



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Sessional Committee on Constitutional Development

Foundations for a Common Future:

**The Report
on Paragraph 1(a) of the Committee's
Terms of Reference
on a
Final Draft Constitution
for the Northern Territory**

**Volume 5 - Part B [1] —
Hansard Transcripts of Public Hearings**

November 1996

Presented and
Ordered to be Printed
by the Legislative
Assembly of the
Northern Territory on
27 November 1996



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PLEASE NOTE:

- The Transcripts of Hearings in this Volume have been edited for consistency purposes. The substantial content of the Hearings have not been changed.
- Copies of the Originals are available either at the Table Office, Northern Territory Legislative Assembly or the Northern Territory Library, Parliament House, State Square, Darwin NT 0800.

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CHAPTER 1

HANSARD TRANSCRIPTS OF PUBLIC HEARINGS

DARWIN REGION

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

DARWIN— Wednesday 10 August 1988

PRESENT:—

Committee:

Mr T. Harris (Chairman)
Mr B. Ede (absent)
Mr W. Lanhupuy
Mr M. Perron (absent)
Mr R. Setter
Mr T. Smith

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Ms Sue SCHMOLKE
Ms Ida WILLIAMS
Ms Myrna BULL -
representing the Women's Advisory Council
Ms Lyn POWIERZA
Mr Harry COEHN -
representing the Office of Equal Opportunity
Mr John HARE
Mr Peter McNAB
Mr Kevin FLETCHER
Mr Peter TULLGREN -
representing Federated Miscellaneous Workers
Union

NOTE: Edited Transcript
Issued: 21 November 1988.

Mr HARRIS: Good morning ladies and gentlemen, welcome to this fifth public meeting of the Select Committee on Constitutional Development. There are 3 members of the committee present - Terry Smith, Rick Setter and myself. Unfortunately, the others members are not able to be here at this time, but Wes Lanhupuy should be arriving soon. I would like to emphasise that, at these hearings, we are examining the development of a constitution for the Northern Territory. It needs to be made clear that we are not a statehood committee. Whether we proceed to statehood in 5, 10 or 50 years, we need a constitution that is accepted by the people and, by visiting communities throughout the Northern Territory, we are working towards the development of such a constitution. Statehood is not something that is to be pushed on the people; statehood must come from the people themselves. We would like to know what people would like to see in our constitution when we eventually become a state.

We have been given the task of preparing the groundwork for our new constitution. In order to do that, we have distributed 3 documents. The first examines the options for the granting of statehood and copies are available for interested persons. There are 2 methods spelled out in the document. The first is that statehood may be achieved by means of an act of the Commonwealth parliament. Under section 121 of the Australian Constitution, statehood may be granted on certain terms and conditions. The other method is by means of a referendum to alter the Australian Constitution under section 128. The views of the committee are given in these documents and we would like to hear the comments of people in relation to those.

The second document is a discussion paper on representation in respect of a Territory constitutional convention. By way of background, perhaps I could refer to the former Chief Minister's policy statement 'Towards Statehood'. It indicated that the development of a constitution is a 3-stage process. The first stage is the preparation of a draft constitution by the Select Committee on Constitutional Development. That draft constitution would be submitted to the Legislative Assembly and later be put before a constitutional convention. The composition of the convention is a matter for discussion. Should it be fully elected, partly elected or nominated? Eventually, the constitution would go back to the Legislative Assembly for ratification and then be put before the electors of the Northern Territory.

The final document issued by the committee is a discussion paper relating to the executive, the judiciary, local government, land matters, Aboriginal rights, human rights etc. We are seeking comments on these matters as well. The process of constitutional development is complex in that it impacts on some 35 Commonwealth acts. I am not sure of the precise nature or the extent of the amendments that would be required to those acts, but it is a very big task indeed. I guess our aim is to ensure that we have the same constitutional rights, privileges, entitlements and responsibilities that people in the existing states have. We need the same political representation in the federal parliament so that the needs of the Territory's people can be properly served. We need secure financial arrangements with the Commonwealth similar to those of the states. It is the view of all members of the committee that the constitution for the new state must be prepared by Territorians. We feel very strongly about that and we would like to hear other people's views on that.

With that in mind, we have been visiting a number of communities throughout the Northern Territory and have been receiving written and oral submissions. That process will continue. We have an extensive mailing list which includes judges, unions, business and employer groups, local governments, community governments, political parties, teachers, educationalists, land councils and

private citizens. We would be only too pleased to hear of any groups who would like to become involved in this exercise. We want to hear from as many community groups as possible.

I hope that gives some background on what the committee has been doing. I might mention also that there has been some confusion about the nature of these public hearings. The purpose of the hearings is to enable people to give evidence at a public meeting. We have a number of people who wish to contribute today. The first people are representatives of the Women's Advisory Council which has submitted a written submission to the committee. I ask the representatives of the Women's Advisory Council to come forward.

This is a select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect as proceedings in the House itself. For the Hansard record, would you please state your full name and the capacity in which you appear today.

Ms WILLIAMS: Ida Williams, Women's Advisory Council.

Ms SCHMOLKE: Sue Schmolke, Convenor of the Women's Advisory Council.

Ms BULL: Myrna Bull, Executive Officer for the Women's Advisory Council.

Mr HARRIS: Sue, we have received a written submission from your council which covers a range of matters. Would you care to expand on any of the points in the submission?

Ms SCHMOLKE: I would like to make a few introductory comments. Our submission is the result of serious consideration by the Women's Advisory Council, especially during the period of the past Convenor. I have been Convenor for the past 3 months. Ida Williams, who is with me today, is a past member of the council. She was Deputy Convenor of the immediate past council.

The Women's Advisory Council represents women throughout the Northern Territory. We have 14 members who come from the length and breadth of the Northern Territory and who represent a wide range of backgrounds, opinions and expertise. We have representation from Aboriginal women, women from non-English-speaking backgrounds, women from pastoral properties and remote communities, professional women and women who are involved in the community in general. In fact, women are half of the voting strength of the Northern Territory and we believe it is essential that their voices be heard at every stage of the constitutional development for the Northern Territory.

It is a great disappointment that there are only men on the select committee. In the vital formative stage of this 3-step operation, women of the NT, to all intents and purposes, deliberately or by the accident of numbers in the Assembly, have been successfully ignored. This statement can be denied in political terms, but not in actuality. We have only to look at the composition of the select committee. The Women's Advisory Council has already raised this very important issue in its written submission. We do not believe that the situation was created deliberately - far from it - but it is an example of the way in which men in politics can easily presume that women's views are the same as theirs and have the same emphasis. That is a very dangerous assumption to make in this day and age. Not only is it fraught with peril for the committee in terms of its being able to produce balanced recommendations, it is morally wrong for a group totally comprised of one sex to claim to be able to adjudicate and recommend on matters involving both men and women.

Our first recommendation, therefore, is that this select committee should appoint a subcommittee of women experts to be involved in all stages of constitutional development. Committee members have already received our formal submission. The submission is an indication of intent in principle. We do not pretend to be constitutional lawyers and, when the constitution is being drawn up, we intend to obtain expert opinion and make further comment. However, there are some items in the submission that should be highlighted because our council believes they are very important to women in the Territory. Recommendation 8 is that the constitution should be written in non-sexist language and we commend the committee for having adopted this approach so far. Recommendation 9 is that we want the constitution and its complementary legislation to establish basic human rights. Recommendation 10 is that we want a constitutional commitment to the principle of equality of the sexes and legislation empowering it. We would be happy to answer any questions involving other matters raised in our submission.

Mr HARRIS: Thank you, Sue. Ida, do you wish to make any comment at this stage.

Ms WILLIAMS: No, I do not.

Mr HARRIS: Can I indicate that the committee is still considering your first recommendation in relation to a subcommittee. We have some concerns in respect of that proposal and we will be meeting soon to consider it further. However, I can assure you that we are in no way trying to ignore the input of women in this process. We would invite as many submissions as possible from representatives of your council in the various communities that we will visit. It is important that we have their views and we encourage your members to become involved in that way.

Ms SCHMOLKE: We feel that it is vital that the involvement of women should be in a formal and recognised sense and that it is within your power to establish such a subcommittee of women experts. A representative at least from that subcommittee should be involved formally in the sittings and hearings of the select committee. The provision of adequate resources and facilities and also payment for the time put in by women involved in such a subcommittee should be considered and implemented. It is all very well to call on the expertise and comments of women generally, but it needs to be done in a formalised sense.

Mr SMITH: Sue, could you elaborate on your argument that it is within our power to establish a formal subcommittee because the advice that we have at the moment indicates that there are some great difficulties with that?

Ms SCHMOLKE: We have actually responded to this very issue and we wrote on 27 June outlining the background. There is a speech in 1985 in the Parliamentary Record indicating that you have the power to coopt specialist knowledge. We believe that, within your current terms of reference - I think it is item 17 - you have the power to provide the committee with all necessary staff, facilities and resources and to appoint persons with specialist knowledge for the purposes of the committee.

Mr SMITH: But that does not actually refer to the power of this committee to set up subcommittees other than subcommittees of the main committee. I think that is the legal and technical problem that we have at present.

Ms SCHMOLKE: We are saying that it is vital that a way be found to enable the representation that we are suggesting. We suggested a subcommittee comprised of representatives from the Ethnic Communities Council, the Territory Women Lawyers Association and from the Women's Advisory Council because of its broad-ranging responsibility. We believe that, given what has been recorded in the Parliamentary Record and given your terms of reference, this could be done with goodwill.

Mr HARRIS: Sue, as I said, we are looking at the matter. Could I stress that we are in no way trying to remove the opportunity for women to have an input in this process. Could I just indicate very clearly that there is no way we are trying to take away the opportunity for you to have input. I really believe that you can have just as much input through the processes that are available. In fact, we urge you to become involved in the entire process, including the constitutional convention, and we will be ensuring that you have that opportunity. Do you have any comment on that matter, Rick?

Mr SETTER: I would like to ask a question in relation to the request for a subcommittee. Do you consider that similar subcommittees should be established for other interest groups such as the unions, Aboriginals, ethnic groups and so on?

Ms SCHMOLKE: This is an example where 50% of the population is not receiving adequate representation and the matter should be examined seriously. However, it is not really our province to comment in respect of those other groups, but I understand what you are saying.

Mr CHAIRMAN: Would you like to address any other specific issues this morning? I note that you are in favour of the section 121 proposal and that you also comment in respect of the 12 Senators. You believe in equality there. Could you expand a little on your suggestion that the Senators be elected progressively at appropriate federal elections over a period of no greater than 12 years.

Ms SCHMOLKE: We feel that, given the Northern Territory's population size, it would be best to phase in our Senate representation, starting with 4 Senators and adding an additional 4 Senators 4 years later and so on. Ultimately, we should be represented in the Senate on a basis that is equal to that of the other states.

Mr SMITH: In recommendation 2 in your submission, you talk about the composition of the constitutional convention. You suggest that 50% of the participants be elected and 50% be nominated. Throughout your submission, there is reference to the need for a balance between specialists and generalists. What sort of specialists are you talking about in relation to that convention?

Ms SCHMOLKE: We must never forget the community at large. Quite often, the emphasis is placed on the legal and professional people of one sort or another. I would make the point that the general community must be represented. However, I think there are areas, and women are included in these, where there are people who have specialist expertise. The migrant communities and the unions are other examples. I believe that there has to be a balance between people with professional qualifications and representatives from the broader community so that there are no gaps in the knowledge and wisdom that is available as the basis for decision-making.

Mr SMITH: Professional qualifications in what?

Ms SCHMOLKE: Perhaps Ida would like to comment further.

Ms WILLIAMS: In relation to the 50:50 proposal, we often have an imbalance in respect of such matters because most of the decisions are taken by people from the legal fraternity. As Sue said, the people in the general community are often forgotten. There will be many women in the community, for example, who will not realise what is going on, who do not know what a constitution is about and who perhaps will not have the opportunity or the knowledge to comment. I think it is up to the Women's Advisory Council to provide that representation and to ensure that we do not have the professionals framing a constitution that is not from the people, and that is one of the aims that you expressed in your opening comments, Mr Chairman.

Ms SCHMOLKE: I do take your point though. You are asking what professionals and I ...

Mr SMITH: I am asking what specialists.

Ms SCHMOLKE: If you refer to the mailing list for the dissemination of information that we were told about, hopefully by now you would have an adequate cross-referencing of the various specialists who would be interested in having input. We will always be alert to drawing to your attention any groups who have not been involved and whom we feel should be involved in this process.

Mr HARRIS: The reason why I referred to the mailing list was that the comment was made at one of the hearings that such groups had not been informed that we were about to discuss this matter. We hope that the parent organisations will contact their various sub-groups issue and make them aware that the committee will be travelling throughout the Territory seeking comment. The committee wishes to ensure that everyone in the community has the opportunity to provide input.

Ms WILLIAMS: There has been very little reference in the media to today's hearing. We were discussing that before we came here this morning. I think that it is a pity that the media is not playing a greater role in publicising something as important as this.

Mr HARRIS: I guess you can only go so far.

Ms WILLIAMS: I realise that.

Mr HARRIS: We are trying to generate interest. If we were merely examining the question of statehood as such, there would indeed be considerable interest because there are many people with differing views on whether we should be pursuing such a goal. When it comes to asking people what they would like to see in their state when it comes into existence, they do not seem to be as interested in that process even though it is a vital one. How do we get the message across? We are examining how we can encourage the Aboriginal communities to become involved. They constitute 22.4% of our society. We will be visiting many of the Aboriginal communities. We will be providing them with information and sending out people to talk to them about the issues prior to our visit. We will have local government representatives talk to them and get them involved so that, when we arrive, we will be able to have meaningful discussions with them.

Mr SETTER: It is important to understand that the aim of these hearings of the select committee is to take formal evidence from witnesses and that they are open to the public. They are not public meetings as such.

Ms WILLIAMS: I realise that.

Mr HARRIS: Do you have any other suggestions in relation to how the committee can draw people's attention to the fact that we will be visiting their particular community. As I said, we have tried to use the media as far as possible. It has been suggested, for example, that service clubs and other groups in various areas should have guest speakers attend their meetings to talk about the question of statehood and perhaps generate interest among the people. I do not know what else we can do other than what we have already done.

Ms SCHMOLKE: This is a personal comment. I think that the formal arrangements for contact with various groups is in place but greater use could be made of the media as a means of making information available. Advertisements could have been inserted in the paper over the last few days, particularly last Friday, Saturday and Sunday, alerting people to the fact that the hearings were to be held today and tomorrow and that they were welcome to come and listen or, if they made prior arrangement, present a formal submission to the committee. The media could be used as a means of educating people on this matter. The newspapers and radio are very effective channels of communication because they reach a wide range of people. Such a media campaign could have created greater awareness of these hearings.

Mr HARRIS: We have a limited budget but we will take that on board. Thank you.

Mr SETTER: Do you agree that this is an appropriate time for the Territory to move towards developing its own constitution with the achievement of statehood being the ultimate aim? Do you also agree that it is appropriate that Territory people develop that constitution as opposed to having one imposed on us by the Commonwealth at some future time.

Ms SCHMOLKE: The answer to both of those questions is yes - very much so.

Ms WILLIAMS: It is very important that the people feel that it is their constitution. In addition, it would create a bonding among Territory people that would enable the eventual gaining of full statehood.

Mr SETTER: Yes, indeed.

Mr SMITH: Mr Chairman, the constitutional convention obviously will be of paramount importance in the development of a constitution. The committee itself has proposed 3 options in relation to its composition. I would like to hear your arguments as to why you prefer the third option rather than the option of fully-elected representation. I do not think that anyone can favour the fully-nominated option. Secondly, how far would you take your recommendation that membership of the convention proportionately reflect the Territory population? In your submission, you identified 3 groups - women, Aborigines and people from non-English-speaking backgrounds - and I expect that you would say that they should be proportionately represented on the convention. Are there other groups whom you think should also be represented on the convention according to their proportion in the population?

Ms SCHMOLKE: In answer to that question, I would like to clarify that we are not arguing for 50% specialists and 50% generalists. I understand that you have not asked that but I would like to say it. We are particularly arguing for women and specialists to speak on behalf of women to be represented. There are other groups, apart from Aboriginals and people from non-English-speaking backgrounds, who should be represented: mining communities, remote communities, pastoral properties etc. Those elements of the Northern Territory's population who are living in different situations should be identified and their representation on the convention ensured.

Mr HARRIS: In respect of the composition of the parliament, your submission indicates that you agree that it should be a unicameral system but it does not go into any detail about the actual structure. Do you agree, for example, that the parliament should have the same powers, including legislative powers, privileges and rights, as exist in the state parliaments?

Ms SCHMOLKE: Our submission indicates that we believe that we should have equality with the other states.

Mr SMITH: Your recommendation 6 proposes rather a quantum leap in the recognition of local government. In particular, you recommend that parliamentary privilege, or whatever you would call it for local government people, should be extended to local government. That is a proposition that I have not heard advanced before. Perhaps Ida might like to expand on that.

Ms WILLIAMS: Local government is always referred to as the third tier of government. If there is parliamentary privilege at the state level, then I think it should also exist at the local government level. Local government should be recognised as a very important part of the democratic process and it should have equality with the other areas of government.

Mr SMITH: What advantage would parliamentary privilege give local government that it does not have at present?

Ms WILLIAMS: Sometimes local government people are not given the respect or perhaps the support that we think we should receive. Although we receive an allowance, we are not on wages and there are very many differences. We are working in the same areas as people from the Legislative Assembly and, if we could have things like parliamentary privilege, we would feel that we were working hand in hand with the state and with the Commonwealth and that we are not a separate identity catering simply for the basics. The responsibilities of local government have increased and will continue to increase over the years. I think it is a general feeling of being accorded the same privileges that are given to state and federal politicians.

Mr SMITH: But, what practical difficulties does the absence of the concept of parliamentary privilege present at the local government level?

Ms WILLIAMS: I do not see that there are great difficulties with it. However, it certainly makes it easier if you have parliamentary privilege in relation to what you are saying, doesn't it?

Mr SMITH: Okay, I take your point.

Your submission refers to 'constitutional recognition'. Can you elaborate on the extent of the constitutional recognition that you would like to see? For example, should the recognition that you

say should be provided in the new Northern Territory constitution go as far as preventing that the new Territory government having the power to dismiss elected local governments?

Ms SCHMOLKE: We believe that there should not be any such dismissal without a public inquiry and adequate investigation. To that extent, the answer to your question is yes. The matter would have to be aired and investigated before a local governing body could be dismissed.

Mr SMITH: If we became a state, we would be regarded as an equal constitutional partner with the Commonwealth in the sense that the Commonwealth certainly cannot dismiss a state government. Are you saying that there still should be a power, under certain defined circumstances, for the state government to dismiss a local government?

Ms SCHMOLKE: I am saying that the power should be very much controlled ...

Mr SMITH: But, there should be a power there?

Ms SCHMOLKE: A limited, controlled power.

Mr SETTER: I noted that you agree that a unicameral system is more appropriate for the Northern Territory at this stage. Would you envisage that, at some time in the future as the population increases, we should move to a bicameral system?

Ms SCHMOLKE: At the moment, we believe that there should be only one House but we should not eliminate the possibility of a second House being created should that be the wish of the community at large at some future time. However, it would have to be an expression of the wishes of the community. Historically, we have had a unicameral system and that is something that the Territory community relates to.

Mr SETTER: I think Queensland and the Northern Territory are the only places which have a unicameral system. Mind you, it has worked very well in the Northern Territory to date.

The other matter I would like to discuss with you is your proposal that, on the achievement of statehood, we should elect 4 Senators but, within 12 years, move to the full complement of 12. From my discussions with political parties interstate, there could well be some difficulty with that. There is a nexus between number of representatives in the Senate and in the House of Representatives in that the number representatives in the Lower House is approximately twice that in the Senate. That would require a considerable increase in the number of members in the House of Representatives over that 12-year period. Do you think there would be any difficulty from other states and the Commonwealth if that were to occur?

Ms SCHMOLKE: I think there would be an enormous difficulty and that is something that needs to be addressed. Our council expressed the view that the Territory needs to have equal representation with that of the other states.

Mr SETTER: Yes, I share that view. If we are to move to statehood under section 121 of the Constitution, that would require an act of the Australian parliament. It would require, of course, that statehood for the Territory be acceptable to the major political parties in Canberra. We must bear that in mind.

Ms SCHMOLKE: Yes. The other thing to bear in mind is that the time frame that the council has suggested is a recommendation only at this stage.

Mr HARRIS: Do you have any comments in respect of the number of members of parliament and whether or not that should be enshrined in the constitution?

Ms SCHMOLKE: At this time, we do not have any further comment in relation to that. That is very much a specialist area. We are concerned and interested lay people in the community and therefore I cannot give any further detail. Certainly, we can look at that matter.

Mr HARRIS: What about the terms of parliament? For example, should there be a fixed 3-year term? Do you have any comment on that in your submission?

Ms SCHMOLKE: A point that I probably did not make clear at the beginning is that, from the discussion papers and information papers, we selected some areas that we felt were pertinent for us to comment on at this time. We have not covered every area in the papers that you have distributed.

Mr CHAIRMAN: There have been comments from many people in respect of whether or not there should be fixed terms. Do you agree that the term of a parliament should be fixed at 3 years and that there can be no dissolution before that time unless a vote of no confidence is carried or a Premier resigns or vacates office and another government with the confidence of parliament cannot be formed within a reasonable period? Those are the sorts of issues that we would like to address in the course of our deliberations.

Ms SCHMOLKE: That issue has not been examined in depth by our council. It is something that we can follow up and provide more information to you later.

Mr CHAIRMAN: There are a number of questions that we would like to pursue with you but that would take considerable time. Perhaps we could look at specific issues that we would like to pursue with you in more detail and perhaps contact you again.

Ms SCHMOLKE: Before we finish, I would like to emphasise certain points in our submission.

Mr CHAIRMAN: I am not trying to wind you up. I am just saying that there are several questions that we would like to pursue with you in more detail. I am suggesting that perhaps we can contact you in respect of those and you can respond accordingly.

Ms SCHMOLKE: That would be excellent. We would be very pleased to do that.

Mr CHAIRMAN: Are there other areas that you wish to comment on?

Ms SCHMOLKE: We are particularly concerned about our recommendation on page 13 relating to human rights and equality of rights. We believe that provision should be made within the constitution for the protection of those.

Mr SMITH: Sue, I do not understand why you have both recommendations 9 and 10. Why have both of them. Isn't recommendation 10 - calling for the principle of equality of the sexes - covered by recommendation 9 which relates to basic human rights, including non-discrimination.

Ms SCHMOLKE: No, not adequately.

Mr SMITH: Could you spell out how those 2 recommendations are not identical?

Ms SCHMOLKE: Equality of the sexes is something that has not been clearly addressed or acknowledged. In fact, it is not covered adequately by common law. We believe that there needs to be stated clearly, probably in the preamble to the Constitution, that there is a commitment to the equality between men and women. The recommendation relating to basic human rights covers various other areas. However, we feel so strongly that there needs to be a clarification and a commitment to the equality between men and women that we have made that an additional recommendation.

Mr SMITH: Is there a difference between non-discrimination and equality or are you just saying that, because you feel so strongly about the issue of equality for women, it should be specified separately?

Ms SCHMOLKE: I will pick up your reference to non-discrimination. Quite often, it is very easy for the law makers to feel that, by saying that there will be no discrimination, people in fact will be treated equally. There can be an assumption that all groups - and I am not talking only about women - have access to the same power and resources that the makers of the law have at their disposal when, in actual fact, they do not. In this case, we are talking about women but it applies to other groups also. We feel that there must be a clear statement of a commitment to that equality between men and women which would then flow on through the various legislation that is enacted and would be implemented in that way. That would be a major step forward and would probably remove the need for various other legislation that is being considered such as the legislation in relation to domestic violence that is trying to redress these existing inequities. We feel that the constitution would provide a very simple, adequate and emphatic opportunity to make this commitment.

Mr SMITH: Are you asking for a higher commitment towards the rights of women than for other groups?

Ms SCHMOLKE: No. We have been asked to give this submission as a body representing women and therefore we are speaking very strongly on behalf of the women who constitute half of our population. We feel that it must be drawn to the attention of this select committee. We acknowledge that there are other groups that possibly feel that they have a similar need to be treated fairly and equitably and it is their responsibility to make that submission for themselves. However, possibly it is something that this select committee can bear in mind.

Mr HARRIS: Recommendation 9 relates to the inclusion in the preamble to the constitution the establishing of basic human rights in the new state whereas recommendation 10 indicates that the constitution itself should contain a commitment.

Ms SCHMOLKE: Yes.

Mr HARRIS: At this stage, I acknowledge the presence of the member for Koolpinyah, Mrs Noel Padgham-Purich, in the gallery. Noel, you can come down into the Chamber if you wish. Are there any further questions?

Mr SETTER: Recommendation 7 refers to extensive debate and consultation being undertaken in respect of Aboriginal land rights etc. We heard this morning that women comprise 50% of the Territory's population. Given that 50% of the Aboriginal population would be women, I assume that you see yourselves as representing their interests as well.

Ms SCHMOLKE: Yes.

Mr SETTER: Do you have a view in respect of the suggestion that has been made to us that an acknowledgement of the prior ownership of land by Aboriginals - that is, prior to white settlement - should be included in the constitution? Others have suggested that it be included in a preamble to the constitution and others again have suggested that it should not be included at all.

Ms SCHMOLKE: The whole issue of Aboriginal rights and Aboriginal land rights is a matter that the Women's Advisory Council firmly believes needs to be thoroughly aired and discussed by the community at large. At this point, we do not feel that we are in a position to say that one thing should or should not happen or that any other thing should or should not happen because the ramifications of ownership of land for Aboriginals and non-Aboriginals is massive and has a big impact on the Territory as a whole. At this point, we are not in a position to comment and I really doubt that many other people are either. We feel that there should be thorough consultation and discussion of the issue.

Mr SETTER: Thank you.

Mr HARRIS: I am sure there will be, Sue. The problem is trying to get the traditional Aboriginal people involved. It is a very complex matter. I do not have any solutions to the problem of getting people more involved in this process. I agree that there needs to be extensive debate on the issue. I am sure that there will be and I hope that we can arrive at some resolution of the matter.

The suggestion that the act be patriated back to the Territory had also been made. My colleague, Brian Ede, maintains that there is no such thing as 'patriation' and the expression should be 'devolution' on the Territory. Nevertheless, it is an issue of which we are very much aware and much comment has been made in the past in relation to it.

Are there any other points in your submission that you would like to refer to specifically?

Ms SCHMOLKE: At this point, I think that, in conjunction with our written submission, our initial comments have been fairly comprehensive. We look forward to making further comments on the items on which you require further information from us. We will be more than happy to supply that. I simply re-emphasise our belief that a subcommittee of expert women from various areas is absolutely essential to the fair treatment of this subject by the select committee.

Mr HARRIS: As I said, the matter of women being involved in the exercise is not really a question because it will in fact occur. How it will occur is perhaps the question. Nevertheless, we

will ensure that your group has opportunity to comment throughout the entire process. As I said, we will contact you in relation to matters on which we require further information.

Ms SCHMOLKE: On behalf of the Women's Advisory Council, I thank the select committee for extending to us this opportunity to comment.

Mr HARRIS: I am sure there will be many more opportunities to speak to us.

Ms SCHMOLKE: Thank you.

Mr HARRIS: I welcome the other member of the select committee, Wes Lanhupuy.

We have a written submission also from the Office of Equal Opportunity. Could I ask Lyn to come forward. I repeat that this is a select committee of the Legislative Assembly and any evidence from witnesses demands the same respect as proceedings in the House itself. For the Hansard record, could you please state your full name and the capacity in which you are appearing before us today.

Ms POWIERZA: My name is Lynette Powierza and I am here as the Director of the Office of Equal Opportunity. I have with me Harry Coehn who is a member of that office.

Mr HARRIS: Lyn, we have received a written submission from you. The main issues that you refer to in that submission are human rights, Aboriginal rights, the number of parliamentarians, length of residency, terms of office, constitutional convention, electoral allowance etc. Would you like to expand on any of those matters.

Ms POWIERZA: Not really. The members of the office examined all the papers that were distributed. The headings that we gave are the matters that we wanted to comment on in particular at this stage.

In particular, we felt very strongly that there should be at least a minimum position in relation to human rights set out in the preamble to the constitution. We make the point that, whilst this is not included in other constitutions in Australia, there is no reason why the Territory should not take the lead, particularly given that the composition of our population perhaps is unique in Australia. We also felt that such a provision would provide a foundation for the development of particular legislation covering equality of opportunity in the Territory. Do you want me to talk to all of the points on the paper?

Mr HARRIS: In relation to the number of parliamentarians, your submission indicates that 'the number of parliamentarians or an appropriate ratio should be set out in the constitution'. We would like you to expand a little on statements such as that. If you would like to expand on any of the points in your submission, we would be pleased hear it.

Ms POWIERZA: The reference to the number of parliamentarians is brief because we did not have a specific idea on the particular number which should be applied for the Territory. However, we did think that it should be delineated in the constitution so that the number could not be changed at whim, as it were. That is our reason for saying that it should be set out in the constitution.

In respect of the length of residency, we simply agreed with the select committee's view that the 6 months residency clause in both the Territory and the Commonwealth legislation should be the one that applies in relation to voting eligibility. We think that that is a reasonable and adequate time.

We supported the 4-year option for terms of office after discussing the various propositions that have been made in that regard. That is simply the view that we reached on those issues.

Mr HARRIS: I was interested in that comment because the select committee recommended that the number of members of the new state parliament continue to be stipulated in legislation rather than in the constitution itself because there are times when it would need to be changed.

Do members have any matters that they wish to raise in respect of any part of Lyn's submission.

Mr SETTER: With regard to the constitutional convention and its composition, I noted that you say that 'while mention is made of the participation of key groups, population groups are not featured'. The composition of the convention is one of the difficulties that will be faced in the future. We have heard various views expressed today. It is a very difficult matter because, whatever is decided, somebody will feel that he has missed out. I would like to hear your view on that. How can we allow everybody the opportunity to have input into the convention without disadvantaging any group?

Ms POWIERZA: It is a difficult question. The reason that we have emphasised population groups is that they are pretty basic. There should at least be representation for groups such as Aboriginal people, women, people with disabilities and people from non-English-speaking backgrounds etc. We tend to talk about specialist groups such as unions or whatever else, but sometimes ignore those basic groups which should not be overlooked. The reason that we recommended also that there should be a mixed model of selection of the convention is precisely to try to address the problem of obtaining as wide as possible representation of various groups and interests in the community. We are mindful that, in the voting process, which is a very competitive one, the results sometimes come out skewed. The mixed model would allow the filling in of the gaps, but also allow the democratic process of selection to occur to an extent.

I was listening to the previous witnesses this morning, and I would like to indicate that I too believe that it is important that people who live in remote areas and in special situations should be represented. Harry, do you wish to add anything to that?

Mr COEHN: Perhaps there should be prior involvement of these particular groups, be they population groups or whatever. I am not certain - and I stand to be corrected - that those groups are particularly involved at this time. From my observations, to have many people from the various groups go through a fairly heavy set of documents such as these makes their submission and involvement less than what they should be. If convention does not permit the possibility of representation from all these groups, prior involvement before a submission is made should be much heavier than it is. At least, what you are seeking - their involvement and their point of view - will be obtained at an early stage.

The chairman has pointed out that the committee works within a certain budget. Nevertheless, it appears to me that more consideration could be given to the type of information papers and the type of publicity that the committee is focussing on. To make a personal comment, it seems to me that the discussion on the constitution centres on the legislation to the neglect of many other major points. For example, every time I pick up the paper, there seems to be talk about the number of Senators that we should have. There is a whole host of other items on which the media does not focus. Consequently, when you are talking about the types of groups from whom you should be trying to obtain submissions, those subjects are not necessarily the sorts of things that those people are totally involved in. I was in Nhulunbuy recently and it seemed to me that the information available in respect of the constitution centred very much on the number of parliamentarians and the number of Senators. From reading these documents, it is clear that there is much more than that to the constitution. Perhaps if the various groups gave submissions and became involved in the very early stages, the composition of the convention may not be such a difficult matter.

Mr SETTER: Are you suggesting, Harry, that this committee needs to conduct a considerable amount of promotion with regard to the real issues involved in this whole debate as opposed to letting the media have the running on it because it tends to seize on emotive issues?

Mr COEHN: I agree. I think this committee should identify groups of people who perhaps could do much of its work. Putting aside the fact that many would be in other localities, how many of the groups would feel comfortable in attending a hearing such as this? I think it would be easier if you prepared reasonable working papers and sought input from these people. These people may feel very comfortable soliciting information and data and giving their point of view. This could then be collated for public information. At least, by doing that, you would obtain their point of view. The publicity in relation to the hearings of the committee is quite good. I do not think there is a single Territorian who does not know that there is such a committee and that it is collecting information. However, I would be interested in the number of people who actually do attend a hearing.

Mr SETTER: If the convention were composed of 50% elected and 50% appointed people and the appointees were professional people, constitutional lawyers, politicians etc, do you think that the elected people would feel rather overawed in that they would not have the same knowledge of constitutional matters that the professionals would have? Do you think that there is an opportunity to use a subcommittee system within the convention whereby people who have special interests - for example, ethnic affairs, issues relating to Aborigines etc - could have input? I imagine that much of the debate that would occur at the convention would not be of interest to all the participants.

Mr COEHN: I think that that at least would cover the interests of many of the groups that may not necessarily be represented as a result of the election system. Let us be honest and recognise the fact that the people who are elected may not cover the entire range of people who compromise the various groups.

Ms POWIERZA: My idea in respect of the mixed composition was not that the appointed people would be specialists such as constitutional lawyers etc. After the election of the 50% of the delegates, you could then determine where the gaps were and fill them by means of the appointees. This could involve the appointment of lawyers or people from remote areas or whatever. The appointment system should aimed deliberately at filling the gaps missed by the election system.

Mr SETTER: Of course, no decision has yet been made.

Ms POWIERZA: No.

Mr SETTER: However, your point is a very valid one. Thank you.

Mr HARRIS: These are issues which we will have to address. All we are saying at present is that all the information that has been provided will be looked at. At the appropriate time, people will be able to comment on that at a constitutional convention. I hope that all the issues are raised well and truly prior to that. We need to know those views for our deliberations in relation to a draft constitution. Our task is to try to glean from members of the community any issue that they feel is of concern and should be addressed.

Harry, I take the point that there are a number of major concerns in the documents which need to be addressed by the community. Many of them are very straightforward issues. The question of the number of Senators is of real concern to us naturally because it is a major issue which will confront us at some stage. The whole matter of having a new state with a small population having equal numbers in the Senate is a frightening prospect for other governments in Australia. Those issues will have to be addressed and we want the views and the arguments of people in the community in relation to them. Some people are saying that, under no circumstance, should we move to statehood. We need to discuss these views.

Lyn, in your submission you raised bilingual education in relation to Aboriginal rights. I am not raising this because I also happen to be the Minister for Education. It has been raised at other hearings. I am interested in your reference to 'specific treatment'. Are you able to expand on that in any way? What should that specific treatment be?

Ms POWIERZA: I think that the bilingual education program certainly has been crucial to the preservation of Aboriginal languages. It is my belief that it is a very important element of education for Aboriginal children and for Aboriginal adults. The framing of a constitution presents a wonderful opportunity to recognise the significance of Aboriginal languages to the people. In many ways, the Territory is unique in the world in the number of languages that are dealt with in the school system. It is not as easy as it was in Canada which merely determined that both French and English would be official languages. Whether or not we can go that far, I think it would be possible to refer to the right of people to be educated in their own language when that refers to Aboriginal languages. I know that there are many other people from non-English-speaking backgrounds and that 50 or 60 languages from around the world are spoken in the Territory on a daily basis. However, I do not think that those languages have quite the same status as the languages of Aboriginal people. I believe that the bilingual education program is essential to the continued existence of those languages. That is why I have said that it requires specific mention.

Mr HARRIS: All I query is the equality of the whole exercise. I am trying to look at the matter right across the board. I know that we make specific reference to certain areas. I simply wanted you to expand on that.

Ms POWIERZA: I think that it is particularly important that the program is viable. We have proved in the Territory that it is viable and this is an opportunity to enshrine it. We have made

some provision at least within our education system for other non-English languages in the Territory. Also, the government has given support to the establishment of schools that communities themselves run. That is an attempt to overcome difficulty in terms of numbers and the dispersion of people and children from different backgrounds throughout schools. I am mindful that, in other parts of Australia, there are opportunities for bilingual education. Greek is an example of which I am aware. However, I do not really see it as being viable here because of the present numbers unless it is in a non-government school situation. There have been applications for that from the Greek community.

Mr SMITH: Lyn, I think that it would be difficult to entrench in any constitution an education program and the principle of support for bilingual education or the rights of Aborigines to continue to receive education in their first language. However, it is the type of matter that it may be possible to look at in terms of the constitution.

Ms POWIERZA: Yes, possibly that should have been reworded so that, in relation to the constitution, we are referring to the principle and not to the specific program. I agree.

Mr SMITH: In your preceding paragraph, you talk about Aboriginal people and state that the history and ownership of the land 'should be entrenched'. What do you mean by 'entrenched'?

Ms POWIERZA: I am referring to the preamble to the constitution. I suppose that 'entrenched' means that it should be written into the constitution so that there is a real recognition of the history of the people in relation to the Territory.

Mr SMITH: You mean written in. In my view, and I am not sure whether I am legally correct, 'entrenched' means that there are special provisions inserted into the constitution and, to change those provisions, requires action that is different from changing normal provisions of the constitution. In other words, when talking about entrenching Aboriginal land rights in the constitution, people are saying that there must be a two-thirds majority of people at a referendum to change that whereas normal provisions of the constitution may be changed by, say, 50% plus 1 of people voting in a referendum. I wanted to elicit from you whether you thought there should be special provisions or whether by 'entrenchment' you meant simply placing it in the constitution whereby it could be altered by the same procedure that you would use to alter any other provision of the constitution.

Ms POWIERZA: I did not really consider the technicalities of that. Did you have anything to say on that, Harry.

Mr COEHN: No. I think that the language part ties in with the whole cultural heritage of the Aboriginal people. There should be recognition of the whole cultural heritage of the people. We did not intend to enter into deep discussion on whether that should be entrenched or otherwise. I think that recognition in the constitution would give it that status anyway.

Mr HARRIS: Any further comments?

Mr SMITH: I wanted to take up the matter of electoral tolerance which obviously is of particular interest to politicians. I note that you base your call for 20% tolerance on the fact that it provides us the opportunity to take into account vast distances and sparsely populated areas. However, the reality of the result of the 20% tolerance so far in the Northern Territory's electoral

history is that the larger electorates have tended to be in those very areas. For example, Wesley Lanhupuy has one of the largest electorates in terms of numbers of people, as does Stanley Tipiloura, and the smaller seats have tended to be in the urban areas. At present, the smaller seats are in Alice Springs. Some electorates there have 500 or 600 fewer people than Wesley's. I know also that my electorate of Millner has fewer people than the Arnhem electorate. That is not the result of any gerrymander or anything like that. It results from the way in which the independent electoral distribution commission has worked through its task. Perhaps I am not really asking a question. Maybe I am merely making the observation that it does not seem to me that the point you have made in support of a 20% tolerance really works out in practice.

Mr SETTER: I would like to ask for a point of clarification in regard to what you mean by a tolerance of 'up to 20%'. Do you mean 20% plus or minus or 10% plus or minus.

Ms POWIERZA: We are all reading the discussion papers in responding to that.

Mr SMITH: The discussion paper means 20% ...

Mr SETTER: Yes, and that is the current situation in the Northern Territory.

Ms POWIERZA: I suppose that we were virtually looking at the status quo. I did not realise that, in practice, the Arnhem electorate has more people than the Millner electorate. My perception was that the 20% tolerance would allow for the sparseness of population. Who makes the determination about where the boundaries are and what sort of tolerance is appropriate?

Mr SETTER: There is an independent tribunal established from time to time which draws the boundaries based on its assumption of population spread.

Ms POWIERZA: Yes.

Mr HARRIS: It is a difficult problem to arrive at areas that are consistent with one another. The drawing of boundaries is a very sensitive matter. That tolerance is required if there is massive growth in an area or where you can see that a particular area is developing quickly. The problem is in linking it all together, particularly in relation to the Aboriginal scene where there are completely different tribal groupings. The electorate of Stuart is perhaps the perfect example where Yuendumu people, for example, relate to people as far up as Lajamanu. That has to be taken into account when you are drawing up the electoral boundaries. Thus, it is very difficult when you talk about land areas as compared with the population in those areas.

Ms POWIERZA: I understand that. We were really reflecting the view that the status quo should be maintained in that respect.

Mr SMITH: Of course, the matter may be taken out of our hands if the referendum is passed.

Mr SETTER: Yes, that is one of the things to be considered in the referendum on 3 September.

Mr HARRIS: Are there any further questions. Do you have any further comments?

Ms POWIERZA: No, only to thank you very much for allowing us the opportunity to give evidence. If there are other issues on which you would like specific comment from us, we would be happy to sit down and talk those through.

Mr HARRIS: Thank you very much for that offer and for presenting your evidence today.

Ms POWIERZA: Thank you very much.

Mr HARRIS: We have a submission from Mr John Hare. Can I ask Mr Hare to come forward to present his evidence. John, you are aware that this is a committee of the Assembly and that we require you to observe the normal courtesies extended to the House. Could I ask you to state your full name and the capacity in which you appear today before the Committee.

Mr HARE: Thank you, Mr Chairman. My name is John Denham Hare and I appear in my capacity as a private citizen. I am a local businessman.

Mr HARRIS: We have only just received your submission, John. Perhaps you could speak to it and we will go from there.

Mr HARE: Mr Chairman, it is fairly brief and I apologise for its late arrival. If you could bear with me, perhaps I could read through it - it should not take too much time - to give everybody a chance to pick up the main points which I am raising.

Mr HARRIS: Certainly.

Mr HARE: Basically, there are 2 major issues which I wish to address. One is under the heading of options for a draft of statehood and the other one relates to the proposed new state constitution. The terms of reference of the Select Committee on Constitutional Development include provision for the committee to inquire into and report and make recommendations on the issues, conditions and procedures pertinent to the entry of the Northern Territory into the federation as a new state. In its Information Paper No 1, the committee states that the preferred method of creating a new state is by an act of the Commonwealth parliament under section 121. I am of the view that section 121 should be the preferred method. It is contended that the Commonwealth parliament would be more competent in analysing the issues involved in the grant of statehood, and hopefully in an objective manner, than, say, a nationwide referendum where the majority of citizens may not understand the issues. Politicians - in this case Commonwealth parliamentarians - would be held accountable; the general public cannot be.

Irrespective of the constitutional power which the Commonwealth may or may not have under section 121, re the imposition of terms and conditions, the new state would have determined its bargaining position prior to approaching the Commonwealth parliament. While it is unlikely that the Territory, particularly with the current political complexion of the Commonwealth parliament, could obtain in advance a public commitment from the Commonwealth government to support the proposed grant, it follows that support from within the Territory must be demonstrated. The select committee's concurrence with the holding of a Territory referendum within a reasonable time is supported. The key issue is the definition of 'within a reasonable time'. The timetable for statehood should not be determined by political considerations nor be at the whim of the government. The government has indicated it is moving 'towards statehood'. That process has commenced and, in my

opinion, should be finalised within 18 months. The preparation of a draft constitution for presentation to the Legislative Assembly and the establishment of a Territory constitutional convention should be in place by the end of 1989.

My major point is that the low level of political knowledge and education in the community at large is appalling. Surveys Australia-wide indicate a poor level of knowledge or understanding of the constitution or the political process. The development of a new constitution for the Northern Territory provides an excellent opportunity to educate the general population on the parliamentary system of government as it operates in the Northern Territory as well as Australia-wide. Such education hopefully would result in a more politically-literate community which, in itself, would contribute to the enhancement of the institution of parliament and the good governance of the Northern Territory.

I make a distinction in such an awareness program between the selling of the concept of statehood and its advantages in relation to the fundamental issues of control of land, mineral rights etc, on the one hand, and an awareness program on our system of government on the other. While the government of the day should have responsibility for the former, I believe the select committee should have responsibility for the latter.

On the subject of the proposed new state constitution, I have but one major issue which I would like to raise. The drafting of a new state constitution provides a unique opportunity for a Territory constitution to be drawn up to reflect the social, economic and geographic diversity of the Northern Territory. Lessons should be drawn from the inadequacies of existing state constitutions. We have a unique opportunity to devise a constitution in keeping with the evolution and development of the Territory. The principle remains that the Territory should not have a constitution enforced on it, but rather should develop its own.

As I said, I wish to comment only on one particular aspect of the constitution and that relates to the executive. As a general rule, I support the select committee's view that the Premier and other ministers of the new state should be chosen from the members of the new state parliament. However, I would ask the select committee to consider a complementary system which would allow the Governor, on the Premier's recommendation, to make ministerial appointments from outside the parliament. This would have the advantage of allowing the Premier to choose the best available brains to assist in the good governance of the Northern Territory. Ministerial accountability would still be through the parliament and this could be achieved in one of two ways. Firstly, the non-parliamentary Cabinet minister could be called to the bar of the House to address parliament or be subject to questioning or, secondly, the non-parliamentary Cabinet minister could be 'shadowed' by a parliamentary colleague. This system would afford the government the best possible scope and range of expertise to the executive level of government.

As admitted in the select committee's discussion paper on the proposed new state constitution for the Northern Territory, the executive has become the dominant arm in the Westminster system. The executive sets the agenda for the parliament and effectively dictates the business. While, in theory, the parliament has control over the executive, the reality is that the parliament does not have that power in any practical sense. Since that strand of responsibility has been effectively removed, it also removes the constraint, at least in theory, or inhibition that some of the ministry could not be drawn, with certain safeguards, from outside the parliament. Under this

system, the executive would still be dependent on the legislature for the passage of its registered proposals and, most importantly, for the ongoing appropriation of funds necessary for the performance of government functions.

The ministry is responsible to parliament because parliament claims to represent the people on whose behalf it acts and to whom it is therefore responsible. But, as I said, like most other parliaments, there is the criticism that the executive is not really accountable to the parliament. In the Territory, there is the added criticism that, because of its small population base, the government of the day is unlikely to have a large enough pool from which to draw its managers - that is, the ministers. As mentioned, necessary safeguards would have to be built into the system. For example, it has to be the function of parliament to appropriate moneys. It would be essential that the Treasurer and or finance ministers be parliamentary ministers to at least afford the parliament the opportunity to vet appropriations. No doubt other mechanisms could be devised, such as an expanded committee system, to act as a necessary watchdog.

Mr HARRIS. Thank you, John. You have raised some interesting points. There will indeed be a comment made in the community at large when such a proposal is put forward. I note your comment that the timetable for statehood should not be determined by political considerations or be at the whim of the government. You say that the government has indicated that it is moving 'towards statehood', that process has commenced and should be finalised within 18 months. I suppose that the issue of statehood and the direction of government in that regard is a matter for government. As I made it clear at the opening of this hearing, that we are a constitutional development committee. I acknowledge your point and, in fact, I have made the comment on other occasions that I believe we have perhaps gone about this whole exercise the wrong way. However, I believe that the process can still be achieved in the manner in which we are going about it. We are already educating the children in our schools about parliament. Every sitting day of the Assembly, there are children in the public gallery and members from both sides of the House speak at the various schools about the operation of the parliament. Perhaps there are matters that the public need to be made more aware of. I take the point that there is a need to generate interest if we really do want comment to flow back to a committee such as this.

No doubt, some of us would have concerns about the proposal for ministerial appointments from outside the parliament.

Mr HARE: Mr Chairman, to take up the matter of public education, it is interesting - and I certainly have not had a chance to discuss anybody else's submission - that the Convenor of the Women's Advisory Council, Sue Schmolke, made exactly the same reference. There may well be a public perception out there but anything that can assist in a greater understanding of the political process really has to be a responsibility of this committee. I am sure that you have limited funds, as you mentioned earlier. I hoped to try to make the distinction between constitutional development and the move towards statehood which obviously has to be determined by the government of the day, and hopefully by means of a bipartisan approach. However, I do not think that a committee such as this can expect to receive submissions in relation to a new constitution unless people understand the current system and receive information in a format which they can understand. While I commend those information papers, they are pretty dry and I wonder how many people have actually read them. Thus, I would simply like to reinforce that point about public education.

Mr HARRIS: Various groups such as unions have made submissions relating to their concerns in respect of the statehood issue - industrial relations matters etc. Those groups are following the process quite carefully and making their comments to the committee in the appropriate manner. However, we do need comment from the people at large in the community and that is one problem that we do not seem to have solved as yet. Do you have any comment, Rick?

Mr SETTER: Yes, Mr Chairman. John, I noticed that you favour section 121 as the preferred method and you further comment that the Commonwealth parliament would be more competent in analysing the issues involved in the granting of statehood than the community at large. Do you then continue to support the establishment of a constitutional convention which would consider a draft constitution and that that convention should comprise representatives of the community in full or in part? Do you favour that system as opposed to having the constitution developed by, say, a committee of this parliament? In other words, on the one hand, you are saying that the Commonwealth parliament is more competent to grant statehood to the Northern Territory but, on the other hand, you are suggesting that a Territory convention is appropriate to develop the constitution.

Mr HARE: I have no problem with that. I certainly think that there should be a constitutional convention. How that convention is comprised is a matter for later discussion. My point in advocating the section 121 option is that there would still be a the constitutional convention. However, it would be by means of section 121 that the constitution, however it was arrived at, would be put to the Commonwealth parliament. In this case, I favour that option rather than going to a nationwide referendum. We are having enough problems in the Territory trying to educate people on the constitutional niceties or the challenges and therefore I do not see how we would excite the people of Queensland or South Australia. However, there is a fair chance that, through our existing channels of information, we can at least lobby, for want of a better word, the existing members of the Commonwealth parliament. That is why I favour the section 121 option. It has no bearing whatsoever on whether I like or support a constitutional convention. I have no problems with a Territory constitutional convention being formed.

Mr SETTER: John, you observed that there seems to be a low level of political knowledge and education in the community at large and you consider that that is appalling. Do you think that that problem is unique to the Northern Territory or is it is a nationwide phenomenon?

Mr HARE: It certainly is a nationwide one. It is a subject which I have been following for some years. No doubt, you would have noticed in the press recently comments on surveys that revealed that a surprising number of people could not nominate in which House the Prime Minister sits. That indication must give cause for considerable concern. We are asking people to partake in a unique experience. Not many people have a chance in their lifetime to have an input into how their state is to be run. Whilst I have no intention to deny people that right, I think we have a responsibility to ensure that people can come to their decisions with the best possible information at their fingertips. It is certainly not a problem that is unique to the Northern Territory. In fact, I would suggest that possibly the Territory education system addresses the matter of political education and constitutional history to a greater extent than some of the states. Nevertheless, it is a universal problem.

Mr SMITH: John, when you say that the process should be finalised within 18 months, are you talking about a grant of statehood within 18 months?

Mr HARE: Oh no! I see no reason why this sort of activity cannot continue at a higher level whatever the decision of the government or the bipartisan approach to actual statehood is. In fact, I would have thought that the longer that the average citizen understands what the new constitution is and what the various options are, the better. It comes back again to better education. That in itself will generate sufficient debate, hopefully, to allow people to address the wider issues of whether they actually want statehood. I cannot see why this committee could not arrive at a draft constitution by the end of next year. Would you then circulate that draft throughout the community and have another round in 1990 after feedback? I think that one of the problems is that this whole issue is dragging on. We seem to go through great roller coaster activity when it comes to constitutional development or statehood. One minute we are up in the air and the next minute we are down in the trough. That is not assisting the whole education process.

Mr HARRIS: We are required to report back to the Legislative Assembly within a year of our establishment. We hope that we will be able to come up with something within a reasonable period of time. However, you are talking about the timetable for statehood. That is something that has yet to be determined.

Mr HARE: Yes. I am sorry, my terminology was probably a bit loose there.

Mr HARRIS: Our specific aim is to have a draft constitution as quickly as possible after consultation with as many people in the Territory as possible. We hope to come up with a document that can be submitted to a convention after ratification by the Legislative Assembly. It would then be made available for further public comment and put to a referendum. However, that is a different issue to the question of statehood.

Mr SETTER: John, I would like to comment on what you said a moment ago about the move towards constitutional development going through highs and lows over the last few years. I think the reason for that is that, several years ago, when the Chief Minister of the day made the announcement that we would make a push for statehood, there was lot of media hype at the time. Most of that centred on how many Senators we would have. That matter was debated back and forth for some time. When this committee settled down initially to examine this whole issue, it realised that it was very complex indeed and that an enormous amount of research needed to be done. We have been through most of that process now and these documents are a result of that. We accept, of course, that it is an ongoing process which will continue for several years at least. Whilst that research was being done, there was not a great amount of media hype occurring. In other words, it was not very exciting work and it was addressing a whole range of issues. The committee has been meeting on a regular basis over the last couple of years and I simply wanted to reassure you that much groundwork has been done and we are now standing on fairly firm ground in the sense that we know where we are going. We are now undertaking the process of consulting with the community on the issues that we have previously discussed. I anticipate that the hype will continue to rise from now on.

Mr HARRIS: John, I am aware of your involvement in the wider community and your interest in parliaments and the parliamentary process. Do you have any strong view in relation to whether the new state parliament should be unicameral or bicameral?

Mr HARE: I have no particularly strong view. Probably, a single chamber would be my preference at the moment.

Mr HARRIS: Do you have any views on the matter of qualifications for nomination as members of the new state parliament? Do you agree with the view that the person should be an Australian citizen of at least 18 years of age?

Mr HARE: I think that 18 years is quite acceptable and I certainly think that, whether it needs to be written into the constitution or not, Australian citizenship should be a prerequisite.

Mr HARRIS: Do members have any further questions?

Mr SETTER: John, you made the comment that, because the Territory has such a small population base, the government of the day is unlikely to have a large enough pool from which to draw its managers - the ministers. Are you suggesting that there is a need to enlarge the size of this parliament from its current level of 25 members?

Mr HARE: No. I think argument about increasing the size of the parliament is based understandably on the premise that you draw your ministry from within the parliament. The other way you can do it is to provide a system whereby the Chief Minister of the day can advise the Governor that he or she wishes to appoint a minister in the manner of the American system from outside the parliament. It does not necessarily follow that you need to increase the size of the parliament.

Mr SETTER: To your knowledge, is there any precedent for that within the Westminster system of parliamentary democracy as you understand it?

Mr HARE: There is no precedent as far as I am aware.

Mr SETTER: Thank you.

Mr HARRIS: Any further questions? John, thank you very much for presenting your evidence.

Mr HARE: Thank you, Mr Chairman.

Mr HARRIS: The next submission is from Peter McNab. I indicate again that this is a committee of the select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect as proceedings in the House itself. For the Hansard record, would you please state your full name and capacity in which you are appearing today.

Mr McNAB: My name is Peter Donald McNab and I am appearing in a private capacity to present a submission.

Mr HARRIS: Thank you, Peter. You have presented us with a written submission. Are there any points that you wish to expand on before we ask you some questions?

Mr McNAB: I would like perhaps to make a very brief general statement, Mr Chairman. The model proposed in my submission is basically a pretty conservative one, apart from some departures on the question of Aboriginal land rights and the matter of a limited form of a bill of rights. Apart from those things, generally the submission supports a state constitution model similar to those of the existing states of Australia.

Mr HARRIS: I note that you agree with the proposal for a unicameral legislature.

Mr McNAB: Yes.

Mr HARRIS: You propose direct democratic elections from more or less uniform constituencies. There is a reference to 'see below'. I am a little confused about that. You propose also that ministers be appointed solely from the legislature. I raise that because, this morning, we had a proposal that the committee should consider a complementary system which would allow the Governor, on the recommendation of the Premier, to make ministerial appointments from outside the parliament. It was suggested that such a system would have the advantage of allowing the Premier to choose the best of the available brains to assist in the good governance of the Northern Territory. Could you expand on your comment that ministers should be appointed solely from within the legislature?

Mr McNAB: Dealing first with the query about direct democratic election from more or less uniform constituencies, the 'see below' is a reference to the matter of entrenchment of fair electoral laws in paragraph 8. It is to make it clear that there is no inconsistency and that the 2 matters are to be read together. Paragraph 8 deals with a democratic standard, a general standard, put into the constitution. I guess I was trying to make it clear that, somewhere in the constitution, direct democratic election would be spelt out - that is, there would be a system like the existing one whereby the people would elect members from constituencies rather than having some sort of appointment or one large constituency with multiple membership.

Regardless of that question of mechanics, I am suggesting that there be a general standard set down in the constitution by which all electoral laws would be measured. That is something along the lines of ensuring a secret ballot, that the election is generally democratic and that it is fair and free. It may be that the actual detail of the method of election should not be mentioned at all in the constitution and that all the constitution should have is the democratic standard so that any laws passed by the new parliament could be subject to judicial review against that standard. I was trying to make it clear that the 2 matters have to be read together.

In respect of the second point about the appointment of ministers from outside the legislature, it should be pointed out that, in the United Kingdom, ministers can be appointed from outside of either of the Houses. There were examples of this in the 1960s but I am not aware of any recent example of its happening. There have been examples of appointed ministers standing for election and being defeated. I believe that the traditional notion of responsible government - that is, all ministers being responsible to the people through the parliament - should be upheld. Even though Britain has the capacity in its constitution to allow this to happen - its constitution being an unwritten

one - it has not generally done that. The fact that there have been examples of appointed ministers who have subsequently stood for election and have been defeated does not seem to me to gel well with the democratic flavour. If the problem is perceived to be in relation to the talent available from within the legislature, that should be addressed by means of salaries and things of that nature.

Mr HARRIS: You also touched on the matter of Aborigines and Aboriginal land. I agree that is one of the most contentious problems that needs to be addressed. We heard this morning that there needs to be much more debate on this matter. The problem is that there are time constraints even though we wish to obtain the views of as many Aborigines as possible. To date, we have not been successful in having the land councils come forward but I hope that they will at some stage. You support the patriation of the act to the new state but you also propose constitutional safeguards which would require a two-thirds majority of the legislature and a referendum for alteration. Could you expand on that a little? I am interested in any proposal in respect of this matter. Obviously, many people hold the view that the Land Rights Act should remain with the Commonwealth.

Mr McNAB: Basically, the suggestion is aimed at a compromise. The existing orthodoxy allows the Commonwealth parliament a fair degree of control over the question of a new state being admitted. While that remains, the issue of Aboriginal land rights will be high on the agenda of members of the Commonwealth. No doubt, they will be subjected to a great deal of political pressure on this question of land rights as being a central matter to be resolved before statehood. I think that is the real politics of the situation.

If one accepts that the Commonwealth parliament has the power to do something about that, even if it is only to delay the granting of statehood, there will have to be some sort of compromise and some workable position arrived at that would satisfy the new state by not unduly hindering it in relation to the exercise of the rest of its powers and, at the same time, give the Aboriginal people some degree of confidence that they could abandon in effect their links with Canberra. There are no doubt many models that could be arrived at. This is my personal suggestion of a model that could be adopted whereby the Land Rights Act itself would become a Territory act. It would not be specifically entrenched but there would be a constitutional standard by which the exercise of legislative and executive powers in the Territory would have to be judged: the test of the benefit to the community as a whole but it would also effect some degree of Aboriginal ownership, control, use etc. That is the constitutional standard by which the exercise of powers would be judged. What suggests that that would be a reasonable compromise for Aboriginal people is that, having that constitutional standard in the constitution, would mean that the fact of the patriation of the Land Rights Act to the new state would not be a problem and they would have some degree of judicial review. Because the Land Rights Act itself would not be entrenched under this proposal, it could be amended but each amendment that the Territory government sought could be judged ultimately against this constitutional standard.

Mr SMITH: Judged by whom?

Mr McNAB: By the courts. It would be a matter for judicial review. In effect, the courts are already a battleground for judicial review in an indirect sense. One element of the compromise package, if you like, might be to have a constitutional standard by which it would be directly judged. For example, I have suggested some entrenched status of the land councils for some transitional period - say, 5 to 10 years. However, under this model, there would be nothing to prevent the new

Northern Territory parliament, after the expiration of that period, passing a new law restructuring the Aboriginal land councils. Provided that that was for the benefit of the community as a whole and it sought to continue Aboriginal ownership, control, use and exploitation of Aboriginal land, the mere fact that there was a new and restructured land council would not be a problem - provided it met that standard.

For example, rightly or wrongly, it may be thought that the land councils are not democratic enough or they should be more representative or they should have more women or that there should only be one land council for the whole of the Territory. If the Territory parliament thought fit to pass such a law, it would be a matter of justifying to the courts that it met the constitutional standard. It would give the Territory government and the parliament some degree of control and influence but it would be measured always against the constitutional standard. The constitutional standard would be the safeguard, if you like, for Aboriginal interests. In my view, different and more flexible mechanisms of use of Aboriginal land may well survive that constitutional standard provided there was proper and reasonable consultation with the Aboriginal people. It is really a question of the new parliament amending the mechanisms and the forms rather than taking away the direct rights.

Mr HARRIS: You would be aware that we are travelling throughout the whole of the Northern Territory.

Mr McNAB: Yes.

Mr SMITH: To pursue that matter for a few minutes, how does your two-thirds majority of the legislature and a referendum for alteration fit in with what you have outlined?

Mr McNAB: The constitutional standard would be entrenched. It could not be changed.

Mr SMITH: Right, I am with you.

Mr McNAB: Presumably, the whole package would be perhaps a condition on admission to statehood. The whole package would be that the Land Rights Act became a Territory law, that the land councils would be preserved in an interim sense with their existing status and that future developments in relation to Aboriginal land would then be measured against this specially entrenched provision. It may be that people could argue that that degree of entrenchment is not sufficient and perhaps a four-fifths or whatever majority would be required. The point that needs to be made is that special entrenchment would be something that may persuade Aboriginal people that this new model is something that they could live with.

Mr SMITH: There is a philosophical point. I may well be wrong but it seems to me that, under the Australian Constitution, there is a passive power to go outside the parliament to the High Court in order to test the constitution. What you are suggesting seems to be a more active power. You are suggesting a formal process of judicial review written into the constitution. Is that correct?

Mr McNAB: Yes.

Mr SMITH: Will that impact on the balance that we presently have between the role of the judiciary and the role of the parliament?

Mr McNAB: Yes. Already, it is not unusual for the High Court to be used as a sounding ground for judicial review in a wide sense. I agree that there are very few constitutional provisions dealing, if you like, with questions of social policy by which laws can be measured. There are plenty, such as section 92, dealing with economic policy that people have used to judge the laws made by the federal parliament against. However, this would be a novel departure. This is almost an area - protection of minorities, general concepts - covered traditionally in bills of rights, the International Covenant on Human Rights, the Canadian Charter of Rights etc.

It would have an impact on the judiciary because the Territory would be directly embroiled in what would be seen by many people - and we have to be frank about this - as political questions being decided by the courts. However, I might add that the trend is to move to that anyway. Have a look at the example of Canada. There is considerable discussion in places such as New Zealand and Britain about such things as bills of rights. There is considerable discussion on this very issue of the impact on the judiciary. One of the references that I added to the list is a general article by Mr Ison in the Adelaide Law Review. Incidentally, this is referred to also by Peter Hanks in 'Australia's Seventh State'. He discusses in great detail the impact it has had on moving political power apparently from the parliament, the elected people, to the courts. He argues that there are many dangers in this. I commend that article to members of the committee if they are concerned about this issue.

As I said, the Constitutional Commission has recommended that a series of rights be enunciated for the Australian Constitution and, at some stage, that may be taken up and put to the people. The same issue will arise there. Even if the Territory people are against the concept of a bill of rights, in order to overcome this hurdle in respect of the question of Aboriginal land rights, it may be necessary for the parliament of the Territory to concede that this may be an exception. If they are philosophically opposed to having a shift to the judiciary in relation to these questions of rights, they could still preserve that but make an exception in this case in order to achieve statehood and in order to overcome the hurdle about Aboriginal land rights in the Northern Territory. The other alternative would be that we would have a limited form of statehood with control of everything except this question of Aboriginal land. That would be against the equality principle which this committee has already endorsed and which many others in the community feel is paramount.

Mr SMITH: One of the other changes that would result if we pick this up is that one of the basic tests of whether Aboriginal land would be granted is being changed from the question of detriment to the question of benefit to the wider community. Would you accept that as a consequence of what you are suggesting?

Mr McNAB: Are you asking whether that change could occur?

Mr SMITH: I am saying that that change would occur. Would I be correct in my interpretation?

Mr McNAB: Not necessarily, but it could happen if the Land Rights Act were patriated to the Northern Territory and the Northern Territory parliament passed an amendment reversing the test, if you like. If that were to happen, perhaps the land councils may feel that that would offend against these constitutional safeguards. I do not think it would because, in a sense, it would simply shift the onus. The right to claim Aboriginal land would still be there. You would still have to make

a case. The body making recommendations to grant Aboriginal land might have to consider things differently but it may well be, nevertheless, an acceptable thing that would meet that standard. It would certainly be seen as a benefit for the community as a whole because that test would be imposed on the decision maker. In relation to the ownership, control, use, exploitation and occupation of Aboriginal land, I have already indicated that that includes the right to claim Aboriginal land.

Mr SMITH: Yes.

Mr McNAB: That may be a difficult question but it may well be that a court could say that the right to claim Aboriginal land is still being maintained and all that has changed is the mechanics. Thus, it may well survive the test of the constitutional standard I am suggesting.

Mr SMITH: When you are putting in place those 2 conflicting principles of the benefit to the community and the principle of continued Aboriginal ownership etc, is it possible to word the constitutional standard in such a way that it would avoid a judicial review which basically reflects the judge's own prejudices? How can that be done?

Mr McNAB: That is the \$64 000 question.

Mr SMITH: It is a difficult question, isn't it?

Mr McNAB: It is and it is the same question that arises in relation to bills of rights. I do not think you can. The judiciary will say that it is merely applying the words as best it can and trying to give legal meaning to them and doing it by means of a traditional judicial method. Other people will say that the judges are merely putting their own philosophy or views ahead of the electors and parliamentarians. There is no way you can resolve it.

All I can say is that it seems that, in America, and to a lesser extent perhaps in Canada, there has been an acceptance despite these criticisms which were levelled at the judiciary. Over time and on the whole, the community begins to accept that these are part of the framework of government, that the judges' decisions are justified and that the task that judges have undertaken in applying bills of rights or constitutional standards has been done in accordance with legal principles. There might be the odd aberration which people will criticise but the relevant court - whether it be the High Court or our Supreme Court - will have the authority, the independence and the quality of judges. Unlike parliamentarians and even ministers, judges are required to give detailed reasoning of how they reached a certain decision and that can be subject to appeal in a hierarchy. Those sorts of limitations and constraints - and given the fact judges are not seen as part of the hurly-burly of politics - mean that the decisions of the judges often survive those sorts of criticisms which are made all the time, particularly in Canada.

Mr SETTER: I would like to pursue that a little further. If I understand you correctly, Peter, what you are suggesting is that the Supreme Court of the new state be empowered to review legislation from this parliament. Are you suggesting that it review all legislation or particular legislation?. Could you explain that?

Mr McNAB: If the Territory decided to have its own bill of rights, then any piece of legislation could be subject to being impugned against that constitutional standard of the bill of rights, whether it be the Dog Act or a major piece of legislation.

Basically, the standard that I have talked about in paragraph 15 would have the same effect but, obviously, it would be limited to legislation of the Territory parliament that dealt in some way with Aboriginal land rights in the most general sense of that word. That would not be an automatic review. People would have to file process in the normal way and they would have to establish a legal basis for challenge. There would not be any ongoing process of judicial review. There would have to be actual court cases ...

Mr SETTER: That is the point I was trying to define. However, surely there is already that option to appeal through to the High Court?

Mr McNAB: Not against the constitutional standard. At the moment, decisions are reviewed against the existing meaning of the words in the Land Rights Act.

Mr SETTER: Hasn't the High Court sat in relation to a number of matters concerning the interpretation of the constitution?

Mr McNAB: Yes, but that is interpreting a legal document and an instrument that gives power.

Mr SETTER: Are you suggesting that the judiciary should be interpreting philosophy or ideology as opposed to considering a matter in purely legal terms?

Mr McNAB: That is the philosophical point that Mr Smith was raising and that many people see in those terms. Of course, once the words are inserted into a constitution or an act of parliament, they become legal words and they are like the word 'reasonable'. The word 'reasonable' appears in many statutes and there are many things of a general nature that are left up to judges to interpret. These are all still legal questions but, obviously, questions of philosophy come into them.

Mr SETTER: Wouldn't you agree that the community could have a problem with somebody who is appointed to the judiciary making such decisions as opposed to legislators who are directly responsible to the community? In other words, they have to be re-elected.

Mr McNAB: Yes, I would have to concede that there could be concern in the community about that. All I can say is that that happens in respect of many areas of the law at the moment. It is happening in many countries which have entrenched bills of rights and those societies seem to have survived that. However, I would have to concede that there would be considerable concern that we had non-elected people applying what many people would consider to be political questions.

Can I add that it may be that, in order to overcome this problem in relation to land rights, this is the only model that would suit everybody. To a certain degree, to be frank, there is a vesting in the judiciary of decision-making in respect of some fairly general words. But, that may be the best thing that we can work towards in order to overcome some very disparate views on a question of land rights.

Mr SMITH: I want to pose an unfair, hypothetical question to you and, obviously, you can decline to answer it if you wish. One of the vexed questions in terms of the transfer of land rights is whether Aborigines should have the opportunity to dispose of the land that they have title to. Would the constitutional standard, as you envisage it, preclude a change to inalienable title?

Mr McNAB: That is something I have actually thought about because it seems to me that that will be a crucial question. It is obvious there is a large school of thought in the Northern Territory that the Land Rights Act is not flexible enough in terms of allowing alienation of land even where everyone supports it and it seems that there is a fair degree of support in a relevant Aboriginal community. Thus, it is a real issue now under the Land Rights Act. There is school of thought against that. In the commentary in 'Australia's Seventh State' by Professor Loveday, he mentions the situation in Canada where there was a large scale freeing up of the inalienation provisions which meant that an enormous amount of indigenous land was mortgaged and, in the end, lost because it was charged and debts could not be paid.

Those are the 2 schools of thought: those who advocate a complete freeze and those who see dangers in lifting that freeze. If the Territory passed a law freeing up the disposal of Aboriginal land or opening up the question of its leaving the hands of the Lands Trust, that would be a very difficult question for the Supreme Court or the other courts in the appellate structure to decide whether it breached the constitutional standard. All I can say is that you would have to look at the possible impact of the new law. I would think that, if the Canadian-type situation could be demonstrated as a possibility, the court would rule that such a law was invalid. Therefore, the Territory parliament would need to have some controls to uphold the underlying philosophy of the Land Rights Act which, at the moment, is against alienation because of this very danger that, if it were alienated, it could be lost again for all time.

However, if a law were passed by the Territory which allowed Aboriginal people to consent to 99-year leases or the alienation of very small parcels of land for public purposes or for joint ownership perhaps with the Territory Crown - that is an unusual concept but it could happen - or joint ownership between a statutory authority such as the Power and Water Authority and an Aboriginal land trust, if that sort of flexibility were enacted, I think that the courts would decide that it would probably not offend against the constitutional standard. There would be no danger of its being lost and it would be a small amount of land which was jointly vested with the Aboriginal people who would still be controlling it.

Thus, it would be very much a question of degree. You would have to look at the law that was passed or the executive action that was undertaken under that law and decide whether or not it offended against the constitutional standard. There would be many judicial battles about that. If the law were changed to enable a degree of alienation of Aboriginal land, many Aboriginal people no doubt would go to the courts and claim that the law offended against the constitutional standard and that they did not want the sort of situation that developed in Canada and elsewhere. I think that, unless there were strict controls on the alienation of land, it may well offend the constitutional standard. However, in respect of the point made by Mr Setter, I guess you would have to trust the Supreme Court to use its judgment and to examine these issues in order to determine whether such actions offended against the constitutional standard.

Mr SETTER: It is probably true to say that, at the moment, the majority of Aboriginal people would prefer the system whereby the land would be inalienable.

Mr McNAB: I agree.

Mr SETTER: I think the reality is that, at some time in the future, albeit several generations, those attitudes and perceptions will change as Aboriginal people become better educated and take a different role in our society. At that time, and this will not happen overnight, I am quite sure that there will be a desire on the part of those people to change the status of that land. It may well be in their best interests to build in to the constitution some sort of framework to allow that to occur if that is what they want.

Mr McNAB: Generally, I would agree with you that there must be some measure of flexibility and this model does allow that. I am aware already of cases where the inhibitions on alienation are seen by some Aboriginals as being a hindrance. Nevertheless, the majority of Aboriginals would see them as being necessary for the reasons I have alluded to in relation to Canada. Certainly, that flexibility may well be something that should be thought about in the long term.

Mr SMITH: Let me explore that too. I understand that the concept of community standard - and I am not quite sure if that is the technical or correct expression - is quite important in those higher court deliberations and, over a period, you find courts varying their opinions on these key issues as they take into account where they think the community has moved.

Mr McNAB: Yes, that is right.

Mr SMITH: To pick up Rick's point, would your proposal be flexible enough for the Supreme Court to say next year, if it were presented to it, that inalienable freehold title could not be changed because of the principles pertaining to Aboriginal ownership, control etc but that, in 40 or 50 years time, it could be changed because of changes in community standards?

Mr McNAB: Yes, I think that could be the result, and probably would be the result. Obviously, Aboriginal use and control had, has and will have a different meaning and a different direction in 1976, 1988 and 20 years on. For whatever reasons, it may well be that a different meaning would be applied. I think there would be that flexibility. But that is a normal judicial function, as you pointed out. The interpretation of legal words possibly will move over time. I would not have thought there was any doubt that use and occupation in 1988 may well mean something completely different in 40 years time.

Mr SETTER: Mr Chairman, it would be fair enough to say that we have even seen that in the High Court over the last 20 or 30 years. There has been a changing approach in its rulings on various issues as a result of changing community attitudes.

Mr SMITH: Can I come back to the entrenchment of electoral laws? The principle is exactly the same. You are proposing that a general constitutional standard be put in place and, every time the government proposes an electoral amendment, there is provision for judicial review against that standard.

Mr McNAB: Yes, that would be the effect of it. It would not happen automatically but people could challenge it at any time.

Mr Smith: Yes, I understand that.

Mr McNAB: For example, it may be found that the law, when passed, looked perfectly okay but, in its operation, it was found that there was an unintended discriminatory effect or something that was unforeseen and, in that case, you may seek to challenge it.

Mr SMITH: Thus, losing political parties could seek to invalidate whole elections?

Mr McNAB: They could seek to invalidate at any time the relevant electoral law. You raised a point earlier as to whether there should be savings provisions. I think that would happen. I think the High Court takes the view that it would not invalidate full scale parliaments at elections. The courts do not usually upset governments or dissolve parliaments that have been elected and are holding office.

Mr SMITH: Where would you place key questions such as the amount of tolerance you would allow in seats?. Would that be part of the constitutional standards?

Mr McNAB: That would have to be judged against the words 'democratic', 'fair' and 'free'. People might want to flesh them out a little more so that there is reasonable tolerance between electorates.

Mr SMITH: However, you would not see a precise percentage being a constitutional standard?

Mr McNAB: No. I would much rather leave that flexibility to the parliament and allow the courts to determine at what point it ceased to be fair. I think it is more important that you have the opportunity for review against the standard rather than fixing in legislation for all time a maximum tolerance percentage. Others would have views on that. It is not perhaps the most gripping and vital point. You could have, of course, the constitutional standard and the tolerance fixed in the constitution. However, it may be better to vest this judicial review in the courts. It has happened in America which, by means of interpretation of its Bill of Rights, has struck down gerrymandered and unfair electoral boundaries. The High Court has said that there are no such guarantees implied in our constitutions. I think that we should insert some general standard in relation to this in the constitution, regardless of whether a fixed figure or otherwise appears.

Mr SMITH: Yes.

Mr SETTER: The Commonwealth government has 4 proposals that it is putting to a referendum in the near future. One of those refers to the flexibility with regard to the plus or minus relative to the states by way of numbers of people in electorates. If that tolerance, be it 10% or 20% or whatever, were written into the state's constitution, would it still be possible for the Commonwealth to write into its constitution an overriding power to control that matter?

Mr McNAB: Section 124B(1) says: 'Where a law provides for electoral divisions in an electoral region, the division shall be determined so that the number of electors in each division does

not depart to a greater extent than one-tenth more or one-tenth less than the number calculated under subsection (2)'. If that were carried and became part of the Constitution of Australia, it would bind all the states because it is paramount law in Australia. In so far as it affected the Commonwealth, it would also bind the Commonwealth. But that would not offend the equality principle because we would be bound like every other state and also the Commonwealth itself. The Commonwealth could do that but only by operation of the referendum proposal which would become paramount law applying across Australia and binding the states as well as the Commonwealth and the Territory.

Mr SETTER: Thus, there is no point in a state writing into its own constitution the limitations that I described a moment ago.

Mr McNAB: I would not have thought that there would be any need except that I guess it would prevent constitutional challenges in the High Court. You could challenge things in your own Supreme Court on your own constitutional standard. On the other hand, the view might be taken that the Australian Constitution covered the field and therefore it was of no force and effect and you could not challenge it. It would be a difficult legal question.

Mr SMITH: But you said that a state constitution could not contravene the Australian Constitution.

Mr McNAB: That is so.

Mr SMITH: That is what Rick was getting at.

Mr McNAB: If we inserted a tolerance that was greater than that permitted by the Australian Constitution, it would be invalid and of no effect.

Mr HARRIS: In relation to the independence of the judiciary, you agreed that the appointment of judges should be by the ministers. However, you propose that an independent judicial service commission be established by legislation to advise the executive in relation to appointments. What would be the form of this independent judicial service commission?

Mr McNAB: In the references, I refer to a book by Peter Wesley-Smith. I do not know if he is a relation of the more famous Territory Wesley-Smith.

Mr SMITH: He is his brother.

Mr McNAB: In his discussion, Wesley-Smith summarises the judicial service commission of Hong Kong. Speaking from memory, basically it is a statutory body that is broadly representative of the government, the lawyers and the community in so far as there is a form of democracy in Hong Kong. It has the job of advising the Governor on the appointment of superior judges and the equivalent of district court judges and I think that it may also extend as far as magistrates. In a sense, that would be a statutory imposition.

At the moment, I note that the committee has called for a convention of informal consultation with the Chief Justice in relation to judicial appointments. This would be a statutory replacement of that, if you like. It still would not bind the ministers, but they would be duty bound to consult with

this commission which would be comprised of community and legal representatives. Their views on who would be appropriate judges, their esteem and their qualities obviously would be a matter that the ministers would take into account in their appointments. I did not mean by that to rule out consultation with the Chief Justice. I must say that I rather assumed that he would have some sort of role in this judicial service commission. I cannot recall whether the Chief Justice of Hong Kong, whose exact title escapes me, is a party to this body, but I am pretty sure that he is.

Mr HARRIS: You also touched on the matter of the constitutional convention and you agreed with a mix of elected and nominated members. You suggested that perhaps 75% of the convention could be elected. One of the problems would be the selection of persons as nominated members. The problem is obtaining representation which is representative of all sections of the community.

Mr McNAB: I have referred to an article by Professor Lumb entitled 'Methods of Alteration of State Constitutions in the United States and Australia'. I respectfully commend pages 8 and 9 of that article where Professor Lumb discusses the constitutional conventions in the United States. On page 9, he states, in relation to constitutional conventions in the United States: 'In the overwhelming number of states, the delegates are elected by the people. Such an election is usually on a non-partisan basis - that is, the candidates do not run on a party ticket'. That is one aspect of its representativeness.

The general point I am making is that, in the United States - although theirs is a different political system - this does seem to be a reasonably successful method in relation to conventions. There is also some discussion by Peter Bayne in 'Australia's Seventh State' on this question of conventions. There would have to be a close study of the American provisions to see exactly what electoral mechanisms they use and how they encourage representativeness and how that actually achieves this non-partisan basis so that people who are outside the political process, who would never think of standing for parliaments or who may not even be members of political parties would feel, nevertheless, that there is nothing to stop their standing as delegates for a constitutional convention. I do not know whether we look on local government as a model for that or not but I commend to the committee a detailed study of the American system.

Mr HARRIS: It might be a little bit premature for the Northern Territory to get away from the politics of it. I guess people are clearly identified. I was interested in your remarks and we will definitely take note of the attachments that you have included with your submission. Are there any further questions.

Mr SMITH: No. I think Peter has opened up thoughtful avenues for discussion.

Mr HARRIS: Thank you very much Peter for appearing before the committee. If we have further questions in relation to your submission, I hope that you will allow us to contact you.

Mr McNAB: Certainly, I thank the members of the committee for allowing me to make this submission today.

Mr HARRIS: The next submission is to be presented by Mr Kevin Fletcher and I note that Kevin is in the gallery. Would you like to come forward?

Kevin, this is a select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect at proceedings as in the House itself. For the Hansard record would you please state your full name, address and the capacity in which you are appearing before us today.

Mr FLETCHER: My name is Kevin Frederick Fletcher. I live at Unit 3, 39 Kurrajong Crescent, Nightcliff. I am making this submission as a citizen, taxpayer and ratepayer of the Northern Territory.

Mr HARRIS: Thank you, Kevin. We have your submission. Would you like to expand on any of the points that you raise in your submission.

Mr FLETCHER: Thank you, Mr Chairman. I will just go through the original submission which was forwarded in May 1986 when submissions were first called for from the public. My submission gives some ideas that I thought would be worth consideration by the committee.

In relation to representation in the federal parliament, we should have the equal electorates for the Lower House as indicated in the Australian Constitution and equal representation with the other states in the Upper House. My reason for that comment is that the purpose of the Upper House is to allow the smaller states equal representation in the House of review and that we were legally part of an original state at the time of federation - namely, South Australia.

This morning, I was able to do some reading in a bookshop and, once again, I came across the fact that, prior to federation, the people of the Northern Territory voted in the South Australian electorates, they voted in the federal elections and they voted in the referendums. It was only some years later, when the federal government passed the act in 1911 to take over control of the Territory, that the people in the Northern Territory lost those franchises. I think this is an important point that needs to be pursued even if it has to go to the High Court. The citizens of the Northern Territory had full rights and entitlements of South Australians and then, in 1911, those were taken away from them.

Legislative power should be the same as applies to other sovereign Australian states, and certainly no less. Provision should be made for an Upper House once the Northern Territory population exceeds 350 000 people. The Territory should be one electorate, returning 12 members or about half the number of members in the Lower House, the Legislative Assembly. It seems to be a standard rule that an Upper House has about half the number of members as the Lower House.

In relation to executive powers, the Governor or Administrator should have a reserve power to dismiss the government and force an election. This power should be spelt out and the electorate made aware of it. Such action should be used only as a last resort - that is, if the government was doing something illegal or was corrupt. I think that is even more important if there is only one House as the committee has recommended. With due respect, sometimes politicians tend to become carried away with their power and become a little megalomaniacal. The idea of an Upper House in the other states and in the federal sphere is that it is a means of a brake or control on such power. Where there is no Upper House, as has been recommended, I think that the Governor or Administrator would need to have some authority, if the government was acting unlawfully or unconstitutionally, to force an election. In the history of this country, there are 2 cases where this

has happened: in New South Wales and in the federal sphere in 1975. In both cases, the electorate overwhelmingly supported the Governors' action. I consider this is important if there is to be only one House.

The Public Service Commissioner and departmental heads should be appointed by the Executive Council and be removed only by the Executive Council. Senior public servants, however, should be under the direction of the minister. In relation to judicial powers, I cannot see any immediate need to change the present system other than by giving consideration to the establishment of a district or county court at some time in the future. A procedure for the removal from office of any judge or magistrate who is corrupt or incompetent should perhaps be set in place at this time.

The format of our constitution should be based on the Australian Constitution and should include a means to amend it from time to time. The initial constitution should be based on a conservative model which could then be amended as necessary. The principles on which it should be drawn in my view should be the Westminster ideals. In relation to the method of approval of the constitution, the only answer to this question is by the people of the Territory voting in a referendum.

In respect of the steps desirable for the granting of statehood, there are none that I can think of other than legal ones. As I see it, such action should require only the consent of the federal and Territory governments. Requirements may depend on what other states have to say about Senate representation and some other matters. If it is at all possible, I would like to see another 10 years pass before we accept statehood. This would give us a chance to build up certain community foundations which I see as important.

As I said, my submission was written in 1986 which is several years ago. I have not changed my ideas about any of that other than to say that I have gained the impression that some people are concerned about statehood because they feel that it will mean that they will have to pay more in the way of state taxes and state charges. I feel that the select committee or some other authority should undertake a campaign of putting the case for statehood, even at the school level. They should visit the schools and let the people there know what is happening and how it will affect them. Certainly, they will be affected in time to come. However, the gravest concern that I have heard from people probably is what statehood will cost. Once you start hitting people in their pockets, they become very wary.

I have had some thoughts in relation to your discussion papers, particularly on the larger booklet. I will mention those. Some of these things are covered in the original paper, but I am trying to clarify them as they were expressed in this discussion paper.

In respect of pages 5 and 10, the Governor should have the power to suggest amendments to the new state parliament and be able to dismiss parliament at will for breaching the constitution or acting unlawfully. I gave my reasons for this. It is very important if you do not have an Upper House which would have some means of perhaps making the politicians of the day think about a particular bill before the parliament. Giving the Governor this power would provide a safeguard for the electorate because, basically, all a Governor can do is put the matter back in the hands of the electorate.

In relation to pages page 8 and 25, instead of a maximum 6-month period between successive sittings, I would like to see that read a 3-month period. I feel that, if our parliamentary representatives cannot meet once every 3 months, there is something wrong with the system.

Referring to page xix, I support the idea that local government should be recognised in the constitution. As I see it, local governments are the creation of the state governments and the Territory governments and therefore they should be recognised in the state constitutions. I do not feel that recognition of local government needs to be written into the Australian Constitution.

Referring to page xx, I do not favour the idea of Aboriginal rights being entrenched rights. I think that this would be and could be seen by many people in the community as a form of discrimination. As I understand it, as a result of the changes to the Australian Constitution some years ago, many Aboriginal rights are controlled by the federal government through its Department of Aboriginal Affairs.

On page 5, there is reference to entrenched rights. I do not favour the idea of a written bill of rights as cases overseas have shown that a written bill of rights in some cases has meant very little in terms of safeguarding individual rights. There was a survey which I have not got with me. I have not seen the full survey undertaken by a learned barrister in Victoria. It indicated which country had the greatest number of rights and Australia was rated even higher than the United States. The United States of course has a written bill of rights. It was only a couple of points but certainly we rated much higher than other countries which had bills of rights such as the USSR and some Latin American countries.

On page 15, the definition in (c) should include the words, 'the Queen's representative'. In relation to page 16, provision should be made in the constitution so that a second chamber can be added at a later date when the NT population increases and the people desire it. I have suggested a population of 350 000. Page 18 also refers to the number of Houses of parliament.

Referring to page 22, a prisoner serving more than 6 months should not have the right to vote while in prison. I feel that such people have breached the rules of society. Anyone serving a sentence of more than 6 months has been imprisoned for a fairly serious crime and, if that is the case, I feel he should not have that right to vote.

In respect of tolerance in the electorates on page 32, I support a 10% tolerance.

Page 38: I think that refers to some of the things that we have covered such as provision for a second Chamber, 10% tolerance and that the Governor be allowed to recommend amendments to acts of the new state parliament.

Page 47: the positions of Premier and minister should be mentioned in the constitution as they are in the Australian Constitution which refers to the ministers.

Page 65: state judges should have a similar guarantee to High Court judges listed in the constitution. Section 72 of the Australian Constitution refers to that and I think a similar section in the new state constitution would be sufficient.

Page 67 should include a section similar to section 71 of the Australian Constitution to cover the Northern Territory courts, particularly the Supreme Court. These are just brief notes. There should also be a section dealing with proposed alterations to the new state constitution and the method of voting to change it.

Mr HARRIS: Thank you very much, Kevin.

Mr FLETCHER: Mr Chairman, could I make a brief comment on the constitutional convention. I think that it should be an elected convention and, as far as possible, have representatives from a broad field so that each area where there is a town of any size should be able to return one delegate to that convention. I think that is important otherwise we will tend to have people from Darwin or Alice Springs having all the say. If there is system whereby all such areas have a delegate, there would be far better representation of the Territory people.

Mr HARRIS: You commented on the need to promote the positive aspects of statehood or the move to statehood. One of the comments that I make at the beginning of each hearing is that we are a constitutional committee, not a statehood committee. It is very important that we address this issue on that basis. I take your point that the perception in the community is that statehood will cost the world and that there are a number of positive aspects and a number of negative aspects. I guess that is where the politics comes into it and we can start to argue those issues. We are working on the basis of listening to the views of people and then deliberating on those. Nevertheless, we are a constitutional development committee and we have not actively pursued the matter of the benefits of moving to statehood even though, on occasion, we have heard political comments from both sides in relation to that.

Kevin, I am interested in your method of election if there were to be an Upper House. You propose that there would be a single electorate which would return 12 members or about half the number of members in the Lower House. In relation to a fully elected constitutional convention, you argued that steps should be taken to prevent the dominance of Darwin and Alice Springs. Don't you feel that, with your proposal for the election of an Upper House, certain sections of the community could be disadvantaged or not represented?

Mr FLETCHER: Now that you mention it, in light of my comment in respect of the choosing of delegates for the constitutional convention, perhaps that would need to be examined. If an Upper House is established, it may be wiser to have more than 1 electorate, perhaps even up to 4 electorates.

Mr HARRIS: Do other members have any questions?

Mr SMITH: I have some major philosophical disagreements with Kevin. The major point of issue that I would take is the question of the ultimate responsibility of the parliament versus, in your case, the Governor or a second house. I find it difficult to accept that, ultimately, the people do not decide. I guess that, in the case of the Governor, you are short-circuiting that process and saying the Governor can decide that there is something wrong and put it to the people more quickly than it would normally be put.

However, to zero in on the second House concept, how do you reconcile the second House concept and a belief in democracy? It staggers me that, in this day and age, anyone can support the concept of a second House. The Senate was developed in the 1890s as a protection for the states when they entered the new federation. However, the second Houses in the states were established by the landed gentry or the powerful people of that time to protect themselves against the new democratic development of the Lower House for which everybody had a vote. In fact, if my memory serves me correctly, some of the Upper Houses when they first started were not democratic in the sense that everybody had a vote. If we have a belief in democracy, why do we need 2 Houses of parliament?

Mr FLETCHER: Basically because, with all due respect to you gentlemen, politicians have shown from time to time a degree of megalomania and there needs to be a means of whereby there can be a review, a second look or more discussion on important matters. Normally, the politicians control by means of political parties the way that a House operates. Certainly, in a Lower House, that is very much the case. I do not think that is the case with an Upper House. Certainly, from what I have seen of the Upper House in Tasmania, it is not.

Mr SMITH: That is a true House of independents too.

Mr FLETCHER: It is very much more a House of review. That is the sort of system that I was proposing. Normally in the political organisation to which you belong, if caucus made a decision in relation to a certain matter, that would be it for the parliament if the party had the numbers in the Lower House. In the Tasmanian system, there is an independent second House, a true House of review.

Mr SMITH: How is it a true House of review? It is made up of independent people. There is no guarantee that they reflect the wishes of the Tasmanian people any more than the Lower House does. That is the problem that I have with your proposal.

Mr FLETCHER: That may be your way of looking at it. I have had a look at parliaments in quite a few countries where I have travelled overseas, including some of the states in the USA. They all seem to have this system of a second House. It is all shown as part and parcel of their system of democracy. It is my belief that it is important to have a means of reviewing what the first Chamber does for whatever reason. Certainly, in this country, there have been one or two examples where that has probably been necessary. I can understand that, in most cases, it probably has been against the ideology of the Labor Party. I still think it is an important consideration. As I say, it certainly seems to be the system that is operating in most countries that call themselves democratic. The politicians are the elected leaders of the community.

Mr SETTER: Kevin, in the absence of an Upper House, I agree with your point that the Administrator should have that reserve power to call a government into line because otherwise, under our current system of Westminster democracy, the majority party has its way in the parliament on virtually every issue. There is no brake whatsoever. In most states of Australia, the Upper House does apply that brake. Where there is no Upper House, and that is what is proposed here, the Governor or Administrator should have that reserve power. That is my personal opinion.

The other thing I wanted to take up with you was your comment with regard to equal representation in the Senate - that is, 12 members. Whilst we all would like to see the Northern Territory, if and when it moves to statehood, achieve 12 members in the Senate, the political reality is that that would most likely be unacceptable to the major political parties in Canberra. There is the option of seeking representation by 4 or perhaps 6 Senators initially with an in-built formula whereby we would move to a full quota of 12 Senators within the period that the formula dictates. Do you think that sort of formula would be acceptable to the community at large?

Mr FLETCHER: I would say that, if the southern states indicated that the new state would not be acceptable without some such arrangement, there would not be much option. However, I still feel that we must pursue the goal that the citizens of the Northern Territory had full voting rights and full status prior to 1911 and therefore they should have it when they become part and parcel of the Australian Commonwealth. As I said earlier, I would even pursue that with a challenge in the High Court because I think that is important. You would need to take legal advice on that but, if there is no other choice and the southern states force on us the sort of formula that you suggested, we would have no choice. Certainly, my first choice would be for 12 Senators even to the point of a High Court challenge.

Mr SETTER: Mr Chairman, I would like to ask a question of our legal adviser. Graham, would you see any validity in making a High Court challenge as Mr Fletcher suggests on the basis that we had the constitutional rights prior to 1911 and lost them at that time?

Mr NICHOLSON: I would not like to express a final view. However, I very much doubt that there would be any case to be made out of it. The problem is that, between 1901 and 1911, we were part of South Australia. South Australia was an original state and the Constitution gives certain rights to original states in terms of representation which it does not give to new states. We ceased to be part of the original state in 1911 and became a Commonwealth territory. If we now become a new state, I do not think that would revive our status as being part of an original state. On that basis, I do not think that the constitutional guarantees of representation for original states would apply to us. That would be my off-the-cuff view.

Mr FLETCHER: To my way of thinking, that would be very unfair in that, because of a federal act, people were disenfranchised and were made second-class citizens. When we want to achieve what most people will probably look for in the end - the status of a sovereign state within the Commonwealth of Australia - you are saying that what happened in the past is really of no relevance.

Mr NICHOLSON: I am only expressing a legal view. I am not expressing a view on what should or should not be the case.

Mr SETTER: If I could pursue the other point with regard to representation in the Senate, there is a nexus between the number in the Senate and the number in the House of Representatives. There are approximately twice the number of members in the Lower House than there are Senators. If we moved immediately to 12 Senators, that would be an additional 10 Senators in Australia. As a result, there would be an automatic requirement for an additional 20 members in the House of Representatives. These would be distributed on the basis of population. The Northern Territory

would probably not increase its representation in the House of Representatives by more than 1 member at the very most.

Mr FLETCHER: Some time ago, I heard the former Chief Minister say that they should perhaps have a look at that nexus between the numbers in the Senate and I think that certainly they should. This is probably one of the things we should be voting on now rather than some of the issues which we will be voting on next month.

Mr SETTER: That may well be a valid argument but, nevertheless, under the existing Australian Constitution, the situation that I described is the one which applies. That means that the majority of those additional members of the House of Representatives would be distributed in the major metropolitan areas. The major political parties would ask themselves where the balance would fall and, certainly, the conservative parties would have some concern in relation to that. Probably, they could cope with it over a period but would have some difficulty in the short term. That is one reason that, in the long term, might force us to consider a formula for the number of Senators as opposed to standing on our dig for 12 from the beginning.

Mr FLETCHER: I appreciate that. There has to be a lot of negotiation and the other people involved no doubt will have their say about Senate representation. I think I referred to that in my 1986 submission. Certainly, whoever does the negotiation will have to be ready to stand up to some of the tough politicians with whom he will have to deal down south.

Mr SETTER: Mr Chairman, Kevin, I noted your support for the recognition of local government in the new state constitution. Did I hear you say that you are opposed to its recognition in the Australian Constitution?

Mr FLETCHER: I do not feel that it is properly a child of the federal Constitution. I think it is an important form of government. However, it has always been the states that have created local government and therefore it is the states which should give recognition to it in their constitutions. I think the federal government is becoming involved in something that is probably outside its jurisdiction.

Mr SMITH: But it is also true that the federal government provides the overwhelming amount of funds for local government.

Mr FLETCHER: It provides the overall amount of funds for everyone because it collects it. The states gave the federal government the authority to collect the taxes.

Mr SMITH: I think that the federal government won it through the courts rather than the states voluntarily giving it up. But, the same principle applies. The states are given official recognition in the Australian Constitution.

Mr FLETCHER: Sure.

Mr SMITH: I think there is certainly an argument for saying that, because the basis for local government funding comes from the federal level, similar recognition can be provided.

Mr FLETCHER: That is certainly true but it is certainly not my view. My view is that, if it has been created by a particular form of sovereign government, then that sovereign government should have the control over it. That is the way I see it.

Mr SETTER: Kevin, I notice that you are not in favour of Aboriginal rights being entrenched in the constitution. You commented that you considered that to be a form of discrimination. Would you like to expand on that?

Mr FLETCHER: I would be very wary about whatever was put in the constitution in terms of entrenched rights. Certainly, I acknowledge that the Aboriginal people were here prior to the arrival of white people but I do not think that they or other groups, women for example, should have rights entrenched in the constitution. If you have a constitution, I think that it should deal fairly and squarely with every citizen in the community. If you have particular provisions governing Aboriginals, women, Greek people or whatever, I think that gets away from the fundamental purpose of the document which is to safeguard the rights of all Northern Territorians or whatever they are to be called - Capricornians, North Australians or whatever.

Mr HARRIS: Kevin, thank you very much for presenting your submission and we will take on board all of the issues that you have raised. If there is any issue we wish to pursue further, I am sure that you would be only too willing to assist us.

Mr FLETCHER: Thank you Mr Chairman. Thank you members.

Mr HARRIS: I welcome Peter Tullgren to this hearing. Peter, this is a select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect as the proceedings of the House itself. For the Hansard record, would you please state your full name and the capacity in which you appear today.

Mr TULLGREN: My full name is Peter William Edwin Tullgren. I am the Assistant Secretary of the North Australian Workers Union Branch of the Federated Miscellaneous Workers Union of Australia and we have provided an interim submission to the select committee. It is my purpose to address that and to answer any questions that members of the select committee might have.

Mr HARRIS: Thank you Peter. Please proceed.

Mr TULLGREN: On 11 May, we wrote to the secretary of the select committee making an interim submission which sets out the union's position in relation to statehood. Our position is one of opposition to statehood. A resolution adopted by our Central Council, which is the highest governing body of our union in the Northern Territory, rejected statehood at this time on the following bases: the Territory does not have the necessary tax base to support being a state; we believe that the current Northern Territory government is, as the resolution says, anti-worker and therefore it should not be given control over industrial relations; and that there is no justification for giving the Northern Territory Senate representation equal to that of the original states in the Senate. The submission goes on to include 2 other resolutions. One is the resolution of the Northern Territory Trades and Labor Council and I will not address that because I understand that it has made a submission to the committee anyway. The other is a resolution carried by our federal

executive with a recommendation to the Australian Council of Trade Unions concerning the transfer of industrial powers to any new state in the Northern Territory.

Firstly, I might briefly address the Central Council resolution and then, secondly, the resolution of the federal executive. The resolution of the Central Council states that we are opposed to statehood at this time. Obviously, it can be seen from that that we do not totally oppose statehood for ever and a day. However, we believe that it is not advantageous to move towards statehood at this time. We have identified many reasons, but we specify 3. The first one listed is the matter of a tax base to support being a state. While that refers to a 'tax base', it can be taken wider than that. It is our view that, based on the current economic state of the Northern Territory and its potential for economic development, it is simply not in the same sort of position as states like New South Wales and Victoria or even states like Queensland or Western Australia.

Despite the fact that, in the tax-sharing arrangements with the Commonwealth, the Territory would be treated in a similar manner to the states, it is in our view quite obvious that the Territory has a small economic base. Consider some of the reductions in federal government funding to the Territory and the difficulty that the Territory has had in making up that shortfall. It has had to introduce measures such as the tourism levy and to attempt to and partially remove some conditions of employment for employees of the Northern Territory government. Without making some very drastic cuts, it has found it very difficult to make up that financial shortfall. Despite indications by the then Treasurer that it would consider revenue-raising measures such as the introduction of a land tax, the Territory government has failed to come to grips with those matters - at least as far as we can ascertain from the public record. According to all the most up-to-date and reliable information, the Territory has a very small economic base. It has a percentage of its population which makes no material contribution to its economy - and I am not being critical there, but it is a fact that has to be taken into account. We have no manufacturing or heavy industry base. We are principally a mining and pastoral economy which suffers from the difficulties that mining and pastoral economies suffer from generally.

In his paper to the Law Society seminar on statehood last year, Dr Gerritsen talked about the Northern Territory in effect flying on a parallel with Queensland. While that is an option, it is our view that that argument was not particularly convincing and that the Territory government would have real difficulty - and I might say that a Territory government regardless of its political persuasion - in funding statehood simply because, unlike a state like New South Wales or Victoria or even Queensland, it does not have the major taxing resources itself to fall back on in terms of being able to introduce a variety of state-type taxes.

In respect of industrial relations, we make no apology for the way the resolution is worded. Based on an examination of the approach to industrial relations by successive Northern Territory governments, it is our view that it is not principally in support of trade unions as such or of a structured industrial relations system. If we recall last year's public service dispute and all the drama that was caused there, it was clear that, when it came to making cost savings, one of the principal ways of doing that, if not the principal way, was simply to hoe into workers' terms and conditions. As a result of some traditional industrial activities, those conditions were slightly modified. However, we believe that there is great deal of concern and I need look no further than the speech by the Minister for Labour, Administrative Services and Local Government when opening the Industrial Relations Society Convention last weekend, the subject of which was that we could be in real state -

a discussion on statehood. I presume that the minister was speaking on behalf of the Territory government. He trotted out the usual jargon about the industrial relations club, that it was very archaic and self-protective and needed change, and that he or the government wanted to see very substantial changes which gave the Northern Territory power over industrial relations.

Based on a whole variety of public statements on the record and the approach of the government, we would be most concerned if that occurred. I draw your attention to the fact that, in every national wage case in the past 5 years, the submission of the Northern Territory government, while it has been short, has been to support the submission of the Confederation of Australian Industry. Never once in that time - and I think it goes back further but I have only had a chance recently to look at the past 5 years - has the Territory government supported a wage increase for employees. It always simply parroted the position of the Confederation of Australian Industry. I might say that, on the obverse side of that coin, that even Labor states have not always supported the position of a federal Labor government in relation to wage cases. There have been variations.

It is the view of our union that, on the whole, the approach of the Northern Territory government to industrial relations is quite unimaginative. It is simply a fairly conservative approach which attacks the alleged power of trade unions. The Northern Territory on the whole has one of the best industrial relations records in Australia but that does not prevent constant criticism of all the trade unions and workers generally. We have found that, in relation to the policing of federal awards, even the Northern Territory government's own tender board is reluctant to enforce the conditions of its tender agreements over the provision of services. To quote an example, one of our biggest bugbears is in relation to cleaning contractors. The Territory is a large consumer of cleaning contracting and we have raised with the tender board over time the fact that it should be policing the provisions in its tender agreements about award conditions. The tender board's response has been that that is not its responsibility and that it is there to obtain the best service possible for the government. What that has meant in fact is condoning in a de facto way breaches of federal awards and that is an unusual situation for governments to be in.

We would be very sceptical about the creation of an industrial relations system. I might also add that, despite comments to the contrary, the government, and for that matter other groups that have an interest, has been unable to indicate what is currently wrong with the present industrial relations system under which the Territory functions. There are broad criticisms that the system does not work but there is no detail of any of those. The Commonwealth is in the process of revising its industrial legislation which will overcome some of the problems. The High Court has extended the power of reinstatement. We say that, if there is a claim for a separate industrial relations system, then it has to be based on merit and there has to be substantial argument and there has been none.

I might also add that one of the preferred options is a state industrial relations system. That would mean the creation of an eighth industrial relations system in Australia. The government has said that it is opposed to a great deal of duplication and waste. A commission that is set up would have to include someone who was the equivalent of the president. In all states, that person has a salary and status of a Supreme Court judge. In fact, in places like New South Wales, the president has the status of the Chief Judge of the Court of Appeal. In the Commonwealth, the president of the commission has the same status as the Chief Judge of the Federal Court. That would involve considerable expense. You would also need a couple of commissioners and, so that it would be

seen to be fair, there would need to be a former employer and a former trade union official. Thus, you would be duplicating a system whereas, in fact, the states have been trying to streamline their position. We believe that it is unnecessary.

Thirdly, much has been made of the fact that the Territory should have statehood on the basis of similar representation to that of the original states on the basis of fairness and equity. That would mean granting the Territory 12 Senators. Whilst we support job creation, we do not support the job creation of more politicians by politicians so that they can be filled by party officials and trade union officials who want to retire into the Senate. I will not bore you because I am sure you have read the legal argument. The reality is that the equality that was given to the original states was done by a great deal of horse trading at the federal conventions and was done quite simply to ensure there was a federation. If it had not been done, Tasmania and Western Australia would never have joined. With the greatest respect, despite what occurred in 1899 in relation to Western Australia and Tasmania, the Northern Territory in 1988 does not have the same clout. If you were to accept an argument that said we should have 12 Senators and 2 members of the House of Representatives, and given that we have 25 Legislative Assembly members, we would truly be the most overgoverned place in Australia. There are a great many other arguments but I do not intend to go into them here. We believe that this argument about equality is basically fatuous because equality here is arguing for more politicians. It is always worrying to people when politicians say that there should be more politicians. We do not support that proposition.

The position that we put to the ACTU summarises our position. I would certainly be interested in - and I have not heard - any submission or material, particularly in relation to industrial relations, that supports an argument that, if there was to be statehood, we should not keep the current system. If there are criticisms of the current system which supposedly dictate the creation of a new system, then I certainly have not heard them and I would be pleased, if they do exist, to actually be able to read them to determine that.

On the whole, we do not believe that statehood is warranted. In fact, with the greatest of respect, it is our view that statehood is a political phrase which has been seized on to cover a whole variety of sins and to be used as a rallying point. It is interesting to note that, if I remember correctly, the most recent polls commissioned in relation to this said that the majority of the people in the Territory did not support statehood. I think that is a salient point in any consideration. In broad brush terms, that is our position in relation to statehood. We do not believe that it is a good idea.

To make it clear, I might state that our position is not politically motivated in any party political sense. Our position is based on what we believe is best for our members in the Northern Territory. It is our view that, in no way or shape, can it be said that statehood would be good for the ordinary Territory worker, the ordinary person who earns between \$15 000 and \$19 000 and who is a member of ours within the Northern Territory whether he or she works in the public sector or the private sector. If it could be shown that it would be of benefit, we would reconsider our position.

We do not believe that, in any of the material that has been provided and even in the preliminary documents that this committee has issued, there has been any closely argued position that justifies moving to statehood on an economic basis. The arguments are that we will gain control of the land and that we will gain control of mineral royalties. If what is being said by the proponents

of statehood is that, if we get control of uranium mining, that money will solve our economic problems, then somebody cannot add up. With the greatest respect, the amount that would come to a Territory state in royalties from uranium mining would not be a solution to our economic problems. I think that anyone, even people inexperienced in economic matters, will see that. We do not see that, among your published deliberations to date or in any of the discussions by proponents of statehood, it can be shown that the ordinary person will be better off. The then Chief Minister, Mr Everingham, said that it probably would not cost more than the price of a can of beer. We think that, even apart from inflation, the price of a can of beer would escalate very greatly under statehood. We think that would be unwise and that it would simply impose a great deal of financial hardship on ordinary people in the Territory, the majority of whom are in no position to continue to bear very high imposts of state taxes simply to keep a state administration afloat.

Mr HARRIS: Peter, could I start by thanking you for putting your union's position. However, I think that you are missing the point to some degree because this committee is not a committee that is opposing or supporting statehood. It is a committee that is looking at putting in place a constitution. In order to put in place a constitution that we believe would be accepted by the people of the Territory, it is necessary for all groups throughout the community to have their say. The comments that you made in relation to government activities are highly provocative to me and we have had meetings on occasion where those issues have been raised. You said that you oppose statehood at this time which means that you should be looking at the development of a constitution and putting forward your views in relation to industrial relations. Those are the issues that we want to hear about, not whether a government of the day can run the place and that it should not do this or it should not do that. Those sorts of matters can be argued out in the community if you want to put those views.

In relation to the cuts made to Territory funding, you know those cuts were simply imposed on the Territory and that the major part of states' funding comes from the Commonwealth government. Our terms of reference indicate that we require equality with the states. That is what our particular task is. The existing states may have a larger tax base but they also have to provide a great many more services to their communities. When we talk about Senate numbers and the number of politicians, I agree that there are too damn many of them. However, the reality is that, if we are to obtain equality, then it is a numbers game and we have to look at moving in that direction. Thus, I make those comments initially.

You mentioned that you have been to see Sir John Moore. Has your union made a submission to him? You are aware that the government is examining the whole matter of industrial relations and is aiming to come up with a paper that can be put before the community along with a whole range of other papers.

Mr TULLGREN: No, Mr Chairman, we have not made a specific submission to Sir John Moore although he is aware of this submission. We have made a number of comments to him.

To take up an issue which you raised, I would respectfully disagree that we have missed the point. I think we have approached the operation of this committee from another angle. We are aware of the terms of reference that you are looking at drafting a constitution. Our view is that the drafting of a constitution is predicated on something happening and, in this case, it would be statehood. Obviously, you are not going to draft a constitution and potentially have a constitutional

convention if, at the end of the day, you are going to say, 'Well, that was a nice exercise and we have finished'. In our view, what the committee should be doing, instead of looking merely at the question of the drafting of a constitution or the establishment of a constitutional convention, is examining what statehood means. I think that, as a select committee of the parliament of the Northern Territory, you have a responsibility to make an assessment and I do not believe it is contrary to your terms of reference to do that. You could say: 'Whilst we are charged to do this, we can do it but we question whether, in the total balance, statehood is a good idea'. That encompasses all that we have said.

The Trades and Labor Council is to make a submission to you that talks about the protection of human rights in a constitution. We support all of those things. If it came to that, we would make a lengthy submission. However, to use an analogy, it is said that Nero fiddled while Rome burned. I think that this committee has been asked to create the fiddle that can be played while the Territory burns because it would be giving the people the basis on which to move towards statehood when all examination reveals nothing to really show that the Territory should become a state. I know that there is a long history of neglect by the Commonwealth. In his speech, the minister referred to home rule in Ireland. I know that McCarthy is probably an Irish name but home rule meant something entirely different to the Irish and I do not think that Territorians can be put in the same position.

Thus, I submit that we are not ignoring your terms of reference. What we are asking is that you consider whether in fact you should be recommending something to do with statehood without there being a proper examination of statehood. In relation to the move for a new state in northern New South Wales in the 1960s and in relation to proposals for other new states, the practice in the past has been to establish royal commissions. The terms of reference of those commissions - and I include also the federal royal commission established in the 1930s in relation to the creation of new states - charged them to examine economic viability, social impact etc. Your committee is not charged specifically with examining any of those things. Our union believes that it is incumbent on you to carry out an examination of those matters because it is no good creating a wonderfully democratic and utilitarian constitution if what it is going to be imposed on is a vast area with a declining population and a narrowing economic base. It may have the most brilliant constitution but quite literally be bankrupt or exceedingly poor. It may end up being mendicant like Tasmania was in the 1920s and the 1930s.

I think that is an unwise proposition for the committee to pursue without testing empirically the arguments about whether the Territory can afford statehood and the question of equality of representation in the Senate. As I said, the equality occurred because of a deal that was struck in the 1890s. The Territory is not in the same position now. In all the documents that you read, you find reference to equality of representation in the Senate but no examination of why that occurred or of the fact that there was considerable opposition to it in the conventions from states such as New South Wales and Victoria. Eventually, practicalities prevailed.

I do not believe that people should make broad statements about statehood being a good thing. We can't pay for it later. We need to be able to prove that we can pay for it now. The existing trouble that the Northern Territory government has with its finances would not get any better as a result of statehood. They have the potential to become worse. Let's not beat around the bush, Senator Walsh thinks that this is the most expensive place in Australia and, if the system of

government were to change to a state, he would feel far less restrained than he is now to simply go after the state of the Northern Territory or whatever, just as he goes after the other states. I have lived here for 8½ years and, when I was first appointed, I was told I was being sentenced for 25 years. I am not sure whether that will come true or not, but I have a stake. I do not want to live in a place which basically has a governmental system that it cannot afford to maintain. The union represents its members and many of our members have lived here for as long as you and your family have, Mr Chairman. We believe that you should go back a couple of steps and make an assessment. If you then believe that we should be a state, you could then proceed with drafting a constitution. This really is putting the cart before the horse.

Mr HARRIS: As I said, I do not agree with your thoughts in relation to the matter of statehood. I think that Territorians are part of Australia. We need to have a say in what is going on and we need to be treated the same as other parts of Australia. What we want to look at are your concerns. The politics of whether or not we can afford statehood or the benefits that we would derive from it are issues that can be fought out in the open arena. This is a committee of the parliament which is looking at developing a constitution. I am on record, and I have commented here, that personally I would have preferred to have gone about it the other way: to have discussed the issue of statehood and then decided whether or not to have a committee. The situation is that a committee has been formed to examine the development of the constitution and we will do everything in our power to ensure that we obtain comments. Whether they are aggressive comments towards the government of the day or whatever, I will still retain my cool.

Mr TULLGREN: I wasn't attempting to be unnecessarily provocative, but I was being honest with the committee about what we believe is the position.

Mr HARRIS: But, again, you could question whether we believe or whether it is certain individuals or whatever. Do other members have any comments?

Mr SMITH: I guess I too should respond to some of the general comments that Peter has made. It is my view and the committee's view that we have a fairly strict charter and that is to look at the constitutional questions. The questions about our attitudes to statehood have been adequately indicated elsewhere. I agree with the chairman that probably this is not an appropriate place to pursue those in any depth. However, I am intrigued by your comments about the costs of funding statehood. Quite clearly, this is one of the key factors in the general statehood debate. In your view, what are the costs of funding statehood?

Mr TULLGREN: Take the example of the industrial relations system. If you set up a separate system, that has a cost for which you would have to pay. The states have a great many powers where they are required to meet many of those costs themselves. Despite the fact that the states receive a great deal of their income through the tax-sharing arrangements with the Commonwealth, they also provide a great deal of their own revenue basically by the introduction of a vast host of state taxes. For instance, all the states levy land tax to varying degrees. The Territory does not levy the land tax although it was said last year that that was being considered. Land tax, high taxes on fuel, duty on cigarettes and a great variety of taxes and charges are the means by which the states help to fund part of their operations. All of the states are able to do that to varying degrees because either they have large populations such as the south-eastern states or they have a fairly good economic base. Even Queensland, which for many years was considered principally as a

mining and rural state, has a manufacturing and service base which has developed and continues to develop and it can afford to tax that base. Also, Queensland has the most regulated form of primary industry in Australia. There are more rules and regulations in that non-socialist state than there are in most Iron Curtain countries in relation to their agriculture. That is not a comment that I make, but a comment that has been made in the Queensland parliament in respect of the marketing of agricultural products.

The Territory does not have any of those bases. It also has a declining population. About 23% of its population is comprised of Aboriginals, a great many of whom are tribal Aboriginals who do not work as such and who do not produce income. You cannot tax people who do not produce anything. In no state is there, in effect, about 18% or 19% of the population from whom no tax is capable of being derived. The Northern Territory has got that problem. It has no basic economic situation from which it could levy taxes. Based on recent history, it will not be able to rely on the Commonwealth simply providing large amounts of money. If anything, it is moving towards reducing what it provides. What happens with the shortfall? We recall the outcry over the tourism marketing levy last year. That was a simple 2½% levy. What would happen if you introduced an 8% land tax in the Northern Territory? That would be politically unacceptable to a large part of at least the government's constituency.

You could introduce a whole variety of other taxes. We have some of the highest electricity charges in Australia now. Unless there were a marked decline in the cost of electricity as a result of the natural gas situation, all of those costs would increase. In NSW and Victoria, some of those costs are passed on to the manufacturing industry in order to ease the burden on the ordinary householders. You cannot do that here and therefore we would not enjoy the luxury of playing some of the nice double shuffles that exist in the southern states. When it comes to taxing, it is you and me and not industry that is taxed. You cannot levy the same sorts of taxes and duties on the mining companies because of the situation here. Many of them are self-contained in the sense that they generate their own power and control their own water and sewerage services. In other places, mining companies are reliant on electricity generated by the state and on state controlled water. On a simple examination of those things, there is not the economic base or the economic pool that politicians can tap into when they have to tax people

Mr SMITH: But you are operating on an assumption. You have slipped around what I asked you to prove. Your assumption is that statehood would involve extra costs. Let me try to narrow it down a bit. If statehood is to involve extra costs, that could be in 2 main areas. The first is in respect of transferred functions such as industrial relations, control over lands and national parks etc and the second is your belief that the Commonwealth would hit us even harder when we did not have the protected status of a territory. In your view, it would be in both.

Mr TULLGREN: The cost of transferred functions would not necessarily be an enormous impost. I am not in a position to know what it would cost if the Territory got control of national parks. Perhaps if you took the figure that it now costs the Commonwealth, you could apply that. There is a current discussion about Commonwealth/state financial relationships. Both the Treasurer and the Minister for Finance have made it clear that states have to be more responsible in relation to expenditure and in relation to their own income raising. What we have seen in the past couple of years, through the Loans Council and so on, is the federal government saying that the states will receive so much money and will be responsible for their own activities and, if they want to spend

more, they can do so. The federal government is reducing its financial commitment to the states as part its long-term economic policy.

The Territory will not fare any better by being a state. Some might say that it does not fare too well now. I think that is probably true but, based on what I have read and on union discussions with the Commonwealth in relation to many of these matters, I do not believe that the Territory would get any joy out of the Commonwealth. The prognosis is that it will be worse not better and it will not remain static.

Mr SMITH: Worse for the Territory or worse for all the states?

Mr TULLGREN: Probably worse for all the states and the Territory, but remember you are talking about becoming a state. The result would be that you would be totally in the same position as New South Wales or Queensland or anywhere else. Unless there is a major change of heart by the federal government, things will get a lot worse. I would submit that, even if the Labor government disappeared tomorrow in Canberra and there was a coalition government, based on many of their stated economic policies, the Territory would not fare substantially better. I know there are promises about a number of things and the Territory might get a railway or a couple of one-off projects but there is nothing in the coalition's economic policy that indicates that states will get a substantially better deal than they get now under a Labor government. The Territory would be walking into all of that.

Mr HARRIS: Peter, whether we like it or not, we will have to pay. The taxes that you are saying are around the corner are a fact of life already. What we are concerned about is that we do not have the clout where it counts and the federal government can do what it likes. It does not matter which political persuasion it is, it can kick us to death. If we had the numbers and a member on the Loans Council - and we do not have a member on that at the moment - and there are a number of other areas in which we can become involved, that clout can come into play. We can play politics and say that it will cost this or that and therefore we are not interested. We can have those arguments. As Terry said, we are trying to work towards developing a constitution. Involved in that is whether the state has other options in relation to a single industrial system. That is what we want to hear. If we can hear your views on what should be put in the constitution in relation to that matter, we can take them away and examine them. We can still argue the pros and cons of statehood. I make it quite clear that the decision to move to statehood will be made by the people. We are not going to foist anything on the people. That would not succeed; it has to come from the people.

Mr SETTER: Peter, as the chairman rightly pointed out earlier, the charter of this committee is to consider the development of the constitution as opposed to whether or not we should move statehood, although I do take your point that, at some time in the future, the eventual result of all of this will be a push or otherwise for statehood. You spent a fair amount of your submission talking about industrial relations and the perception of your union with regard to those matters. I would like you to be aware that, at this time, the committee does not have a position on industrial relations. It is not a matter that we have discussed in any detail at all. As was mentioned earlier, Sir John Moore is in Darwin at the moment taking submissions on the very issue of what the Northern Territory's position should be in the event of statehood. At some time, we will have access to his report and

we will discuss it as a committee and perhaps develop a position or optional positions. That is where we are at in relation to industrial relations matters.

In reference to a conference on statehood sponsored by the Law Society last year, you said that a professor addressed that conference ...

Mr TULLGREN: Dr Gerritsen.

Mr SETTER: ... and he made the comment that the Northern Territory was flying on a parallel with Queensland.

Mr TULLGREN: No. I am sorry if I misled you. He presented a paper about the economics of statehood and he used a parallel argument as to the way Queensland has developed and has been treated in relation to its funding by the Commonwealth. As I understood his paper, he was saying it is possible to use the way Queensland has been treated as a model for the Northern Territory. It was not a detailed exposition. He commented that this or that had happened and it might be possible to do this or that.

Mr SETTER: He was using that as an example of what our position is or is likely to be? I take it that he was suggesting that we could develop the same approach in responding to or coping with the Commonwealth's decisions.

Mr TULLGREN: To put it fairly bluntly, basically he was saying that the Territory could use the same system to try to screw as much money out of the Commonwealth as Queensland has managed to do over a number of years. He floated that as an option. He did not say that was the preferred option, but he said that it is something that could or should be considered.

Mr SETTER: With regard to statehood, it is my personal opinion that, if we do achieve that level of constitutional development, we would know the rules, at least in broad terms. As a territory of the Commonwealth at the moment, it can do as it will with us from time to time because we do not have that sort of constitutional protection that the states currently have. Thus, I personally see that there is some advantage there. I take your point that our funding would be basically on exactly the same basis as that of the states, apart from special grants for certain projects etc. Nevertheless, I believe that, if we know the rules, and the same rules apply to everybody else, we can adjust our financial position to fit in with that. At the moment, as history has told us over the last few years, our position changes from one year to the next.

Mr TULLGREN: I have always found that an interesting argument in relation to this. The union approaches it this way. Materially, a person in the Northern Territory is not treated any differently from a person in New South Wales. He has the same rights to education and health care, he has a local government structure and he has the same rights to buy and sell a house or a car. The only difference that we see is that the Commonwealth government reserves to itself powers over industrial relations, the control of uranium mining and uranium export, Aboriginal land rights and some control over national parks. As a result of the High Court decision in the Franklin dam case, the Commonwealth has power that it can exercise over the preservation of large parts of Tasmania and, under that decision, because of its international treaty obligations, the Commonwealth could

exercise that power here, in Queensland, in South Australia. It will possibly do it in relation to Tasmania again.

I cannot see where the rules are any different. Financially, as I understand the way the federal government approaches this, when the annual pilgrimage is made to the Loans Council, it is like opening up the flap of a tent in a snow storm. You walk out and you do not know what is there. The states do not know and neither does the Territory. That will not change. In relation to Aboriginal land rights, I cannot see that the Commonwealth would cede that power to the Territory. It may. For instance, New South Wales has limited land rights legislation and so does Victoria.

In nearly every material respect, people in the Territory are no better or worse off than people in the southern states. I came from New South Wales and, when I came here, I was no better off in New South Wales than I was in the Northern Territory or vice versa. On behalf of the union, I cannot see where there is major discrimination. Because of the way the High Court has interpreted the Australian Constitution, the Commonwealth has wider constitutional power now than it had 5 years ago and that will not change. How would statehood protect us from that situation? I really cannot see that there is a major disadvantage.

Mr SMITH: Peter, can I ask you a specific question about the industrial relations function? I take your union's point that it does not want to change the system. As I understand the system, industrial relations in the Northern Territory essentially fall within the aegis of the Conciliation and Arbitration Commission.

Mr TULLGREN: That is right.

Mr SMITH: Let us make the assumption that, at some future time, we will have statehood. At present, as I understand it, the commission sets up a Northern Territory panel. Is that correct?

Mr TULLGREN: It puts the Northern Territory into one of its panels because it operates on a panel system. Excluding certain industries and the public service, the Northern Territory is put into a panel. The former are picked up elsewhere.

Mr SMITH: If statehood were granted, would your union have a problem if the Conciliation and Arbitration Commission set up a separate Northern Territory panel whose members would be appointed by means of consultation between the Commonwealth and Northern Territory governments?

Mr TULLGREN: By that, do you mean that existing commissioners of the Conciliation and Arbitration Commission would be moved into a specific panel?

Mr SMITH: No. There would be particular commissioners appointed jointly by the Commonwealth and the Northern Territory as the Northern Territory panel of the Conciliation and Arbitration Commission.

Mr TULLGREN: Potentially no. As you may be aware, when a member is appointed to the federal commission, it is a tripartite appointment. There has to be broad agreement by the government, the employers and the trade unions on the appointment of members. Firstly, that would have to occur. Secondly, the members would have to hold federal commissions. As you are aware, all members of the Conciliation and Arbitration Commission receive their commission from the

Governor-General. The panel would have to be a panel of the Conciliation and Arbitration Commission. It would deal with the Northern Territory but it would apply commission decisions in relation to national wages, precedents and all the other matters. Potentially, if those conditions were met, there would potentially be no problem. However, I cannot speak for other unions. Remember there are some industries such as the maritime industry which appear in their own panels. Uranium mining appears in a separate panel because of its national importance. Printing appears in a separate panel and there are a couple of others. However, as far as we are concerned, potentially, we would have no objection to that.

Mr SMITH: What would be the attitude to bringing all those other industries into a Northern Territory panel?

Mr TULLGREN: We cannot speak on behalf of the other unions.

Mr SMITH: What is your personal point of view, without prejudice?

Mr TULLGREN: As a purely personal point of view without prejudice that cannot be held against me at any time in the future, I think that it would be applicable in some cases and not applicable in others. For instance, the maritime industry is a national industry and its standards are nationally set. You could not excise it and start making decisions about what went on in the Territory, purely on a Territory basis. There are probably a couple of others in the same circumstance but, on the whole, my personal opinion is that there is probably a good argument for doing that, bearing in mind that most awards here have a nexus with a federal parent award which has application throughout Australia. I do not see that it would be a big problem apart from one or two specific examples.

Mr SMITH: Like the maritime industry and the wharfies.

Mr TULLGREN: Yes.

Mr SMITH: I do not think a Northern Territory panel would like to handle the Waterside Workers Federation award anyway.

Mr TULLGREN: That's probably mutual. I don't know about that.

Mr HARRIS: Peter, the committee would like a detailed submission on where your union stands in respect of the industrial relations aspect. I take all the points you have raised but we really would like to have some expert views and advice in respect of these matters. Would you consider preparing a submission for us?

Mr TULLGREN: Yes. I could certainly do that. Despite our reservations, we would consider preparing a submission on what should be in a state constitution as well. Even though there is a fundamental disagreement between ourselves and the select committee on the way that should proceed, we would certainly seek to do that on both of those matters.

Mr HARRIS: That is good. If there are no further questions, I thank you, Peter, for attending.

The hearing closed.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

DARWIN— Thursday 11 August 1988

PRESENT: —

Committee:

Mr T. Harris (Chairman)
Mr B. Ede (absent)
Mr W. Lanhupuy (absent)
Mr M. Perron (absent)
Mr R. Setter
Mr T. Smith

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Rod ELLIS
Ms Joan WILKINSON -
representing the Trades and Labour Council
Mr Kevin ANDERSON -
representing NT Community Government
Association
Ms Susan ANDRUSZKO -
representing the Darwin City Council
Mr John ANTELLA
Mr Noel LYNAGH -
representing NT Local Government Association
Mr Raphael CROWE -
Director, NT Confederation of Industry and

Commerce

Mr Charles JEFFERIES
Mr Francis PERCEVAL
Mr Anthony HOSKING

NOTE: Edited Transcript.
Issued: 21 November 1988.

Mr HARRIS: Before commencing could I just indicate that this is a select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect as proceedings in the House itself. For the Hansard record, I ask witnesses to commence by stating their full names and the capacity in which they appear.

Mr ELLIS: My name is Rod Ellis and I appear with Joan Wilkinson. I hold the position of Assistant Secretary of the Northern Territory Trades and Labour Council and Joan Wilkinson is the Junior Vice-President of the Council.

Mr HARRIS: Thank you. We have before us a submission without prejudice from yourselves. Would you like to address that submission?

Mr ELLIS: Thank you, Mr Chairman. We said at the beginning of our submission, which is dated 14 June, that it was an interim submission. We said that very deliberately because the Trades and Labour Council, as the representative of organised labour in the Northern Territory, believes that many aspects of statehood will affect its constituents and that it may not necessarily be appropriate for the TLC to comment on many aspects of the statehood issue. In our interim submission, we have dealt in particular with the workings of a constitutional convention and the issue of representation on such a commission.

We want to make it very clear that, in dealing with those matters today, we are not debaring ourselves from entering into debate on specific issues as the matter proceeds. We would not like it to be thought that this was the final statement of the views of the Trades and Labour Council. We wish to be heard and represented throughout the discussions on statehood.

The front page of our submission states the policy of the Northern Territory Trades and Labour Council on statehood. That policy, determined at a formally and properly constituted meeting, is that the council rejects any move to have the Territory become a state.

The first reason for this policy relates to population. We do not believe that the Territory has a large enough population base to sustain a viable state. The figures from the Australian Bureau of Statistics, which are not disputed, indicate that the Territory's population is decreasing rather than increasing.

Yesterday I heard a comment by Michael Anthony. He is not someone I normally agree with or quote, but I believe that he was correct when he stated that the only reason many more people have not left is because the real estate market is so bad that people just cannot afford to sell up and leave. He said that if the real estate market was in any way decent, we would be faced with another huge exodus of population. I think that is right.

In fact, rather than attracting people to the Territory, the concept of statehood is causing them to leave. In this context, I refer particularly to the attack on remote locality conditions which has been based upon the argument that the Territory is no longer remote, that Territory workers no longer need specific remote-area conditions in awards and that the Territory is now looking towards statehood. That attack on workers' conditions is causing people to leave the Territory in great droves and, unfortunately, the federal government is in the process of continuing the attack. The Trades and Labour Council believes that the concept of statehood, rather than attracting people and

increasing our population, is in fact decreasing it. The factors of climate, distance, cost of living and access to services remain as relevant today as they were in the 1940s.

Mr Chairman, when we say that the cost of living is extraordinarily high, it is sometimes believed that we do so in a trite manner. That is not the case. The reality is that figures from Bureau of Statistics indicate that a household in Darwin can expect to spend some \$620 a week on household expenditure. The next highest figure is \$497 in New South Wales followed by \$490 in Victoria, with Tasmania the lowest of all at \$400. The cost of living remains extraordinarily high here and is a huge disincentive in terms of bringing more people to the Territory.

The population base is vital in terms of creating a real and vibrant democracy, in providing a revenue base sufficient for a state, in generating an adequate level of services and in providing an appropriate range of cultural and entertainment activities. Our population base is simply not large enough to justify statehood at present. I do not think that anyone would be brave enough to say that, in the next 25 to 30 years, our population base will be sufficient for a viable state. This issue of population is a major factor in our argument for the rejection of statehood.

The second part of our argument against statehood is that the Northern Territory does not have a sufficiently large tax base from which to generate its own revenue. It is not our role to make an economic submission, but a brief look at the Territory budget shows that more than 80% of the Territory's revenue still comes from Commonwealth funding. We all remember with some bitterness the trite arguments that were thrown around at the time of self-government when we were told that it would cost no more than a can of beer per Territorian. Well that has been demonstrated to be totally false. The Leader of the Opposition, in a statement in the Sunday Territorian, said that our public debt level was such that nearly \$15 000 was owed for every Territorian. There was a huge outcry when Premier Greiner revealed that the New South Wales figure was \$8000, but here we owe twice as much.

I am familiar with the matter of unfunded superannuation for NT public sector employees. Without taking into account the liabilities which are not funded, in 5 years' time the superannuation liability will be \$247m. This flies in the face of the baloney propagated by successive Northern Territory governments to the effect that our budget is balanced. It is not. We are running into serious debt problems, which are probably twice as bad as elsewhere else in Australia and that is with a self-governing Northern Territory that is only 10 years old. Heaven help us in the future!

When I looked at the budget last night, I was struck by what has occurred in relation to land sales. In the 10 years since self-government we have sold \$128m worth of public land. In 1985-86, government land sales realised about \$21m, which was 10% of total government revenue in that year. In 1986-87, land sales raised \$22m, which was 8% of total revenue. By 1987-88, the amount has slipped to \$10m, which is 3.6% of total revenue. The very serious question which arises is: have we been selling off the family silver? It appears to me that we have sold a fair bit of it. We have certainly sold off an amount worth \$128m and unless those people who have bought the land suddenly donate it back to the government, which I would think is unlikely, that revenue base has gone. It has been a significant one and the question which arises is: where will that revenue come from in the future? If it is to come from a population which is already 5000 less than it was last year and which is continuing to decline, it is clear that the Trades and Labour Council is correct in arguing that the Northern Territory does not have a sufficiently large tax base to become a state.

Our third argument, which is a matter of substance to us, deals with the industrial relations system in a state of the Northern Territory, and I will cover this in detail in due course

In its fourth argument, the Trades and Labour Council states that it is opposed to giving the Northern Territory government control of Aboriginal land rights due to the racist views of the government. The ACTU policy on Aborigines recognises that Aboriginal people are entitled to special facilities for the attainment of equal rights, equal opportunities and equal responsibilities. The ACTU adopts that policy with specific regard to wage discrimination, education and training, general welfare, housing, land rights and collective enterprises, rights to self-determination and the formation of a national Aboriginal consultative council. We consider that these things are very important, a view that is not held by people in power in the Northern Territory.

Mr SMITH: Sorry, can I interrupt you there Rod? The submission which I have, and I am not sure whether it is the same as the one you have, says that 'Appropriate guarantees of Aboriginal land ownership must be included in the Territory constitution.' I thought that the TLC's position was simply that Aboriginal land should not be transferred to a future Territory government.

Mr ELLIS: Yes. I was just stating the ACTU policy on Aborigines, which recognises particular specific rights of Aborigines. I was about to say further that the unions also support the Aboriginal Land Rights Act of 1976 as a measure which provided a legal mechanism for redress in that it allowed Aborigines to make claims over land in cases where they had been dispossessed, allowed for granted land to be held under inalienable freehold title, and provided for the protection of sacred sites, Aboriginal control over mining on Aboriginal land and access to royalty equivalents for affected Aborigines. It can therefore be said that the unions support the introduction of legislation to cover the registration and protection of sacred sites and the Land Rights Act of 1976. That, however, has not been a position that has been held publicly by the current Northern Territory government.

Mr SMITH: Yes, but would the TLC accept the transfer of the Commonwealth Land Rights Act if sufficient guarantees were placed in the Territory constitution?

Mr ELLIS: Item B on page 3 of our submission talks about sovereignty. I think it does make a statement. The reality is that the subject is probably better dealt with by other groups which will argue more strongly in support of the principles involved. What I am saying today is that we support the principles embodied in the Land Rights Act. We support the ACTU policy and our statement is clear. However, the Trades and Labour Council is not the appropriate body to deal with the legal and other mechanics of transfer of land for Aboriginal people, notwithstanding that our submission makes reference to the significance of the matter.

Page 2 of our submission talks about the justification for statehood and refutes the false statement that the cost of self-government was no more than a can of beer per Territorian. We believe that there should be a genuine justification for statehood. The argument that has been loosely put is that Territorians must be the equals of other Australians. I believe that is a false argument. If one asks the ordinary Territorian in the street if he or she believes him or herself to be less than the equal of a person living in New South Wales or any other part of Australia, the answer would be no. They are not concerned with that argument. I think the ordinary person in the street honestly shudders at the thought that we would elect 12 Senators from such a small population base. There

needs to be a genuine justification for statehood, not just trite cliches referring to costs of cans of beer or the need for equality. Equality exists already.

Our submission discusses the notion of a draft constitution. If there is to be a draft constitution developed by a Constitutional Convention, the process of putting it together must be very broad, enabling full consultation across the widest spectrum of interested parties. Already, probably without any deliberate intention, this select committee has run into trouble from people who have stated that they have not had sufficient time to consider the issues on which their input is sought. The select committee may reply to such people, saying that they have known about its activities for a considerable period and have had ample chance to develop points of view. The reality is, however, that any process of developing a draft constitution must generate its own consultative mechanisms and timing so that everybody has a real opportunity to input and to submit. I believe that there needs to be a long period of time between the preparation and the adoption of a draft constitution.

I now turn to the workings of a constitutional convention and the issue of representation. Firstly, notwithstanding its position on statehood, the TLC wishes to be involved in the debate. As the organisation representing organised labour in the Northern Territory, it must be adequately represented on the convention. Other groups must also be adequately represented. We have not tried to define those groups but, certainly, major groups should be involved. In considering the issue of representation, a couple of relevant criteria apply. Firstly, groups should be represented by peak bodies. For example, the Trades and Labour Council should represent the unions and the Confederation of Industry should represent the employers. Secondly, the groups must represent a significant body of opinion. At the end of the day, it is a numbers game. If we represent some 15 000 to 20 000 workers, we should have greater representation than a group which represents dozens or hundreds. That needs to be taken into account in providing the framework for representation on any constitutional convention. I appreciate that a cast of thousands is not appropriate, but representation should reflect the size of constituencies as far as possible.

We favour a combination of elected and nominated representatives on any constitutional convention. That is because we place particular stress on the participation of key groups and a totally elective process would make that more difficult. Certainly, if the process was totally elective, the Trades and Trades and Labour Council would achieve secure representation, but we believe that large and significant groups such as the TLC should be able to nominate representatives to the convention. Without stating how the balance should be achieved, because that is ultimately a numbers game, our submission argues in favour of a combination of elected and nominated representatives.

The TLC does not favour a select committee approach. We discussed the issue at length and, whilst could see the value in having experts in particular fields leading parts of the discussion, debate, workings and writings of the convention, we felt that, at the end of the day, a process which used committees would probably frustrate the aims, aspirations and abilities of the ordinary members of the convention. Our view is that 60-odd people should be on the commission and should themselves determine what committees and expert input are needed. We believe that a select committee approach will simply be a source of frustration to the ordinary members of the convention.

That concludes our thoughts on the membership and workings of the constitutional convention. I now turn to the matters which are more particularly the province of the trade union movement, the first of which is industrial relations.

The Trades and Labour Council strongly favours the retention of the current system. You will be aware, Mr Chairman, that the industrial relations powers were not transferred to the Northern Territory at self-government and remain under the control of the Commonwealth. That arrangement has served the Territory well. It has meant that disputes and other matters have been dealt with by the Conciliation and Arbitration Commission under the Act of 1904. It has meant that decisions have been made in relation to Australia-wide precedent. It has prevented us from becoming isolated and inward-looking, which is always a very grave danger in an isolated place with a small population base.

Our second point, which we make with some vigour, is that any system of conciliation and arbitration requires a genuine independence in decision-making, which must be perceived to be genuine by all parties. In a small community, it is not possible to find commissioners who will be seen in that light, no matter how much integrity they have and no matter how well-respected they are. If they so much as greet or have a cup of coffee with a member of one side of the industrial scene, people on the other side will immediately be alarmed. That is a real problem which needs to be addressed. The Northern Territory population is too small to allow us to supply our own panel and in that situation it has been an advantage to have people from the federal system coming in from outside to handle disputes. With occasional exceptions, they have generally not been considered as having any preconceptions in relation to disputes.

Mr Chairman, we are not saying that the current system should stay in place for all time. We realise that there is a concern in relation to interstate disputes. If the Territory became a state, the present system would require us to find an interstate dispute whenever there was a local dispute and that would be quite stupid in many cases and at other times it would simply be very difficult. We are not putting our heads in the sand and saying that the system should never change. We believe, however, that the present system has worked well and, for the reasons we have advanced, favour the retention of that type of system and those principles.

On the question of human rights, the TLC has not attempted to define specific issues in the Territory context. However, in our 1987 submission to the Commonwealth Constitutional Commission, we talked about the importance of enshrining freedoms in the federal Constitution. That submission talked about democratic and individual rights under the Constitution, Australians and legal process rights, Australians and civil courts, Australians and equity rights, associate economic rights, the right to private property, the right to work, the right to strike and the right to an adequate standard of living. It talked about the rights of Aboriginal Australians, the rights of Australians at the ballot box and constitutional guarantees. We believe that those issues and the data contained in that submission should be considered by any Territory constitutional convention. The development of a Territory constitution would provide a unique opportunity to enshrine the reforms that have occurred in all parts of Australia since federation.

I imagine that the conservatives will argue that the constitution should contain as little as possible. What that means is that decisions will be left as matters of political expediency, to be made on the basis of what the mood of the community is judged to be at any given time. The

progressives would argue that we need to enshrine the social and economic advances that have been made in Australia over time. The Trades and Labour Council is very clearly one of society's progressive forces and argues that we should go beyond political expediency and should set in place constitutional guarantees which, for example, would provide for a proper standard of living for all Territorians and would particularly protect the rights of the poor and underprivileged.

A Territory constitution should provide for such things as equality of opportunity, which has been legislated for in most of the states, together with the rights of indigenous people and the other matters I have just mentioned. The formulation of a constitution is a once-only opportunity given to the members of the constitutional commission on behalf of the people of the Northern Territory and it should not be lost.

That concludes my comments on our submission. I reiterate the point that it is an interim submission, without prejudice, which sets out some of the very basic issues which the TLC is concerned about and upon which it has formulated policy. We hope that the move to statehood does not proceed. If it does proceed, however, we wish to be involved in the convention and in the debate on all aspects of statehood, particularly those concerning industrial relations. The unions and the employer groups will be those primarily affected by whatever is delivered at the end of the day and it is, therefore, a very important matter for the people of the Territory.

Mr HARRIS: Thank you very much, Rod. I would say at the outset that the committee acknowledges that yours is an interim submission. In fact, I have mentioned to the other groups which have appeared before us that, if we have further questions in relation to submission after groups have spoken at these hearings, we will contact them. We will definitely keep in touch with you in relation to all of the issues and we are happy for you to be involved at some later stage. We acknowledge that it is important for organisations such as yours to have input into this very important exercise.

I would also state, as I stated yesterday to one of your colleagues, that there appears to be some confusion about the role of this committee. It is not a statehood committee. It is the Select Committee on Constitutional Development. We are not promoting statehood. Similarly, we are not saying that statehood is not the way to go.

Needless to say, Rod, I do not agree with a number of the comments you have made in relation to statehood, particularly those which relate to the costs. We have to pay anyway. The major part of all states' funding comes from the Commonwealth. There are whole range of issues that could be argued on the political front in relation to whether we go to statehood or not. This committee is not going to argue those particular issues. We are trying to obtain input in areas in which people have particular expertise and, in your particular case, that area is industrial relations. Some people live in the Northern Territory because they love the place. They like the climate and a few other things and it is pretty clear that some of us have very strong and differing views about the Territory and why we are here.

I do not agree that the concept of statehood is a factor in causing people to leave the Territory. Of course, such matters can be debated in other forums and I am quite happy for that to occur. I also take issue with the argument that the government has racist views in relation to

Aboriginal land rights. I want to make clear, however, that we are not going to get into the politics of such matters here. We are really looking at the issue of constitutional development.

At one stage, Rod, you commented on people's complaints that they had not had sufficient time to respond to the committee in its consultative process. The confusion seems to have arisen from the fact that there are public meetings and there are public hearings. In the case of the hearings, the people with evidence to present have known that we would be coming to hear them. In Tennant Creek, people mistook the public hearing for an event at which people could get up and talk generally about statehood. It needs to be made clear that public hearings are occasions in which the public is able to be present to hear evidence presented to the committee.

I was interested in your comment, Rod, that ultimately representation on the constitutional convention is a numbers game. That also applies in relation to the representation which we might have, as a state, in the Senate, and whether we might have 12 Senators initially or have to work towards that gradually. That, too, is a numbers game. The arguments about whether or not we have too many politicians do not matter in that context. What we are talking about is the opportunity to have equality in the federal parliament, to put our views, to have clout. That applies with your organisation and it applies with the Territory in its aspirations. I do not see representation on the convention as a numbers game because I think it is important that all of the groups you mentioned must be involved. The union movement has to be there as do other groups with expertise. They should be able to have every opportunity to be involved in that exercise.

Page 3 of your submission talks about sovereignty. You say that the TLC is not the organisation best placed to advise on the specific constitutional measures and so forth, which is fine. However, we also are looking at whether or not those proposals are acceptable to the various groups. Some people have come out quite openly and said that they are totally opposed to including any reference to the fact that Aboriginals have prior ownership of the land, and there is debate over whether any statement on that issue should be in the preamble or in the constitution itself. Those are issues that need to be debated and we need to hear the views of a range of groups.

Mr ELLIS: I accept that point, Mr Chairman. Perhaps I did not express myself clearly, but what I was trying to say is that if, for example, the land councils took a different view to that expressed in our submission, we would not be seeking to disagree with them.

Mr HARRIS: You also discuss human rights and mention a couple of reports. We do not have much to do with those reports. I will leave my comments at this point and ask other members whether they have any questions.

Mr SETTER: Rod, I listened with interest to your submission and, like the Chairman, I disagree with many of the things that you said. However, it is important to reiterate what the Chairman said in relation to the status of this committee. It is a bipartisan committee of the parliament charged with the responsibility of developing a draft constitution for the Northern Territory, should it become a state at some time in the future. It is not a tool of the Northern Territory government and it should not be seen as that. We have adopted this approach all the way down the line and we will continue to do so.

I do not intend to debate the various issues that you raised other than one particular point. In referring to the composition of the constitutional convention, you said: 'At the end of the day, it is a numbers game'. I disagree. It would be very sad if the results of the deliberations of that convention came about as a result of a numbers game played within it. It is very important that the people who represent the Northern Territory on that convention be people who represent the community at large and not major vested interest groups. The interest groups should certainly be represented but in my opinion it should not be a matter of getting the greatest numbers at that particular convention. If that occurs, the convention will not be representative of the whole community.

To move on to the central issue we are here to address, I would like to ask you a couple of questions relative to constitutional development. First of all, should the Territory become a state at some time in the future, would you agree that a completely new constitution should be developed rather than continuing with the Northern Territory (Self-Government) Act, which we currently operate under? If that is the case, would you believe that the best people to do that are Territorians or should we invite people with particular expertise to come in from the south to participate in the constitutional convention?

Mr ELLIS: I want to answer the point you made about the convention representing the people at large. Whilst that might be ideologically pure, it is simply not reality. In fact, the only way of making it completely ideologically pure would be to have a totally elected convention. We would argue strongly against that. Whilst we would not seek to deny any other major group, the Trades and Labour Council can put up its hand and say that it represents 17 000 people, and organisations which represent that many people should be involved. That is why we say that representation on the convention is ultimately a numbers game. Any organisation which wants to be involved has to be able to demonstrate that it represents a significant number of people. Frankly, Rick, the idea of representing the community at large is just not reality.

In a constitutional convention, the Trades and Labour Council would put forward the views and the aspirations of organised working people in the Northern Territory. Even if the convention was fully elected, our views would be heard. If, for example, I was elected, I can assure you that I would represent the views of the Trades and Labour Council. However, I would rather sit on the convention simply as an official representative of the Northern Territory Trades and Labour Council, if the council elected me to represent its views.

In terms of your question about the development of a constitution, I would make it clear, without compromising the TLC position on statehood in any way whatsoever and addressing the matter purely in a theoretical context, that before we move down that path any distance at all, we would want to see the proposed constitution. Only then can any decision be made as to whether we should have a constitution or continue to operate under the Self-Government Act.

Mr SETTER: We are asking you to have input into the development of that constitution.

Mr ELLIS: Yes, but we might get rolled on every point. In fact, we probably will.

Mr SETTER: Well, we cannot all win all the time, can we?

Mr ELLIS: At the end of the day, we will want to see the document. No decision will be made before that and I would suspect that no thinking person could make a decision before that.

Mr HARRIS: I do not think that you will be rolled on every point, Rod. In fact, the process will be one of obtaining information from the community. This is a very difficult task because, when I talk about the community, I am talking about the whole of the Northern Territory. Our visitation timetable includes all of the major communities and the document we produce will go to parliament. It will then go back to the people. When the people have seen the document, a referendum will be called in relation to it. It is not a matter of seeing these proceedings as the end of the story and then sitting back and waiting to see what will happen. It is a matter of seeking as much input as possible into the areas that you see as important and would like to see covered in the constitution. Whether or not we go down any given line is another matter but I would make the point that this is a fact-finding exercise and we are learning as we go along.

Mr SETTER: Mr Chairman, I would just like to follow up a point that Rod made earlier and clarify my position with regard to the composition. Rod, you said that your organisation represented 17 000 people.

Mr ELLIS: Yes, I think that is the current figure.

Mr SETTER: That is fine but, yesterday, the women's representatives told us that they represent 50% of the population. We know that the Aboriginal people represent in excess of 20% of the population and I suppose that, if we asked how many people supported Australian football out there, that would be a large proportion of the population. It is impossible to organise the constitutional convention solely around the representation of various interest groups. The point that I was trying to make is that representation on the convention needs to be as broadly based as possible, whilst accepting that all of those interest groups will need to be represented.

Mr ELLIS: The point is that there has to be some organisation of those interest groups. You cannot say that, because you have green skin with pink dots and 33% of the population also has it, that you represent all of the people with green skin and pink dots - unless there is some organised structure which creates the representative base. In the case of the Trades and Labour Council, we have a clear representative structure. We have a set of books, office bearers and a constitution. That does not apply to the followers of Australian football.

Mr SMITH: Equally importantly, one of the functions that would be transferred if we became a state is the industrial relations function, in which the Trades and Labour Council has a very direct stake. In fact, I would think that the TLC has a better claim than most organisations.

Ms WILKINSON: Also, the interests of the groups mentioned by Mr Setter would largely be covered by the Trades and Labour Council in any case. The TLC truly represents women through its various women's committees and in other ways. The footballer out there on the field is probably a union member. The Trades and Labour Council represents the interests of a considerable number of workers in the Northern Territory, from right across the spectrum.

Mr HARRIS: Rick, I will just give Terry the opportunity to ask some questions, because he has to leave shortly.

Mr SMITH: I want to start on the industrial relations section. The fact is that, if we become a state, the industrial relations structure will be transferred from the Commonwealth and, within that framework, we will have to come up with an arrangement that best suits the interests of the new state. It may be possible to arrive at some sort of a lease-back agreement, for want of a better term, in which we continue to use the services of the Conciliation and Arbitration Commission. However I would suspect that the bottom line of a state government of any political complexion would be the desire to have some input into how the Conciliation and Arbitration Commission operated in the Northern Territory.

Rod, I would like to put to you a proposition which we put to Peter Tullgren yesterday, which is that a Northern Territory panel could be created within the Conciliation and Arbitration Commission, with the Northern Territory government having an input in determining the membership of the panel. I am aware that members are appointed on a tripartite basis but there certainly should be an opportunity for the Northern Territory government of the day to have an input. The other thing I would like your comment on is whether it is possible for the operations of such a panel to cover all of the industries and awards which operate in the Northern Territory.

Mr ELLIS: When I put the submission together, I realised that there would be some problems in terms of the industrial relations powers if a state were created. For example, interstate disputes would be a major problem for us. I am talking outside the terms of the TLC submission now, but it may well be that a state of the Northern Territory would, because of problems like that, see it as appropriate to hand the powers back to the Commonwealth in some shape or form. Whilst that might not be politically attractive, there would be some very good reasons for doing it. In such an arrangement, a Northern Territory panel could service both Australian and Northern Territory matters. The commissioners would probably live in other parts of Australia but would be members of the Northern Territory panel. In many ways, there is little difference between that and the arrangement we have now. I imagine that something could be worked out along those lines. I am not sure that we are opposed to the notion of the Northern Territory government having some input in determining the membership of that panel. I suppose that is a fact of life.

Sir John Moore talked briefly with us. As the committee will be aware, the Northern Territory government has commissioned him to prepare options for an industrial relations system in a state of the Northern Territory. We stated our position. We know that there are some legal problems with it but we would like to see Sir John Moore's papers. I understand, Terry, that the proposition which you outlined is one of Moore's options but, before we make any decisions, we would like to see more detail on the options.

I am sorry, could you repeat the last thing you asked me?

Mr SMITH: I think you have covered it. I asked whether all the awards in the Northern Territory could be brought under the operations of that panel.

Mr ELLIS: I think they could be. They would all be federal awards.

Mr SMITH: I think Peter said yesterday that there would be some problems with awards like that covering the waterside workers, because of the national implications.

Mr ELLIS: Yes, but the great majority are federal awards and would remain so whatever the system was.

Mr SMITH: The other thing that needs to be explored, although we really don't have time to do so now, is the issue of costs. I think it is an issue which organisations like yours have to come to grips with. You keep talking about the costs of statehood but you have not been terribly specific about what those costs are.

MR ELLIS: I certainly don't make trite comments likening it to the cost of a can of beer for every Territorian. I have been specific to the extent of quoting your column in last week's paper concerning the huge debt that a self-governing Territory has built up during the last 10 years. I am very well aware of the cost of unfunded superannuation. A debt of \$247m in the next 5 years will certainly affect the Northern Territory. Those debts would not exist if self-government had not been granted. They would still be debts retained by the federal government. They would be retained by all of the people of Australia rather than being the responsibility of a Northern Territory government which has only existed for 10 years.

Mr SMITH: So you are advancing an argument for a return to Commonwealth control rather than arguing against statehood.

Mr ELLIS: No. You have asked me a question about costs and I am trying to answer it. It is within my charter to say to you that there should be a return of Commonwealth control. What I am saying, and what many of our members are saying is: 'Look, let's not vote about statehood. Let's vote about whether we give it back to Canberra'. I put to you that many ordinary people in the street are saying that.

Mr HARRIS: Do those people realise that there will be costs, whatever direction is taken? Are they aware of that?

Mr ELLIS: What is wrong with my argument that we currently owe \$15 000 per person in unfunded liabilities, for which the Northern Territory government is responsible? If there had been no move to self-government, those matters would have remained the responsibility of the Commonwealth government and any liabilities would be shared out among about 16 million Australians rather than 160 000 Territorians, a number which is decreasing rather than increasing.

Mr HARRIS: I do not know if that is the case but what I am saying is ...

Mr ELLIS: Well, why wouldn't it be?

Mr HARRIS: No. I am saying that it has been made very clear to us that the cost to Territorians will remain. The costs will exist whether we like it or not. We are moving into a political debate and I don't wish to do that.

Mr ELLIS: It is not a political debate; it is a money debate.

Mr HARRIS: No, it is a political debate. I do not know if you are aware of it, but the government is preparing a financial options paper which, like the industrial relations paper, will be

released so that the issues can be fully debated in the public arena. There will be no problems there. This committee, however, has the task of developing a constitution.

Mr SMITH: To be fair, Mr Chairman, I did raise this matter and Mr Ellis has been responding.

Mr ELLIS: I am not answering the question in a political context. I would say, however, Mr Chairman, that unfunded superannuation is building up a huge liability for the Northern Territory. At the end of the day, the money has to come from somewhere. If it does not come from the Commonwealth, it has to come from raising taxes and charges on Territorians. I have mentioned the sale of about \$130m worth of assets through land sales. I do not know how much land we have left to sell but it seems to me that, if there is not much more, we are in strife because while those sales contributed 10% of our revenue in 1985-86, there was a reduction to 3.6% in 1987-88. I put to you, Mr Chairman, that there is a real money cost associated with self-government and that that will be continued rather than alleviated by statehood. The more decisions that the government makes to embark on projects like the Anderson development, the greater the cost which the Northern Territory people will ultimately have to meet. It is silly to argue otherwise. This is not a political argument, Mr Chairman, it is a money argument.

Mr HARRIS: I am not going to enter into debate on the issue because, as we have said before, this is not the appropriate forum. When such issues are raised, I find it very difficult not to respond. Indeed, at some meetings we have had to deal with quite aggressive approaches in relation to certain activities of the government. I make it very clear, however, that this is a constitutional development committee. It is not a statehood committee. If you want to knock statehood, that is fine. If you want to promote statehood, that is fine, but this is not the place to do either. I realise, Rod, that you were answering a question from Terry and that is fair enough.

Mr SETTER: I have a question about superannuation schemes. Rod, you obviously have considerable knowledge of such schemes around Australia and you have been critical of the Northern Territory government scheme, talking about the extent of liabilities 10 years in the future and so on. Could you tell me what the system is in the other states and in the Commonwealth and whether or not each of those states and the Commonwealth have funded or unfunded schemes. If so, what is their potential liability?

Mr ELLIS: In New South Wales, Premier Greiner has been highlighting the massive extent of public debt. About a quarter of that debt is unfunded public sector superannuation. The state schemes and the Commonwealth scheme are unfunded.

Mr SETTER: Right, so you are saying that all state schemes and the Commonwealth scheme are unfunded, like ours.

Mr ELLIS: Yes, but I am not saying that that makes it right. It is wrong. Australia has outplayed itself in the area of superannuation and has created a huge debt for future Australians which will only be met by reduced standards of living or by massive increases in immigration which will spread the debt more widely.

It is very interesting. I do not want to get into the issue too deeply here but the fact is that the tail of the retiree is growing longer and longer every day. The Commonwealth has never put 1 cent into a retiree - not a cent. The funding comes about because Telecom is forced to pay 20% of its wage bill to the federal government. That meets the whole cost of retirees and that is why Telecom is so keen to develop its own superannuation scheme because it can do it much more cheaply than the 20% of the wage bill paid to the Commonwealth. However, people like Senator Walsh say: 'No way. We want the 20% each pay'. That is a real problem for all Australians to face and just because we are doing it here in the Territory, it does not suddenly become right. It is crook.

Mr SETTER: You would be aware, of course, that public servants in the Northern Territory were operating under the Commonwealth Public Service scheme up until 2 or 3 years ago when the Commonwealth indicated it was going to opt out of that and transfer the responsibility to the Northern Territory government. That is how we became involved.

Mr ELLIS: Yes, I realise that.

Mr HARRIS: Rod, can I ask whether other arms of your organisation throughout the Territory have been informed that we are moving around the Territory?

Mr ELLIS: I think they have.

Mr HARRIS: I wonder if you could make sure that they are informed. I ask this because, at a recent hearing of this committee in Alyangula, we were accused of not talking to the people that really ran the world. We made it clear that we had in fact written to unions and other organisations and groups to let them know that we were looking at the issue of constitutional development. I do not want a repeat of the situation which occurred at that meeting and it would be very helpful if you could again contact your organisations and groups to let them know where we will be appearing. We actually have a list that will be finalised in 2 weeks and we will send you a copy. Hopefully, you will be able to advise your members or branches in the various areas so that they have an opportunity to come forward and express their views.

Mr ELLIS: Will our submission have any additional weight if we deliver it 20 times?

Mr HARRIS: I am sure that you appreciate the problem we have. Although I acknowledge the role of the unions, we have organisations such as the land councils and the Women's Advisory Council which see themselves as representing large segments of the population. As Joan has already mentioned, there is a large contingent of women within the TLC and the union movement. That is in addition to the Women's Advisory Council which says that it represents all the women in the Territory. Every section of the community has to have the opportunity to comment and we are endeavouring to encourage groups with particular expertise to come before this committee. We also want to hear the views of the people in the streets and in the more remote communities. We need to know how they see the future constitution of the Northern Territory and whether it reflects their general thinking. It is important that we acknowledge that all Territorians have to have the opportunity to comment, whether through an organisation or as individuals. I am happy for you to contact your wider organisation, Rod, and hope that people will come forward in various parts of the Territory as a result. I am sure that you would agree that the situation in a place like Alyangula

may be very different to the situation in Darwin. Similar differences will occur in relation to other communities.

I would like to thank you for presenting your evidence, Rod, and to indicate that we have noted that your submission is an interim one. We look forward to your further participation in the future.

Mr ELLIS: Thank you, Mr Chairman.

Mr HARRIS: The next submission comes from the representative of the Northern Territory Community Government Association and I will just reiterate that this committee is a select committee of the parliament and as such, evidence by witnesses demands the same respect as proceedings in the House itself. For the Hansard record, please state your full name and the capacity in which you appear before us today.

Mr ANDERSON: My full name is Kevin Anderson and I appear on behalf of the Northern Territory Community Government Association. The evidence I will present to the committee this morning has the full endorsement of the executive of my association.

Mr HARRIS: You have a written submission before us. Would you like to expand on it?

Mr ANDERSON: By way of preamble, I would say that the introduction of local government into remote communities in the Northern Territory has been one of the greatest initiatives taken by the government of the day in the Northern Territory, supported by the opposition. We believe that it has given people in remote communities an unprecedented opportunity to manage their own affairs and, obviously, our concern with any constitution of a future Northern Territory state is that it should protect the powers which have been devolved through legislation which incorporates remote communities as legitimate partners in the third tier of government. For that reason, our submission states that we would like to see any future constitution enshrine protection clauses for local government generally in the Territory. We do not wish to see any discrimination in terms of the way community government is treated, as opposed to municipal government. We see them both as legitimate types of local government and do not subscribe to any distinction which sees municipal government as a superior form of 'traditional' local government. We believe that all local governing bodies in the Territory, whether in remote locations or in major municipalities, are equal under the law. We would like to see that guaranteed in the constitution.

Our submission argues for constitutional recognition in accordance with 5 principles, these being: general competence and autonomy for each local government body to act for peace, order and good government in its area; a secure financial basis; a proper recognition of the elected member's role; protection from dismissal of individual local government bodies without public inquiry; and due consultation prior to any changes to powers, functions, duties, responsibilities and financial resources.

We believe that the proposed NT constitution provides the opportunity for the enshrinement of local government and we totally support the proposal of the select committee that section 121 of the Australian Constitution be utilised in the creation of a new state, an event which we see as inevitable. There is no way, in the association's opinion, that such a large portion of Australia's land

mass should continue to be dependent on the remainder of Australia. We also believe that we are in fact a long way down the road towards statehood, as shown by the fact that the Northern Territory is presently being treated almost equally with the states in terms of financial assistance.

We do not see this select committee or the formation of a convention as in any way foreshadowing any untimely early institution of statehood for the Territory, but we do see the committee's work as a timely early way of preparing for an inevitable event and we therefore support it .

As far as the composition of any future convention is concerned, 3 options are put forward in the discussion paper. The association strongly supports option 1, which is for a highly elective convention, although it is aware of the limitations and problems which that might create and supports option 2 as a second preference, provided that a majority of convention delegates are elected representatives. The association would not support any wholly appointed convention.

Mr Chairman, that concludes my evidence and I am willing to answer any questions that you may think necessary.

Mr HARRIS: Thank you, Kevin. Could I just ask, in relation to your association's support for option 1, whether you would envision people being elected from specifically identified areas of the Northern Territory.

Mr ANDERSON: Yes, that is true.

Mr HARRIS: I would also like to know about your relationship with municipal local government because we will shortly be hearing a submission from the Local Government Association which appears to be at loggerheads with you on a couple of issues, such as in their preference for a fully nominated convention. I am wondering about your relationship generally and whether the 2 associations have discussed their approaches to the constitution.

Mr ANDERSON: We have always had, and probably always will have, a fairly close relationship with the Local Government Association. You are probably aware that we are strongly affiliated with the Australian Local Government Association. The 2 associations in the Territory have not put their heads together to make a joint approach on this particular issue, although we have exchanged correspondence. We are both familiar with the contents of each other's submissions and neither has any problem with the other. In this exercise, Mr Chairman, I am merely expressing the wishes of the executive of the Community Government Association and whether or not its preference for option 1 is purely idealistic is a matter which can be debated. We are aware of the limitations of the first option but, given the opportunity to comment on 3 options, the executive chose the first with option 2 as its second preference, if I can use that term.

Mr HARRIS: Whatever happens, I take it that your association would wish to be represented in the deliberations of the convention itself.

Mr ANDERSON: We would certainly welcome the opportunity, Mr Chairman, to be represented through either the elective process or by being nominated.

Mr HARRIS: In many cases, community government councils are in areas where they have a relationship with the land councils. The committee has not spoken with the land councils so far. They have not approached us. It will, however, be necessary for us to contact them. I do not know whether you have had any contact with the land councils on this issue or whether they know you are putting forward a submission and what is in that submission.

Mr ANDERSON: I am not sure whether they do, Mr Chairman. In the past we have had contact with the land councils on local government issues in remote communities, particularly Aboriginal communities. Whilst our association has only been in existence for just over 12 months, the relationship between the land councils and ourselves has been developing slowly. We certainly do not take as big an interest in land rights issues as they take in local government. That is probably irrelevant to this enquiry. I doubt that they would be aware that we are putting in a submission unless I told them, which I have not. I do not believe that there is any reason to let the land councils know that we are making a submission on local government issues.

Mr HARRIS: No, I am not saying that there is any reason for that. I am saying, though, that it is important for the land councils to be involved as well as the communities themselves. I am just trying to clarify the relationship so that, when we do come to talk with the various groups, we are aware of the situation.

Mr ANDERSON: To answer your question specifically, Mr Chairman, the land councils probably do not know that we have made a submission or what is in that submission. On the other hand, we do not know whether they are making submissions or what the contents of such submissions might be.

Mr HARRIS: Thank you. Rick, do you have any questions?

Mr SETTER: Yes, Mr Chairman. Kevin, could you describe which communities your organisation represents?

Mr ANDERSON: There are about 49 communities involved. I am not quite sure what you mean by 'describe', Mr Setter.

Mr SETTER: The number is really the major part of the answer I am looking for. I am also interested to learn whether or not you only represent the smaller urbanised communities as opposed to Aboriginal communities where community government is progressively taking hold. I take it, though, from the number of 49 communities, that you are representing both.

Mr ANDERSON: I can be a bit more specific if you like, Mr Setter. The Community Government Association represents all bodies deemed to be local governing bodies for the purpose of financial assistance from the Commonwealth or NT government, other than municipalities.

Mr SETTER: Do you have active participation in your organisation by those Aboriginal communities?

Mr ANDERSON: We certainly do. The 7 members of our executive are all Aboriginal people.

Mr SETTER: Fine. Kevin, you indicated that option 1, which is the wholly elected constitutional convention, is your preferred option. Do you have any idea about how we could go about that?

Mr ANDERSON: I can only follow on from Mr Chairman's suggestion in relation to representation from specific areas of the Territory. Obviously, as Rod said, the convention cannot contain a cast of thousands. The aim would be to have the broadest possible representation of the interests of Territory people in the future administration of the Territory state. The number of areas would obviously have to be limited so that the convention could work reasonably effectively. The division into areas would need to be discussed in detail and people would put themselves forward for election in due course. In other words, nominations would be called and a poll would then be conducted.

Mr SETTER: Yes, the Territory would have to be broken up into zones rather than calling for nominations on a Territory-wide basis.

In terms of option 3, for a partly elected and partly nominated convention, would you accept that it may be in our best interests to invite interstate people to participate? I am thinking of people with specialist knowledge, such as constitutional lawyers and others with relevant expertise.

Mr ANDERSON: Certainly, I would see an advantage in that. They would not necessarily be decision-makers in a convention situation but they could certainly act as advisors to the convention. I do not believe in reinventing the wheel and if people have expertise in an area, albeit they come from outside the Territory ...

Mr SMITH: They are all dead.

Mr ANDERSON: ... or outside the country, why not use that expertise? Sorry, Terry?

Mr SMITH: I was making a facetious comment, Kevin. The last people who participated in the development of an Australian constitution did so in the 1890s.

Mr ANDERSON: I think Mr Setter is referring to academics.

Mr SMITH: Yes, I know.

Mr SETTER: People with professional expertise.

Mr NICHOLSON: In fact, we have some expertise in Australia. Some people in Australia have been involved in preparing constitutions for newly emerging countries.

Mr SMITH: That is true. They have been involved in Papua New Guinea and elsewhere. I apologise; I meant no reflection on anyone.

I had to leave the hearing temporarily to make a courtesy call on a visiting ambassador and I am not sure what has transpired in my absence. Kevin, I wanted to ask for your opinion on the level of awareness and involvement of the councils that you represent. Are they aware of the broad

issues that we are discussing here? If they are not, what sort of exercises do you believe we should undertake to raise the level of awareness so that they can become full participants in this debate?

Mr ANDERSON: I take your point, Mr Smith. It is very relevant. The element of remoteness means that there is probably not as deep an understanding of the ramifications of statehood and the development of the constitutional convention in some communities as we would like.

The issue of how to give people the necessary information to enable them to contribute effectively to any future constitution is a difficult one. I am not sure that there is any way of doing that other than by sitting down with people and going through the various processes with them. You could produce ream upon ream of paper and send that out, but I do not think that would be an effective method unless individuals in the communities were able to relay the information, via council meetings or whatever, to the people. I take your point that there needs to be some sort of information dissemination campaign if we are really serious about getting people in remote communities involved in discussion on this issue. I do not know whether it would be possible to use the government's departmental field officers to do that. Perhaps there are some possibilities there.

Mr HARRIS: Kevin, could I just say that we are looking at that as a possibility. Our concern is that we do not want to again politicise the debate in relation to statehood. There is some concern about a possible conflict of interest between the land councils and the communities and we are still considering the issues at present. We tend to agree that it is necessary to move through all the communities and it is our intention to do so. The fact is, however, that it is pointless to carry out that exercise if there is nobody in these places who will discuss the issue in a responsible manner in terms of really understanding the matters we are talking about. We would obviously look to you and your association as a means of giving us information or ideas as to how we can get that message across. I would hope that the community government councils in the areas we visit will make their presence known to the committee.

Mr ANDERSON: Mr Chairman, the association would be only too happy to facilitate communication on local government matters between this committee or, for that matter, the convention, and remote communities. I would not see us getting involved in anything to do with land rights. That is the job of the land councils and we would not get involved. On local government issues, however, we would be only too happy to assist and facilitate communication.

Mr SETTER: Kevin, what would you see as the best communication media in terms of assisting Aboriginal people to get across the issues? I am thinking of things like booklets, videos, radio and audio tapes, as well as face to face communication. What would be the best option in your opinion?

Mr ANDERSON: I believe face to face communication would be best, followed by video. Video is a very popular medium in remote communities and the audiences it attracts are probably larger than even face to face contact would attract. Video would be an excellent means of getting the message across.

Mr HARRIS: Would it work best in comic form?

Mr ANDERSON: Well, I do not think we need to be simplistic about it. I believe there is a fairly high level of understanding out there, particularly if the message is put across in a reasonable way without complicating it too much. It is the same for Joe Citizen in town. The more complicated you make the issues, the less likely he is to listen. However, if video is used to convey a simple message, whether it be in comic form or depicted graphically in some way, I believe people will understand what constitutional development is all about and what the convention is all about.

Mr HARRIS: The committee is formulating a booklet to go out to those communities. In laymen's terms, it spells out what we are about. The committee is presently considering the booklet and, hopefully, we will be able to get something out in the next 4 weeks or so.

Mr ANDERSON: I certainly support that and suggest that it be followed up by video, which will attract the widest possible audience. I would suggest that representatives of the select committee or of any convention, meet with local government councillors from remote communities. That could be done through central meetings in Katherine and Alice Springs or by going out to the communities themselves. Either would be appropriate; it is 6 of one and half a dozen of the other, and cost is obviously a factor. However, I believe that such a combination of approaches would get your message across.

Mr SMITH: I just do not think we should get too carried away about this whilst ignoring the need for awareness in non-Aboriginal communities. There is obviously a major job to be done there as well.

Mr ANDERSON: I think you are right. The association represents only a half a dozen of those communities, most of which are along the track, with the exception of Borroloola. Certainly, such a campaign should extend to open communities as well as Aboriginal communities.

Mr HARRIS: Thank you very much, Kevin, for presenting your evidence to the committee. We will keep in touch and in fact we would like some comment on the booklet from yourself if that is possible. As I said, the committee is still discussing the details of the booklet to consider whether it is appropriate to be released in the remote communities. We will be making an effort to visit as many communities as possible and to ensure that people from those outlying areas are given the opportunity to comment to the committee on this very important issue. I would ask that you relay that message back to your organisation. When our timetable of visits is ready, we could send you a copy and perhaps the association could assist in getting that information out to the communities.

Mr ANDERSON: I would be only too happy to.

Mr HARRIS: Thank you very much.

Mr ANDERSON: Thank you, Mr Chairman.

Mr HARRIS: The next submission is a verbal submission from the Darwin City Council. Could the representative come forward please? I will just reiterate that this is a select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect as proceedings in the House itself. For the Hansard record, would you please state your full name and the capacity in which you appear before us today?

Ms ANDRUSZKO: My name is Susan Andriscol and I appear on behalf of Darwin City Council.

Mr HARRIS: Thank you Susan.

Mr SMITH: Susan, could you tell us what position you occupy with the council?

Ms ANDRUSZKO: Executive Assistant to the Town Clerk.

Mr HARRIS: Susan has a verbal submission to present and I invite her to address the committee.

Ms ANDRUSZKO: Mr Chairman and members of the committee, Darwin City Council has considered the discussion papers on the proposed Northern Territory constitution and, although in general agreement with the various proposals, it has confined its comments to the issue of local government and its place in the constitution.

As you are aware, the Northern Territory Local Government Association has made a written submission to the select committee and the Darwin City Council supports the content of that submission. The council appreciates the fact that the select committee favours some constitutional provision for the recognition of local government in the new state. However, it wishes to stress that the issue at hand is the recognition and protection of local government powers, functions, duties, responsibilities and financial resources. At one end of the spectrum is simple recognition of the existence of local government and at the other is the enshrinement of the entire Local Government Act and any necessary amendments in the proposed new constitution. Of course, a realistic position between these 2 poles is desirable.

In addressing this issue, consideration should be given to the principles set out by the Northern Territory Local Government Association in its submission. These are referred to on page 91 of the Discussion Paper on a Proposed New State Constitution for the Northern Territory. This council strongly believes that entrenchment and protection of local government within the constitution must be in accordance with the said principles, primarily to protect the expectation of ordinary residents within the community that the third tier of government, which they have come to rely upon as a fundamental part of their lives, will remain in place as long as acting for peace, order and good government. It is vital that a new Northern Territory state recognise that residents have a right to democratically elect a third tier of government and that this level of government will be afforded legitimate recognition and protection of its powers, functions, duties, responsibilities and financial resources.

It is this council's view in respect of section P, 'Entrenched Provisions Generally', that local government is a matter of vital importance in the functioning of the new state and thus should be entrenched in a certain manner and form so as to require a two-thirds majority of new state electors at a referendum prior to any matter relating to local government being amended or repealed.

It is also this council's view that the new constitution be developed by way of a wholly nominated constitutional convention, of which the majority of delegates should be Territorians. There is scope for a partially nominated, partially elected convention. However, as the committee's

paper states, many questions still require answers before a decision can be made. The council also recognises that there may be a need to nominate specialists from interstate or, indeed, overseas.

On behalf of Darwin City Council, I thank the committee for this opportunity to present its view and advise that it looks forward to continued involvement in the process of developing a new state constitution for the Northern Territory.

Mr HARRIS: Thank you, Susan. It is obvious that each group is going to comment. As you mentioned, the Northern Territory Local Government Association has prepared a submission, which will be addressed shortly. Do members have any comments or questions on the Darwin City Council submission?

Mr SETTER: Sue, I was interested in your comment that the council prefers a wholly nominated constitutional convention. Could you expand on the thinking behind that?

Ms ANDRUSZKO: Although it has not considered the matter in great detail, the council's view is that that would be the best way of going about the constitution-making process. I suppose that conditions would have to be placed on those nominations but it is believed that a nominated convention would be the best way of ensuring that the needed specialists and qualified people were members of the convention, together with the broader sections of the Territory community.

Mr SETTER: Is the council saying that individuals should not necessarily be nominated but that organisations should be targeted and asked to nominate somebody to represent them on the convention?

Ms ANDRUSZKO: That is one way of going about it.

Mr HARRIS: One of the problems with that sort of process is that people perceive that the process is being controlled by individuals who are seen to have expertise in the field rather than people putting the broader views of the community. I think that it is important to acknowledge that we not only need the expertise and views of those with particular interests but that we need to hear from people in the streets as well.

Ms ANDRUSZKO: That is why I think you need fairly well-defined selection criteria to ensure that the necessary representation occurs.

Mr HARRIS: That is right. Terry, do you have questions?

Mr SMITH: It is probably appropriate that I make my comments now that Mr Antella has arrived.

Ms ANDRUSZKO: Would you like Mr Antella to sit down here?

Mr HARRIS: No. His turn will come next.

Mr SMITH: I must say that I am disappointed at the amount of time and effort that the council has put into its submission, and I think that has placed you in a very invidious position, Susan. It seems to me that, if the council was taking this matter seriously, it would have ensured that

some aldermen were present along with some more senior members of staff. I want to say, for the record, that I find the council's attitude, as expressed here today, to be less than satisfactory. I would want an assurance from the city council that it is seriously interested in this issue. It would need to do more than it has done today to demonstrate that it has a genuine concern for the development of a constitution of the Northern Territory. I do not intend that in any way to be a personal reflection on you, Susan.

Ms ANDRUSZKO: In commenting briefly on that, I would say firstly that I am a member of the council's senior management team. Secondly, council sees this hearing as part of a long-term process and, based upon the information presented at this stage, many questions remain unanswered. The council sees today as an opportunity to signal that it is interested, that it has looked at the information provided and that it wishes to remain involved and to receive more information as the committee receives feedback from the broad community which the council represents. The council is very keen to be involved.

Mr SMITH: Sue, I do not want to prolong the debate but in my view it is the responsibility of elected members of council, rather than staff, to appear before committees such as this. I am not sure whether other members of the committee share that view but I would like you to take that view of mine back to the council.

Ms ANDRUSZKO: Right. If I could say one more thing on the matter, John Antella was going to appear for the council. However, he had an official engagement with an ambassador which coincided with this part of the hearing.

Mr SMITH: How many councillors are there?

Mr HARRIS: There are about 2 in Darwin at the moment.

Mr SMITH: About 2, right.

Mr HARRIS: Sue, could I just say that one of the problems that we have is generating interest from not only elected members of the various councils but also from members of the Legislative Assembly. In fact, and I am sure Terry would be aware of this, we have an opportunity to debate the issues in the House. I believe that, in this formative stage, members of the Legislative Assembly could also present themselves and take part in this initial process.

One of the things we have learned from this exercise is that a lot of people are waiting in the wings, saying: 'Look, we want to know what this is all about'. The unions have indicated that very clearly in the interim submissions they have made. I will take the council's submission as being interim and will look forward to further input from the council at a later stage.

We had to start somewhere but I am a little disappointed with some of the submissions that have been put forward. There has been a tendency to agree with the direction in broad terms but to avoid the nitty gritty of what will happen, which is the most important thing. People seem to feel that if they state particular viewpoints, they will have to deal with others coming down hard on them. We are addressing the issue of what will go into our constitution and I believe we need to get past that attitude. We have wasted some time in this initial exercise because, when we have gone into various communities, people have misunderstood what we are about. I hope that, after this initial round of

hearings, the community will at least know what we are on about and will be prepared for the next round of discussions.

Rick, would you like to make any further comment?

Mr SETTER: No, other than to thank Susan for coming along and speaking to us today. I support what the Chairman has said. This is an ongoing exercise and I am quite sure that we will be sitting in Darwin at some time in the future when the council will have another opportunity to submit its thoughts. I have no doubt that it will participate, in some shape or form, in the constitutional convention.

Ms ANDRUSZKO: I did have some other comments to make. I thought they would actually arise in response to questions but that has not occurred.

Speaking to a certain extent on behalf of the council as well as an individual - you stated earlier that you were also interested in individual comments, Mr Chairman - there is a need for a commonsense practical approach which accepts local government as a fundamental part of the structure of government. I believe that the community acknowledges that local government plays a very important part in its life and I think that any constitution, as dictated by a state government, has to recognise local government's role in governing specific local areas, without suggesting that it should take on state-type functions. That recognition should be entrenched in the constitution.

Mr SMITH: Should entrenchment go as far as preventing a state government summarily dismissing an elected local government?

Ms ANDRUSZKO: I think I would have to say yes to that, unless an inquiry is first instituted, an inquiry which proves the council to be totally incompetent. The matter should then be put to the people who elected that particular local government. They should be able to have a say in whether they believe their council is doing the right thing.

Mr SMITH: But, under some circumstances, you believe that a state government should be able to dismiss a local government.

Ms ANDRUSZKO: Under some circumstances.

Mr SMITH: After a full inquiry.

Ms ANDRUSZKO: After a full inquiry, possibly followed by a referendum of the electors of that council. At the very least, there should be a full inquiry.

Mr HARRIS: Thank you very much, Sue.

Ms ANDRUSZKO: Thank you, Mr Chairman.

Mr HARRIS: We now move to the next submission on behalf of the Northern Territory Local Government Association. I am sure that both representatives of that organisation will be aware that this is a select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect as proceedings in the House itself. For the Hansard record, could you

please state your full name, the position you hold in the organisation and the capacity in which are attending this hearing today?

Mr ANTELLA: My name is John Antella and I am the Deputy Lord Mayor of the Darwin City Council and, at present, the Acting Lord Mayor in the absence of the Lord Mayor. I am here to represent the Northern Territory Local Government Association because its president, Dr Charles Gurd, is interstate. The vice-president from Alice Springs, Mr Brown, is also interstate and the other executive members are not available.

Mr LYNAGH: For your information, Mr Chairman, the other executive members are the treasurer, Mr Maley, President of the Litchfield Shire Council, and the immediate past president, Alderman Patricia Davies of Katherine Town Council. They are also interstate. The other vice-president, Alderman Kennedy of Alice Springs, is heavily involved in budget considerations and was unable to attend. Alderman Antella is the other delegate from the Darwin City Council and he was nominated by Dr Gurd as his proxy.

My name is Noel Lynagh and I hold the position of Secretary of the Northern Territory Local Government Association.

Mr HARRIS: Thank you very much. You have made a written submission. How would you like to present it?

Mr LYNAGH: In what form would you like us to present it?

Mr HARRIS: In any way you prefer. If you wish, you can present it as a written submission and then expand on any areas you wish to highlight during the course of the presentation.

Mr LYNAGH: Could the presentation take the form of a letter addressed to the Chief Minister on 10 February 1988?

Mr HARRIS: Certainly.

Mr LYNAGH: Is the committee in possession of a copy of that letter?

Mr HARRIS: If I could clarify the position, we have your written submission. How you present it is up to you. What we have done in similar cases is to note the contents of written submissions and to ask whether people appearing before the committee wish to enlarge upon any particular matters.

Mr ANTELLA: Thank you, Mr Chairman. I must apologise for the absence of elected members from Darwin City Council from the earlier meeting. We discussed the hearing at a special council meeting on Tuesday but at the moment Alec Fong Lim, Charles Gurd, Robert Crean, Jan Collins, Pat Burke and Dave Fuller are either out of town or about to leave town. I was at an official engagement from 10 am and we simply were not able to muster up any other elected member to attend.

The association's submission is as per the letter of 10 February. The association, representing all councils, considered the discussion papers. How many meetings did that involve, Noel?

Mr LYNAGH: When they were first received, the discussion papers were distributed by the committee. They were circulated to all member councils and were the subject of discussion at 2 general committee meetings.

Mr ANTELLA: The association generally supports the philosophy inherent in the discussion papers and agrees with the various proposals, including the single parliament elected for a 4-year term and the independence of the judiciary. The association's comments regarding Aboriginal land rights are self-explanatory. We have a couple of concerns regarding the form and composition of the legislature, qualifications for members, and in relation to local government.

Territory local government councils are unanimous in their view that elected members of local councils should not have to resign from those positions in order to contest elections for the parliament. It is reasonable that they stand down from council positions during the course of an election but. The current legislation requires that members of councils have to resign those positions in order to contest parliamentary elections.

Mr SMITH: John, do you believe that, under a Northern Territory constitution, members of local councils should have to resign those positions if they are elected to parliament?

Mr ANTELLA: The situation varies from one state to another, Terry. I think it is probably in the interests of good government that they do resign. I would have no problems with occupying both positions because I do not belong to a political party. That, however, is just a personal view.

Mr SMITH: Does the association have a view on that?

Mr LYNAGH: The association subscribes to the view that, if an individual decides to nominate for the Legislative Assembly whilst occupying the position of mayor or alderman, the decision as to whether or not he can serve in both positions is one for that individual rather than one which should be interfered with by any other legislative body. That has been the case in some other jurisdictions in Australia for quite some time. The view has been expressed by ministers of the Northern Territory government that it is not competent for a person to fill both roles. That leans rather heavily on personal views rather than any developed experience of the matter that would justify such an interference in an individual's right to make up his own mind.

That is some of the background to the general view in the association that the decision as to whether or not it is appropriate for an individual to serve in both jurisdictions is strictly a matter for individual determination.

Mr SMITH: There are some good examples of people who have successfully filled both roles. One which comes to mind is Ted Mack.

Mr LYNAGH: I did not want to draw personalities into it. The central theme is that it is up to the individual.

Mr HARRIS: The big concern has been the potential for a conflict of interest. There is a bill before the Assembly in relation to the other matter. Quite frankly, I do not see why people should have to resign from councils and then fight another election if they are not elected to the parliament.

Mr ANTELLA: I think that was something which was just slipped through without being noticed by anybody.

Mr HARRIS: That issue is being addressed. There is a very real fear, particularly in the context of devolution of powers further down the line, that a situation might arise in which a minister might also be an alderman of a council. That could create considerable problems. I suppose that is the government's view. I do not wish to debate those matters here because it is your views which are of interest here.

Mr ANTELLA: Well, I think that Noel has covered that issue in as much detail as is necessary, Mr Chairman.

I guess the other matter which the association unanimously agrees upon is the need for some constitutional recognition of local government. Being a former alderman yourself, Mr Chairman, you would know that local government has advanced considerably in the 10 years since you served in that role. I have been an alderman for 10 years and all I can say is that the Darwin City Council is a very responsible organisation, and I have no doubt that the same applies to the other councils. We are fairly stable. We do not think that we should continue in the role we sometimes fill, as the whipping boy for the more senior level of government.

Mr HARRIS: We all have that problem, don't we?

Mr ANTELLA: We do. Sometimes it is unnecessary.

Mr SMITH: How would constitutional recognition stop you being the whipping boy, John?

Mr ANTELLA: Constitutional recognition would not necessarily achieve that, Terry, but I am just saying that it is about time we got on with the job.

Mr HARRIS: Earlier this morning, the Northern Territory Community Government Association presented a submission. Its position is similar to yours in most respects, except that it feels that the convention should comprise a combination of elected and appointed members whilst you favour a wholly elected convention. Have you had any formal discussions with the Community Government Association on that issue?

Mr ANTELLA: I would ask Noel to answer that, Mr Chairman.

Mr LYNAGH: There have been no formal discussions. There have been informal discussions, and in fact we have provided the Community Government Association with a copy of our submission. We have not received a copy of its constitution in return. Nevertheless, it would be remarkable if that association did not view constitutional recognition of local government in the Northern Territory constitution as a necessity, given that our objectives and our responsibilities are virtually identical.

In fact, to go beyond the terms of the question a little, it is the view of this association that there should only be 1 association representing local government in the Northern Territory. It is not exactly ludicrous but it is at least a little superfluous to have 2 separate local government associations in the Northern Territory which have identical objectives. Our constitution makes it very clear that any community government, whether formally or informally constituted, may join our association. We have already issued a general invitation to community governments to join us if they wish and the next step will be to send them copies of our constitution as it now reads - there having been some doubt about the position at an earlier stage - and renew the invitation. Indeed, that step was recommended by the present Minister for Local Government.

Mr HARRIS: Have you heard back from them on the subject of coming together under a single umbrella?

Mr LYNAGH: No. The only statements we have heard have been public ones by various officials in the community government councils to the effect that they want to learn to control their own affairs before they try and join a wider forum. We do not see it as wider. They are, however, entitled to their view. We do not wish to denigrate the CGA or its directions in any way, nor to seek to apply any compulsion. We do think that the existence of a second association to some extent weakens the case for local government.

Mr HARRIS: Do you have any timetable for the process which you have just outlined?

Mr LYNAGH: No, that would inject too much of a personal note into the views which I have expressed. I am simply a part-time secretary and there is a limit to how much I can do. I am virtually a 1-man band. The matter is on the agenda, however, and the invitation will be extended.

Mr HARRIS: I only raise the matter because, in terms of our charter, we see would like to see some commonality in the views of municipal local government and community government.

Mr LYNAGH: We believe that it is crucial that there be a common voice on common problems. In fact we have been approached recently by the Community Government Association to join with it in a proposal to the Northern Territory government for some relief from the cost of water tariffs in connection with the maintenance of parks and gardens in municipalities. We gladly took up that issue on its behalf and joined with it in putting the case, which is proceeding at a fairly deliberate rate.

Mr SMITH: We had an interesting proposition advanced to us yesterday, which was that in key areas like the recognition of local government, we should not have precise protection but, rather, what the person described as 'constitutional standards'. These would be a set of principles which would, in this case, govern the relationship between the state government and local governments. The state government would have to comply with those standards when considering such things as changes to local government acts or other matters related to local government. In fact, our respondent went so far as to suggest that there should be a judicial review process, which would apply in situations in which there was dissatisfaction with laws and some question as to whether or not they complied with constitutional standards.

Mr LYNAGH: The laws introduced by the state legislature?

Mr SMITH: Yes. That concept was something members of the committee had not considered before. I just want to put it to you as a proposition which your association might like to consider. In essence, it would mean that the constitution would contain a set of principles rather than a set of protections.

Mr LYNAGH: For many years, there has been a central concept in the thinking of local government in Australia on the issue of recognition. Although it is not drawn out specifically, it is the basis for what appears on the second page of our submission, where we set down our policy for the terms of constitutional recognition: 'a general competence and autonomy for each local government body to act for the peace, order and good government of its people'. That would need to be enshrined in the appropriate legislation but it would give local government a higher stature than it currently has. Throughout Australia at present, local government is very much the creature of another legislature. We believe that it is necessary for it to be regarded as an equal level of government, not a subsidiary level. That, in fact, is the substance of our point (a).

Point (b) consists of 3 words which entail a great deal: secure financial basis. During the last 30 years the responsibilities of local government have widened considerably to embrace services to the population at large rather than to what is virtually an elite group, the property owners in a municipality. We now have universal adult franchise rather than a franchise based on property and a much heavier financial burden which has not been met from its proper source, which is the taxpayer rather than the ratepayer. That is what (b) is about: an acknowledgement that an identified portion of revenues collected at the state and federal level should be directly allocated to local government.

Another point relates to proper recognition of the role of elected member. This comes down primarily to what is known colloquially as parliamentary privilege. There is no protection for an elected member of a local government body who says something in good faith but is seen by someone about whom he is speaking as damaging. It leads to an unhealthy and unnecessarily large amount of in-camera dealings by local government elected groups, such as in committees. That occurs simply because, in making an honest appraisal of things like tenders, contracts and so forth, local government members need the protection of confidentiality. If their role as freely elected representatives of the public was recognised through the protection of privilege, they would be able to function in the light of day and people would know the actual reasons for decisions.

Mr SMITH: Does parliamentary privilege apply anywhere to local government?

Mr LYNAGH: I think it applies to a fair extent in the USA but I am open to correction on that. I certainly know that it is a matter of concern to local government authorities throughout the country.

Our next point relates to our concern that there be protection from dismissal of individual local government bodies without public inquiry. The crux of the matter is the phrase 'without public inquiry'. That is to say, that there is no objection to the right to dismiss a body whilst local government is a creature of the state rather than a partner. When you are a creature of somebody else, there is an automatic acceptance of subservience. Whilst that state of affairs is not acceptable, whilst it continues and there is a right to dismiss, that right should be subject to examination by way of public inquiry. It should not be within the arbitrary competence of a minister, or a Cabinet for that matter, to dismiss a local government without public exposure of the reasons.

We have referred to the need for due consultation prior to any changes of powers simply because we feel that it is necessary as a safeguard. There have been many instances of decisions, particularly at the federal level, which entail a heavy involvement of local government without any clear idea of who is going to pay the bill at the end. Quite often, after a program has been set up, there is a sudden withdrawal of funding whilst the program continues. That is the reason for referring to the need for consultation in this area. That is virtually the notion of a standard of behaviour, although it does not apply only to the state government. It applies to all 3 spheres of government in their dealings with one another.

Mr SMITH: I accept that point.

Can I ask you specifically about industrial relations? That is one of the powers that will obviously transferred across to a state government upon the achievement of statehood. Has your association looked at any industrial relations models which might apply in a new state? Are you happy with the present arrangement? Have you looked at other arrangements?

Mr LYNAGH: No. At present, there is a general discontent with the rather indeterminate nature of the organisation of industrial relations, particularly our involvement at the federal level in matters which would normally be the province of the states. We would see it as being desirable for industrial relations to be matters which come within the province of the state. Local government should share in that process to the extent that it is feasible.

Mr HARRIS: Rick, do you wish to raise anything?

Mr SETTER: Yes, Mr Chairman. Gentlemen, I draw your attention to page 92 of the Discussion Paper on the Proposed New State Constitution for the Northern Territory. Item 6 says, and I quote, 'Subject to these considerations, the select committee favours some constitutional provisions for the recognition of local government in the new state. It invites public comment on the nature of those provisions'. It can be assumed on that basis that this committee is generally in favour of giving some form of recognition to local government in the new state constitution. I think what is required from your organisation is a detailed response on how we should achieve that - in other words, your submission on how you believe that should be undertaken. That is because, when we consider this matter further, and when the constitutional convention considers the matter, a detailed set of proposals from local government will be very helpful.

Mr LYNAGH: I am very pleased to hear you say that and I have no doubt that the Deputy Lord Mayor of Darwin is also elated to hear it, sir. We put our case, in detail, some 2 years ago. It is in the hands of the Northern Territory Government. It was rejected. We sought the advice of one of the leading authorities on constitutional matters in Australia, Professor Cheryl Saunders of the Melbourne University. She outlined 4 options for the enshrinement and entrenchment of local government in the constitution of the Northern Territory. She examined in detail the apparent conflict between some aspects of federal law and Northern Territory law and spelt out the reasons why, in her view, both enshrinement and entrenchment would be feasible and sensible. That fully developed case is with the Northern Territory government. I am prepared, sir, if it is your wish, to make available the basis for its refusal by the Northern Territory government, but at the moment it is in the nature of correspondence between a minister and an association.

Mr SETTER: Well, let me point out that this is a committee of the parliament as opposed to the Northern Territory government.

Mr LYNAGH: I understand that.

Mr SETTER: To the best of my knowledge we have never seen that submission and, if it represents your current position, I would suggest that you submit it to this committee.

Mr LYNAGH: I can assure you that it is still our position.

Mr SETTER: Right, that is fine.

Mr SMITH: Just before you move away from that subject, I would like to ask a follow-up question. What did the minister refuse to do? Did he state that the government's position was that local government would not be recognised in any future state constitution?

Mr LYNAGH: I am relying on memory now. As a matter of fact, I thought of this in bed last night. I was going to refresh my memory this morning but I did not have time.

As I recall it, the position is that there are aspects of the Northern Territory (Self-Government) Act which make it difficult if not impossible for the Northern Territory government to take action. I believe the Northern Territory Government would have to request the federal government to change the act, and that is not an acceptable action for it to take at this stage.

Mr SMITH: So he did not deny the possibility of providing recognition under a new state constitution.

Mr LYNAGH: I would put it slightly differently. A policy was not expressed. Reference to the legislation cited by our legal advisor was used as the reason for not taking any further action.

Mr SMITH: Does the paper of your legal advisor address the question of recognition based on the present legislation, that is the Self Government Act?

Mr LYNAGH: Yes.

Mr SMITH: So it does not address the question of a state constitution.

Mr LYNAGH: That is correct.

Mr HARRIS: Could I just say to you that we do have the opinion from Cheryl Saunders and perhaps we should ask the government to make those papers available to us.

Mr LYNAGH: Will you do that or do you want me to provide copies of what I have?

Mr HARRIS: No, we could do that. Do you want to follow on from that, Terry?

Mr SMITH: Sorry, I interrupted Rick.

Mr SETTER: I have further questions, Mr Chairman. Gentlemen, you indicated that your preferred option was that of a wholly nominated constitutional convention. Could you expand on your reasons for that position?

Mr ANTELLA: Mr Chairman, I think Mr Lynagh is in a position to answer that in a little more depth than myself.

Mr LYNAGH: I might hedge my bets a little by first saying that one can never be sure that one gets entirely into the minds of people who say things.

The basic reasoning is that this matter is so important and its ramifications for our children and the generations to come are so far-reaching that we should be making use of not only the best knowledge and experience available but also the widest possible sample of opinion, and that we should therefore be confining the consultative process to interaction with people of considerable calibre. The selection of members of the constitutional convention should come about through the careful compilation of an invitation list from an initial, broadly selected group. The consultation should spread not only through informed and competent people in the Northern Territory but nationally - and the only way to do that is by appointment.

Election or any sort of random process could undoubtedly elicit intelligence, competence and high qualification but it may not be as comprehensive as it should be and it may accidentally be weighted in one direction or another. As far as I can condense a view that is the result of fairly lively argument over a period of 6 months, that is the reasoning behind that particular proposition.

Mr SETTER: Thank you. If I could move along to another point, you stated that the new constitution should allow for local government to be equal and not subservient as you obviously feel it is now. Given the acknowledgement of local government's position in the constitution, would you feel that it should exist as a level of government which operates on the next level down from the state government and therefore receives its funding from that source? Or, conversely, do you see it as a totally separate level of government which would deal directly with the Commonwealth in terms of funding? Is that the option that you are suggesting?

Mr LYNAGH: Not necessarily. In fact, I do not think the association is suggesting that at all. The proposition is hard to reduce to simple terms but it is based on general competence. Local government believes that it deserves, and is entitled to, recognition as a separate and competent sphere of government with a standing and stature that is not outmatched or overborne by its partners in government. Local government is part of the government of Australia. It is, in some respects, the most important part for the people it serves because it looks after their day by day needs.

State governments and federal governments are progressively remote from the daily activities of the population. It is natural that that should be the case. Federal should mean national and state should mean regional. Local means around the corner or in the same street. What local government seeks is recognition of its competence to deal with the matters that are rightly its concern. We also believe that government is about people, not about territory. Population size should be the criterion in determining the size of municipalities, the size of electorates and so on.

Mr SETTER: Thank you. The reality is that state government is, in a way, subservient to the Commonwealth government because it is the Commonwealth that holds the majority of the purse strings.

Mr LYNAGH: In the case of Joh Bjelke Petersen it is fading rapidly, isn't it?

I see what you mean but that argument could be turned around. Have we got time for this sort of philosophical diversion?

Mr SETTER: Please go ahead.

Mr LYNAGH: Strictly speaking, the federal government is a creature of the imperial government of Britain at the instigation and with the acquiescence of the states of Australia. It is the original sixth state, so the role is rather tangled. The vexed question of sovereignty is also very relevant. To argue that the federal government is superior to state government is to ignore the argument about states rights which has been raging since federation and continues to rage now. Indeed, the first question in the referendum on 3 September relates to the role of the Senate as a states House rather than ...

Mr SETTER: We could debate that all day, couldn't we? The states have their view and the Commonwealth has its view.

Mr LYNAGH: All that local government is looking for in this area is an acknowledgment in firm constitutional terms of the lip service that state and federal government has paid to its role as a partner in government. It claims that it is an essential part of government. It should be recognised as such and recognised as competent to carry out its function.

Mr SETTER: Thank you. Could I move on to another subject, Mr Chairman?

There was some discussion earlier with regard to the ability of state governments to dismiss councils. We have seen examples of that during the last couple of decades. My concern about your particular proposal, in as much as it suggests that the state government should not be able to dismiss councils without conducting an inquiry, is that if there is some evidence of malpractice, the state government does not have the option to stand down a council and appoint an administrator while the inquiry is being undertaken. I agree with you that there should be an inquiry but not with the contention that the council should continue whilst the inquiry proceeds. Perhaps a more acceptable option could be to stand down the council and appoint an administrator during the period of the inquiry. That would rule out the possibility of further maladministration occurring during the period of the inquiry. Could you comment on that?

Mr ANTELLA: My personal view is that there is probably nothing wrong with that as an alternative. However, that is not the view of the councils in the Territory. Noel, could you spell that out?

Mr LYNAGH: It is a little bit difficult for me to comment as an official of the association because there is a fairly firm view that dismissal without an inquiry is arbitrary and can be a wilful or capricious act. In fact, people in local government have been sorely troubled by the manner in

which Sydney City Council was dismissed by the NSW government. There have been other examples, not only in the last couple of decades, but since federation.

Local government bases its position - that there should be no dismissal or even suspension without an inquiry - on the fact that, in most cases where there has been some culpability, the damage has not been great. In fact, there have been far too many cases in which dismissal has been totally unjustified, being based on political caprice or some such reprehensible motive. To sum up in everyday terms, the state governments have made their beds in relation to this and now they have to lie in them. There is going to be no acceptance of their competence to make the decision in the present climate.

Mr HARRIS: Noel, in cases of what you refer to as capricious dismissal, surely such matters could be brought before the Supreme Court. Have there been challenges?

Mr LYNAGH: I hate to say this, but that avenue was available in New South Wales until recently. In fact, Doug Saunders, the Lord Mayor of Sydney, was actually walking up the courthouse steps as the legislature was withdrawing his right to appeal against what had happened. That withdrawal, by the way, was retrospective.

Mr SMITH: How far will the local government question in the Commonwealth referendum go in terms of meeting the needs of local government? If it is passed, is there a need for a recognition of local government in any state constitution?

Mr LYNAGH: As the question is worded, it will achieve 2 things if passed. It is hard to know exactly how it would be translated into enacting legislation but the key words are: 'There shall be a form of elected local government'. That would remove all our problems with dismissal and the appointment of commissioners or individuals, as distinct from an elected representative body. It would ensure that an election would be held within a reasonable time of the dismissal of any local government. Local government would still be subject to state legislative provisions which means that the power to dismiss would remain, but the word 'elected' would offer some protection in terms of the form of local government in a situation where a council was dismissed.

Apart from those important changes, the referendum question, if passed, would enshrine in the constitution a recognition of the competence of local government as a branch of government. The effect of that at the state level relates to the dismissal process. Whilst local government must be subject to state legislature, there would have to be provision in the state legislature that dismissal is limited to the removal of a council while another one is elected.

Mr SMITH: I just remembered something on the first page of your submission. Can you explain the rationale behind your third paragraph where you state that you would like to see Aboriginal rights and human rights issues dealt with in a general preamble rather than specific enshrinement?

Mr LYNAGH: The thinking behind that is not exactly simplistic but it is fairly straightforward. Aboriginals are part of the population. There should be no special treatment, in a constitutional sense, for any part of our population. We are all citizens of Australia and to single out a particular group for whatever reason, be it ethnic origin, place of birth or whatever, is not

appropriate in a constitution which should be dealing with general propositions affecting the whole population.

Mr SMITH: We could set a precedent.

Mr LYNAGH: Be that as it may, we do not support the idea that a state constitution should distinguish one group of citizens from the remainder. It is within the competence of the state legislature to make special provisions for special cases. It is not the role of a constitution to do that and that is the reasoning behind the association's position.

Mr SMITH: So you do not believe, in general terms, that the constitution should provide any protection for minority groups.

Mr LYNAGH: It is within the competence of a legislature, operating under the constitution, to look after all its citizens. The basic reasoning behind the association's position is that the constitution should not get too far down into the particular.

I suppose my personal experience is not particularly relevant, but I believe that the problems which relate to Aboriginal people and their life in the Northern Territory and Australia generally, are of such a complex and difficult nature that they need to be addressed as legislative problems rather than constitutional problems. What I am trying to say is that we are not a group of nations; we are an Australian nation. A lot of my own feelings are coming into this now. I am here to represent the association but, nevertheless, I think that ideas like the ones I have been outlining are what led to the decision that is reflected in that paragraph.

Mr SMITH: Could you just narrow that down a bit? When people talk about entrenching Aboriginal rights, they are obviously talking about Aboriginal land rights. I take it from your comment and the paper that your association does not favour any form of entrenchment of Aboriginal land rights.

Mr LYNAGH: We see administrative incompetencies in the Aboriginal Land Rights Act. For example, many of the community governments in the Northern Territory are, strictly speaking, located on private land and are therefore not entitled to the support of the taxpayer in terms of paying for their access roads or even the internal roads in the communities. In most cases, the roads are situated on land which is the property of a group of individuals who do not even live in the community and certainly do not pay any rates. We have problems with anomalies like that in the Aboriginal Land Rights Act, which has not solved problems so much as added to the problems that already existed.

Mr HARRIS: There is no doubt that the issue of land rights will be one of the most contentious matters which we have to address. There are some options being put forward which aim at a compromise and we are interested in obtaining individual views as well as views from organisations.

Mr LYNAGH: A lot of this hinges upon the ability of the traditional owners of the land to dispose of the land in any way. Although they have certain decision-making rights and powers, they are still subject to a land trust. The land councils service those trusts. The land is private property

with freehold title but the traditional owners have no independent right to dispose of it. The act forbids that, except in a very limited way. For example, it cannot be sold.

Mr SMITH: That is right. It also cannot be mortgaged.

Mr LYNAGH: They can't mortgage it either? That is another thing they cannot do.

Whatever value the land has is circumscribed by the inability to sell and further devalued by the inability of traditional owners to use it as collateral for any sort of development or use. From a local government point of view, those aspects of the Aboriginal Land Rights Act are worrying. We cannot charge anyone for rates. We have no right, ultimately, to put a road on private property. In fact, I believe that although there is a provision in the act which allows land to be leased, there is a limit on the term of the lease. A few years ago, when I was directly involved in some of these matters, I think the period was 10 years. It may have been extended now but, nevertheless, provisions like that can create administrative difficulties of horrendous proportions. Indeed, I worry about the fact that, if community governments join our association, some of these problems might start to drop on our policy desk because I am sure that the thinking people amongst the Aboriginals must find them as difficult as do sympathetic observers.

Mr HARRIS: Noel and John, thank you for coming. Could I ask you to prepare a submission to the committee in relation to your comments about the need for privilege for members of local government?

Mr LYNAGH: Without wanting to appear flippant, Mr Chairman, I advise that your request has been anticipated by an alderman in Palmerston, who rang me this morning and asked if ...

Mr SMITH: She was here yesterday.

Mr HARRIS: It is important that we look at all these issues. The whole matter of local government and where it sits is an argument which has been the subject of debate for many years. I happen to believe very strongly and personally that each tier of government has a very important role. Some, however, would argue that state governments should disappear, leaving only the federal government and local governments ...

Mr ANTELLA: I do not think we agree with that overall.

Mr HARRIS: It is a contentious area and I thank you very much for putting forward your submission.

Mr ANTELLA: Thank you, Mr Chairman. The Northern Territory Local Government Association would like to express its thanks for the opportunity to make this submission and to assure the select committee of its willingness to offer full cooperation in the pursuit of this foundation for the state of the Northern Territory. If there are any other matters which you would like to have our comments on, such as the one you just mentioned, we would be happy to hear from you.

Mr HARRIS: At this stage, I will take the opportunity to again emphasise that this is a constitutional committee rather than a statehood committee.

The next submission comes from the Northern Territory Confederation of Industry and Commerce. I advise that this committee is a select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect as proceedings in the House itself. For the Hansard record, Raphael, would you please state your full name and the capacity in which you appear today?

Mr CROWE: My name is Raphael Francis Crowe. I am the Executive Director of the Northern Territory Confederation of Industry and Commerce.

Mr HARRIS: We understand that this is a verbal submission. We have not received any written submission.

Mr CROWE: That is correct.

Mr HARRIS: Could I ask initially why there was no written submission? My only reason for asking is because it is important for us to be able to look at the issues in advance so that we are able to consider our questions.

Mr CROWE: I apologise for the lack of a written submission. We believe that the committee's work is ongoing and we hope to be able to present a written submission at some time in the future. We wrote to the committee earlier this year stating that we would be making a written submission and were given an extension of time in which to do that. The main reason we have not done so is because the confederation does not have the time and resources to complete such an exercise in the necessary depth. As members know, the confederation is the major representative of business, commerce and industry in the Northern Territory. We have 700 members throughout the Northern Territory and we feel that the issues being considered by your committee are of such importance that we should have the time and resources to respond.

I will hand up a copy of a letter which the confederation wrote to the previous Chief Minister on 16 June, in which I advised the Chief Minister that the confederation had formed a working party which had considered the discussion papers and information and wished to prepare a written submission. The letter said, and I quote: 'However, the work envisaged in preparing an appropriate response from business is substantial. My executive committee has met to consider this matter and has asked me to write to you to seek assistance. The confederation strongly believes that the business view on the fundamentals of statehood needs to be put and our members should be aware of the implications of statehood. In order to do this, we submit that your government should provide some assistance, either financially or with resources, to enable us to undertake the task. Please could you advise your views?'

Since that letter of 16 June, I have written to the new Chief Minister asking for his response. We had an acknowledgement of our initial letter but as yet we have no idea whether assistance will be forthcoming. Our position is a very difficult one. I have had to do all of the work for today's hearing by myself, of course with some comment from the confederation's working party which consisted of some of our members, particularly those from the legal profession. The working party felt that the issues were of such importance that we should request additional support, by way of resources or financial assistance, so that we could employ somebody to carry out the mammoth task of preparing and presenting the business view to your committee. That is a long-winded explanation

of why we have no written submission today. It is just a lot of work to be done in a short space of time.

Mr HARRIS: It would appear that some groups coming before us are adopting the approach of waiting to see what will happen. We need input. I will take this as an interim submission which can be followed up by a formal written submission at some later stage.

Mr CROWE: Although it may be self-evident to members of the committee, in hearings like this I normally begin by giving some background information explaining the activities of the confederation so that its role and function is clear in the transcript. The confederation is an employer association and, effectively, a member association. As I said earlier we have some 700 members throughout the Northern Territory. We have branches in all of the major centres - Alice Springs, Tennant Creek, Katherine and Nhulunbuy - and, of course, our head office is in Darwin. We have committees in all of the centres I mentioned and I am not sure whether members of our branches have spoken to this committee in Alice Springs or Katherine. The confederation employs staff in Nhulunbuy, Alice Springs and Katherine. These people are considered to be branch executive officers. The confederation is a foundation member of the Confederation of Australian Industry and a member of the Australian Chamber of Commerce. It is also a member of the Northern Territory Business Council, of which I am the secretary.

I have already indicated that we have sought some assistance from the Northern Territory government to help us to prepare a worthwhile submission. It should be noted that the Northern Territory Business Council also wrote to the previous Chief Minister, followed up by a request to the new Chief Minister, seeking assistance to sponsor a seminar on statehood for business. We are waiting for a response. The Northern Territory Business Council believed that it was very important to clarify the issues to the business community and is prepared to sponsor a seminar with the help of the Northern Territory government.

Part of the confederation's problem arises because of confusion about the timetable for statehood. We appreciate that we have to hasten slowly but it is a bit unclear, from media reports and so forth, what the timetable actually is. In March 1986, a newspaper advertisement sought public submissions by 31 May 1986, which is some time ago. We appreciate that things have changed since then and that the membership of the select committee, including the Chairman, has changed since the election last year. As we understand it, the current work of the committee is, firstly, to prepare a draft constitution and, secondly, to table that constitution in the Legislative Assembly with recommendations for the organisation of a constitutional convention. I do not know whether I am entitled to ask questions but the confederation wants to know whether this is still the case. Is this still the program and if so, what is the timetable for it? To which sittings of the Legislative Assembly will this committee report? That is where the confusion lies within the confederation and that is what tends to sometimes put the issue on the back burner. People react to timetables and if the end to the process is a very long way off, there is a tendency for matters not to receive the attention they deserve.

If the work of the committee is as I have suggested, it is obviously seeking the views of the public to assist in its recommendations pertaining to the constitution. Information Paper No 1 put the matter in very broad terms when it referred to the committee's role in looking at the issues,

conditions and procedures pertinent to the entry of the Northern Territory into the federation, as a new state.

As I said earlier, we have formed a working party of members to consider the 3 information papers. We are still waiting to hear back from the Chief Minister in relation to our request for assistance in examining the papers in detail and canvassing our members in the business community.

What I would like to do today is to go through the Discussion Paper on a Proposed New State Constitution for the Territory and pick out some points where there is a need for much more detailed consideration by the business community. That will at least give you some idea of the issues which we feel are worthy of consideration. Just before I do that, though, I want to be clear that the constitution is the first matter which the select committee is looking at and that the constitutional convention comes next. My comments will not contain much detail on the constitutional convention but the confederation's general view is that it needs to develop a position in relation to it. That is why I went through the exercise of explaining the background of the organisation and our importance. We believe that the business view should be represented in the constitutional convention. That is just a general comment and, keeping it in mind, our views on the paper relating to the new state constitution are as follows.

Perhaps I will refer firstly to the the summary of select committee recommendations and endorsements at the beginning of the Discussion Paper on a Proposed New State Constitution for the Northern Territory. We see item (c) on page (v) as one that needs to be further considered by the business community. It relates to the representative of the monarch and the function and powers of that representative. As I said, Mr Chairman, I will not go into any detail but will just make very brief comments.

I have a question in relation to item (b) on page (vi). I am not sure whether it is my place to ask questions but I note that the select committee proposes that the new state parliament should consist of 1 House only. I have read some of the background to that and it is clear that we would need to ask that question in any written submission that we make and to ask the business community about its views. We saw this matter as being rather important.

Mr SMITH: I am rather confused. Are you saying that you are looking at the prospect of having 2 Houses rather than 1 House?

Mr CROWE: We have to look at the traditional system which is used in the states. The discussion paper puts the argument that we should have only 1 House but the business community needs to decide whether that is acceptable. All I am saying is that issue has been flagged by the working party as one that needs to be looked at in more detail.

Mr SMITH: I suppose your working party would like the second House to be full of businessmen.

Mr CROWE: I do not know.

Mr SMITH: The Business House of Review, or something similar.

Mr CROWE: I do not know whether that is the thinking, Terry. The working party just felt that it was an area that needed to be further considered.

Mr SETTER: Mr Chairman, that is not the case in any other Upper House in Australia these days.

Mr SMITH: No, but it used to be, didn't it?

Mr SETTER: That may have been the case in years gone by. Originally, members of the Upper House were simply appointed.

Mr HARRIS: We have also received the suggestion from some quarters that ministers should be appointed too. Please proceed.

Mr CROWE: Item (e) on page (vi) is also a matter which the business community would like to look into in more detail. Item (h) on page (vii) touches on commercial matters. We agreed with item (j) on page (vii); the working party was in agreement about the retention of the existing term.

Item (l) on page (viii) makes comment on the ability of the Governor to dissolve parliament. The background papers recommend that there be a Governor and it is obvious that the powers of that office will have to be defined. It is obvious from my earlier comments about our views on the role of the Queen's representative that that matter would need to be looked at by the business community.

We need to have a good look at section D, beginning on page (viii). I am a bit confused as to what the second paragraph of that means when it expresses the view that 'the nature of electorates should not be prescribed in the new state constitution but should be left to ordinary legislation'. I do not know whether that raises questions of gerrymanders and so on but we believe that it is a matter of great interest to the business community.

We believe that item (f) on page (ix) is another fundamental issue that needs further consideration. It relates to fundamental matters like secret ballots and 1 person 1 vote.

On page (x) under the heading of 'Other Legislative Matters', item (a) refers to the powers of the Speaker and, again, our question is: why? Obviously, we need to look at that separately.

Items (c) and (d) on page (x) refer to entrenchment. The select committee's position is spelt out in more detail on page 37 where a number of matters which could be considered for entrenchment are listed. These matters have been identified by the working party as being of interest to the business community and we would need to investigate them further. I am just trying to put my finger on exactly what the working party said about them.

Mr HARRIS: When was that working party formed?

Mr CROWE: It was formed in March this year and met on 7 April, when it listed the matters which required further investigation.

In relation to the matters which might be entrenched in the constitution, the working party prefaced its comment by saying that its response might impinge on the political arena, which the confederation does not want to do. The working party said: 'The confederation may wish to make comment on the suggestion that certain things be entrenched in the constitution, particularly a maximum tolerance between electorates ... Because the constitution has a life which, if all things go according to expectation, will last for many centuries, the entrenchment of a fixed maximum tolerance between electorates and a constitution - as distinct from its presence in the electoral act - is rare and should be carefully considered'. That is the sort of comment that was made on that point.

To refer to the summary again, item (b) on page (xvi) states that the select committee is opposed to 'any proposal for including any external controls over borrowing by the new state other than in accordance with the provisions and powers presently applicable to the existing states'. That is something that the business community would need to give careful consideration to.

Items (a) and (b) on page (xvii) refer to the appointment and removal of judges. That, again, needs further consideration. Item (b) reads: 'The select committee favours inclusion of provision for removal of judges in the new state constitution and, in the absence of a national scheme concerning the removal of judges, the existing method of removal, which leaves the question of a determination as to misbehaviour or incapacity to the legislature'. There seems to be some conflict there in terms of whether it is written into the constitution or left as a matter for the legislature

We agree with the need for an independent judiciary, as stated on page (xviii). We would need to have a further look at item (d) on page 19. The question of Aboriginal rights is dealt with on page 20 and the matter of the current Aboriginal Land Rights Acts would also need further discussion with our members in the context of the select committee's recommendation.

That concludes the matters raised by the working party in its consideration of the select committee's discussion papers, Mr Chairman. As I said, the confederation's response is only initial and cursory. It does not go into any depth or try to come up with recommendations. We have been a little bit hamstrung in that we had hoped that by now we would have had some assistance to prepare something more substantial for you. As I said, the letter to the Chief Minister was sent in the middle of June and we have not received any response or indication in reply as yet. We have come along today to inform you that the confederation is very interested in this issue and seeks to prepare a more extensive submission at some time in the future. I would, however, like some indication as to the timetable.

I would also like to make a brief comment about industrial relations under statehood. I cannot put my finger on where that is covered in the document I have been referring to, but only today the confederation put out a media release on the issue. Sir John Moore is, of course, advising the Northern Territory government on this matter and only yesterday we put our views to him. In brief, we believe that the situation in which the federal Conciliation and Arbitration Act has relevance in the Northern Territory should be continued, on the basis that the Northern Territory government can at some stage take on the responsibility itself when it considers that the new state has reached the stage of development where it has the ability to use the industrial relations power under its own legislation. We appreciate the legal and technical difficulties but, in summary, we believe that the Territory Government should accept the industrial relations power but then legislate to adopt the

federal Conciliation and Arbitration Act and use the federal commission to assist parties in the Northern Territory to prevent and settle industrial disputes.

As I said, Sir John Moore has our detailed views and I spoke to him yesterday about them. We are not arguing that there is no need to simplify and make more flexible the current federal system and the system of industrial awards to take into account Northern Territory conditions and the Northern Territory population's views, so that, for example, we can compete in the Asian market.

I do not want to go into too much more detail. I presented a paper on this subject at the Industrial Relations Convention only last weekend and I am happy to forward that to you. Whilst it is an address, it certainly captures our views and I will forward it in due course.

Mr HARRIS: I am glad you mentioned industrial relations, Raphael. We are looking at groups such as the confederation to give us their detailed views. The unions are also looking at the issue and have presented some ideas. It is important that we obtain as much information as we can.

I will now turn to a couple of points which you have raised. Firstly, we do not have a set timetable as far as this exercise is concerned. We wish to visit as many areas as possible and to allow the greatest possible number of Territorians to comment on the various matters that have been raised. Indeed, if some have not been raised, they can touch on those as well.

You have correctly outlined the process which the committee is following. We will be putting forward a draft constitution to parliament and that will then go to the constitutional convention. That will produce a document which will go back to the parliament and will then be put to the people in the form of a referendum. Many people seem to be saying that they will wait until the draft is prepared before entering into discussion on the issues. That simply lengthens the process and makes it more difficult. We need input now. We need to have comment from people in relation to how they see various matters which will be affected by the constitution. Some people, for example, believe that issues relating to Aboriginal land should be covered in a preamble to the constitution whereas others argue that they should be enshrined in the constitution itself. We need to know the views, not only of organisations but of individuals. Unfortunately, if everybody waits for the draft document, we will finish up repeating the whole process. The purpose in preparing the discussion papers was to open up debate and obtain views from the community.

The confederation has flagged its interest in being represented on the constitutional convention. Actually, it will be very difficult to cater for all groups in the community but I would suggest that your group is in the same category as union groups and will be amongst those represented.

Mr SMITH: Tom, can I just clarify one area in which Raphael and yourself may be having some difficulty with the interpretation. It is not the job of this committee to organise the convention. Our job is to report back to the parliament and then the parliament in some way will organise the convention. It might appoint another committee or it might organise the convention itself. It might appoint ...

Mr HARRIS: But it is part of the process.

Mr CROWE: I was not going to comment on that today. I really wanted to concentrate on the actual constitution but I thought it was important that we just flag our interests in being involved when it occurs. Thank you, Terry.

Mr HARRIS: You also said that the areas we were covering were fairly broad. That is because we want comment on as many areas as possible. We are firmly agreed that Territorians should be the ones who decide what should be in their constitution. We are talking to people in remote communities as well as in the urban areas and we will be inviting people to come before the committee.

Raphael, you said that the confederation's working party was formed in March and met in April. You also talked about resources. I do not know whether it is necessary to have a lot of resources in order to discuss the issues. You have already prepared a paper and you have spoken about a number of matters. Those are the sorts of things that we want to know. I acknowledge that detailed research on any topic requires assistance and perhaps you can see Rick or Graham in relation to that, even though funds are limited. Generally speaking, I would have thought that it was possible to get members of the confederation throughout the Northern Territory to address some of the issues. You indicated that you considered issues of the Territory's constitutional development to be important and you expanded on some matters but I accept that this has been an interim submission and that you will go into more detail at some later stage.

There has been some comment from various sources in relation to the committee's visits to other communities. Could I ask in that context whether or not you have contacted the various branches of the confederation about the work of this committee? I know the unions have had some trouble in this area and I am not sure whether the information is flowing through. I am not being critical, but I am concerned that the various branches of organisations like yours should be kept informed of the committee's program so that they can come forward when we visit their areas.

Mr CROWE: You seem to be saying that members of the confederation have not come forward at the hearings in Alice Springs and elsewhere along the track. I can advise that, prior to forming the working party, we advised all branches of our activities and sent them copies of the committee's papers. After the working party met in April, I prepared a summary of its comments and circulated them to branches with a request for their responses. Some fairly broad comments came back but, in the context of what you have detailed in terms of the consultations so far, I believe that awareness is gradually being raised although it is still a case of 'out of sight, out of mind' for many people.

It is very difficult for me, in my role as executive director, to spend time getting members of the confederation involved and working through the discussion papers in order to make suggestions. In the end, my executive decided to form the working party from the most active members and several others with particular interest in the matter. Even then, 2 of those did not attend the meeting or did not really have the interest to submit anything to the working party. It was very difficult, certainly back in March and April, to obtain the sort of information that you require. That is why we came to the conclusion that we had to seek some assistance. If I spent all of my time for a significant period in gearing up members, sending out circulars and contacting them, it might be possible to put together a worthwhile submission from the confederation. Quite frankly, though, my

executive has said to me: 'You have other things to do. We do not have the resources to go into the issues in depth at present'.

Mr HARRIS: The problem is that it needs to be a planned process. You do not want people coming in at the last minute without knowing exactly what is happening. That is why we put out the discussion papers, in the hope that they would assist people to respond in an organised manner.

Just so that everybody is clear, I will again point out at this stage that this is a constitutional development committee and not a statehood committee. I agree, however, with Raphael's comments in relation to a seminar on statehood. The government may wish to pursue that because it is one way of generating awareness. I don't know whether you have any suggestions, Raphael, in terms of raising community awareness about the issues this committee is looking at. It may be that the issue of statehood will have to be used in the first instance to generate greater awareness.

Mr CROWE: People who have taken the time to look into things appreciate that the area where the real work has to be done is on the constitution and the constitutional convention. However, there is general confusion about the role of this committee. Many people believe that it is a statehood committee and that then raises all sorts of political and other questions which actually have to be divorced from the exercise this committee is engaged in.

I believe that what is really needed - and I have said this to a number of politicians - is some sort of balance sheet which very clearly sets out the costs and the benefits of statehood. I recall that, some years ago, Paul Everingham made a speech in which he said that many people who thought statehood would bring a whole range of powers and revenue opportunities had another think coming. Until people see a clear statement which shows both the costs and the benefits of statehood, they will view these issues as the province of politicians without much relevance to themselves. I must stress that people need to know the costs as well as the benefits. Only when they have all that information will they be in a position to say that the move to statehood is a positive one. Until people have that information, they will have a negative reaction and will lack an understanding of the issues.

Mr HARRIS: Do you believe that statehood will be costly to Territorians?

Mr CROWE: In terms of hip-pocket costs, I do not know. That is why I am arguing that there is a need for more information.

The area I am most familiar with is industrial relations and I would certainly argue that, if a new state of the Northern Territory took on industrial relations powers, that would be very costly. A bureaucracy would have to be set up and that would be costly to the taxpayer. Even if the Commonwealth continues to be involved, it will not be prepared to pay for our industrial system, although a continuing Commonwealth involvement would be the cheaper option.

Mr HARRIS: Terry, do you have any questions?

Mr SETTER: No. Raphael has outlined his organisation's concerns and I hope that the confederation will take the opportunity very quickly to have another look at those concerns. As Tom said, it is important that we get feedback from a wide range of people.

Mr CROWE: There is confusion, Terry. When my executive received a letter from the previous Chairman, dated 6 November 1987, seeking written or verbal submissions by 1 February, its reaction was: 'Put it to the lawyers. It is a constitutional matter and we do not want to have anything to do with it'. We went to some of our larger members organisations which employ corporate lawyers and some of our members from the legal profession. Their response was that the questions posed in the papers were not just matters for constitutional lawyers but matters for the general community, including the business community. The working party came back to the executive with that view and said that matters such as I vote 1 value, the number of Houses and so forth would affect the business community and needed to be properly researched with the business community's views properly presented. At that point, when the importance of the issues had been recognised, the executive decided to make an approach for additional resources. Given the amount of time I had available, and given that the members of the confederation are all heavily involved in their own businesses, that was the only way to go.

Mr SETTER: Mr Chairman, Raphael has raised a number of issues which have already been discussed and there are others which will require more detailed comment as time goes by. No doubt, if and when the confederation obtains the additional resources it is seeking, it will be able to carry out research and develop its positions. I would like to ask Raphael whether his organisation, understanding the role of this Select Committee on Constitutional Development, believes that the parliament is on the right track in moving towards the development of a constitution at this time.

Mr CROWE: From my reading of the papers, the answer is yes. I can only take it that the people who prepared the first information paper have correctly laid down the scenario and the timetable to be followed and, if that is right, you are taking the only possible course. You have to give the broad population of the Northern Territory a chance to consider the issues and it is important that that process not be restricted by too tight a timetable. That is particularly important in view of the fact that, under the favoured option, there is no way that the Commonwealth will grant statehood under section 121 of the Constitution without a referendum.

However, in spite of the obvious reasons for choosing the process you have chosen, my problem is that the timetable at this stage is too open. It does not indicate that, for specific and understood reasons, such as the Territory's further economic development, we need to have the matters sorted out by a specific date, such as the end of this year. I appreciate your reasons for not wanting to do that. You would be accused of all sorts of things and there would probably be legal problems as well. Until that happens, however, confusion will continue. The matter will stay on the shelf and be brought out whenever people feel that there is some additional interest in it. The whole issue was kicked off in 1986 and since then there has been an election, new Chief Ministers and changes in the chairmanship of the committee. People out there in the community wonder how serious the whole business really is.

Mr SETTER: Let me respond quickly to that. This committee was established about 3 years ago when the government of the day decided that it was the time to start a move for statehood. The documents that you see here are the product of those 3 years of consistent work by the committee and many hours of deliberation. Admittedly, a number of members of the committee have changed. The committee has taken advice from highly qualified constitutional lawyers, academic people who have majored in constitutional political science and a whole range of other people. As issues have arisen, they have been considered by the committee. Of course, we have

not agreed on everything and that is why the papers contain options. However, they represent the work of 3 years and we are now undertaking the process of discussing that work with the public at large. I agree that we cannot put a firm time frame on this whole exercise. That is because we really have only one chance to address this issue and we have to do it correctly, albeit slowly. We have to work our way through it very gradually. It is a very complex issue and that is why, when the move to statehood was first announced 3 years ago, there was a lot of hype in the media about how many Senators we would have and other issues which are relatively remote. When you look into it, the reality is that it is a very detailed and complex matter.

Mr CROWE: Well, the committee's papers certainly have enlightened the limited number of my members of my organisation who have read them and, certainly, myself. There is no question that a considerable amount of very good work has been done. In fact, I believe that the Law Society has held a convention on the subject. I accept what you say and, with that in mind, maybe the confederation can spend the time within its own resources to respond. If the process is open-ended, we can pick an issue a month, or 1 every 3 months, and finalise our response.

Mr SETTER: Mr Chairman, could I ask your advice on one point? Is it possible that our legal adviser could be available to offer advice to organisations such as the confederation, and others?

Mr HARRIS: I have indicated to Raphael that both Rick and Graham would be available on a limited basis. If you need advice, Raphael, please contact them.

Mr CROWE: I think most of the information in the papers is pretty clear. It might require some clarification but the real problem is in canvassing the views of our members. We consider ourselves to be a democratic organisation and it is not simply a matter of putting down the views of the working party or myself. We cannot just send out a paragraph from the discussion paper and ask for comment either; we simply would not get anything back. Where the time and effort is needed is in contacting members, sitting down with them and explaining the issues and obtaining views. Quite frankly, it is like extracting teeth. I can assure the committee also that this is not the only area in which we have difficulty in informing our members and obtaining feedback.

Mr SETTER: I suppose it is a matter of making a management decision as to whether you are seeking complete consensus or whether the elected representatives may be empowered to make decisions on behalf of the membership.

Mr CROWE: Certainly. That is what we are trying to do through the elected members of our branches.

Mr HARRIS: Perhaps we could offer some assistance in the form of workshops. If your working party wishes, it can contact Rick Gray and he can make the necessary arrangements. We will try to help where we can. That offer will go to other groups as well, including union groups which wish to have that advice.

I would also say that, as far as the committee is concerned, it is disappointing that people see changes in the membership of the committee as being a downgrading or reduction in emphasis in the work of the committee. It is a committee of the parliament and, as such, has to take into account

the workload of members and other factors in the life of politicians. It is not always possible to foresee these things and I just hope that people will recognise the amount of work which has gone into the production of the discussion papers as a token of the sincere effort of the parliament to commence work on the very important issue of constitutional development.

I would also indicate that we are required to report back to the Assembly by April next year. That certainly represents a deadline in our timetable in respect of reporting. Bearing that in mind, Raphael, I would appreciate it if we could get something back from your groups by the end of the year or early next year. It would also be useful if you could provide the committee with copies of your detailed submission on industrial relations. It would be greatly appreciated if those could be delivered to Rick Gray, together with any other papers which may assist us in our work.

Mr CROWE: I know that I have only a couple of minutes left but there are a couple of things I would like to clarify.

Obviously, Sir John Moore is not advising this committee. So our submission will not necessarily end up with you unless we give it to you.

Mr HARRIS: That is right.

Mr CROWE: The other thing I would like to explain, Mr Chairman, is that I did not intend to say that the change in the membership of this committee had led to any denigration of its work. I was trying to say that there is confusion in the general community about the push to statehood and, with the new Chief Minister, people have been asking whether there would be a slowing of momentum. I think it is fair to say that there was a perception that Steve Hatton was pushing it too fast. I am not saying that the community perceptions about these sorts of things are accurate. I am saying that, with the changes of Chief Minister and the committee's membership, people tend to react by believing that the committee's work may be sped up or slowed down. I am pleased that you clarified that.

Mr HARRIS: What happens out there in the broad sphere of government is a different matter to what happens here. We have a charter and we are pursuing it and I certainly hope that people do not see changes of membership as being the criterion for judging the emphasis which the parliament places on the committee's work.

Ralph, thank you for presenting your submission. We look forward to seeing a more detailed submission in the near future and I would be pleased if you and your working party could bear in mind the date I have mentioned. I hope that you will be able to get together a further written submission prior to the end of the year.

Mr CROWE: Thank you, Mr Chairman.

Mr HARRIS: The NT Chamber of Mines was due to present the next submission but as its representative is not here at present, I will call upon Charles Jefferies. I will repeat that this committee is a select committee of the Assembly and, as such, evidence of witnesses demands the same respect as proceedings in the House itself. For the Hansard record, would you please state your full name and the capacity in which you appear today?

Mr JEFFERIES: My full name is Charles Edward Jefferies and I am a private citizen and retired public servant.

Mr HARRIS: Thank you very much, Charles. I understand that you wish to present an oral submission to the committee. Please proceed.

Mr JEFFERIES: Without any equivocation, I am 200% in favour of statehood.

Just to give you a bit of background, I have lived in Darwin for the last 28 years. In that time, the Territory's parliamentary representation has gone through considerable changes. Initially, we had a member in the federal parliament with voting powers only on Territory matters. Later, the voting powers were extended to all matters. That was then increased to representation in both federal Houses, and a Legislative Council was created here in the Territory. Initially, the majority of members of the Legislative Council were nominated but, with the passage of time, the elected members became the predominant force. We then proceeded to a fully elected Assembly and self-government.

After self-government, I thought it was logical that statehood would be just around the corner. In effect, I have gone from being a fourth-class citizen to something like a second-class citizen. I will not, however, achieve first-class citizen status until the Territory becomes a state and we have the full privileges and responsibilities of our fellows down south. It annoys me immensely that we have had self-government for 10 years now. My understanding at the time of the granting of self-government was that we would have statehood within 5 years at the most. We have missed out on an excellent opportunity of gaining statehood in Australia's bicentennial year and the prevarication seems to be going on and on.

Information Paper No 1 states on page 5, referring to the granting of statehood, that 'it is clearly desirable to obtain in advance a public commitment from the Commonwealth government to support the proposed grant'. To my knowledge, the federal opposition has given wishy-washy support to the concept and there is no full support from the federal government. I am not even sure whether there is a bipartisan commitment to statehood from the parliamentary opposition in the Northern Territory.

Under the heading of 'Basic Steps to Statehood', Information Paper No 1 states that: 'Such a commitment is unlikely to be forthcoming unless there is demonstrable support in the Northern Territory for the proposed grant'. At present, people who have arrived in the Territory since the cyclone would outnumber by about 50% those who were in residence before that. Consequently, many residents of the Territory are unaware of our parliamentary situation. In that context, given the phrase 'demonstrable support in the Northern Territory', I would like to know what sort of proposals exist for mobilising that support.

For example, the brochure setting out the terms of reference of this select committee is very informative. However, as people would know, most brochures simply do not get read. I would like to see a program undertaken in which, once a month for a set period, an argument in favour of statehood is put out in brochure form, with all possible supporting detail, so that people at least know exactly what statehood means. During evidence presented by Raphael Crowe, mention was made of the uncertainty that exists, particularly in relation to money matters. I quite frankly cannot

see that statehood is going to cost us anything at all. It is certainly going to cost us if we do not achieve statehood.

Mr SMITH: Can you elaborate on that?

Mr JEFFERIES: Yes. For example, 85% of our budget comes from the federal government. Nowhere is any mention made of the amount of royalties that are actually flowing back to the federal government which would automatically flow to us if we were a state.

Mr SMITH: Do you know how much they are?

Mr JEFFERIES: I do not know. That is the whole point. I do not know.

At the present moment, my understanding is that we have something like 37 000 taxpayers in the Territory - that is, wage and salary earners. People believe that, if we become a state, we will have a budget of \$1000m or more and that all that money will have to be raised from those 37 000 tax payers which, of course, is nonsense. It does not matter whether we have 37 000 or 370 taxpayers; the cost of maintaining all of the Territory's infrastructure and so forth would have to come from the federal government of the day, exactly as occurs in the case of Tasmania, which is subsidised to a considerable extent. This does not seem to be widely known and the result is that people are honestly scared of statehood in exactly the same way as they were scared of self-government.

As I said, I have lived in this Territory for 28 years and I hope to be here for a few more years yet. It annoys me intensely that the basic information is not finding its way through to the general public. An education campaign is needed. I do not want to give you a lecture on goals and motivation, but if the goal is to achieve statehood, a number of basic and specific elements are required to achieve it. If the goal is to be a state, you have to set a time. Are we to be a state by 1 January 1990, or by the year 2000 or 2001? You set a time. You make things measurable. There has to be measurement in terms of a referendum on the question of statehood so that the people of the Territory can express their view. Each step has to occur within a specific time frame. The goal has to be achievable.

The committee and others involved with the issue seem to be enthused with the idea that statehood should be achieved through a grant from the federal government under section 121 of the Constitution. I suggest that, if you think that the present federal government will give statehood to the Territory, you have another think coming. At the present moment the federal government is a Labor government, a socialist government, which in my opinion is committed to centralisation. It will not give statehood to the Territory without a fight. Clearly, the first basic step is to obtain a public commitment from the Commonwealth. To my knowledge there has not even been a public commitment from the federal opposition.

We are asking the federal government to give us statehood and, clearly, it will turn around and say that we must come back with overwhelming support from the Territory community. This is touched upon in paragraph 2 on page 5 of Information Paper no 1, where it says: 'To this end, the select committee concurs with the holding of a Territory referendum within a reasonable time to assess support for the proposal generally'. The key words are 'reasonable time'. The select

committee is to report back to the parliament next April. But this report will only consist of some paperwork on the proposed constitution. It has nothing at all to do with the question of whether the people of the Territory want statehood. In a sense, the comments which Tom made yesterday morning indicate that, in a sense, this select committee is putting the cart before the horse. Until we get a firm commitment from the people of the Territory indicating that they want statehood, the draft constitution you are working on will be valueless.

A lot of work has gone into the documents prepared by the committee and I commend that work. If you were inventing the wheel, you might have had a fair amount of trouble. In this case, however, 6 wheels are already in existence. Each state has its own Constitution. As an ex public servant, I know only too well that, when you are trying to frame a document, you go to base matter which already exists on file. In this instance, where 6 state constitutions already exist, you pluck out the relevant provisions and cut and paste to produce a document which the people of the Territory can comment on. In my opinion, the Territory is not so unique that it cannot benefit from all of the existing state constitutions.

Another factor which has been raised in relation to statehood is our small population base. Once again, I do not want to give you a history lesson, but when Queensland became a colony in its own right, it had a population of only 250 000. Prior to federation, the populations of the individual states varied from 252 000 to something like 2 million. However, at the time colony status was granted to each of the settled areas, their populations were certainly very small. It needs to be considered that, although federation first became an issue in the 1880s, it was not until 1900 - 15 years after work had commenced - that the final federation document was put to the people.

Are we going to make 15 years the target in relation to the grant of statehood? We have now had self-government for 10 years and the way things are going, unless people are motivated to press for statehood, nothing is going to happen for another 10 years. All your constitutional development work will simply be put into mothballs and, to me, that is simply not good enough. To return to the subject of the publicity campaign, I would like to see the benefits of statehood set out clearly so that everyone knows, without equivocation, exactly what benefits they will enjoy and what responsibilities will come with those. Anything else is, to my mind, superfluous. I think that just about sums up what I have got to say.

Mr HARRIS: Thank you, Charlie. Can I just say that a number of us share your frustrations. The difficulty in the Northern Territory, and the factor which makes our situation both unique and extremely complex, is the fact that 22.4% of our population is Aboriginal.

We also feel very strongly that Territorians must have the say in terms of the development of our constitution. The process of visiting communities throughout the Territory is a lengthy and arduous one, but we have to go through it.

In addition, many of the constitutions which we have - and they are all over there in that little book - are outdated. We have people who are looking at other constitutions but, at present, our main objective at this stage is to allow people to have their say. You commented on my remarks concerning the need to generate interest in the community about statehood and the positive aspects of it. I certainly agree that there is a widespread perception that statehood will increase costs for taxpayers in the Territory. My argument is that, in many ways, we cannot afford not to become a

state. Those, of course, are political issues and I think the government needs to be more positive, not necessarily in promoting statehood, but in putting forward the advantages that it will bring to Territorians.

Whilst you stated that we needed to work towards an achievable goal, the problem is that if we went down that line and just started to move for statehood, we would have a great deal of difficulty in obtaining the necessary support from Territorians, even though I believe that the majority are in favour of the idea that we should move towards Statehood.

We have to try and make sure that all Territorians are catered for and looked after, despite the feelings of some people in relation to the Aboriginal situation and the questions of land rights, national parks and so forth. Those issues have to be addressed and we are trying to do that as quickly as possible. I do not have to be convinced of the importance of that. However, this is a constitutional development committee and it is up to the Territory government to consider the promotional aspects of the move towards statehood.

Rick, do you have any comments to make?

Mr SETTER: Thank you, Mr Chairman.

Charlie, I also share many of your views and frustrations. I am sure you can recall the time prior to 1978 when the then Chief Minister, Paul Everingham, and the current Chief Minister, Marshall Perron, went down to Canberra and negotiated self-government with the Commonwealth government which subsequently passed the Northern Territory (Self-Government) Act. I suppose that a Territory government could do the same thing and achieve statehood via an act of parliament if we ever had a federal government which supported statehood. That, indeed, is the preferred option under section 121 of the Constitution. That is the short circuit approach. The reality is, with a supportive federal government, it might be possible to do that, firstly without gaining the support of the majority of the Territory people and secondly without addressing all of the very complex constitutional matters with regard to the relationship between the Northern Territory and the Commonwealth.

Since federation, nobody else has gone through the process of establishing a new state. We are breaking new ground in many ways. The parliament of the Northern Territory has taken the view that the best way to accomplish this task in the best interests of all Territorians is to take the tortuous path that we are now following. We are feeling our way. As I said, we are breaking new ground. Certainly the process may be slow and frustrating but, if and when we achieve statehood, we will have the support of the majority of Territorians. That is very important indeed and, though I share your frustrations Charlie, the reality is that we really do not have much option if we are to achieve our objective with the full support of the Territory people.

Mr JEFFERIES: On that point, Rick, can you just clarify one matter? As I understand it, when the constitution is eventually framed, it will be put to the people at a referendum.

Mr SETTER: Eventually, yes.

Mr JEFFERIES: Will there be a totally separate referendum to determine whether we have statehood?

Mr SETTER: I would have to take advice on that point. Graham, what is the position?

Mr NICHOLSON: It is what is indicated in paragraph 2 on page 5.

Mr SETTER: A totally separate referendum.

Mr NICHOLSON: But that would be a matter for the government, not this committee.

Mr SETTER: Yes. It would surely be possible, though, to ask 2 questions in the referendum. People could be asked whether they supported the draft constitution in one and whether they supported statehood in the other.

Mr HARRIS: I believe that statehood will eventually be an election issue. There will be a time when the public will be asked to respond in relation to statehood. In terms of the constitution, we want to have a document that can go out to the public so that they can talk about it and look at it as the constitution that will eventually govern whatever happens in the Territory. As I have said, it is up to the government of the day to determine the schedule for the final step to statehood. We have certainly taken your point, Charlie, that the government should be promoting the positive aspects of statehood.

Mr JEFFERIES: In my opinion, there is nothing to stop the government promoting the concept of statehood and holding a referendum as soon as it can be arranged. We are really in a cleft stick. The information paper says that we cannot go to the federal government and ask for statehood until we can demonstrate overwhelming support from Territorians. On the other hand, we are saying that we have to go down this tortuous path of seeking all the views of Territorians, when we are actually seeking views on 2 completely separate matters. One is the constitution itself and the other is the acceptability of statehood.

Mr HARRIS: Terry, would you like to comment on Charlie's submission?

Mr SMITH: Your views have been expressed very clearly and strongly. I am not sure whether you have had a chance to read the document closely and whether you have any thoughts on particular matters which the constitution has to take into account. For example, do you consider that it is desirable for the constitution to protect land rights as they exist under current legislation?

Mr JEFFERIES: I could speak for the next day and a half on the issue of land rights. I will not bore you by doing so, simply because the issue is a hot potato and will certainly receive more and more attention as we get closer to the time of adopting the constitution. There has been discussion about making some sort of statement in a preamble but I notice that the federal government has not managed to get its particular preamble off the ground. Then there is the question of this forthcoming treaty, which will be a real hot potato. To be quite honest, I would prefer not to bore you with my thoughts on the matter.

Mr HARRIS: Anyway, Charlie, thank you very much for your submission. It is all on the record.

Mr JEFFERIES: Thank you, Mr Chairman.

Mr HARRIS: I note that Mr Perceval is in the gallery. I wonder if he might like to come forward now and present his submission.

I will not go through the normal process other than to ask you, for the Hansard record, to state your full name and the capacity in which you are appearing before us today.

Mr PERCEVAL: My name is Francis James Perceval and I appear as an elector of the Northern Territory.

My submission is not very long and I arranged it so that it relates to each of the 3 booklets put out by the select committee. The first of those is the Discussion Paper on Representation in a Territory Constitutional Convention. The view I wish to put in response to the options set out in that document is that I believe that the membership of the constitutional convention should be partly elected and partly nominated. If the number of delegates is to be between 50 and 60, I consider that a minority of delegates should be nominated. It should be very much a broadly based electoral convention with a minority of delegates representing organisations. The time for organisations to express views is now rather than from seats at the convention. I think that membership of the convention should be, as far as possible, 50% men and 50% women, and that it must reflect the multicultural and, to some extent, multiracial composition of the Territory population.

The second publication is Information Paper No 1, Options for a Grant of Statehood. I think that the option which must be chosen is for a grant of statehood under section 121, although that possibly puts us in the position of becoming what Steve Hatton used to call a Clayton's state. It is, however, the only way to go. It will be a very long time before our population reaches a level that would enable us to have the balance between representation in the House of Representatives and the Senate which is laid down in the Constitution. We will, therefore, have to accept whatever the Australian parliament is prepared to give us in the way of representation. However, I think that it is better to have statehood under that arrangement than to go on as we are.

In response to the third publication, the Discussion Paper on a Proposed New State Constitution for the Northern Territory, I would say in general terms that the constitutional convention, which I believe we must have, presents an opportunity and a challenge not only to the people of the Territory but to the people of Australia. I believe that the people of the Territory would be carrying the flag for the remainder of the people of Australia in terms of establishing an up-to-date constitution in an Australian setting.

With due respect to the authors of the Australian Constitution, they lived 100 years ago. They did not have the benefit of the transport and communication systems which now exist. They lived in another world. The federal Constitution has stood the test of time and I certainly would not want to throw it out holus-bolus. However, I think that the men and women of today have a very different view of the world and, if possible, we should cast our minds 30 years ahead and ask ourselves what the world might be like then. In that regard, although I do not want to inflict more on our education system than it already has to cope with, I would like to see an opportunity for Year 11 and Year 12 students to have an input into our constitution, perhaps by way of an essay competition. They are certainly the people who will have to live with it.

I think that it is very important that we have a preamble to our constitution. The bones of the constitution are well and truly established. We have many models including the Australian Constitution, the state constitutions and the United Nations Declaration of Human Rights. We could look at the Canadian and New Guinea constitutions, and probably any number of others around the world, which are quite unobjectionable and proclaim a lot of universal truths. I believe that, in a preamble for the Northern Territory constitution, we need to look first of all at the very nature of the Northern Territory - and by that I mean its physical nature. In this day and age, it is important that we take account of the land, the water and the vegetation that we have. In these times, we must address conservation issues such as the disappearance of our soils. A preamble can place on record that the people of the Northern Territory think that looking after the Territory, which is looking after us, is a fairly basic matter.

Paragraph 2(e) on page 3 of this discussion paper states that our traditional constitutions have broadly dealt with the description of the major institutions - the legislature, the executive and the judiciary. Once again, I think that that is quite unexceptionable and acceptable. However, in the late 20th century, we in the Northern Territory have the opportunity to put into our constitution certain provisions of wider concern. In the Australian Constitution, 80 of 128 sections deal with matters relating to the legislature, the executive and the judiciary. Again, that document has stood the test of time and I do not think that we in the Northern Territory would have any great wish to depart from the form of government which is set out there.

However, there are issues which are of growing importance, of which human rights is one, and which can be addressed in the preamble. Such things as the rights of women and children are among those matters which should be expressed as needing protection and particular care and assistance, as I think is the case in the Declaration of Human Rights. I would not like to see them covered in the constitution itself but I think that there is a universal abhorrence of child abuse and the rape and abuse of women and that there is a need for an expression, in the preamble to our constitution, of the particular place of women and children and their particular call upon protection.

By and large, I think that human rights are very well covered by Commonwealth legislation, particularly in the last 20 years or so, and that women's affairs are fairly well covered by organisations such as the Office of Women's Affairs and the Women's Advisory Council.

On page 94 of the discussion paper, reference is made to an address by Ms L. Liddle to the 1986 Law Society Conference on Statehood in which she made comment on the constitutional recognition of Aboriginal citizens in the new state. If the developments in relation to the federal government's treaty or compact do not overtake it, I believe that this can appropriately be addressed in the preamble to our constitution, with a statement acknowledging the position of the Aboriginal people as something special in the state.

I think the committee should be commended on the detail contained in the Discussion Paper on a Proposed New State Constitution for the Northern Territory. It would be possible to go through it, statement by statement, and say that I like this or do not like that. I have gone through the document and would just like to remark on the particular sections which are of special interest to me.

Section B, headed 'The Legislature', raises the issue of whether the representative of the monarch should have the power to suggest amendments to legislation passed by the new state parliament. The committee was divided in relation to this matter. I think that is a constitutional power which should be inserted. If such a situation ever arose, I would imagine that the legislation would be fairly contentious and I think that the governor should have the ability to refer that back to the parliament to perhaps consider it again.

Section C, 'Form and Composition', covers a number of matters in relation to the new state parliament. I believe that there should be only 1 House. I think that such an arrangement will serve the Territory well. It seems to serve Queensland reasonably well, although I guess there might be some debate about that. We should keep our legislature as simple as possible with only the single House. I also believe that there should be provision in the constitution to prevent a member of parliament, having an interest in a contract with the state, from participating in debate or voting on that matter. As far as the length of the parliamentary term is concerned, I think 4 years is reasonable. Very often, 3 years does not seem long enough and 5 years seems too long. The 4-year term is a nice compromise.

In section G, 'Governor and the Crown', mention is made of the existence of direct links with the sovereign, and the view is expressed that this is a matter for the state and its citizens and not for the Commonwealth. I agree very strongly with that even to the extent that, should it be necessary, we recognise the sovereign as being the sovereign of the Northern Territory or whatever the new state may be called. It is certainly not a matter for the Commonwealth to intrude upon.

In section H, 'Powers of the Governor', I think there is an indication that the committee has done very well in envisaging that at some time in the future there may possibly be a female Governor although it is probably quite a long way down the track.

Section J is headed 'Executive Council and Cabinet'. I do not see any need to give constitutional recognition to the institution of Cabinet. I think that is a matter for the Premier and the government of the day.

I believe that there should be a provision in the constitution which enables judges to be removed, a matter which is covered under section N, Judicial Independence. Grounds for removal should include such things as misbehaviour or incapacity, although I understand there might be problems in putting a finger on such things. That would have to be left to the parliament of the day to decide.

The separation of powers doctrine is also covered in section N, where the committee states that it favours inclusion in the constitution of a provision similar to section 159 of the Papua New Guinea Constitution, which provides that nothing in the constitution prevents a law conferring judicial authority on a person or a body outside the judiciary. I do not know what that is meant to reflect but I suspect that, in New Guinea, it may well be an allusion to the ability to recognise tribal or traditional law under the constitution. That would be an important element of the Northern Territory constitution. Bearing in mind that some 25% of our population may well feel that its first allegiance is to traditional law rather than the law we recognise, such a constitutional provision would be very worthwhile.

Section R is headed 'Local Government'. I would certainly like to see constitutional recognition of local government. It may be unnecessary in the Territory context if the local government question in the forthcoming referendum is passed. I imagine that, if local government is recognised in the Territory constitution, there will be provisions recognising various forms of local government organisation, including both municipal and community government schemes. The nature of the Territory at present is that there will continue to be areas which are not covered by those types of local government organisations and I believe that there should be provision under the constitution for communities which may not yet have come into existence to have their own forms of local government. For example, mining towns may be created. Jabiru has gone through the experience of developing local government but there may be situations in which local government organisations may be created and exist only for the life of a particular mine, perhaps a period of 30 years or so. There needs to be scope for that in the constitution.

Section S, 'Aboriginal Rights', discusses the entrenchment of guarantees of Aboriginal ownership in the state constitution. The committee favours such entrenchment, provided that such guarantees can only be amended by following specific entrenchment procedures. At the moment, the question of Aboriginal ownership of land in the Territory is a running sore which may continue to run and be sore for the next 50 years. If entrenchment were enshrined in the constitution, subject to specified entrenchment procedures, the passage of time may see changes in attitudes. For example, there may be moves among Aborigines, in cases where their land contains valuable minerals, to move towards our type of commercialism. Those people may not wish to remain as they are or as they were 40 000 years ago. The type of enshrinement envisaged should allow for changes in Aboriginal society which can then be reflected in the constitution. It is important to allow for unforeseen and unguessed changes in that society.

With that, I conclude my remarks.

Mr HARRIS: Thank you. There are a couple of points I would like to clarify. You mentioned the 4-year term but you did not refer to partially fixed terms. As you know, the 4-year term does not mean that the parliament will actually run for 4 years. Do you think that 4 years should elapse before an election is held? A 4-year term generally means that the parliament runs for 3 years.

Mr PERCEVAL: Right. I take it that you are referring such things as loss of confidence and the Governor's ability to call ...

Mr HARRIS: No. What I am getting at is the difference between a fixed term, in which the parliament must run for the full period, and a partially fixed term in which, for example, a parliament may have to run for a minimum of 3 years of its 4-year term.

Mr PERCEVAL: I agree with that. The term should run for 4 years unless there is something ...

Mr HARRIS: You also mentioned the education system. The difficulty that we have - and I know because I am the Minister for Education - is to be able to develop educational approaches to the issue without bringing politics into schools, depending on who is teaching a specific subject. We

are addressing that issue but we certainly do not wish to do so in a way that can be seen as the government forcing statehood on the community.

I continually make the comment that the move to statehood has to come from the people. However, if the people are to make an informed decision, they must have the facts. At the moment, people tend only to have perceptions. Many of the issues can be debated. I might say that one thing is the case and someone else might say the opposite. It is difficult. I suppose we could get out there tomorrow and promote the issue and set up essay competitions and so forth, but I am sure that Terry would say that that was an attempt by the government to sell statehood. We are looking at the matter and we would like to adopt a bipartisan approach. My concern is in relation to how we go about it. We could, for example, have members of the government and the opposition attending schools to present their cases. The government has to take the whole issue on board.

Mr PERCEVAL: Yes, I agree entirely. Ideally, it should come from parents and that is why I said that I would hesitate to burden the schools further.

Mr HARRIS: Unfortunately, though, parents will come home and say that the whole thing is a load of nonsense. After listening to some people in the hearings of this committee, I am sure that that is what their families would be told.

In terms of your remarks on the Aboriginal scene, there are many difficult issues to come to grips with. I know that the land councils, for example, would feel threatened in relation to the move towards statehood. A compromise was put to use the other day. We could patriate the Land Rights Act back to the Territory with particular safeguards, such as a requirement that any changes to it would require a majority of two-thirds of the legislature plus a referendum. There are ways of addressing such issues so that the constitution reflects broad views and keeps everyone happy. I doubt, though, that everyone would be happy if Aboriginal ownership was enshrined in the constitution.

The important thing is to get people to acknowledge that those things need to be looked at very carefully. We do not want to move to statehood with half the community supporting it and the other half opposing it. We are trying to reach the stage where everyone supports the move and feels good about it. I guess that is the difficulty that we have to come to grips with.

Mr PERCEVAL: It certainly is. Quite frankly, I think there is a long way to go in that regard.

Mr HARRIS: Terry, do you have anything to raise?

Mr SMITH: Francis, you have raised a very good point about the need to involve youth in our deliberations. I think that is something that we need to have a serious look at and, off the top of my head, it would seem to me appropriate to include some Year 11 and Year 12 students in the constitutional convention because they would be at voting age or very close to it. That is something which I had not thought of before and I thank you for raising it.

You said that the constitutional convention should be partially nominated and partially elected, with the majority elected. You went on to say that you did not think that organisations

should be represented on the constitutional convention. In your view, who should the nominated people be?

Mr PERCEVAL: Perhaps they should have a special place in the convention. The people I am thinking of would function as guides or sources of information in terms of framing the constitution. I am thinking of people with expertise in such matters as constitutional law.

Quite frankly, I think now is the time for organisations to express their views. This is the forum at which they should be airing their concerns. I would hate to see the convention top heavy with organisational representatives with just 5 or 10 private citizens. It should be the other way around, with a majority of citizens, whatever barrows they wish to push. The organisations should be taking advantage of this process to put their views. I would hope that they are expressing their views privately to the committee. It is quite shameful for organisations to come before this committee saying that they have not had the chance to gain the views of their membership. I think it is incumbent upon them to do that.

Mr HARRIS: I take it from your original comments that you would see organisational representatives being in the minority at the convention.

Mr PERCEVAL: Yes, yes.

Mr HARRIS: I still think that they have to be involved in that exercise, apart from putting their case here. We have seen over the last couple of days that they still have a great deal of work to do in coming to grips with the issues. Organisations tend to be waiting to see what the others are doing. We will, however, bear your comments in mind. You have raised a very important point.

Rick, do you have any questions?

Mr SETTER: Thank you, Mr Chairman. Francis, I also noted your comments regarding a 50% elected and 50% nominated constitutional convention and your further comments that you would like to see 50% men and 50% women. You went on to say that the convention should include multicultural and multiracial groups. I think that was the terminology that you used. I wonder if you could tell me how you think we might achieve that? It seems to be very difficult to encompass all of those groups but then insist on 50% men and women.

Mr PERCEVAL: I agree with you entirely on that. There has to be some leeway - perhaps to the extent of a 60/40 ratio - but an effort needs to be made to keep a balance.

In terms of the multicultural aspect, we should ideally be looking at a 25% Aboriginal representation although I do not think that will happen. On the basis of the percentage of the population which they comprise, perhaps the Timorese, Indonesian and Malay groups could have 1 person at the convention. That may not happen but I think an effort should be made to say: 'Come on, we want to hear your voices'. I have no doubt that there are members of some ethnic groups in our society who may be very glad to be in Australia and do not wish to get up and draw attention to themselves by rocking any boats. Possibly we will not hear from them. However, they should have the opportunity to be heard.

Without doubt, the Northern Territory has a great deal to be proud of in terms of its multicultural and multiracial society. Indeed, it has a lot to show the rest of Australia. We should not be backward in doing that. However, we should not force members of ethnic groups to participate. We should not try to force them to stand up and say what a good place the Northern Territory is but we should certainly extend to them the opportunity to participate in the convention. It may well be, however, that the convention will end up comprising a 60/40 ratio of men to women and be predominantly comprised of people of white Anglo-Saxon background.

Mr SETTER: There is no doubt that establishing the guidelines for the convention will be very difficult, and I am referring here to the options for a fully nominated and fully elected convention as well.

I was also interested in your comment in relation to involving Year 11 and Year 12 students in this exercise. I support what you said, although I believe that there must be a middle ground. We could probably develop a bipartisan program which could be used in our schools at that level to inform young people about the implications of constitutional development. There may also be a strong case for asking students of political science at the Darwin Institute of Technology and the University College to involve themselves in researching these documents and coming forward with submissions. Those people would be well qualified to comment on the content of the documents. I also see a role for young people.

Mr HARRIS: On that point, Rick, the government has developed the programs. The problem is in dealing with the subject matter in a way that is seen to be bipartisan. That is the problem. The programs have been developed.

Mr SETTER: Indeed.

The other issue, Francis, was that of Aboriginal rights. You commented early in your presentation that Aboriginal rights should be included in the preamble, but later in your comments you indicated that you felt that they should be entrenched with the opportunity for modification at some future time. I understood that you meant on that occasion that they should be entrenched in the constitution. Could you clarify that?

Mr PERCEVAL: Yes. I was referring directly to the discussion document when I spoke about entrenchment with the ability to change that under a very tight provision. A lot will depend upon the success of the present Australian government in establishing a treaty or compact. If that occurs, and is generally accepted by the Australian population, it would be unnecessary for the matter to resurface in the Northern Territory constitution. In this context, I think the year 2000 is a reasonable target for the Territory to be operating under its own constitution and perhaps even that is a bit early. Many changes will have taken place in that time. The year 1988 has seen many issues aired in relation to the differences and similarities between white Australia and black Australia and, during the next 5 or 10 years, many of those will have been assimilated into the community. I think that there will be a more general Australia-wide acceptance of the black community. The situation in that respect is already fairly good in the Northern Territory. Failing the development of a treaty or compact, however, I believe that there should be a constitutional enshrinement of the position of Aborigines in Northern Territory society.

Mr SETTER: Enshrinement within the constitution as opposed to in the preamble?

Mr PERCEVAL: Yes. I was thinking of the exercise the Commonwealth government is going through now, which would remove the necessity to put it in the preamble to our constitution. I would like to see that element in the constitution itself. Perhaps in 50 years - possibly less, possibly more - the need for that may no longer exist and it might be able to be removed with the agreement of the Northern Territory population.

Mr SETTER: Fine.

You also indicated that you believe that the sovereign should be recognised by the new state of the Northern Territory. If we move to statehood under section 121 of the Australian Constitution, through an act of the Australian Parliament, what is the position in relation to acknowledging the sovereign? Does it occur automatically? Perhaps we could have some legal advice from Graham in a moment.

Mr PERCEVAL: I would have thought that the Australian Constitution would have precedence over the state constitution. Perhaps I have been frightened by Sir Joh Bjelke-Petersen's threat to make the Queen the Queen of Queensland. Or did he actually carry it out? In any case, I believe that the constitution would provide a means, assuming that the people of the Territory wish to have a sovereign, of enshrining the position. If Australia were to become a republic, I do not know how we will get around that. I do not know whether it would be possible to have a state within the republic acknowledging a monarch. I guess such a situation is a long way off.

I have noticed throughout the discussion paper that we tend to defer - as we are probably forced to do - to the Commonwealth's power to dictate what the Northern Territory can or cannot do. I think the state has to be a state without the ability of the Commonwealth to pop in and say that it has to do this or that. If the people of the Northern Territory wish to acknowledge the sovereign, that is not the Commonwealth's business. It is the business of the Northern Territory people. I agree that, should Australia at large ever vote to become a republic, we would have to amend our constitution.

Mr HARRIS: Would you like to comment, Graham?

Mr NICHOLSON: The document was written on the premise that Australia has a monarchical system and that system is entrenched in the Australian Constitution. In fact, it was entrenched even more firmly by the passage of the Australia Act in 1986, which determined that, when the Queen acts in relation to Australia, she is no longer the Queen of the United Kingdom or the Commonwealth but the Queen of Australia. As I see the current constitutional position, it is that there is 1 sovereign for the whole of Australia.

The other premise upon which the document was drafted is that each Australian state, including a new state, has a head of state who is the Queen's representative and has the title of Governor or or some other title. At present, all such heads of state are called Governor and, accordingly, the Governor in the new state would be the representative of the Queen of Australia in the new state. Although there may be other opinions about this, I do not believe that it is possible, on the basis of the Australia Act and the Commonwealth Constitution, to establish a republican state

within the present Commonwealth model. The discussion paper was drafted on that basis. I anticipated that the new state constitution would establish the office of state Governor as the representative of the Queen in the new state.

Mr SETTER: But is it possible to establish a sovereign state of the Northern Territory within the Commonwealth under section 121?

Mr NICHOLSON: I am not sure that there is any such thing as a sovereign state any more. If we have sovereignty, it is a limited form of sovereignty within the overall federal system whose components are the Commonwealth and the individual states, including the new state. In that context, I am not quite sure how to answer that question.

Mr SETTER: So, all the talk about Queensland seceding was just that - talk.

Mr NICHOLSON: The Commonwealth Constitution talks of an indissoluble federal Commonwealth. It does not contemplate secession and the issue is probably beyond our terms of reference.

Mr HARRIS: Frank, you mentioned the nexus between the Senate and the House of Representatives but I do not recall you saying whether or not you are in favour, in terms of equality, of the state of the Northern Territory having 12 Senators at some stage. If you are in favour of that, how would you see it coming about. Would it be phased in over a period of time? I am sure that you would be aware that one of our problems, when we start to talk about numbers, is that many people say that we have too many politicians now and that we do not want any more. The reality is, however, that it is very important to have equality and I would just like to hear your comments in relation to representation, whether you feel it should be equal to the other states at some stage, and whether you would see it being phased in.

Mr PERCEVAL: If it were possible to have equal representation from day 1, I would certainly support it. I am certain, though, that the other states would scream about that. If we were to have 12 Senators, strictly speaking we would have to have 24 members in the House of Representatives. Obviously, that is not going to happen. Looking at the current situation, we have 1 member of the House of Representatives and 2 Senators. I think that we should obtain full representation as soon as the other states allow us to have it. However, my general approach is that we should go for statehood sooner rather than later and, if the Commonwealth says that all the new state is initially entitled to is 2 Senators and 1 member of the House of Representatives, we had better take that. I think it is better to start off that way. Even if it takes 100 years for our population to grow to the extent that we are entitled to 12 Senators and 24 members of the House of Representatives, we should take statehood at the earliest possible opportunity.

Mr HARRIS: I suppose the aim is to achieve equality at some stage, whenever it might be.

Mr PERCEVAL: Indeed. As I said, if the other states were to allow it from day 1, I would certainly take it.

Mr SMITH: It needs to be clarified that 12 Senators does not equate to 24 members of the House of Representatives for the Northern Territory. It equates to 24 extra members of the House of Representatives Australia-wide.

Mr HARRIS: That is one of the problems.

Mr SMITH: We might, for example, get 1 of the additional 24 seats.

Mr PERCEVAL: I see. Well, I certainly would go for the 12 Senators from day 1 if that is the case. However, I cannot see the other states allowing that.

Mr SETTER: If it cannot happen initially, do you think that we should ensure that we have an agreed formula in place for the gradual increase in the number of Senators? Do you think that such a formula should be in place prior to the grant of statehood?

Mr PERCEVAL: I would think so. Ultimately, I see it as a matter of equity for the whole of the Australian people to agree to. I do not think that they would accept a state which was other than a fully fledged state, but I can certainly see that initially, it would be hard to justify 12 Senators with such a small population. It would be beneficial if a gradual process could be set in place. As I have said, I see it very much as a matter of equity not just for the Northern Territory but for Australia.

Mr SETTER: In purely political terms, I understand that the major political parties in Canberra would have great difficulty in accepting an additional 23 members of the House of Representatives coming from the southern states. The political fall-out would be too great.

Mr PERCEVAL: I do not know enough about that but you are probably right.

Mr SETTER: Well, it is a numbers game.

Mr HARRIS: Frank, could you give us your address?. I am very interested in a lot of the comments that you have made and it would be beneficial if we could know where to send any further material which you may be interested in. If you could give that to Rick, it would be appreciated. Thank you for attending and presenting your submission to the committee.

Mr PERCEVAL: Thank you, Mr Chairman.

Our next witness is Mr Hosking, who has prepared a written submission. I advise that this committee is a select committee of the Legislative Assembly and, as such, evidence of witnesses demands the same respect as proceedings in the House itself. For the Hansard record, would you please state your name and the capacity in which you appear today?

Mr HOSKING: My name is Anthony John Hosking. I am a consulting geologist and I appear in that capacity.

Mr HARRIS: Thank you, Anthony. You have a written submission before the committee. Just before you address that submission, I will repeat that this is not a statehood committee as such. It is a constitutional development committee and that needs to be made clear. Would you like to proceed, Anthony?

Mr HOSKING: Thank you, Mr Chairman. I would like to say that I wrote my very short submission in an effort to be practical and to endeavour to point out major economic advantages that might be obtained through the attainment of statehood by the Territory. My views are coloured by my employment as a geologist and it probably does not need stating here that the mining industry considers that there are a number of impediments to people pursuing their careers in the exploration and mining industries in the Territory.

It seems to me that issues of statehood and constitutional development are bound up with the federal government's willingness to permit Territory control in a number of crucial areas. In putting the submission together, my feeling was that until the federal government made statements of principle in respect of those matters, statehood would probably not get very far. The issues I am

thinking about are such things as land ownership, the control of national parks and uranium mining. These are the issues which relate to the way in which a great deal of the Territory's natural wealth and employment opportunities are tied up. It seemed of crucial importance that some sort of promise or guarantee be given by the federal government in terms of the handing over, or gradually handing over, control in these areas. I prepared my submission in the context of the economic foundation of the Territory and, basically, my views have not changed. I still feel quite strongly that these economic issues are right at the crux of the whole question of statehood.

Mr HARRIS: Your paper talks about the notion of equality.

Mr HOSKING: Yes, I firmly believe that we should not have second-class statehood. It must be granted on terms which are at least equal to those which apply in the existing states. That is an absolute principle although I accept that it may not be possible to have absolute equality from day 1. It would perhaps be unrealistic to demand that when our population is so small. However, when we compare it with that of Tasmania, there is perhaps not too far to go to achieve an equivalent position. Tasmania also has a small population. As far as I am concerned, the whole issue hinges upon the preparedness of the federal government to give a far greater degree of independence to the Territory in developing its economy.

Mr HARRIS: You also touched on 2 issues which have not been raised by other witnesses. One of those is the name of the future state. I guess some of us have a fairly strong view that it should be called the Northern Territory.

Mr HOSKING: There is a very strong emotional attachment to the word 'Territorian' but if you look around the world, it is evident that territories are dependencies of some other government or political organisation. I am thinking of territories of Canada or territories of the USA. I do not like the idea of the word 'Territorian' disappearing but perhaps there is a better word that could be found. I do not like the idea of using a geographic title like 'North Australia'. That is extremely bland and does not really do a great deal for anybody. As I said in my submission, I would perhaps be tempted to see what young people can come up with. They are the ones who will have to live with the new state. I am thinking of teenagers and kids going through the school system now. This might be a tremendous opportunity to ask them what name they think would be appropriate.

Mr HARRIS: Your submission also said that you believe it is important to have a goal in terms of when statehood should be attained. You said that the centenary of federation, the year 2001, would perhaps be the ideal time.

Mr HOSKING: I think so. There is a lot of indecision and vagueness about the whole proposition in the community at large and it is only through the establishment of a definite plan and timetable that the public will really throw itself behind the whole concept. People will then have a goal to aspire to within a specific timetable. I am sure that an immense amount of political and legislative work will have to occur before the idea can come to fruition. I have no idea of the volume of work involved but I am sure that it is immense. Unless things are put into a time frame, deadlines tend to slip, and vagueness and indecision creep in. If you can work towards a goal, the chance of getting there on time is so much better.

Mr HARRIS: The problem in setting goals, particularly if they are fairly distant, is that time seems to creep up on you and the input required for the making of decisions is not obtained until shortly before the goal is due to be reached. What we are endeavouring to do is to encourage people to come forward from the community and give us their ideas and views. We have had a little

trouble in doing that. It has been said today and on other occasions that there needs to be more awareness of the statehood issues in the public arena so that people will put submissions to this committee, as you have done.

Mr HOSKING: I agree. It is very important to get a ground swell of support from the general public. It is really a grassroots issue and support for statehood has to build from the bottom. Unless statehood has widespread support among the general public, I have a sneaking fear that the concept will not advance very quickly because it is not just a Territory issue. It involves state governments; it involves the federal government. It is not just for us to decide what we want to do with our future. I think that the Territory public is looking for some expression of support from the states and the federal government that the concept is desirable and that this part of Australia should have the same status as the existing states rather than being left as a territory or dependency of Canberra. People are seeking reassurance that that is what offers the best future for the Northern Territory. I do not believe that they have given the matter much thought until now. That may sound like a sweeping generalisation and it probably is. However, statehood certainly is not discussed to any extent in the everyday conversation of my circle of acquaintances and I can imagine that that is fairly typical. In their day-to-day lives, people are not concerned about it.

Mr HARRIS: This committee also has the task of reporting to parliament in relation to the establishment of a constitutional convention and what form it should take. Do you have any views as to whether such a convention should be nominated or elected or partially nominated and elected, or where its membership should be drawn from?

Mr HOSKING: In general terms, the membership should be drawn from as many sources as possible. Practically speaking, I imagine that would mean that it would have to contain a mixture of nominated and elected positions. You would have to somehow canvass the community and ask organisations and individuals if they would wish to serve on that convention. If you ended up with far too many potential starters, I imagine you would have to have some sort of ballot to decide who was on and who was off. I also believe that there would have to be agreement on a core of people who would be automatically represented. A certain number of positions would automatically have to be filled by representatives of government or political parties and major social groups. Aboriginal organisations would have to be represented, solely because Aborigines comprise such a large percentage of our population and because, ultimately, they will probably own half the Territory's land mass. For those 2 reasons alone, I think that Aboriginal organisations would have to be represented.

Mr HARRIS: The issue of Aboriginal land is a very difficult aspect of this exercise. Do you have any views on whether land rights should be patriated back to the state and whether Aboriginal prior ownership should be enshrined in the constitution or mentioned in a preamble?

Mr HOSKING: I believe that these are essentially political issues which have to be resolved by voters in elections. I do not see any other alternative at federal, state or Territory level. I would leave it to the sanctity of the vote to resolve those issues.

Mr HARRIS: It is very difficult because we have a minority group and those issues have to be looked at responsibly. At this point in time, we are trying to get views from the various interest groups and I do not know whether or not the views of the land councils will be similar to the views of community groups.

Mr HOSKING: Those are extremely difficult things to judge and I certainly would not presume to judge them. I would just put my faith in the vote. I really cannot add any more to that.

Mr SMITH: Can you expand on the economic benefits you believe statehood would bring? I think you said that economic independence would result from the Territory becoming a state.

Mr HOSKING: I suppose that is a fairly sweeping statement. However, the situation I would be looking for is one in which the level of subsidy which the Territory receives from the Commonwealth would be the same as the average subsidy received by the states. That would be the basic indicator. As I understand it, the existing subsidy per head of population in the Territory is twice the national average. When we are able to generate far more income from our own resources, presumably that ratio will lower so that it ultimately reaches the national average. I may have the arithmetic all wrong, but I have read in the press that our subsidy is about twice that of the average in the states when all federal grants and subsidies are added up and divided by the population number. It seems to me that it is desirable to bring our figure back to the national average.

My views may be coloured by my involvement in the mining industry, but I am certain that if all royalties resulting from uranium were to flow to the Northern Territory state, the ration would be lowered.

Mr SMITH: Do you know how much money the Commonwealth gets out of royalties from uranium mining in the Territory?

Mr HOSKING: I cannot quote you the exact amount, no.

Mr SMITH: It is between \$2m and \$4m a year, which is not all that much.

Mr HOSKING: There might also be opportunities for additional mines. There has been a lot of publicity lately about the potential for more revenue for the Territory through additional uranium mines. Once again, I cannot quote the exact numbers.

Mr SMITH: Statehood will not affect that because the Commonwealth still has the ultimate control over the uranium industry through its controls over exports. Whether we become a state or not will not alter the controls which the federal government of the day has in that respect.

Mr HOSKING: Royalties would provide the only mechanism for increased revenue in that area.

Mr SMITH: My understanding of what happens at present is that the Commonwealth returns the amount it gets from royalties from uranium mined in the Northern Territory to the Northern Territory. Not all of that goes to the Northern Territory government. The government gets part of it but a substantial part also goes to the Aboriginal Benefit Trust Account.

Mr HOSKING: I cannot really add any more to that.

Mr SETTER: Mr Chairman, I was also interested in Tony's reference to economic independence. Tony, your submission said that '3 areas require major change by the Commonwealth to ensure that the Territory is on an equal footing with the states: land tenure - administration by the Territory; ownership of national parks - Uluru and Kakadu; and ownership of minerals - uranium'. You have already commented on uranium but I would ask you to project your thoughts to take into account the possibility of royalties from the oil and gas reserves off our coast. Also, could you expand on your comment concerning land tenure and ownership of national parks? How do you perceive that would benefit the Territory?

Mr HOSKING: Ultimately, if the Northern Territory controls that land, its government will have the ability to determine how that land is developed and what economic activity occurs on it. That seems to be a more direct way of ensuring that the maximum benefit goes to the owners and occupiers of that land than if it is managed from afar. I admit that my submission put the matter in a general context, in terms of equality with the states. It just seems to me that, if you control your own destiny, you have more freedom of choice and more options in respect of land management. It is not done from afar. The link between the Territory government and the citizens of the Territory is far more direct and immediate than that between the federal government and Northern Territory citizens. It may be a rank generalisation or supposition to argue that there will be greater economic benefit if the link between government and citizens is as close as possible, but I for one believe that that is the case.

Mr SETTER: Would you agree that, upon the transfer of powers from the Commonwealth, we should accept nothing less than equal terms and conditions to those enjoyed by the other states, with the possible exclusion of the extent of representation in the federal Houses of Parliament?

Mr HOSKING: I think so. I believe that the rest of the Australian nation would deem it to be fair that the Territory should not be different. I think that would be the approach to adopt in promoting the concept, both within the Territory and throughout Australia: 'Hey, we have grown up and we want to be just like you'. I know that sounds very simplistic but that is really the way I would deal with it.

Mr HARRIS: Thank you very much for presenting your submission, Tony.

We were also due to receive a submission from the Chamber of Mines, which has apologised for being unable to have a representative present today. If there is no one in the Gallery who wishes to present a further submission, I will thank all members and witnesses for their attendance.

I believe that the exercise of moving throughout the Territory and its communities and obtaining both written and oral submissions is a vital part of this exercise. It will be extremely difficult for us to come to grips with many of the complex issues that we have to look at during the course of developing our constitution. One would hope that enough interest will be generated in the community to enable us to complete our task in a reasonable period of time.

As I have indicated throughout these hearings, it is a disappointment that some organisations and groups have come to us and have not been able to put forward full submissions in relation to matters upon which they should have some definite views. It is important that people do not play the game of waiting to see what the others are going to say. If you do that, you never get anywhere. Fortunately, a number of groups have entered into the spirit of this committee's business and will be presenting full submissions to the committee in the areas in which they have expertise.

With those words, I declare these hearings closed at 3.35pm.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

PALMERSTON — Tuesday 28 March 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr C. Firmin
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Andrew KEARNEY
Mr Frank HOLLAND
Mr Robert TREMETHICK
Mr David SHANNON
Mr Chris DRAFFIN
Mr Steve BENNETT
Ms Sonja WILLIAMS
Ms Mali GRAY
Mr Andrew MODRA
Mr Derek HOGBEN
Ms Dawn COOK

Also present:

Ms Janelle RUMBLE
Ms Margaret BUNDY

NOTE: EDITED TRANSCRIPT

Issued: 14 April 1989

Mr HATTON: In welcoming everybody to this public meeting of the Select Committee on Constitutional Development, I should make it clear that this is the only committee of the Legislative Assembly which has equal representation of both government and opposition members, there being 3 representatives from each side of the House. The Chief Minister and the Leader of the Opposition are also able to participate in committee meetings although as a matter of practice they generally do not involve themselves directly.

The committee's terms of reference are set out in the brochure which has been circulated tonight. In simple terms, our task is twofold: firstly, to prepare a draft constitution for the Northern Territory and, secondly, to prepare recommendations to the Assembly on the structure and formation of a constitutional convention of Northern Territory citizens. In other words, our task is to guide the process of formulating a Territory constitution.

There are 3 stages in the process. The first, which we are now engaged in, is the preparation of a draft constitution to go to the Legislative Assembly. So far we have undertaken nearly 3 years of research into the background of constitutions throughout Australia and the world and, placing them in the context of the Northern Territory (Self-Government) Act, produced a discussion paper which sets out in some detail the sort of clauses that go into a constitution, together with some of the options, some of the issues which relate to the writing of a constitution, and some comments in terms of approaches to amending a constitution. The paper covers the possible role of the judiciary, which is the judges and courts; the executive, which would be the Governor and the Cabinet; the question of whether there should be a constitutional entrenchment of local government; special provisions for Aboriginal rights; whether or not human rights provisions should be written into the constitution; how the constitution can be varied; whether there should be 1 or 2 houses of parliament; whether there should be single-member electorates or multi-member electorates; matters relating to elections; and who has the right to vote and who has the right to stand for parliament. Those are the those sorts of issues which can be raised and dealt with in the constitution.

Having completed that task, we are now involving the community as much as possible. We want to get the community thinking about the issues, talking about them, and bringing its views forward to the committee, either informally or formally with written or oral submissions. We will then take those submissions and our own background work and prepare the draft document. As I said, that is stage 1.

Stage 2 is the formation of a convention of Territorians, comprising a representative cross-section of the Northern Territory community, who will meet and take our work through to the next stage by accepting, rejecting, modifying and adjusting the various proposals. That convention will produce a document which it believes should be the constitution of the Northern Territory.

In stage 3, the draft constitution formulated by the convention will be put to all Territorians in a referendum which will give them the opportunity to accept or reject it. There is a long way to go yet in the drafting of this constitution. The most significant stage of the process is the task we are engaged in now. It will set the ground rules and provide the platform which will determine the shape of society in the Northern Territory in the future. Our constitution will determine that.

You will notice that I have only been talking about a constitution. This committee is not asking you whether you support statehood or are opposed to it, or whether you think it should come

about now, in 20 years, or somewhere in between. We are not asking you that question. We do ask you to recognise, however, that the Northern Territory will become a state at some time, whether that be next year or 5, 10 or 20 years in the future. We should all accept that reality. It is, however, quite certain that we cannot address the question of statehood until we have a constitution which could be adopted by the new state. The issue of statehood cannot be addressed properly until we know what we want in that new state. The constitution will tell us what we want in that new state and, until we have put it together, the timing of statehood is irrelevant. We are not asking you to express a view on statehood but to recognise that it will happen and to make a commitment to working towards the development of a constitution that you believe will serve not only your own interests but those of your children and grandchildren.

The task is to focus upon the sort of a society that you would like the Northern Territory to be as it moves into next century. The job of this committee is to act as a catalyst by stimulating people to come forward and participate, so that in the end we will have a constitution which is not the product of a few politicians and academics but of the people, a constitution which reflects the views and aspirations of the people of the Northern Territory. We would ask you to be involved in that process.

I have spoken a lot but I hope that I have given you an introduction to the work of the committee and the reasons it is here tonight. I welcome any comments which people may wish to make. I know that there is one gentleman here tonight who has done some work on the subject and wishes to put forward some views.

Mr KEARNEY: My full name is Andrew Christopher Kearney and I live in Berrimah Road.

I think it is important that the constitution guarantees the right of all children and teenagers in the Northern Territory, irrespective of the remoteness of the locations in which they live, to both primary and secondary education. There are presently a lot of children in very remote places who do not receive primary education and the majority of such children do not receive any secondary education whatsoever. That is my first concern.

My second point may be controversial, but I think it is important that there be guaranteed places for residents of the Northern Territory at the Northern Territory University and other institutions of higher learning. The aim of such a guarantee would be to prevent such institutions developing their student enrolments solely on commercial or profit-making criteria. There is no question of xenophobia directed at Asians or of racial prejudice. That is not what I am talking about. The principle upon which I base my view is that institutions funded by Australian taxpayers, irrespective of the size of the income of each taxpayer, should not disadvantage resident Australians, or place obstacles in their paths, in terms of obtaining higher education in this country. The provision of places for students from overseas, as a means of obtaining income, should not be permitted to create such obstacles. I repeat, however, that my view is not based on xenophobia or anti-Asian feeling.

An example of the sort of practice I am querying is last year's visit to South-east Asia by the Dean of the Faculty of Education at the university. His intention was to obtain enrolments from

Asian students. My objection to that sort of practice is not based on racial or cultural grounds, but on other grounds which I hope to be able to explain later.

Education resources are finite and valuable and should be provided for Australians first. The future development of this country depends upon our ability to develop new industries and technologies. If we are to have a highly skilled work force, we must encourage research into new industries and technologies and to achieve that we need to provide the best opportunities for Australians in the education sector.

Mr HATTON: Are you suggesting that we should not be offering places to non-Australians in higher education institutions at the expense of Australians? You are not just talking about a ban on non-Australians having access to our education system, are you?

Mr KEARNEY: I think it is basically a question of conflict of interest.

Mr HATTON: Yes, but am I correct in saying that your concern is that Australians may be excluded from higher education places because of the ability of overseas students to take up those places?

Mr KEARNEY: Yes.

Mr HATTON: If it could be demonstrated that non-Australian students entering those institutions created a profit for those institutions and therefore increased the available resources to educate Australians, would your objections still stand?

Mr KEARNEY: No.

My third point relates to the matter of electoral boundaries. I believe that the constitution should provide that electorates be approximately equal in terms of the numbers of eligible voters. We should prevent any practice or process that allows rigging of electorates or gerrymandering, as has occurred in Queensland, or any process which can enable any party to have an unfair advantage in the drawing of electoral boundaries. Is that clear and precise?

Mr HATTON: Yes it is.

Mr FIRMIN: That actually is the case at the moment, Chris. The Northern Territory Electoral Act provides for that provision but we take the point.

Mr KEARNEY: Would it immediately become part of the new constitution?

Mr HATTON: That could happen. The discussion document makes some suggestions as to how that might come about in terms of tolerances, single-member electorates and so on.

Mr SETTER: I would just like to make a comment here. The current situation in the Northern Territory and the states is that there is a mean number of voters in each electorate, but there is a tolerance - plus or minus. There are a number of reasons for that in the Northern Territory.

Mr HATTON: 20%

Mr SETTER: Yes, I think in some of the states it is 10%.

Mr HATTON: In practice they try to work within 10% but the legislation provides for up to 20% in the Northern Territory.

Mr KEARNEY: My next point is that the Administrator or Governor should not have the legal power to terminate the authority of the majority party in the Legislative Assembly. Whether governments maintain or relinquish their right to govern should be matters that the people determine, and should not be a matter for any Governor-General or judge, as occurred in the case of the High Court judge, Sir Justice Barwick in the 1975 constitutional crisis. If there is a major political crisis which threatens the stability of a Northern Territory state, a plebiscite should be taken to determine the real feelings of the community. That would overcome any need for intervention by a third party such as an Administrator or Governor.

Mr HATTON: How would you get the plebiscite held?

Mr KEARNEY: The Administrator or Governor would ...

Mr HATTON: Call an election.

Mr KEARNEY: No, he would determine it on the basis of a plebiscite.

Mr HATTON: As to whether or not there should be an election?

Mr KEARNEY: Yes, on the basis that that would resolve the matter of intervention by ...

Mr HATTON: Isn't he already interfering in the role of government by calling a plebiscite to see whether or not an election should be held?

Mr KEARNEY: Yes, but in the case of the constitutional crisis of 1975, the Governor-General took advice from a man who was a former Attorney-General in the Menzies administration.

Mr HATTON: I think we should be fairly careful about our facts here and I would like to build up a scenario. In the Westminster style of parliament, the government is the Chief Minister and his ministers or, in other words, the Cabinet. Technically, backbenchers are not part of the government. What happens in a situation like that which arose in Queensland in 1988 where a party overthrew its leader who was then the Premier and appointed somebody else as its leader, only to find that the former leader refused to resign as Premier, despite the fact that he clearly did not have the confidence of his party and therefore did not have the confidence of the parliament? Should the Governor then have the right to dismiss him and allow the majority leader of the majority party to form a government?

Mr KEARNEY: Well, in that instance ...

Mr HOLLAND: It is not really a relevant question because people elect governments rather than party leaders. The people do not elect Marshall Perron as Chief Minister or Bob Hawke as Prime Minister.

Mr HATTON: That is true but the problem is that the Governor, as the Monarch's representative, appoints somebody as the head of government and invites a person to form a government.

Mr HOLLAND: But the position of the Governor in today's world is ...

Mr HATTON: It is a formality.

Mr HOLLAND: Yes, and it is a silly position really.

Mr HATTON: But this is very specifically the sort of situation we would need to address in the drafting of a constitution. That situation virtually arose in Queensland in 1988, when Sir Joh Bjelke-Petersen was refusing to resign as Premier. If had not resigned and had formed the government, the only option was for the Governor to dismiss him because he did not have the confidence of the parliament.

Mr KEARNEY: I don't think it needs to involve the Governor. If there is a loss of confidence in the leader of the majority party and that party is able to present a new leader in which it has confidence, the situation resolves itself.

Mr HATTON: I agree. The issue is the technical means of arriving at that situation, given that the Australian Constitution requires us to form a monarchical structure of government. That is, we have to have the Queen's representative as the Governor or head of state.

Mr HOLLAND: But that is going to change eventually.

Mr HATTON: When it changes for the whole of Australia it can change here too.

Mr TREMETHICK: The Territory is required to form a constitution that has a monarchical structure.

Mr HATTON: Yes, because of the Australian Constitution.

Mr KEARNEY: Is it section 106?

Mr HATTON: I think so. It is dealt with in the document but we do not have an option in relation to it.

Mr KEARNEY: The thing that concerns me is the case of the constitutional crisis of 1975. No one disputes the fact that the argument was not over whether or not the power existed but over the interpretation of that power.

Mr HATTON: I understand the point you are making. You are suggesting that the Governor or the titular head of state should not be able to remove the elected government.

Mr KEARNEY: That is correct. All you would have to do is word it in such a way as to say something like ...

Mr HATTON: You have to very seriously constrain that right.

Mr KEARNEY: All you would have to say is that in such a situation and where a provisional leader was nominated by the majority party, the Governor shall declare this man or this woman

Mr HATTON: Yes, I had to raise that because there are technical responsibilities that the Governor has. What you are saying is you need to constrain his powers so that he cannot act of his own volition.

Mr HOLLAND: His position is purely one in which

Mr HATTON: He acts this way under certain criteria.

Mr HOLLAND: ... he is given a clearly defined course of action to follow in a given situation.

Mr DRAFFIN: My name is Chris Draffin. The alternative to what is being suggested is another model altogether, such as the American presidential model. In the American system, there are 3 facets of government - the legislature, the executive and the judiciary - whereas the Westminster system has only 2, because the legislature and the executive are virtually the same organisation, often comprising the same people. In the American model, any 2 branches can hold the third branch in control. For example, the removal of a President requires the endorsement of both the legislature and the judiciary. In the Westminster system, you do not have that principle of 2 branches keeping the third in check. Perhaps we should be looking at that principle as we frame our Northern Territory Constitution.

Mr HATTON: It is a good point. In fact, again there is some debate about the explanation of those differences. The American model is called executive government. It is comprised of an elected President, an elected congress and a separate judiciary and contrasts with what we call responsible government, typified by the Westminster system, where the executive is responsible to the parliament which is responsible to the people. In the USA, the parliament cannot sack the President. They can overturn his decision but they cannot sack him except by impeachment.

Mr DRAFFIN: And that impeachment has to be in cohorts with the third branch.

Mr HATTON: It is like getting rid of a judge in Australia. It is the same system. I think you have made your point well. I wanted to generate that debate because I thought it might have helped other people to grasp some of the ideas that we have to throw around.

Mr KEARNEY: The problem is that the Governor is not elected and therefore should not be in a position to make a political decision, which is what occurred in 1975 when the Governor-General made a decision after receiving advice from a Chief Justice who was a previous conservative Attorney-General. It is clearly absurd to assume that such a Chief Justice could be apolitical.

Mr HATTON: Mind you, he had a strong Labor background.

Mr KEARNEY: Kerr did but not Barwick.

Mr HATTON: No, but the Governor-General did.

Mr SETTER: I would like to make a comment, Mr Chairman. On page 43 of the Discussion Paper on a Proposed New State Constitution for the Northern Territory, under the heading 'Governor and the Crown', the select committee identifies a number of the issues which it has considered in this area. Section 10, under the heading 'Powers of the Governor' says:

Where it is clear that the government retains the confidence of the parliament, the select committee considers that the Governor should have no power to dismiss his or her ministers, or to dissolve the parliament within the first 3 years of its 4-year term, nor any power to dissolve the parliament in the last year of that term without the advice of his or her ministers.

You can see that the matter has been considered at length and that the committee's recommendation is in line with what has been said tonight.

Mr HATTON: Our committee also made some recommendations referring to a guaranteed minimum 3 year term so that the government of the day cannot call an election within the first 3 years following an election. It was suggested that that be incorporated into the constitution.

Mr KEARNEY: I think that is appropriate.

I am not sure about this next point; my background is in history rather than law. However, given the Fitzgerald Inquiry in Queensland and the legacy of corruption there, perhaps there needs to be some sort of independent status or specific status for the police commissioner.

Mr HATTON: That was raised in a discussion which I was involved in on talkback radio this morning. It seems very odd to me to propose, in the light of the Fitzgerald Inquiry situation where the Police Commissioner was the person being charged with corruption, that the commissioner should be made constitutionally independent of the parliament so that the parliament cannot get at him. It seems to me that it should be the other way around, and that he should be under the closer control of the parliament.

Mr KEARNEY: Of course, it is all allegations at this stage.

Mr HATTON: Yes, I am not suggesting otherwise. I am just talking about the general circumstance.

Mr KEARNEY: Yes. I am not saying that there is corruption in the Northern Territory at the moment but if, at some stage in the future, the minister in charge of police was corrupt, as well as the police commissioner, what safeguards would there be? How could we prevent that situation occurring?

Mr HATTON: If you can find a formula I would appreciate it. Personally, I cannot comprehend the situation where you can write a law that is going to stop people from breaking the law. By definition, the people who are corrupt are acting contrary to the laws of the land and are certainly not going to worry about a constitutional provision. In the end you need to rely on the processes of public scrutiny to expose those situations.

Mr KEARNEY: That might indicate that there is a relationship between freedom of information legislation containing real power rather than just rhetoric and ...

Mr HATTON: I am not convinced that freedom of information would solve your problem either.

Mr KEARNEY: Well, a bill of rights.

Mr HATTON: That is an issue which is addressed in this question. We all have views on the matter and it is discussed in the document. We would be interested in receiving some submissions on the matter.

Mr HOLLAND: There is one possible way of avoiding a situation such as that which has occurred in Queensland. A system could be introduced which would allow for independent observations on the operations of government at specific periods, for example a year after each election. Perhaps delegates from other states could be used. I am not talking about something with the dimensions of the Fitzgerald Inquiry but rather an examination or general audit.

Mr HATTON: Some sort of independent judicial audit from time to time?

Mr HOLLAND: I am suggesting that it could apply in all states.

Mr SETTER: Isn't that the sort of thing that the National Crime Authority is doing now without formally going in and conducting an audit? It certainly performs that monitoring role.

Mr HOLLAND: It is interesting situation. When the National Crime Authority knocks on your door, the assumption is that something is wrong. What I am suggesting would be part and parcel of the normal procedure, like showing the books when you fill in a tax return. It is just to check that everything is up-front and above board.

Mr HATTON: I think we are talking about the issue of public disclosure. An example of that is the requirement that members of the Northern Territory Legislative Assembly provide a declaration of all of their interests every 6 or 12 months.

The issue came up in relation to the question of police powers at a conference which I attended in Sydney last week. The conference was sponsored by the International Society for the Reform of Criminal Law and covered issues relating to investigating crime, apprehending suspects and police powers versus citizens rights. That never-ending debate will go on as long as people commit crimes and other people try to catch them. The issue of corruption was debated very heavily at the conference by people from all over the world, including Canada, the United States, New Zealand, Asia, Africa and Australia.

The need for a corporate environment which discourages corruption became very clear. Whilst disclosure is important, a corporate environment that discourages corruption is the only effective way to deal with the issue organisationally and internally within systems. A lot of work is being done around Australia and the world, in coming to grips with the issue. Programs such as community policing are part of a process of creating defence mechanisms against corruption.

I am not sure that the issue of corruption can be addressed in a constitutional manner. We would all like to think that it is possible and I would be interested if somebody can come up with a suggestion in respect of that. It is certainly part of what we are seeking to draw on here. However, I would not like to have a debate just on the issue of corruption for the tonight's purposes. Is there someone else who would like to formally address the meeting?

Mr SHANNON: My name is David Shannon and I live and work in Darwin. My contribution should take about 5 minutes. I will read what I have here and get on with the submission later.

My prime concern relates to accountability. As I understand it, the constitution is a contract between the people and the government which specifies limits and channels of power and how they are affected. I will try to read this stuff and get on with the submission later. I am concerned that the constitution should have some muscle in terms of accountability. The best way of making representatives in government accountable is to simply be able to fire them if they do not deliver. In some places, it is called 'voters recall' or 'voters dismissal'. If I employed a gardener and he was able to determine his own wages and the time and conditions of his replacement, he would not be working for me for very long simply because I would have no way of controlling him.

In the case of elected representatives, there is a need for feedback on a day-to-day basis rather than once every 3 or 4 years. I strongly recommend the incorporation of a provision which would provide that a member could be dismissed or at least have his powers curtailed on the basis of a petition signed by 50% of the electorate and delivered to a court of law.

Mr HATTON: Perhaps a requirement for an election might be the preferable way to go.

Mr SHANNON: Yes. I do not mean shoot the fellow. Simply remove him from office until ...

Mr HATTON: But he would be eligible to stand again.

Mr SHANNON: Yes.

Mr HATTON: Would you apply this to an individual member or to a parliament?

Mr SHANNON: No. It would be a matter between electorate members and their representative.

Ms WILLIAMS: There could be a small referendum in the member's electorate.

Mr SHANNON: Yes, so that the electorate has responsibility for that member. When something goes wrong, it is not just the member who is responsible but the voter in the electorate.

Mr FIRMIN: There could be a problem if there was a considerable number of parties, as we saw recently in Canberra. With a great number of candidates, distribution of preferences might provide you with a candidate that some of you may not necessarily like. You could almost have a frivolous 50% come up straight away and have the person removed because they have not achieved a 50% majority in the first instance and have got the 36%

Mr HATTON: How would you collect the 50%?

Mr SHANNON: I am just saying that if enough citizens felt that the issue was important enough, they would have an avenue which could not be denied.

Mr HATTON: I have never heard the concept but I am just trying to let my mind freewheel on it at the moment.

Mr SHANNON: Sure. I have been working on constitutional reforms and effects since 1984.

Mr HATTON: I would be curious if you could develop that idea and I am sure that the committee would welcome a formal submission on it.

Mr SHANNON: Okay. To move on to some other areas, I recommend that there be a single house of parliament rather than 2 houses, simply because of the straight simplicity of command. The business of 2 arms versus 3 arms - judiciary, executive and legislative - is a waste of time because there is only one purse and whoever pays the money gets the results. You are better off having good feedback into where it counts rather than trying to make sure that 2 parts can topple the third. We should have a single house with single-member electorates; make it as simple as possible.

The document itself should be a statement of principle rather than a collection of details. It should be understandable at least at high school level because people who are going to vote have to understand what they are voting for and what their rights and limitations are. In a choice concerning something like freedom of speech, it is better to say 'speech to be free' than to try to set the number of decibels and the locations at which things can be said. The federal constitution is some 11 000 words long and I cannot find one person in town who has read it let alone understands it.

Mr HATTON: A lot of lawyers have become very rich trying to work out what it means, though.

Mr SHANNON: I know what it means. It is depressing.

I did not know how much material to cover because I was not sure how much time would be available to me.

Mr HATTON: Let me be very clear about that. There is certainly plenty of time. We are taking submissions. We have not fixed a time frame but we would like to receive submissions this year if possible.

Mr SHANNON: Corruption is easy to fix. Don't make laws that intrude on people's private affairs. I am serious. If you take a situation where a guy is doing something that comes naturally or does not think about, an activity which does not involve other people, making it a crime turns him into a criminal and leaves him open to pressure from people who are evil, malicious or whatever. Crime is something that people grow into. If you make people criminals they start thinking like criminals. They do not want to go to the police. The police therefore get no information, and so the cycle continues.

Mr HATTON: Thank you. Are there some other people who would like to make comments?

Mr BENNETT: My name is Steve Bennett and I have a couple of comments to make in relation to what has been said. Parliaments generally seem to have a great problem with the question of who prosecutes the prosecutor. In terms of something like the Fitzgerald Inquiry, parliament uses the prosecutor as its agent to administer justice before the courts. We have been trying to come to grips with the question of who prosecutes the prosecutor. What role and means of control does any parliament have in relation to the corporate identity which we call the police commissioner? There seems to be a crying need for some mechanism other than royal commissions, which seem to find it very difficult to get at the facts and to administer some form of justice beyond simply coming up with a statement or recommendation. The audit process seems like a fine example of an alternative approach but perhaps the parliament needs another power whereby, in certain circumstances, it could become the prosecutor itself. There are legislatures in the world which have that process. It can become a very lengthy and indirect process but there is an opportunity to do that.

Mr HATTON: Yes. That is a valid point. In fact, there are some related powers in the Northern Territory (Self-Government) Act as it presently exists. The idea could certainly be developed and I would be interested in seeing whether somebody might be able to come up with some forms of words setting out how such ideas could practically be put into effect. I think that we are in agreement about the objective, which is to ensure that there is public confidence in our police force and our policing systems. I think that is really what we were looking for along with the knowledge that, if anybody goes off the rails, they will be caught and dealt with.

Ms GRAY: In terms of what has been said about corruption, it might be worth looking at the Papua New Guinea Constitution, which contains what is called a leadership code. There is a requirement on people in power to report on their assets, business activities and so forth. If anyone is found to be contravening that code, they are taken to court on a continuing basis, not only when they are found. Perhaps we could look at something like that here. That leadership code deals with the sort of thing we are talking about now.

Mr HATTON: That would be worth looking into further.

Mr DRAFFIN: I would like to make some initial comments which will let you know where I am coming from and why I am presenting some of my points of view.

I have given a fair bit of thought to the Australian political model in terms of our federal system as well as to constitutional questions generally. In discussions about these matters, there always seems to be a preoccupation about the checks and balances in relation to possible excesses of any branch of the government. One of the things that this country has been encumbered with - and I use that term in a fairly derogatory sense - is a bicameral system of parliament. The separate colonies which existed at the time of federation became entrenched as states with considerable self-governing powers within a federal structure which was drawn up with the aim of satisfying the desire of those colonies to exercise some control over the rest of the legislature. We have been paying for that sin ever since, the result of which was our Senate.

What I want to see is not the creation of a new state but the abolition of all existing states to give us a unitary government. People throw their hands up in horror at this idea and talk about checks and balances and control. This is not what we are on about. The great model that is held up for us, the responsible government model, is invariably the Westminster model. Warts and all, the Westminster model in the UK is one in which a unitary government governs an entire country. Certainly, the powers have been divided among some regional governments but the original concept remains.

Mr HATTON: And that is in a country the size of Britain.

Mr DRAFFIN: Okay, but it has a hell of a lot more people in it than we have. I see no reason why we cannot have a system in this country which operates on the same principle. That is where I am coming from.

The political reality, of course, is that that is not going to happen. My position, therefore, is that I want to delay the creation of a Northern Territory state for as long as possible so that it can be given the maximum amount of thought. The reality, however, is that I will have to fight for the inclusion of some things in the Northern Territory Constitution and one of these has to be the checks and balances. I am not completely satisfied with the model of responsible government, which is why I advocate the tripartite separation of the powers of government. I am talking about total government, not the actual executive or the legislature or judiciary. I intend to lobby for that on a continuing basis. You may say that that is not satisfactory but I think the checks and balances are necessary. I am not very conservative but I am conservative enough to argue for them.

I am also very concerned about the notion of ministerial responsibility and certain parliamentary conventions. For example, the position of Prime Minister is only a convention; it is not entrenched in our constitution. We should think about that sort of thing when we are creating our own model of government because one convention after another is being broken. The notion of ministerial responsibility has been increasingly eroded over the last 100 years, particularly the last 50 years. I believe that there needs to be a strengthening of freedom of information provisions in order to replace that ministerial responsibility. Everybody pooh-poohs that but I believe it is needed in order to balance the erosion of the convention of ministerial responsibility. Of course, that has to be linked with the freedom of the press. There should be entrenched rights in our constitution relating to these things.

Whilst on the subject of rights, I will say that I am not utterly convinced that a bill of rights based on the American model is an appropriate way to go. That is because, time and time again, we are seeing lawyers getting very wealthy where there are clashes in rights. For example, the right to privacy can often be contradicted by the right to free speech. The entrenchment of rights in a constitution has to be done very carefully. The Canadian approach may be appropriate. In that case, a bill of rights was created in the form of ordinary legislation which could be changed by the government of the day. Such legislation can exist for a period while the curly points are sorted out prior to entrenching it. I would be reluctant to see a very prescriptive bill of rights entrenched in the constitution.

Mr HATTON: You raised the issue of freedom of information and the freedom of the press to run with that information. Given the concentration of power in the media and the all-pervading

influence that the media can have on the community, do you believe that if the press purveys a lie that it should be able to be prosecuted for doing so?

Mr DRAFFIN: I think that is highly appropriate. That is one reason for talking about rights.

Mr HATTON: But it cuts across freedom of speech.

Mr DRAFFIN: That is why I am saying that it is dangerous to lock up information. I believe that people have the right to have access to the truth. Given that we are talking about the truth, of course there must be provisions which will allow people to be prosecuted or sued for defamation. That right has to be available and it is difficult.

Mr SETTER: Exactly. It is very difficult indeed and expensive.

Mr SHANNON: Quite often the truth is completely immaterial to the life of the average person. Someone might get raped and her name is dragged all over the countryside with media bosses making an absolute fortune out of it on the basis that people have the right to know everything. There are times when the rights of the individual are more important than the right to know.

The issue of freedom of the press also arises in the context of the recent situation in which Muslims have been up in arms all over the place. There have been cries about freedom of speech but the fact is that people have been genuinely hurt emotionally and the guy is going to make a big buck out of upsetting large numbers of people. I do not think people should have an automatic right to do that.

I cannot slander you while you are alive because you can sue me. The minute you die, however, I can say whatever I like about you. I believe that our constitution should contain a clause which protects the rights of the individual, not only in life but in death. It should also protect the rights of particular religious groups. Religious beliefs should not be a target at which people can freely throw stones on the basis of freedom of speech. I point out here that I have no religious beliefs whatsoever but I respect the fact that people do have religious beliefs. I think that if we are going to say that people have a right to their beliefs in this country, we should say that we will respect those beliefs whether we agree with them or not and will give them the protection of our laws. Do you agree?

Mr HATTON: Yes, that is a good point.

Mr BENNETT: A right with exceptions is like being a little bit pregnant. If you are going to have freedom of speech it has to include the freedom to be wrong and to be accountable for what you say, whether deliberately or not. I recommend unlimited freedom of speech. However, there has to be accountability for what you write, print and distribute through the press.

Mr SHANNON: It is not freedom of the press when you can slander me because you own a newspaper but I cannot slander you because I don't own one. All I can do is tell my friends that what they read in the newspaper is wrong but I cannot reply through my own newspaper. That means that there is an unfair advantage to whoever controls the press. Laws should be about removing such advantages so that people are equal.

Mr HATTON: Can I put another element into the debate? We are talking about the sorts of things that are covered by a bill of rights, freedom of speech, freedom of religion, freedom of assembly etc. There are 2 ways of dealing with such things in this world. In the British tradition, those rights are developed through what is known as the common law process. The rights exist, but they exist as a result of interpretations by the courts over centuries and the refinements of those interpretations over centuries. They are no less real, but the method of development and adjustment and amendment is through the court process, what is called the common law process.

Mr BENNETT: They can be changed through legislation.

Mr HATTON: Certainly, those rights can be amended, varied, adjusted and strengthened by legislation. In other words, rights can be set out by an act of parliament statutorily.

Thirdly, such rights can be written into the constitution as in the case of the American and Canadian Bills of Rights. That takes the rights completely out of the political arena, out of the sphere of the elected representatives of the people and into the hands of the judiciary. However, somebody is always going to interpret what they mean.

Mr BENNETT: Freedom of speech is a very difficult area because it means that there is nothing to stop the dissemination of ideas which may, for example, be racist. It means that there is nothing to stop people saying the sorts of things Stalin or Hitler said in the 1930s. Whilst I think it should be legal to say those things, it is another matter when such ideas are broadcast publicly through the media. That is a real problem.

Mr HATTON: Yes, I am trying to relate it to the sort of role I am playing here. If you look at how these issues come up in the context of a constitution, the question you ask yourself is: 'Do we continue to maintain and develop our rights and responsibilities in those areas through the common law process, as we have traditionally done in Australia, or do we change from that and write them down in a statute or constitution'? That is really the question that people need to think about.

The other question is whether it is appropriate in the Northern Territory context to do something which differs from the system of rights and freedoms which applies in the rest of Australia?

Mr BENNETT: There are possibly a couple of exceptions.

Mr HATTON: Or whether these matters are better dealt with by way of the federal Constitution rather than a state constitution.

UNIDENTIFIED: Can you be more specific?

Mr HATTON: For example, a bill of rights, which is not stipulated in any of the constitutions in Australia and is not contained in the federal Constitution. In fact, a bill of rights has on one occasion been rejected in a national referendum. If such rights were written into a Northern Territory Constitution the structure of your rights will inevitably be affected by the words in that constitution. Those rights will apply whilst you are within the borders of the Territory, but once you move outside them, the rights which apply in the remainder of Australia are the ones which apply.

Mr BENNETT: I have no quarrel with the Northern Territory setting an example.

Mr HATTON: That is the question I think you need to ask. My job here is to put the questions before you. Do you want to be the same or to take a lead or to go in a different direction? I am simply putting the alternatives before the community.

UNIDENTIFIED: We should remember that the Northern Territory Constitution will be the first state constitution drafted under Australian law. The others were developed under British colonial law. The impact of that is that the Australian government will identify anything which they see as appropriate in the Territory's constitution. If it sees that we are leading in certain areas of prescription, it may not support that concept and may send it back for further discussion with the people.

Mr HATTON: That is not a question I would like to address. I do not believe that the federal parliament has any role in what goes into our constitution other than to the extent that we cannot be in conflict with the Australian Constitution. That is my firm belief. Every member of the committee has also expressed the belief that the content of the Northern Territory Constitution is a matter for the Northern Territory people alone.

Ms WILLIAMS: As long as we accept that we are still part of Australia.

Mr HATTON: Yes. That is why I say it must fit within and not conflict with the Australian Constitution. As far as our own internal constitution is concerned, it is a matter for us. We should not be have anything imposed on us from outside.

Mr SETTER: Mr Chairman, with respect, I support your view totally. The reality is, however, that regardless of the constitution that we develop including all the rights which we want as Territorians, if we elect for the Commonwealth government to grant statehood to the Northern Territory under section 121 of the Constitution - and that is the options preferred by the committee, to have statehood granted by an act of the Commonwealth parliament - statehood may be granted on such terms and conditions as the federal parliament thinks fit. My interpretation of that is that, at the end of the day, it is the Commonwealth parliament which decides the terms and conditions.

Mr HATTON: Of statehood.

Mr SETTER: Yes, of statehood. However, if the Commonwealth does not accept our draft constitution, it will of course amend it.

Mr HATTON: That is one area in which we might find ourselves in the High Court.

Mr SETTER: We may well be, but you need to be aware of that pitfall.

Mr DRAFFIN: It really begs the question of why we are going through the whole exercise of statehood in the first place. If we can be granted those powers now, without statehood ...

Mr HATTON: You cannot do it without a constitution to start with. I can knock up a constitution in a couple of days. Whether it is what the people want is another question.

Mr DRAFFIN: That is not the point I am making. It seems that the federal government can grant us as many powers as it deems fit, and give use representation as it deems fit, as a territory.

Mr HATTON: As a territory.

Mr DRAFFIN: As a territory.

Mr HATTON: That raises a separate question, which is getting away from the constitution. If we are given powers as a territory only, there is no constitutional entrenchment of the rights. Do you know that the very existence of any form of government in the Northern Territory exists as a result of a federal act of parliament which is capable of being amended or repealed? By merely repealing an act of parliament, the Commonwealth can wipe out all forms of government in the Northern Territory, the entire public service, the whole lot.

Mr KEARNEY: Yes, but what is the reality to that?

Mr HATTON: The reality is that I do not believe that it will happen. There is, however, potential for amendments to the regulations of the Northern Territory (Self-Government) Act. Irrespective of which party is in power, all the powers of your government derive from regulations under that act, which can be amended without even necessarily going to parliament. An amendment to a regulation under that act can add to or delete from the powers and authorities of your parliament. It is technically possible that, by removing a single line in a regulation, the Commonwealth could remove the entire Northern Territory education system. That is all it would take. That cannot happen in the states.

I refer you to the situation and I am not a lawyer. Please accept it as layman's interpretation. I do know that under the Australian Constitution, the Commonwealth government cannot acquire property except for Commonwealth purposes and even then it can only acquire it under just terms. It has to pay for any property it acquires. It does not have to do that in a territory. It can acquire without compensation and that has been demonstrated in a case in the High Court, which related to Bougainville. The Commonwealth already owns all the property and it would only be acquiring it from itself. You only have a loan of it while you are a territory.

Mr FIRMIN: We have seen that done in the Territory already.

Mr HATTON: That is still the case.

Mr DRAFFIN: That sort of thing was rejected very convincingly in the last referendum.

Mr HATTON: No. There is already a clause in the Australian Constitution. The federal government sought to expand the acquisition powers of the Commonwealth. That was what was rejected in the referendum. In fact, the acquisition powers are limited in the Australian Constitution now for the states, but not for territories.

Mr MODRA: My name is Andrew Modra and I am a student at Darwin High School. I just want you to clarify the statement you made about the Australian government being able to wipe out the entire NT education system by ...

Mr HATTON: Amending a regulation under the Self-Government Act.

Mr MODRA: Would the constitution of the Northern Territory or statehood prevent that happening?

Mr HATTON: Yes, because ...

Mr MODRA: Which one? Both of them?

Mr HATTON: Yes, both. The issue of what powers we have now is not the issue of statehood. Those powers can be increased without statehood and, indeed, the Chief Minister is presently making submissions to add to the powers of the Territory, under the Self-Government Act, to bring us into line with the power structure in the states. However, the federal government is capable of taking away whatever it may give under that act. It is only through constitutional entrenchment in a constitutionally structured state that those democratic rights can be protected, and that arises with the constitutional shift that occurs with statehood. The protections of the Australian Constitution and the Australia Act, all of which refer to a federation of states, are then available to you as citizens. They do not come to you until you become citizens of a state. If you move to a state, you acquire them. If you leave a state and come to a territory, you lose them. That is the core of the statehood issue. It is not money and it is not power. The fundamental issue of statehood is the constitutional entrenchment of your rights.

Mr DRAFFIN: Those same fears you are talking about apply to the whole Australian Constitution. It is only an ordinary piece of legislation in the Westminster system ...

Mr HATTON: I cannot respond to that off the top of my head. I am not a lawyer but I understand that it is more strongly entrenched than that.

Mr DRAFFIN: There are 2 ways to amend the Australian Constitution. One is by an act of the British parliament and another is

Mr FIRMIN: I understand that the British parliament no longer has the right.

Mr HATTON: Please understand that what I am talking about is the constitutional shifts which will occur as long as we continue to be a territory. They applied in the Bougainville situation. In the case of Christmas Island, the Commonwealth exercised its power. The people formed a government there but when the Commonwealth decided that it was not working, it simply moved in and wiped it out. The federal government today still has powers to disallow any law of the Northern Territory within 6 months of its being passed. It still has the power to call an election for the Northern Territory at its whim.

Mr KEARNEY: But in some circumstances ...

Mr HATTON: It would be political suicide to do that, but that is not the issue.

Ms WILLIAMS: I want to raise the matter of electoral systems. What discussion has taken place in relation to optional preferential or proportional systems? Somebody referred earlier

to the situation in the ACT where 35-odd names appeared on the card and the 35 preferences meant that voters were not getting the people they wanted.

Mr HATTON: It is discussed in the discussion paper. There is an option for entrenching certain electoral provisions in the constitution. It is a judgement you need to make in terms of how much detail the constitution contains about that, as distinct from what you would put into an act of parliament. The committee recommends that, except for certain key and important provisions, we do not entrench too many of the electoral provisions in the constitution. We do, however, recommend the entrenchment of the right to a secret ballot, universal adult suffrage and the eligibility to vote. In terms of that eligibility, the recommendation is that the same qualifications apply to that eligibility as apply under the Self-Government Act. For example, you must be an Australian citizen, have been resident in Australia for 6 months and in the Northern Territory for a specified period, you must not be currently serving a jail sentence, and so forth. Those provisions also apply to persons in terms of their eligibility to stand for parliament.

Interestingly, there are also recommendations which relate to the present situation in which certain people are not allowed to stand for parliament, such as public servants and people holding an office in local government. The committee's recommendation is that a person who is a member of the federal House of Representatives, the Senate or another state parliament cannot stand for election to the Northern Territory parliament. In other words, you cannot be the federal member and then become the member for Palmerston. That sort of thing is wrong in our view. Secondly, we are recommending that people like aldermen and public servants can stand for Legislative Assembly elections but, if they are elected, they are automatically deemed to have resigned from the other post. That reverses the current process. It is a more logical way to approach it. We are suggesting that those things should be constitutionally entrenched.

Mr KEARNEY: What about the actual system of voting?

Ms WILLIAMS: Wouldn't you think that that is a key element?

Mr HATTON: Personally, no. Such matters as the voting system, whether it be first past the post, optional preferential or whatever, and whether we have single or multi-member electorates, are best dealt with through an electoral act.

Mr SETTER: Which is what currently happens.

Mr HATTON: That is the recommendation of the committee, although the community might have a different opinion. You certainly have the right to debate those recommendations.

Mr HOLLAND: There is some conflict in the way the voting system works at the moment. You can support the Liberal movement or you can support the Labor movement but, in a particular electorate, you may feel that the candidate put forward by the movement you support is the biggest idiot who ever walked the earth. The way the system works is you must vote for the idiot if you want the party to get in. I believe that the system would be much better if each party gave voters a list of candidates, perhaps in the party's own order of preference, and the voter would have the option of using that order or of choosing his or her own order. That would give the individual the opportunity to express support for a particular party but also to give some sort of preference to

individual candidates from another party on the basis of their personal characteristics and abilities. That would give a much better representation in terms of what people really want.

Mr HATTON: That is not excluded under any system but you you are getting beyond the sort of things you would write into a constitution. You are even going beyond what you would put in an electoral act and venturing into the area of the electioneering strategies of parties.

Mr TREMETHICK: Yes. I can join the Palmerston branch of the Liberal Party and say: 'I want this man to be the candidate and I will vote for him in preselection so that I can vote for him later on'. That is base level politics. It is not a constitutional matter.

Mr HATTON: You have to be careful when you are talking about what you put into a constitution and that is why I am trying to draw the line. Remember, if you put something in and want to change it 5 years later, even if it is only a minor modification, you have to put it to the vote of every voter in the Northern Territory.

Mr TREMETHICK: Can I ask what modification processes the committee has recommended?

Mr HATTON: Referendum to the people. No amendments except by referendum.

Mr DRAFFIN: What sort of majority is required?

Mr HATTON: We have not put any recommendations forward on that yet. We have raised the issue of whether there could be different levels of majority required for different clauses in the constitution.

Mr TREMETHICK: The last 2 referendums held in Australia have been multi-question referendums. In each case, I was happy with half of what was being put forward but had to vote against the other half. Will the NT constitution be such that single questions will have to be put forward so that we can vote on single changes?

Mr HATTON: Are you putting that forward as a submission?

Mr TREMETHICK: Yes. Most definitely.

Mr SETTER: I think that is an excellent concept.

Mr TREMETHICK: I am looking for feedback.

Mr HATTON: Well, we have not made recommendations in respect to that.

Mr FIRMIN: It is not a problem. From what you have just said, though, I would have presumed that you would have been able to vote in favour of 2 of the questions in the recent referendum and against the other 2. There were 4 individual questions, each having an effect on the constitution in its own right.

Mr TREMETHICK: But each had one or 2 choices. That is what I am getting at.

Mr SETTER: I think that is a ploy used by both parties to package up something that may not be very palatable with something that is generally acceptable, in the hope that ...

Mr TREMETHICK: It will go through.

Mr KEARNEY: In the case of that referendum, the opposition parties were criticised because of the way they opposed the questions. The problem is that, even if the majority of the population are in favour of proposals put forward in a referendum, the proposals have to achieve a majority in 4 of the 6 states. That means that, even if a proposal is passed in Victoria, New South Wales and Queensland, which contain the majority of the population, it will fail to pass if there is no majority in the other states.

Mr SETTER: I think all political parties have been guilty of putting forward multi-question proposals in the past and the fact that only 7 or 8 referenda have been carried since federation is evidence of that.

Mr KEARNEY: That begs the question of whether many more referendum proposals would have been passed if a straightforward majority applied.

Mr HATTON: The question is, of course, whether some of them really should have got through anyway.

Mr KEARNEY: We could argue about that at length.

Mr HATTON: Because the people might have said no and, in fact, they did.

Mr DRAFFIN: Whilst we are on this point, we should consider the implications of the Territory becoming a state. It will change the balance in relation to referendum questions. At present, if only 3 states have a majority, the question is lost. However, that balance will alter and make it easier to get amendments through because ...

Mr HATTON: It will be 4 out of 7 instead of 4 out of 6.

Mr SHANNON: I have a recommendation on the qualifications of voters. The provisions for taking someone off the voting list because they are in prison or in hospital is a bad idea on 2 counts. The extreme case probably does not apply in Australia, it being that those who oppose the system end up in hospital. Secondly, we are missing out on a major source of prison reform. People with the greatest experience of the consequences of imprisonment are being denied access to the political system and the opportunity to give feedback. That is showing up in that as many places as we can afford to provide in prisons are being filled almost at once.

Mr HATTON: I think the proposal at the moment is that if you have been sentenced and are currently serving a term of imprisonment of more than a year, you are not eligible to stand for election.

Mr SHANNON: But it does not affect voting.

Mr HATTON: No, it does not affect voting.

Mr SHANNON: I am sorry. I take it that all people in hospital vote as well. The situation in Queensland is different. The only stipulation I believe should apply is one which specifies a minimum voting age.

Mr KEARNEY: I thought that prisoners could not vote if they had been sentenced to 5 or more years of imprisonment, whether they were allowed out on parole after a time or not. You are saying that a prisoner who serves a 1-year sentence can vote but a person sentenced for, say, 8 years cannot.

Mr SETTER: I think it would be impossible to police if they are out on parole.

Mr FIRMIN: I know that, in Territory elections, the prisoners at Berrimah Prison can vote if they are correctly enrolled on the electoral roll.

Mr HATTON: The select committee's recommendation appears on page 34 of the discussion paper. It says:

The select committee is of the view that there should be a 3-month residential requirement in the new state for a person to be eligible to vote for the new state parliament. Persons eligible to vote in Commonwealth elections anywhere in Australia immediately before the commencement of statehood should be eligible to vote for the new state parliament if meeting this residential qualification. Subject thereto, voting should be limited to Australian citizens. In other respects, the committee favours similar provisions to those presently applying in the Northern Territory. These qualifications should be included in the new state constitution.

The qualifications for voting are set out earlier on page 33:

The qualifications for voting in the Commonwealth Electoral Act are that the voter has attained 18 years of age, is an Australian citizen (with some transitional arrangements for British subjects), is not of unsound mind or under sentence of imprisonment for 5 years or longer or has not been convicted of treason or treachery without a pardon. Prisoners have now been given a vote in Legislative Assembly elections by section 27 of the NT Electoral Act.

It is noted in the preceding paragraph that the qualifications to vote for the Legislative Assembly in the Territory are primarily derived from section 14 of the Northern Territory (Self-Government) Act. Basically, the committee's recommendation is that the existing situation should continue to apply and be entrenched in the constitution.

Mr KEARNEY: Yes, I agree with that.

Mr HOLLAND: Can you elaborate on the notion of 'unsound mind'. For example, a person who is manic depressive would be declared as being of unsound mind and yet, quite clearly ...

Mr HATTON: I think the definition that applies would be that contained in the Mental Health Act. I am not a lawyer though and it would be unreasonable for me to make a definitive statement. I believe the same situation applies throughout Australia, under the Commonwealth Electoral Act.

Mr FIRMIN: My understanding is that a declaration of the Supreme Court the Mental Health Act is that the definition of a person of unsound mind is a person who is unable to administer his or her own affairs. It is probably similar to the judicial provision for wards of state and so on.

Mr TREMETHICK: The issue of voting systems was raised by Ms Williams and I thought that it was a pretty important issue. I think she was talking about proportional voting.

Mr HATTON: No, I raised the issue.

Ms WILLIAMS: My view is that, whatever system is chosen by the people of the Territory, it ought to be entrenched.

Mr HATTON: There is a capacity there to entrench it in the constitution, if the people of the Territory want to do so. There is nothing to prevent that happening but the committee's recommendation is that it would be better to do that through legislation than through the constitution. Do not just let us bully you around though. If you have a strong view one way or the other, we want you to tell us. That is really what we are saying.

Mr KEARNEY: Don't you think that that certain types of electoral systems are biased towards certain decision-making?

Mr HATTON: No.

Mr KEARNEY: In a first past the post system, a majority of electors may be opposed to the elected candidate whereas in a proportional voting, the candidates elected are those supported by the most people.

Mr HATTON: What happens when turmoil is the result?

Mr KEARNEY: What is wrong with a bit of turmoil? People automatically assume that a hung parliament will be the result. If we consider the history of the European democracies, however, it is clear that it is quite possible to operate with such a system. To my way of thinking, under a proportional voting system, people know that the person elected has the support of most people.

Mr HATTON: That is not the principle of proportional representation. The principle of proportional representation is, firstly, that you have multi-member electorates rather than single member electorates. If a party wins 5% of the vote, that party gets 5% of the seats. That leads to the representation of minority interest groups in the parliament. That is the ultimate form of proportional representation. How much that can be watered down is a matter for debate.

Mr FIRMIN: It is a very difficult thing to handle in very sparsely populated area like the Northern Territory, especially with single member electorates and trying to keep costs down.

Mr KEARNEY: I will concede that.

Mr HATTON: I am going debate the issue now. I cannot help myself, I am sorry. I think the most lunatic situation in Australia exists in the ACT at the moment. That is supposed to be a 25-member parliament, but even now they have not worked out who the members will be. The ACT has been declared to be a single electorate and people voted for 100-odd candidates, 19 of whom

are to be elected in some weird, complicated electoral process. I would be curious to know how a constituent who lives in Woden would know which member to take a complaint to in terms of being their local member.

Ms COOK: They are asking the same question themselves.

Mr KEARNEY: What about the other side of the argument? In the British political system, you can have a situation in which it does not matter that an elected candidate has not been the choice of a majority of the people.

Mr HATTON: That is the problem where you have voluntary voting and first past the post voting. If you have compulsory attendance at the polling booth and full preferential voting, you know that more than half the people would prefer that candidate to the others. They might not like that candidate but they prefer that candidate to the others.

Mr SHANNON: Most systems are warped in one way or another.

Mr HATTON: That is right, there is no perfect one.

Mr SHANNON: I could be wrong on this one but I think that the only 2 countries that have compulsory voting are Australia and the Soviet Union.

Mr HATTON: I did not know that the Soviet Union did it.

Mr FIRMIN: Certainly there are very few countries.

Mr HATTON: No other western democracy uses compulsory voting.

Mr SHANNON: Yes, I am starting to change my way of thinking about it.

Mr HATTON: Please, it is not a matter of compulsory voting. It is a matter of compulsory attendance at the polling booth.

Mr KEARNEY: There should be room in the constitution for the donkey vote. You should be able to go to an election and say that you do not like any of the candidates.

Mr HATTON: None of the above.

Mr KEARNEY: Yes, you should be able to say that.

Mr HATTON: You can do that.

Mr FIRMIN: Sometimes, in Legislative Assembly elections, voters write the name of somebody on the ballot paper. On one occasion in my electorate, there were 4 votes for a man who did not even stand for election. It worried the hell out of me but it seemed that his family felt that their dad would make a far better candidate than those who were standing. A populist movement could take place if people wanted to push that view.

Mr TREMETHICK: I think we are getting well off the track. Mr Chairman, you and I have a right, if we wish, to go to the Palmerston branches of the CLP and the ALP and say that we would like to strangle the incumbent and have the opportunity to vote for a preselected candidate of our choice in Palmerston. That is the bottom line.

Mr COOK: You want that entrenched in our constitution.

Mr TREMETHICK: No, it is not necessary. I can strangle Coulter anytime.

Mr Chairman, could I ask you to outline what you are proposing in relation to the terms of governments in the NT?

Mr HATTON: The committee has recommended a maximum 4-year term with a minimum of 3 years to be served before the leader of the government and the Governor can issue writs for an election. There are some specific technical exceptions to that, such as the situation in which a government acts unconstitutionally or where no effective government can be formed. Those exceptions aside, we are saying that governments should be expected to serve most of their elected term, rather than to go to the people whenever it is convenient. That is why we have recommended a minimum term of 3 years. There is flexibility in relation to the fourth year.

Mr TREMETHICK: Is there any reason why we should not go to a fixed term so that on a specific date, such as 1 July of every 4-year period, we are going to have an election come hell or high water?

Mr HATTON: That option has been discussed, although it has not been recommended by the committee.

Mr TREMETHICK: Can I ask why? No, it is all right; I will look it up.

Mr HATTON: I can give you some answers. One of those is the practicality of having it accepted.

Mr TREMETHICK: It is the same as Presidential elections in the United States. On 1 January, we know that in 4 years time we will have a new president of the United States.

Mr SHANNON: If the government wants to opt out, it can always resign. Members would simply vacate their individual posts.

Mr HATTON: The arguments for and against fixed terms are set out on pages 26, 27 and 28 of the discussion paper. One of the arguments in respect of fixed term parliaments is that you end up in a much longer electioneering mode in the sense that ...

Mr TREMETHICK: That is your problem not ours.

Mr HATTON: It might be, although I would not have put it that way. I would have thought the opposite.

Mr FIRMIN: You mean to say that you want to put up with it more?

Mr TREMETHICK: Okay, point taken.

Mr DRAFFIN: Can I submit that we consider a compromise? What I am suggesting is that we do not necessarily stipulate that there be no election inside the 3 years but that, if there is such an election, it be only for the remainder of the original 4-year term.

Mr HATTON: That is not an option which has been considered.

Mr DRAFFIN: Obviously, a mid-term election like that would only occur in some sort of crisis situation. It would eliminate the political opportunism which presently occurs in relation to early elections. Clearly, governments sometimes call elections simply because they are on a high and the opposition is on a low. This option would eliminate that whilst still allowing for the possibility of a mid-term election in a crisis situation.

Mr FIRMIN: I cannot imagine any crisis situation in which a majority government would seek to go to the people, in the middle of a 4-year term, for an election which would apply only for the remainder of that term.

Mr DRAFFIN: I could imagine situations in which a government had a comfortable majority.

Mr FIRMIN: The whole object of this recommendation is to achieve what we have been doing ever since self-government anyway, which is to run our maximum term because it is the cheapest option for the people.

Mr SETTER: Yes. There is a considerable cost in running an election.

Mr DRAFFIN: I appreciate that. What I am proposing is an approach which takes the political advantage out of early elections and ensures that they will only be called in dire straits. Certainly, in a bicameral system, a situation can arise in which an upper house blocks supply.

Mr HATTON: We are recommending a unicameral system.

Mr DRAFFIN: Nevertheless, a crisis could occur if a government with a majority of 1 had to face a by-election and lost its majority, meaning that there could be a change of government on the basis of the result in a single seat. I think that it would be appropriate, in that situation, to go to the people.

Mr HOLLAND: It could be a scenario.

Mr TREMETHICK: If you have a responsible government, you can get it to ban advertising. A responsible government would ban all political advertising except for perhaps the last 30 days before the election.

Mr HOLLAND: Then you will have ministers jumping up saying: 'This has nothing to do with the election but ...'

Mr TREMETHICK: Freedom of speech.

Mr HATTON: I think you have to be practical about some of these things. We need to be careful about what we put into constitutions. The suggestion has been put forward on the basis that there would essentially be a fixed term, but that a degree of flexibility would apply.

Mr KEARNEY: Why is there a need for flexibility?

Mr HATTON: I would refer you to the arguments set out in the discussion paper. If you would like to argue otherwise, that is fine, but there are equally valid arguments for flexibility.

Mr FIRMIN: Can I pass the question back to you again? Do you have any fixed position in relation to 4 years? Whilst we have agreed as a committee to a 4-year term ...

Mr KEARNEY: I think it should be longer.

Mr FIRMIN: I personally believe it should be at least 5 years.

Mr KEARNEY: I think it should be 6 years. You should govern for 6 years. Governments should be able to frame and implement long-term policies. Even in the supposedly wonderful days of Menzies, there was no long-term planning. What this country lacks is long-term research and long-term planning for the future and the development of technology. We have never done it. We have been in the forefront of technological innovation, including computers and the aircraft industry, but we threw away our advantages during the years of conservative government. I am not making a political statement.

Mr HATTON: You are getting pretty close to one.

Mr KEARNEY: It is information based on historical analysis.

Mr HATTON: You are encouraging a political response, I can promise you.

Mr SHANNON: I would not like to see anything longer than 5 years.

Mr HATTON: You need a balance. Parliaments are responsible to the people and they have to go back to the people to renew their mandates.

Mr FIRMIN: At least make sure you are alive.

Mr HATTON: There is a responsiveness that comes from that. One of the reasons for the 4-year term with a minimum of 3 years is that 3-year terms tend to lead to elections after 2 years. There are problems in terms of insufficient time to settle into government, introduce programs and see the results of those programs at the other end. If there is a guarantee that 3 years of a 4-year term will be served, there is enough time to introduce some measures and work them through so that you can go to the people with evidence of success or failure.

The danger of the shorter terms is that you go to the people too early, before programs have time to be properly developed. That leads to short-term thinking because governments want to see quick results before they go back to the polls. It limits the ability of governments to make some of the more important and fundamental changes that are often needed from time to time. Such change

will often be disruptive in the early stages and no government wants to go to the polls in the middle of a disruptive period. It discourages governments from doing things that they know they should do.

Mr KEARNEY: Making hard decisions.

Mr HATTON: That is right. Making the hard but necessary decisions. I believe, however, that the 4-year term with the option to go to the polls after 3 years overcomes that problem.

Mr KEARNEY: I think it would be even better with at least 5 years and preferably 6.

Mr HATTON: Then you have the problem of getting too remote from the people in terms of how frequently they have their say.

Mr KEARNEY: The majority of Australian citizens tend to derive much of their political information from the mass media, particularly television. That is a poor medium to receive information from and I see a problem in this area. The problem may have been created by the media more than by the politicians. It is that, when the media covers politics or constitutional matters, it is only concerned about entertainment. It is not concerned with any deep analysis of the issues. It focuses on personalities. However, people of reasonable intelligence are concerned about real long-term issues.

Radio is a better medium but, overall, Australians are becoming less politically intelligent. They are not politically articulate and they do not try to become politically articulate. They do not become involved in the process of discussing things like the constitutional development of their own country. It is not encouraged at either primary or secondary school level, which is where it should be encouraged. This sort of meeting is a very good thing. Whilst I disagree with your political philosophy, I think that this process is very worthwhile. I might add that it is very unusual for me to pay compliments to people like you.

Mr HATTON: Thank you.

Mr KEARNEY: What you are doing is a very rare and courageous thing. This is a very progressive step, supported by both political parties. This is a very rare thing. I have never seen it up here.

Mr HATTON: Maybe it is part of walking into the new world. Are there any other issues which people would like to raise? I know that some of you have been sitting there quietly listening to the discussion.

UNIDENTIFIED: I do not want to say anything at this stage.

Mr HOLLAND: I wonder if I could raise a different issue. I have browsed through the document and I do not see any reference to the environment. In these times, the whole world is hopefully becoming more involved in environmental issues and protection of the environment. If we are framing a constitution, it would be foolish not to ensure that it contains provisions which actually protect our environment.

In this context, I am reminded of the current situation in the United States, in which a company can produce a substance and it is up to the authorities to prove that it is a hazard. That seems ludicrous to me. I believe that our constitution should require manufacturers who operate here to prove that their products and by-products are not hazardous to the environment or to society. If there is some degree of hazard, it needs to be assessed and determinations made in relation to what sort of compensation the state receives if it puts up with the effects of that activity.

I also believe that, in situations where a company is going to produce a pollutant into the environment, the decision in respect of the degree of toxicity which is tolerable should not be made by the government, but by way of a referendum. The people should decide whether the Ranger uranium mine can pour its wastes into Kakadu National park.

Mr HATTON: That example does not fit your criteria because the toxins cannot be measured.

Mr HOLLAND: I am not trying to jump on a particular bandwagon.

Mr HATTON: You raised the issue of a particular company and I really have to ...

Mr HOLLAND: All I am saying is that, in a case which involves radioactive waste at any level ...

Mr HATTON: You are raising the issue of whether there needs to be some constitutional entrenchment of environmental guidelines.

Mr HOLLAND: I am not asking whether there should be. I am saying that there should be.

Mr HATTON: You are putting a submission that there should be.

Mr HOLLAND: I am making a statement that there should be, given that the world is very conscious of environmental issues. It would be negligent of us not to include protection of the environment in the constitution.

Mr SETTER: The issues that you raise are generally addressed by legislation in the Commonwealth and in the states. The situation varies from state to state and if you were going to write something like that into a constitution then you ...

Mr HATTON: So is the knowledge of the world.

Mr SETTER: It is very difficult to do in detail.

Mr BENNETT: Perhaps the gentleman is suggesting that the basic right of the individual is to have clean water and clean air.

Mr SETTER: Sure. Something like that could be written in.

Mr BENNETT: It could be entrenched in a constitution. The implementation of that statement would evolve with legislation

Mr HOLLAND: We could have a grading of toxins so that a definitional grading could be introduced. For example, level A toxins might be those which break down in a 10-year span, at which time they might be classified under a different level.

Mr SETTER: You cannot do that without going to a referendum. If you entrench it within the constitution, you have to go to a referendum to alter that classification.

Mr HOLLAND: No, because the classifications can be determined by legislature. The actual ...

Mr SETTER: Oh, I see what you mean.

Mr HOLLAND: Yes, the constitution would contain a broad principle and legislation could then implement it flexibly, adjusting the levels in terms of the grading of toxins and so forth.

Mr HATTON: What is the value of putting it into the constitution?

Mr HOLLAND: By having it there, we avoid the possibility of environmentally disastrous decisions being taken because the country is in economic trouble and there is a perceived short-term advantage to be gained in terms of export income. The trouble is that, 10 years later when the country is booming, that decision might be a cause for great regret. The consequences might be around for 1000 years. Such major decisions should be made by the people at large, through a referendum. That way, if a mistake is made, it is the responsibility of the whole community and not just a few politicians. The people will have to live with that responsibility.

Mr HATTON: It is an interesting concept. We have it recorded now. I cannot for the life of me think of how it might be put into constitutional terms. However, if you want to develop it and put something to the committee, that is fine. To be honest, I do not have much of a feeling for it. Perhaps you would like to develop something more substantial in terms of the wording.

Mr HOLLAND: Yes, it is something I have given some thought to.

Mr HATTON: Obviously, discussion across the table at this particular stage is not going to advance that. It is a matter that can be picked up at a later stage. Perhaps you and other people might be interested in making further comment in relation to some sort of constitutional entrenchment of environmental guidelines.

Mr FIRMIN: In terms of the constitutions I have read, particularly the United Nations draft constitution, I endorse the remark which was made earlier in relation to the need for broad underlying principles which relate to how you want your life to be controlled and developed. That is what determines the entrenchment of particular specific matters in a constitution and allows legislation to flow from that. That is why I liked Steve's comment about the right to clean air and clean water. It is a very simple principle and from that would flow the protections that you are seeking, although in a different format.

Mr SHANNON: I can articulate part of the concept in order to state it formally. The responsibility of the government is to provide, in order of priority: firstly, liberty for its citizens; secondly, security for its citizens - meaning safety; and thirdly, profit - as in wealth. In other words,

people are to be free before they are safe, and safe before they are rich. Having said that, I would like to move on to another topic now.

Mr MODRA: I would like to make another comment on the environmental issue. I think we need to be very aware of the fine line we tread in terms of the impact of our activities on the atmosphere and the environment generally and I think that needs to be recognised in the constitution.

Mr HATTON: So you are speaking in support of some form of constitutional entrenchment.

Mr MODRA: I am saying that we need to be careful of what we do environmentally.

Mr HATTON: We must thoroughly understand the environmental consequences of actions that we are taking. It is very hard to find the right form of words, isn't it.

Mr HOLLAND: It is not enough just to say that there is a basic right to clean air and clean water because you will then have people with large financial backing spending millions of dollars in the process of defining what 'clean' means and they will soon convince you that toxins are very clean things which are not at all dirty. The meaning of the broad provision needs to be very finely articulated without being too specific.

Mr HATTON: Can I just remind also everybody of one matter which I think is worth remembering. There is a phrase in the Australian Constitution which says that trade and commerce between the states shall be absolutely free. That is about as clear a statement as could possibly be made but its interpretation has made more lawyers into millionaires than any other single clause in the Australian Constitution.

Mr SHANNON: I can still ride my motorcycle across the border without ...

Mr HATTON: Yes, but my point is that even simple words become contentious when the lawyers and vested interests get to work. The argument over the meaning of that clause, which seems very simple, has been going on for 80 years. We have a situation in New South Wales, for example, in which freight can be moved across the state border and back again in order to avoid road tax in New South Wales.

Mr SHANNON: Especially if you live at Albury or Wodonga.

Mr HATTON: That is right.

Mr SHANNON: Another question relates to whether or not there should be a distinct part of the constitution which relates to Aborigines. I recommend that that not occur because, if we start differentiating between citizens on any basis whatsoever, we will set up an 'us and them' situation which is the first step towards war. If Aborigines or any other identifiable group needs particular distinctive cultural rights, they should be incorporated within the general statements in relation to rights, liberties and entitlements. The constitution should provide that everybody is entitled to reach a certain standard of education or to have some form of assistance in terms of any danger to a given culture. I recommend that no distinction be made on any basis.

Mr HATTON: Two issues have been raised with us in respect of Aboriginal people and they certainly are in the minds of Aboriginal communities. One is the issue of Aboriginal Land Rights. There is a fear in the Aboriginal communities that, upon statehood, all of their existing land rights will somehow be taken away from them. They are looking for some guarantees that they will not lose the land that they have got back.

I raise that issue because the question of the constitutional entrenchment of Aboriginal land rights has been raised. People in Arnhem Land have private ownership of that land at the moment. Should the government, on the granting of statehood, be able to walk in and say that that is all finished? I raise that question because the matter of land rights has been the foremost concern in the Aboriginal communities which we have visited.

The second issue relates to the process of healing some of the racial wounds. I am seeking to honestly reflect the expressions that have been put to us. As a process of healing the racial wounds between Aboriginal and non-Aboriginal people, the question arises as to whether it would be appropriate to add some form of a preamble to a Northern Territory constitution. Such a preamble could recognise the fact that Aboriginal people existed and occupied land in the Northern Territory prior to non-Aboriginal occupancy from 1788 onwards. The question is whether there should be some constitutional recognition of the prior occupancy of indigenous people. Of course, there are some real concerns about that sort of approach. How could it be done without leading us into an international legal minefield? I do not know the answer to that but I need to honestly put the issue before you because it has been raised with the committee.

The discussion booklet canvasses these issues and, when we visit the Aboriginal communities, they are raised directly with us. We need to develop a constitution that will stand in good stead among everybody in the Northern Territory. That applies to the Aboriginal community as much as anybody else. It cannot just think for itself. It must think in terms of all Territory people. The same applies to us. If it is possible, we must find a formula that will enable us to develop a society where we can live together with some sense of mutual respect.

Mr SETTER: You have to understand that they represent almost 25% of the population of the Northern Territory and that their needs and aspirations therefore need to be properly addressed.

Mr SHANNON: I have no quarrel with a preamble that states the truth.

Mr HATTON: I do not know of any citizen who does not say that Aboriginal people were here before whites, that they have their own culture, traditions and religion, and that they have a special place as an indigenous people. That is internationally recognised. The question which arises in relation to a constitutional preamble is how that can be recognised without walking into a minefield of legal claims in relation to compensation, reparations and so forth.

Mr SHANNON: Yes, that is a risk you accept in walking into a minefield.

Mr HATTON: That is an issue which I would like the Territory people to address in the totality of the debate.

Mr HOLLAND: I have not had much of a chance to read this document. The first part of it talks about repatriating the Aboriginal Land Rights Act back to the Northern Territory. Why do that? If you are worried about the reaction of the Aboriginal people, why not leave that act in the hands of the federal government. When the 1967 constitutional referendum gave the federal government the power to make laws in relation to these matters.

Mr HATTON: I think it stretched the truth a long way in relation to that. The referendum gave the federal government certain powers which it then interpreted very broadly. I do not think that, in that referendum, people actually gave approval for what occurred subsequently. In my view, they simply voted to give citizenship rights to Aboriginal people. I do not want to debate that issue because it is irrelevant to the present situation.

The reason for the proposal to patriate the Aboriginal Land Rights Act is this: if you are going to govern at a state level, the land is the basis of government just as much as it is the basis of people's lives. Government at a state level is government that is associated with the administration of people and land. Our laws interrelate with that. When something like 50% of your land mass has an administration base which is outside your control and direction, that means that that land is subject of an entirely separate legal fabric. The Aboriginal Land Rights Act says that the laws of the Northern Territory apply on Aboriginal land to the extent that they are not inconsistent with that act. The problem is that that can mean all things to all men. We had to go to the federal High Court to find that the Control of Waters Act applied on Aboriginal land. We have 400 or 500 acts of parliament. Do we have to do that with every one of them? Can we impose stock control laws on Aboriginal land? Can we charge a land tax on Aboriginal land, as states charge on private land, and so on.

We do not know how to extend our laws to apply to Aboriginal land. An issue which arose last year caused an amendment to the Traffic Act: a person got off a dangerous driving charge in an Aboriginal community in Arnhem Land on the basis that they were travelling on a private road and that the Traffic Act therefore did not apply. The road was in a town of over 600 people. The result was that we had to change the Traffic Act and deem all private roads on Aboriginal land to be public roads for the purposes of the act. We have to go through that sort of nonsense simply because the Aboriginal Land Rights Act is a Commonwealth act. The problem has nothing to do with the principle of land rights itself; it is simply that, because the act is an act of the Commonwealth, it cuts across the fabric of our laws in the Northern Territory.

Mr HOLLAND: Would it be possible to specifically document the actual Aboriginal customs? If that was done, the preamble could then state that the rights and beliefs of all people living in Australia would be respected regardless of race. The constitution, by documenting the Aboriginal customs in the context of that preamble, would recognise Aboriginal people as part of the total population. Their rights would not be particularly singled out to create an us and them situation, but they would nevertheless be protected.

Mr HATTON: On the same basis as other people's rights are protected.

Mr HOLLAND: There would still be a preamble more or less acknowledging their ...

Mr HATTON: As long as it is not an ATSIC form of preamble. That would have created really difficult problems because of the legal ramifications.

Mr HOLLAND: I was thinking more along the lines of a preamble which stated that their culture had existed for 40 000 years and would set out some of the aspects of that culture. That be a specific reference but it would be covered by the more general statement in terms of the rights of all people.

Mr HATTON: I believe that these will be the most difficult issues we will face in the drafting of the constitution. It will be relatively simple to thrash out such matters as whether the parliament has 1 or 2 houses and so forth. However, in the case of emotional issues like this, it will be much

harder to find a solution that will not give offence to one section of the community or the other. This is going to be the test for the future.

Mr KEARNEY: On page 93 of the discussion paper, under the heading of Aboriginal Rights, it says:

One option, favoured by the select committee, is to entrench these guarantees of Aboriginal ownership in the new state constitution, such that they can only be amended by following specified entrenchment procedures. The extent of these guarantees and the degree of entrenchment of matters upon which public comment is invited.

What is the extent of these guarantees? You opened this out for public discussion.

Mr HATTON: Yes, could I say that other discussion papers are available although I do not know whether we have copies here. They certainly can be made available to you. There are 3 papers altogether and they came out in 1986. One relates to land matters on statehood. It is not actually a select committee paper. It was produced and went past the select committee prior to tabling in the Legislative Assembly. It deals with such matters as the manner of transfer of federal land, including Aboriginal land under Northern Territory jurisdiction. A second paper related to national parks upon statehood and a third to minerals and energy upon statehood. The 3 discussion papers relate to some of the work which we are now doing and are available to people as additional information.

Mr HOLLAND: I have a short question which relates to the Aboriginal land problem. The Commonwealth Constitution contains provisions relating to federal land acquisition. What does the NT government or your committee propose in relation to land acquisition under a Northern Territory constitution. If the government can acquire my land - or 968m² of it - can it acquire Aboriginal land?

Mr HATTON: We cannot acquire Aboriginal land. It is perpetual inalienable freehold title which means exactly what it says: perpetual, inalienable and freehold. That is Aboriginal land under the Land Rights Act.

Mr FIRMIN: Which is a right you do not have.

Mr HOLLAND: That is right.

Mr HATTON: The Northern Territory government is restricted in its ability to acquire land under the Northern Territory (Self-Government) Act. We can compulsorily acquire on just terms, which means that we have to pay for it. There are rights of appeal under the Lands Acquisition Act but we cannot just take land without paying for it as some state governments can do. In New South Wales, for example, the state government can acquire land without compensation and has done so. You might remember that Neville Wran took all the coalfields in the 1970s. It is the recommendation of our committee that acquisition on just terms be written into the constitution to prevent the government taking land without compensation. The committee believes that the government should pay for any land it acquires, whether it be for a road, an easement or whatever. It is an acquisition of property which includes a person's rights too. It is not just real estate.

Mr HOLLAND: I believe that you should avoid using the term 'Aboriginal land'. It is an offensive thing. It immediately draws a line. It says: 'This is my back yard. You keep away'. I think it should be referred to as ...

Mr HATTON: Private land.

Mr HOLLAND: No, I think the term should be Aboriginal sacred sites. The same applies in the case of Westminster Cathedral or something like that. We are talking about land which does not actually belong to somebody but is sacred to the Aboriginal people. I would not even put it under ownership and say that it belongs to the Aboriginal people. I would say that that land is sacred sites and that is it. It stays there. It does not belong to anyone. It never will. It is sacred sites.

Mr FIRMIN: Can you just clarify that? Are you talking about the totality of Aboriginal land?

Mr HOLLAND: I am not talking about situations like Arnhem Land, where land has been set aside so that the Aboriginal people can live their traditional life. I am talking about situations like Uluru, or Ayers Rock. If that is a sacred site, it does not belong to anyone. It is an Aboriginal sacred site and no one gets a buck anywhere. It is a sacred site and that is the end of the story.

Mr HATTON: The problem with the concept of sacredness is that it may have a meaning according to our cultural beliefs to that which applies in Aboriginal belief.

Mr HOLLAND: Ownership has a completely different meaning in each culture. To say that they own the ...

Mr HATTON: That is right. It certainly does.

Mr HOLLAND: They are flying the flag now.

Mr SETTER: I think it is important to draw the distinction between Aboriginal land and sacred sites. You are inferring that all Aboriginal land is a sacred site or. It is not, of course.

Mr HOLLAND: No, what I am saying ...

Mr SETTER: There are sacred sites dotted around in Aboriginal land.

Mr HOLLAND: Yes, but what I am saying is that sites that are considered Aboriginal sacred sites should not belong to anybody. They should simply be deemed sacred sites without attaching the concept of ownership. They should not belong to anybody for ever and a day. This relates to the problem I perceive in relation to what is called Aboriginal land, which is that it forces society to address the question: when is an Aboriginal not an Aboriginal? At what point does someone become a non-Aboriginal?

Mr SETTER: That is a good question.

Mr HOLLAND: The issue does not matter at present because we can say: 'Yes, this person is a true Aboriginal'. In 200 years' time, however, that may not be the case. It may be that the concept of Aboriginality as we know it today may not apply. However, if we word our constitution appropriately, people will be able to say that particular sites are sacred and remain so regardless of any idea of Aboriginality. Hopefully, the Aboriginal culture will remain. Certainly, the principles of the culture can remain alive.

Mr HATTON: I would urge you to read the relevant material in the discussion papers. The issue of Aboriginal land rights will certainly be critical in the development of the constitution. The papers present a series of options in terms of dealing with Aboriginal land. We have to accept certain realities. Large sections of the Northern Territory land mass are privately owned by Aboriginal land trusts on behalf of particular Aboriginal communities. Those areas are lands which were traditional tribal property - and I use that term very loosely - of particular groups. That situation is fact. We do not have to deal with the question of what has happened in the past. We do not even have to deal with the question of whether current form of Aboriginal land ownership should continue.

Everyone tends to assume that Aboriginal people think that the Aboriginal Land Rights Act is perfect in its present form. I do not believe that is true. Nor do I think that the vast majority of Aboriginal people are of the view that Aboriginal land should be left fallow in its natural state and that they should continue to lead their traditional nomadic lifestyle in the future. I do not believe Aboriginal people think that way. The vast majority do not. However, they regard that land as their own, just as strongly as you regard your 962m² block as your land. Indeed, they may feel even more strongly attached to the land. That does not mean they do not want to turn it to their economic advantage. They may well want to.

Mr HOLLAND: I have fears in relation to that notion. Whether you like it or not, you are implying that we have come in as invaders and taken the land and, without making any moral judgement about that, are looking at the question of rectifying the situation.

Mr HATTON: I did not say that.

Mr HOLLAND: No, but that is the implication.

Mr HATTON: I am making a statement about the aspirations of many Aboriginal people.

Mr FIRMIN: Let's reverse the argument for a moment. You live in Palmerston. The land in Palmerston is owned by the people who live there and those people build houses for themselves. If you want to live somewhere else, however, it is simply a matter of selling your house. Some Aborigines have put it to me that they are not prepared to build their own houses on Aboriginal land because they have no individual land tenure. If they build a house, how can they sell it? They do not have individual tenure on the land. They do not have a square plot of land marked out, upon which they have the right to develop, trade, or sell as they see fit. Such people feel disadvantaged by the Land Rights Act in its present form. They cannot sell anything on their land, and they cannot sell their land or anything that goes with it. They cannot mortgage the land to create an opportunity to build a house. You can go to the bank. You have collateral on your land and so on. They cannot do that.

Mr HOLLAND: I do not believe that the act ...

Mr DRAFFIN: When we start talking about entrenching anything in the constitution in relation to land rights, we are getting into a very difficult area.

Mr HATTON: I would be less than honest if I did not tell you that that matter is on the agenda in terms of the constitution. That is what I have been doing.

Mr KEARNEY: I don't think the constitution should get bogged down in questions of ownership of land because that is an area of great controversy which would be the cause of considerable conflict between groups of people. We should look to resolving the conflict rather than

fighting. People talk about the past. We cannot change the past. The people here were not responsible for what happened in the past. My parents were not responsible for what happened in the past and your parents were probably not responsible either so it is pointless talking about the past.

Mr HATTON: It will be a matter of some interest to listen to the debates on these subjects at the constitutional convention.

Mr BENNETT: We have to recognise that we are talking about the enshrinement of the rights of individuals in a constitution. On the other hand, the land trusts vest land in groups of people, leading to the problems which Col has explained in terms of the rights of individuals who live on Aboriginal land. The rights of individuals and the rights of groups of people are 2 distinct matters and I suppose that is why the committee has looked at a preamble in terms of recognising that there are different forms of land tenure in the Northern Territory. We cannot get away from that. It has been enshrined in terms that are beyond the scope of this constitution to change, and any attempt to change that situation would probably be rendered invalid by the Commonwealth, which is the source of any power we might have to develop and Territory constitution.

Mr SETTER: That is right. It is very important to understand that the Aboriginal Land Rights Act is a Commonwealth act.

Mr BENNETT: Exactly.

Mr SHANNON: I have a recommendation regarding anybody else's land rights. It is that only Australian persons, defined by citizenship, should be allowed to own property in the Northern Territory.

Mr SETTER: Does that exclude permanent residents?

Mr SHANNON: Yes. If you want to own real estate, you should have to be a citizen. I know that might be hard to explain to our foreign trading partners and I am sure that it is in conflict with way in which the Trade Development Zone has been established.

Mr HATTON: What about people who are not yet Australian citizens but who have been granted permanent residency status?

Mr SHANNON: That would be the responsibility of people who are accountable. I am just after accountability here.

Mr HATTON: I understand the point you are making.

Mr MODRA: Could I just have some information on your proposal for a Territory Constitutional Convention? It was one of the matters you referred to in your opening comments.

Mr HATTON: To be honest, we do not have a fixed view. I can make some general comments, however. Basically, 2 options have been presented. The first is that the convention be comprised of people appointed from representative groups in the community and the second is that it be comprised of people elected either from within particular groups or areas. The choice is between an appointed or elected convention, or one which is a mixture of both.

One of the questions which arises is how we get something that is representative and is seen to be representative? Another is that of Aboriginal representation, cultural representation, women's representation versus men's representation, regional representation, local government representation, trade union representation, industry representation, religious representation and so on.

Mr TREMETHICK: Pensioners, grey power.

Mr HATTON: There are so many different interest groups which will want to have a say.

Mr TREMETHICK: What about our high school students, who will be the future residents of the Territory?

Mr HATTON: Yes, youth. The fear is that if we sat down and wrote a list of the groups which might be represented, there is almost a guarantee that we would get it wrong somewhere. However, we have been trying to get an idea of which interest groups people feel should be represented, leaving aside the question of whether it should be on an elected or appointed basis, so that we can get an idea of how large the convention might be. At this stage, we are thinking in terms of 50 to 60 people.

Mr TREMETHICK: Representing 120 000 people?

Mr HATTON: Yes. There are other issues as well. One is the question of whether that convention may break into specialist groups. I believe that there is certainly a need for some legal representation. It will certainly avoid problems further down the track if good constitutional legal advice is available in some way. It will certainly be essential at some stage. It may be possible for the convention to break into smaller subgroups and for those groups to report back to the convention as a whole. The select committee has not made any recommendations in relation to these matters and I am sure that you will understand why. As I said today to a lady in my electorate office, if I put up a recommendation in relation to the formation of the constitutional convention, there is one thing I can absolutely guarantee: it will be alleged that I have tried to rig it, no matter who the members of the convention are.

Ms COOK: Steve, you said earlier tonight that you hoped that you would stir some interest and obtain some feedback. I am sure that the people who have attended this meeting will go home and talk to their neighbours and friends and, as that happens, this meeting will have a spreading effect which will create a great deal of discussion within our community. I would like to think our community will have the opportunity to sit down at some stage in the future, probably in greater numbers, in another meeting like this one. Do you see that as a possibility?

Mr HATTON: Most certainly, either with the committee as a whole or with members of the committee. The opportunity is available to either the broad community or to particular groups within the community. We are really keen to have the opportunity to mix with the community and to discuss issues with people.

Ms COOK: I believe quite firmly that most of the people here tonight were not quite sure about what you were looking for. I believe that they are well and truly aware of that now and that, probably in a few months' time, a discussion like this would be quite fruitful.

Mr HATTON: I understand that between now and the middle of May we are going through this exercise with 59 separate communities throughout the Territory. The aim is to get people thinking and talking about the issues. We expect to go back to all of those communities later in the year, hoping that by then people will have thought about some of the issues and will be able to come forward with comments and submissions.

Mr SETTER: Mr Chairman, it is worth drawing attention to the fact that, on 29 May and 30 May, the committee will be meeting publicly in Darwin. I think that meeting will be held in the Legislative Assembly.

Mr KEARNEY: Is that for ordinary citizens?

Mr HATTON: Anyone can come along.

Mr SETTER: If you would like to make a written or a formal submission, that would be an opportunity.

Mr HATTON: Or you could attend and listen to the submissions

Mr DRAFFIN: This is a very important question. When are you going to call this new state?

Mr HATTON: You want my view? I would call it the Northern Territory.

Ms COOK: On behalf of the Palmerston community, I would like to thank the committee for this meeting and I look forward to its next visit.

Mr HATTON: Thank you very much. I thank everybody for their participation. It has been an excellent evening.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

BAGOT — Tuesday 28 March 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Norm BUDDY
Mr Dick NIKI

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

Mr HATTON: I formally declare this meeting of the Select Committee on Constitutional Development open at 10.30 am at the Bagot Community. Thank you very much for coming along today. My name is Steve Hatton. I am a member of the Legislative Assembly and I am the chairman of this committee. The other members of the committee who are with me today are Rick Setter, the member for Jingili, Wesley Lanhupuy, the member for Arnhem, and Col Firmin, the member for Ludmilla. We are all members of a special committee of the Legislative Assembly which has the job of preparing a draft of a new constitution for the Northern Territory. Our committee is different from any other committee that the Assembly has ever had because this one has equal numbers from the government and the opposition: 3 members from the CLP and 3 members from the Labor Party. It is one issue that the CLP and the Labor Party are not arguing about and that makes it different again. We seem to be arguing about everything else in the country but not this one.

The second thing I would like to say is that we are not asking you whether or not you think the Territory should become a state. That is a separate question. But please accept and recognise that one day, whether it is next year or in 5 years time or in 10 years time or in 20 years time, the Northern Territory will become a state. If you can accept that, and I am not thinking about when, you will understand that, before we can even think about that question, we have to work out what sort of a state we want to have, how we want it to run, how we want our parliament to go, what rights people should have protected and how we want our society to go in the future. We do that by writing a constitution. If you wanted to set up your Bagot Community Incorporated, before you could do that, you would have to work out how you wanted it to run, your committee, what rights the committee would have, how you would change the committee and all the general rules about how you wanted to run your community.

It is the same thing with the whole Northern Territory. Before Australia could become one nation, they had to write up a constitution to make that happen and that is the job we are working on. If we are going to do it properly, we need to make sure that it is something that all the people of the Territory want. And that is why we are going out as a committee around the community talking to as many people as possible, saying: 'Please have a look at this. Have a think about it. Get your ideas worked out as a community and come and tell us what you think should be in the constitution'. Only by doing that can we make sure that we write a law, a constitution, that is one that expresses the views, the feelings, of all the people. It really is important for you to have your say and bring forward your ideas on what you think should go into that constitution. It is not going to be a quick job. We are not just walking in now, talking for 10 minutes and then going away to write it up. At this time, we are asking you to have a think about it. Ask us any questions you want about it and have a talk among yourselves later. Think about it. If you have any questions later, you can ring us up and ask us. You can ask one of us to come out and talk to you more about it. Think it through and then, when you have got your ideas worked out, come and tell us. And we would like to get that done at some time this year so that, over Christmas and in the New Year, we can sit down and start to write up the constitution. But that will not be the end of the story.

After we have done that, we go to the next stage and that is the second thing we want you to think about. We are only preparing a stage 1. We also want to form what is called a constitutional convention, which is a big drafting committee. It has got to have people from all over the Northern Territory whose job will be to take our work and have a look at it and say they like

this, they do not like that, they want to change this or they will not accept that. They will prepare a final document which will then go to all the people in the Northern Territory to vote on. There are 3 steps. We are doing step 1, preparing a draft. Step 2 is a convention of Territory people and step 3 is a referendum, a vote of all the Territory people. You can see it is going to take a long time. It is not going to happen quickly and it is going to involve the people so it really will be the people's law. It must be the people's law. And it is important for you and for your children and your grandchildren that you really think carefully about it and you come and you make sure you tell us exactly what you are thinking about it because it is the most important law in any country and in any state. It must reflect everyone's views. We cannot just think for ourselves. We have got to think, 'Okay what is good for me but what is also good for the other man, the other person?', because it is important that we get a community that we all want to live in and we can all live together with mutual respect into the future. We have got to work on that by means of this document.

I have probably talked too much already so I will not say any more. However, I will ask the other committee members if they wish to add anything. Perhaps Wesley would like to start.

Mr LANHUPUY: Thanks Steve. Thanks a lot, Mr Chairman, for giving us the time to come here to talk to you mob. I personally think, like Steve said earlier, it is important that the people in the Northern Territory come round and talk about this paper that we have given to you because it is going to involve a lot of talking. Decisions will be made that will affect both white people and black people in the Northern Territory. What we are asking you to do is to look at that paper and at least start talking about it and thinking about it because it is important to make sure that you come and talk to us and tell us what you think and what we should have in this new constitution for the Northern Territory. It is important that we as a committee know about your views on it so that, when we have this big meeting, whenever that is on, to talk about how we should have our law in the Territory framed, we have your views.

It is no good some time after for you to argue to us: 'But we weren't consulted'. It is important that you talk about it now, give us your views, write it down, ring the office. There is a bloke in the office who will always be available to talk to you. If you want us to come out to talk to you again, we will do that. We do not want to rush it. We want this law to be the Territory people's law so that every one of us has a say in it and that we are happy with it - not just one side of the Northern Territory people are happy but the whole lot of us. That is why it is important that we as a committee are going around to as many communities as possible - white and black - to say to them: 'Look here is this paper. One of these days the Territory hopefully will become a state but, at this stage, let us start talking about making a law that will suit us'. That is why it is important from this committee's point of view that you talk to us and give us your views so that, whenever we have a law, it will be for the whole lot of us, for people throughout the Northern Territory, and we will be happy instead of having arguments and fights among us about what should be in it.

From this committee's point of view, it is important that we go around and talk to as many people as possible. We will be doing that for the next 3 or 4 months. We will be visiting places like Alice Springs, right down the centre, Groote Eylandt, Nhulunbuy, to get people's views. I of course want Aboriginal people to make sure that our voice is heard in this constitution, that what we want for the Territory is placed in this paper so that, when the parliament looks at it, it will know what the Aboriginal people want and hopefully it will listen to us. That is why it is important from my point of view to make sure that Aboriginal people put their views to this committee and to the parliament.

Mr HATTON: Thanks, Wes. Col, would you like to add anything?

Mr FIRMIN: Thank you, Steve. I reiterate what Wes said. It is very important that you read all the documents that you have before you. They are guidelines of things and questions that you might like to ask. From talking to Norm in the past on various matters about Bagot in particular, I know you have some ideas about how Bagot wishes to fit in the scheme of things. You are a little different and perhaps unique in your land ownership and management here. You may want to talk about those things and how you relate even into your local community as much as you do into the wider community of the Northern Territory.

As Wesley said, it is important that there are no fights at the end of our discussions in several months time. It is something unique in Australia for a group of people to be able to sit down and talk about what they want for their future. For every other state in Australia, whilst there has been some discussion on their constitution, their constitution was put in place in the very early part of their development and they had very little history to go on. The constitution was drawn up basically by learned people and by legal people. Here I think we are unique. We are a unique mix of people in the Northern Territory and we need to reflect the things that are important to us. I think the fact that we have had such a long history of living together before we come to a point in deciding what our laws will represent is very important to us and I think it is important to you. I am your local member here and, if you have any problems that you wish to discuss about constitutional development, you can talk to Norm and Norm will ask me to come from my office down the road and talk to you again at some time in the future. I will be very happy to do that when I am here in Darwin and not travelling with the committee.

Mr HATTON: Thank you, Col. Rick?

Mr SETTER: Thanks, Steve. I think it is important to understand what we are talking about when we say that we are here to discuss with you the development of the constitution for the Northern Territory. As you probably know, the Commonwealth of Australia and all of the other states already have their own constitutions, but we do not have one. That means that our relationship with the Commonwealth is like a child to a parent. In other words, if the parent says, 'This is what you will do', then that is what we have to do. In a state, that is different. The relationship between the state and the Commonwealth is quite different because the state has its own constitution. A constitution, of course, is a set of rules, a set of guidelines, like a bible if you like. What we are trying to do is to develop our own set of rules, our own guidelines, our own bible, and that is very important because that is the first step. You must have a set of guidelines, a constitution, before you take any further constitutional steps. Of course, we will be discussing a number of things with you in the months ahead. How will the constitution affect land rights, if at all? How will it affect community government? Should we entrench in the constitution the recognition of community government? Many people would say that is a good thing, and I believe it is a good thing.

Those are the sorts of issues that we want to discuss with you and we would like to hear your point of view. We would like to hear what you have got to say about that. It would be simple enough for our committee to sit down and draft a constitution without even discussing it, but there would be no point in doing that. It is very important that we talk to all of the people in the Northern Territory to seek their views before we write the draft constitution, otherwise it would not have the support of the people, and that is one of the reasons why we are here talking to you today.

Mr HATTON: Thanks, Rick. We have done a lot of talking. A lot of this obviously is to explain to you what we are doing. Mr Chairman, perhaps you have some questions that you would like to ask us.

Mr BUDBY: Not as yet perhaps. I think it would be better for us to have a meeting ourselves and then we can call Mr Firmin or somebody to come out and we can explain what we think. Perhaps we could have a meeting ourselves within the next week or two.

Mr HATTON: You do not necessarily have to do it in one go. You can have quite a few goes.

Mr BUDBY: No, over a period of time. Certainly.

Mr HATTON: We can leave some extra material behind for you also.

Mr BUDBY: Yes, I would like that.

Mr HATTON: There are other things that have come out. The book that we gave you is what I would call the everyman's guide to the constitution. It is an introduction on what sort of things go into it and what sort of questions we are asking. But, if you want more information, there is a book like that. This book here was actually written as a simple summary of the stuff that is in here, but this has more of the arguments for and against different things in here. If you see something in here that you would like to know more about, you will find more about it in this book.

Don't just tell us what you want in the constitution. We also need you to tell us who you think should be in what we call the constitutional convention. What should be the Aboriginal representation? How big should the committee be? Should there be women as well as men represented? Should there be representation from Central Australia as well as the Top End. Should there be local government and community government representation? How do you think we should put that committee together to make sure it is going to represent Territory people right across the spectrum? I am asking a lot of big questions and that is why I do not expect any quick answers.

Mr BUDBY: That is something that will have to be thought about pretty thoroughly before anybody could commit themselves to something like that.

Mr HATTON: I think so. We have been talking about it for 3 years now and I guess we have got a bit of a head start on you. There are also other books on some of the general issues on statehood which we can leave for the community. One that I know will be important to you is on land matters. I know that is important for Aboriginal people particularly. It gives some of the ideas on ways that might be able to be handled. There are ones on national parks and mines and energy matters. They are available for you too. If I can come out today and feel that I have encouraged you to think about it, talk about it, discuss it among yourselves so you come back and tell us what you are thinking, then it has been successful for me.

Mr BUDBY: Yes. (Inaudible) ... do that with all the communities. I think that is fair all around.

Mr HATTON: Because you will not find a more important thing than this one.

Mr BUDBY: That is right.

Mr HATTON: As Wesley said, we argue about lots of different things in the government, in politics, don't we? We fight about these things and fight about those things. Sometimes something comes along that is really deeply important. It does not just affect you and me today. It is going to affect our children and our grandchildren and their children. When you think about something like that, you have really got to take your time and do it properly. That is why we are not arguing about how we go about doing this. It is really important. It is important for you to really make sure you think about it. Anything else you want to raise?

Mr BUDBY: I have got nothing more to say.

Mr SETTER: Maybe somebody else would like to ask a question.

Mr NIKI: My point of view is that I reckon it will be better for us to have a meeting here and tell you what we would develop, like today's meeting, so hopefully, when next time comes along, we might have all the community together.

Mr HATTON: Thank you. I formally close these proceedings.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

BELYUEN — Wednesday 29 March 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr John SINGH
Ms Lorna TENNANT

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

Mr GRAY: My name is Rick Gray. I am the secretary to a committee of the Assembly of the Northern Territory. The committee has come here today to talk to your community about a constitution for the Northern Territory. I would like to introduce the committee to you. Steve Hatton is the chairman of the committee and the members with him are Wes Lanhupuy, Col Firmin and Rick Setter. Mr Hatton will talk to you now.

Mr HATTON: Thank you very much. Our apologies for the delay in starting but it really is very pleasing to see so many people have come to hear us and I hope to talk to us today about this question. Our committee is a committee from the Northern Territory Legislative Assembly. At the back of this book that we gave you, you will see that it has all the people who are members of this committee. There are 6 members and this is a special committee unlike any other one of the Assembly because it is the only one that has got the same number of Labor and CLP members. It has got equal numbers from government and from the opposition. That is because, in what we are talking about, there are no arguments between the government and the Labor Party. We are both saying the same thing and trying to get the same thing worked out so we are working together. It is not a political thing. It is just all of us working for the Northern Territory.

Our committee has got a job to do and that is to start work to write a constitution for the Northern Territory. You have heard a lot of talk about statehood, about whether the Northern Territory should be a state or whether it should not be a state. There are lots of arguments about that question. We are not asking you if you believe it should be a state or not be a state yet. That is another question. What I ask everyone to think about is to recognise that one day, whether it is next year or in 5 years time or 10 years time or 20 years time, the Northern Territory will become a state. It is only a question of when.

Before we can even think about becoming a state, we are going to need to work out what sort of a place we want and we do that by writing a constitution. Just the same as if you want to set up community government in a community like this, the first thing you have got to do is to work out the constitution: how it is going to work, how the council will be elected, what it can do, what it cannot do and what rights the people have to say about what happens. It is the same thing with a state, with the Territory. It is the same thing with the whole of Australia. Before they could make one country for Australia, they had to write a constitution. They did that 100 years ago. We have not got a constitution for the Northern Territory and what we are doing is going around talking to the people all over the Northern Territory saying: 'What sort of things would you put into a constitution? What sort of a parliament do you think we should have? What should be in there to protect your rights? What sort of a society, what sort of a place do you think the Northern Territory should be for yourself, for your children and for your grandchildren? How do we make our place, the Northern Territory, a place that is a society that we all want to live in, that is good for everyone and recognises the needs of all the people?' You do that through your constitution. And we are going around explaining to people what we are doing, providing the information you might want and we are asking you to have a think about it, to talk about it among yourselves and tell us what you think should go into a constitution for the Northern Territory so that we can start our work, our part of the job in making this constitution.

There are 3 parts to this job. Our committee is doing the first part. We are preparing what will be known as a draft constitution. We are also making recommendations on the formation of a committee which is called a constitutional convention. That is like a giant drafting committee of

representatives from all over the Northern Territory. Those people will take our work, they will take our suggestions and they will think about them, talk about them and argue about them. They might accept some. They might change other ones and they will work up a document that they think should be the constitution as the next stage. That is stage 2. When they finish their work, that constitution will be put to all the people to vote on in a referendum.

So there are 3 steps and we are only right at the first little shuffle in the first step by going around and saying: 'Please, think about it now and start looking at some of these questions'. When you have thought about what you think should go into this constitution, we will come back. Would you please think about it so you can tell us what you think to make sure that you have your say and to make sure, when this job is finished, it is a constitution that is very much the law of the all the people of the Northern Territory. It is going to take a long time. It is not going to happen quickly but it is important that you become involved and have your say. It is a great chance to have your say on how the Northern Territory should be in the future. I might ask Mr Lanhupuy if he would like to add anything before we open up the meeting.

Mr LANHUPUY: I think Steve has covered most of the important things about this constitution and this committee. We are going around a lot of communities in the Northern Territory asking people to try and talk about this paper that he has just given you. I think it is important because it will involve a lot of us. This will be like land rights for Territory people, not only Yolgnu people. This paper will be like land rights, the Land Rights Act for the Northern Territory. It will give us that right to do what we want in the Northern Territory and the way we want to develop our land.

The important thing is that we are going around and asking you people to talk to us and express to us what you mob think. I think it is important that we in the Northern Territory, one time or another, should control our own lives, the way we live, what laws we want and what government we want looking after us. Should we have an Administrator appointed by the federal government or what sort of law system do we want in the Northern Territory? What kind of land management do we want? Do we want Canberra looking after our land like the parks that we have? Those sorts of things. Do we want land rights under federal government? Those sorts of things. And like I said at Bagot the other day, it is important for Yolgnu people to put your views to this committee because it is no use us mob arguing 5 years later that we did not talk to you. Your chance is there now to talk to this committee and put it to them and say: 'We want land rights in that constitution'. If you want that, you tell us mob now. And, hopefully, we will put that to this committee which will be made up of a lot of people that will draft the law for the Northern Territory.

It is important now because it has not been done for over about 100 years. The last one was in Tasmania and the Northern Territory is just starting to gain recognition. Because Yolgnu people make up 30% of the Territory's population, it is important that you talk to this committee and make sure that we hear your views. Whatever you think: whether we should put land rights into the constitution of the Northern Territory and whether it should recognise the rights of religion. Those sort of things. It is important because, once the constitution is ready, your children and my children are going to have to live under it and the decision we make now is crucial for us mob's future children. Therefore, like I said at Bagot the other day, it is important. It is no use you and me arguing 5 years later down the track when the constitution is made, when everything has been agreed to. Your views and arguments, whatever you want, put them to this committee. We can only listen to

you, write it down and then present it to this big meeting that is going to happen hopefully in about 2 or 3 years time.

The important thing to remember is that we are not pushing for a time limit. The committee is going around saying to people: 'Start talking about it. It is going to happen regardless what you mob think'. It will happen. We will get a constitution in the Northern Territory and we will get statehood in the end. And if us mob, Yolgnu people, want to achieve anything in the Territory, we have got to have our say in it and be a part of it. The constitution will be no good if part of the Territory such as Yolgnu people say: 'Sorry, we do not want to have anything to do with it'. It will be nothing. So that is why we are saying that we want to hear from you. Talk to us, write, ring up. If you want us mob to come back, we will come back to talk to you mob further about it. We are visiting as many communities as we can throughout the Northern Territory and asking views about what you mob want in this constitution. Hopefully, in the end, we want this constitution to be the people's constitution, not for us mob, for politicians. We want the constitution to be a constitution made for and by the people in the end so that it will bring us all together in the Territory. That is why it is important that we put our views in and that people like us mob listen to those views expressed by Yolgnu people or women's liberation mob - the whole lot.

Mr HATTON: As Wesley said, it is very important that this constitution has got what is good for the Yolgnu people. When they think about that, Yolgnu people also need to think about the balanda as well so that we work out how everyone, Aboriginal and non-Aboriginal people, can live together. I said the same thing when I spoke in Palmerston last night. Everybody in the Northern Territory has to start thinking about it for ourselves but also for the other person and how we can find a way that we can all live together with respect. If we can do that, we might make something really good for all of us. That is what we must work for but we need you to be involved and we need you to think, talk and tell us what your worries are, what your concerns are, and things that you think are important for you. Have you got any questions that you would like to ask on anything about this?

Mr LANHUPUY: I might just explain something that might be much closer to home for us mob. At the moment, the Northern Territory government here in the Territory only works by an act of parliament that they call a Self-Government Act. That federal government in Canberra can wipe us right out just like that. The Land Rights Act is involved in that process. It is just an act of parliament. It is not in the constitution. If John Howard and his mob get into parliament and, if they do not want land rights, they can wipe it out just like that, by a motion in parliament because it is not in the constitution. If we want land rights in this kind of paper now, that is what we are trying to get you to tell us. Do you want land rights in that constitution?

If it is in the constitution, the people of the Northern Territory have to vote, not only us who work in parliament. We do not make that decision. It is important that the whole lot of us talk about it and understand what we are going to go for. It is going to affect us. We may make the decision over the next 3 or 4 years or whatever, but our children and our children's children will be involved and will have to live under this new law. It is not only the Land Rights Act for the Northern Territory Yolgnu people but a Land Rights Act for the Territory. It will affect our land, it will affect our rights, how much tax we pay, the whole lot, because every other state has got a constitution except the Northern Territory. We are the last one and the parliament in the Northern Territory has decided to say that we are going to push for our constitutional rights to be able to make sure that we

fight for the same type of money and everything from the federal government and have the same sort of rights on a whole lot of matters whether it be tax, funding, education - everything.

Some of those things we do now. The Territory government looks after education, health and a whole lot of things exactly like Queensland, Western Australia or South Australia. But, we are not a state yet and, if the federal government wanted to just take us off, they can do that by an act of parliament. It is important for us mob to put our views. Sometimes you might not trust us mob, the Northern Territory government or parliament. You might not trust us concerning land rights and everything else but is it better for you mob to deal with a government here or down there? They are the sort of things that you are going to have to think about and talk about.

Mr SETTER: Mr Chairman, there is another matter that I think would be of great interest to Aboriginal people too and that is community government. I assume that you have community government operating in this community? You are just fixing it up at the moment. Obviously, it is something that you have considered and thought about quite a lot. Community government or what we would call local government is a matter that could also be included in the constitution. The recognition of community government can be protected. It could be written in so that it is there forever, locked into the constitution and no future government could ever take it away. That is another issue that is of great interest to you, I would think. That is a further evolution of responsibility so that you are making your own decisions locally in the community about the things that you want within your own community. I personally think that it is a very good thing.

Mr SINGH: What happen here to people who come up and say, 'No, we don't want that new law. We want the same old law. We want the land rights to be in that paper'.

Mr HATTON: In this one?

Mr SINGH: We just want to have our own law, not to change our law, like Aboriginal law. To make sure that it is put in that paper also ... (Inaudible).

Mr HATTON: You can do that. That is one sort of thing that a constitution can do. The good thing about a constitution is that the politicians cannot change it. It is like the people's law. You can write into the people's law that you want to have some protection for your rights, for your culture, for your Aboriginal law. You can write that in and that will give it strength, more strength than it has got now because then the federal government cannot touch it and the Northern Territory government cannot touch it. It is safe. The only way that it can be changed is if everybody in the Northern Territory votes to change it and you have got a vote then too, you have got a say. That is the importance of this sort of law.

The same thing with, as we said in other communities, land rights, and Wesley raised that. The truth is that Aboriginal people are very worried about land rights with statehood. They do not trust us a lot. Well, the constitution is one way to provide protection for your land rights. It would be stronger protection than you have now because now, if Bob Hawke wants to, he can take away your land. He can just take away the act of parliament. He will not do it. I am not saying that he will do it. Please do not get me wrong, I do not think he will. I do not think either side will.

Mr SETTER: No, neither will.

Mr HATTON: John Howard will not either. No one is saying that they will take your land away. We are not saying that, but it is a question of saying that, no matter what I say to you, if I have not got the power to do it, you are in a stronger position, aren't you? That is what a constitution can do for you. That is the difference. It is what they call entrenching your rights because it is a stronger right. It is important for you to think about it. Among the books I gave you, there is a simple, small book and there is a big thick one, thicker than that one. We will leave copies behind for you. If you want to know more about what something means, you will find more about it in there, in that one. There are 11 pages of questions that that book asks you. There are lots of things to think about.

There are other books that we have got. One on how you go about forming what we call a constitutional convention. We want you to tell us who you think should be represented on that. We are asking that question too, so it makes sure that it represents properly the people right across the Northern Territory, from everywhere, and all the different people in the Northern Territory. We are also asking how big it should be and there is another one there on how you go about becoming a state and that is there for your information. There are other books that are available on land matters and that has got a lot of things about land rights and ways of protecting your land rights. There are ones on national parks, mining and minerals and energy. Those books are available to you too. Take the time to read about it, think about it and talk among yourself about it. Form your own ideas, what you think, then make sure you come and tell us about it so you really do have your say. That is what is important.

Mr LANHUPUY: The most important thing is that we are about 25% to 30% of the Territory population. What this committee is saying is that, if one part of the community does not like what we are saying, please talk about it so that when this book is made, this constitution is written, it will be a constitution for the people of the Northern Territory. If us mob decide 5 years later and say, 'Sorry, we do not want it', it will be too late. Our chance is here now to tell this committee what us mob want, whether we want land rights in the constitution, whether we want our bilingual education - you name it, the whole lot, Aboriginal law, customary law - in this constitution. Now is the chance for us mob to put it to them because it is important, otherwise if we sit back and let other people talk about it, we will lose once again.

It is crucial that Yolgnu organisations like land councils be involved in it. We are not going to seek organisations one, one, one, like that and say: 'Come and talk to us'. What we are saying is that we are a committee established by the parliament to talk to everyone. We are not seeking views from one specific organisation. If they do not want to put in their views, that is their problem. We are here to take views from the community as a whole regardless of whether you are balanda or Yolgnu. That is why this committee has been made up to try to come up with something that hopefully will be the people's law in the end, made up by the people of the Territory for the people living here. And you might want custom in it, you might want customary law in it, land rights entrenched and land management or whatever. They are the sort of things. That is why these other papers will give you more information about it.

Mr HATTON: And different ways of looking at those problems. You should think about different ways.

Mr FIRMIN: In the process of thinking about those things, we also would like you to think about not only just the things that you would like to see in the constitution, that you believe you would like as your rights, but also to think in general terms. In the broad sense, we are all Territorians and we all have a responsibility to the Northern Territory so we also need to look at the responsibilities that we have to each other so that, when we talk about customary law and the way in which you want your law entrenched, you must think also how that affects everybody else, not just you, but all of the rest of the Territorians. It is going to be very important for us to get a balance and it is worth sitting down and looking at how everybody relates to each other, how we can all live together or work together and make the Territory a strong place where, as Wes says, his children, my children, Rick's children and Steve's children and your children all are proud of being in the Northern Territory and want to stay here and work here and raise their children here. It has to be something that they can live with for a long time so we all have to be able to live together. When we think about the things that we want in the constitution, we not only have to think about the things that we want for ourselves, we have to think of how it is going to affect the rest of the Northern Territory as well.

Mr LANHUPUY: Like the Land Rights Act from our point of view and from your point of view. The Land Rights Act is the best thing that we have had going for us so far. What we are talking about now is like land rights. That will affect land rights. What we are talking about now will affect land rights. If we do not have any input to this paper, we are going to be left behind. Apart from land rights, this is the next most important thing for us mob to talk about because it will affect us, our daily lives and our children's lives for the years to come. You people now have got that opportunity to put that view across. Our children will not and our children's children will not. They will have to live under this law. Our children's children will have to live under this law so what we put into this law is going to affect them for a long time until such time when the whole of the Territory votes against it. So it is important that you talk about it throughout the community and put your views to this committee. There is a bloke here that you can ring back and tell him or you can put your views through the Office of Local Government.

Mr HATTON: If you want us to come out again, we will come out again.

Mr LANHUPUY: We can always come back again and talk to you mob further about it. People at Bagot the other day said to us: 'Thank you very much for your information. We will look at it, talk about it in the community at our meeting and we will ask you to come back again'. We are not pushing you mob to make a decision next year or the year after. We are saying to the Territory community: 'Start talking about it. Come back to us'. It will happen. That is the important thing. It will happen.

Mr HATTON: You talk among your community about what you are thinking. Other communities are doing the same thing and they will tell us what they are thinking. We can tell you what the other mob are thinking about. You might not agree with them or you may agree with them. By talking around, getting information around the place, we will start to develop something and we all will be happy. That is what we have got to work towards. It is not going to happen quickly, is it? There must be a lot of talk. Any questions?

Mr LANHUPUY: If there are no questions, we can always come back and talk to you mob. If you want Steve or me just to come out and talk to the community as a whole, or Col or

Rick, we are available to come out and talk to you and just explain this thing further to you mob. The important thing is that I personally would like us mob, Yolgnu people, to have some input into the whole thing because, if the whitefellas want it and Yolgnu people do not want it, it is not a constitution. It is not going to work for us mob. And if we are going to fight against that mob for land and everything else, it is not going to work and this constitution is supposed to be for everyone: your rights, this one's rights, my children's rights and my children's children's rights for years to come. It is important that we now make an input to this committee. Like I said earlier, what we are going through now has not happened for the last 100 years.

Mr HATTON: It never happened up here.

Mr LANHUPUY: It happened in Tasmania about 100 years ago and it might be a new thing for the whole lot of us but it is part of, I suppose, what we in the Territory believe. It is like you mob asking Health and Community Services to have your local government here. Johnny Singh might want his own outstation. That is like cutting strings from this community Belyuen and having an outstation. That is what the Territory is doing. We are cutting that string from Canberra so that we can make our own law here. It is important, if we want this law here in the Territory for us mob, Territory people, we have got to have that input in there. I and all this mob here, we all believe that, one of these days, we will have a state here but statehood is a long way away from us. If we do not get this constitution right, I believe statehood will not happen.

Mr HATTON: It will not happen well.

Mr LANHUPUY: It will happen with some disagreements but the constitution is important.

Mr HATTON: I think we have talked enough.

Ms TENNANT: Yes, I think so. Sorry to have to say that. I am Lorna Tennant who manages the council office and I think it would be better if we had some more meetings of our own to discuss this further. Coming like this now and putting that in front of the people who do not quite understand how it works, I think it would be better if we met among ourselves and discussed it at a further meeting. Maybe good things will come out of it and I do not know how long you expect it will be before you come back

Mr HATTON: I do not think it will happen quickly. When you are ready.

Ms TENNANT: I was reading through the material the other day to see if I can understand it myself. We need a few more meetings to go through it a bit further. The people may be a bit shy because ... (Inaudible).

Mr HATTON: I appreciate that. If we can leave with the people of the community saying that they will go away and talk among themselves, we are really happy. That is what we came out here to try to get you to do. Thank you very much.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

ADELAIDE RIVER — Thursday 30 March 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Ian LANCASTER
Mr Bruce ROSS
Mr John FAWCETT
Ms Maureen ROBERTS
Mr Lewis WILKES
Mr Leigh BROWN
Mr Peter RUZSICKA
Ms Patsy FAWCETT

Also present:

Mr John WHATLEY
Ms Juliet LEWIS
Mr Malcolm PASSMORE
R. HARDING
A. PAZNIEWSKI

NOTE: Edited Transcript

Issued: 24 April 1989.

Mr HATTON: May I have your attention please? Thank you for coming along tonight. It is obviously always preferable to have as many people as possible in attendance but I certainly am not going to let this sway me and I know it will not sway the committee members. First of all I would like to take the opportunity to introduce myself and the members and talk about what our committee is doing and how we are going about the job that we have been set. We are here to hear anything you want to tell us or to answer questions that you want to put to us.

Before we start I would like to make 2 things very clear. Firstly we are not asking you whether or not you support statehood. That is not the question. We are asking you to think about, talk about and give us your views about what you think should go into a Northern Territory constitution. Our committee, which is known as the Select Committee on Constitutional Development, has been established by the Legislative Assembly. It comprises 6 members - 3 from the Country Liberal Party and 3 from the Labor Party - and is unique in that respect. It is the only committee of the Legislative Assembly that has equal representation from the government side and the opposition side and it reflects very much the very bipartisan approach that we are taking on this whole issue of constitutional development in the Northern Territory.

Our job is to prepare a draft constitution for the Northern Territory. You know there has been a lot of debate about the Northern Territory becoming a state, and that debate will continue. Some people would like the Northern Territory to become a state very quickly and others would like it to take longer. I would ask you all to recognise that whether it happens next year, in 5 years or in 10 or 20 years, one day the Northern Territory will become a state. That is something that inevitably is going to happen.

When we become a state, we are going to need to have in place our own constitution. Every state in Australia has its own constitution. Australia as a nation has its own constitution. The Northern Territory does not. The closest we have to a constitution is the Northern Territory Self-Government Act. Until we have worked out, as a community, what sort of a place we want the Northern Territory to be, what sort of a society we want to have, how we want the processes of government and administration to operate, how we want the courts to work and what rights and obligations people should have, we cannot even consider the question of progressing to statehood. Before we even think about when we should become a state, we need to work out what we want that new state to be like. That is what the process of developing a constitution involves and it certainly will not be a quick job.

Basically, there are 3 steps. The first step, which our committee has been working on, was to conduct research and provide background information, which eventually found its way into a booklet called 'A Discussion Paper on a Proposed New State Constitution for the Northern Territory'. That took nearly 3 years of preparation, of research into constitutions around Australia, the Self-Government Act, the federal act and a range of overseas constitutions and different models from around Australia and the world. The aim was to provide a range of ideas to put to the people to think about.

Our second job is to take information to the community, as we are doing now, and say: 'Hey, we want you to think about this, talk about it and come and give us your views. Maybe we have got some of our ideas wrong in here. Maybe there are things we have not thought about.

Maybe you think we have got it spot on. Whatever it is, we would like to hear from you. We want to know, during the next few months and ideally some time this year, what your views are.

We will then take those ideas, together with our own research and will present a draft constitution to the Legislative Assembly. We will also make recommendations to the Assembly on how we go about setting up what is called a constitutional convention, which would be like a giant drafting committee comprised of Territory people. Who should be on it? How do we go about selecting them or electing them? What sort of representation should it take into account? Should there be local government representation, Aboriginal representation, regional representation, women, ethnic communities? What sort of mix? Business, trade unions? What sort of representation do you think would be appropriate for that convention, which will have the task of taking our work, going through it, accepting, rejecting or varying particular aspects, and coming up with a proposed constitution as the second step in the process? The third step involves putting the proposed constitution to the people of the Northern Territory, for acceptance or rejection, by way of a referendum.

You will appreciate that we have taken basically the first shuffling step of the first shuffling stride down a very long track towards our objective. If we are quick, maybe we will get it done in 2 or 3 years. It could well take longer. What is important is that the work we do in this constitutional development process is done properly and properly involves and reflects the broad views of the people of the Northern Territory so that, at the end of the day, it will be very much a people's constitution, not a politician's constitution or a lawyer's constitution. If that occurs, it will be something you and I and all of the people of the Northern Territory can be proud of. It will be something we can use as a foundation stone to build for the future of the Northern Territory. There can be nothing more important than that, because that foundation stone will set the general direction for the Northern Territory well into the next century. It will be the basis for the sort of society we want for our children and our grandchildren and their children. It is not a thing we can take lightly and it is not a thing we can do quickly. It is a thing we all must get involved in to do it properly.

Having said that, I might ask whether any other members of the committee would like to raise any points.

Mr SETTER: Thanks, Steve. My name is Rick Setter, MLA for Jingili in Darwin. Just to follow on from what Steve said, I suppose one could ask the question: 'Why don't we just take the other constitutions - the Commonwealth Constitution the other state constitutions - and go through them to develop the Territory constitution?' Of course, we could do that. But you have got to understand that it is a long time since the last constitution was written in this country. In fact, that would have been the Australian Constitution, which is now something like 90 years old. Times have changed in this country since 1901. We have changed a lot.

Whilst the other states and the Commonwealth operate reasonably successfully with their existing constitutions, we believe that the situation in the Northern Territory is quite different and unique and that we owe it to the people of the Territory to consult with them in order to come up with a constitution that is relevant in today's society. The Northern Territory's society is different to society in the states. For example, a large percentage of our population, something in the vicinity of 25%, is Aboriginal. Aboriginal people have quite unique needs and desires which have to be addressed. There is no question about that. That situation does not exist to the same extent in the

states. Even apart from that, we have a very multicultural society. For example, Darwin has 50 or 60 different nationalities; a large percentage of our population is made up of people from other countries. A whole range of such issues make it necessary, we believe, to consult with the people of the Northern Territory.

At the end of the day, when we put the draft constitution to a referendum, it will have to be approved by at least the majority of people in the Northern Territory. If they have not been involved in the process of developing the constitution, it is reasonable to expect that they will not understand it and would most likely reject it. That is why we are going to spend a lot of time visiting many communities, probably more than once, in order to consult with the local people and to seek their views. All of those views will then be taken back to the constitutional convention which will have the task of developing the draft constitution.

Mr LANHUPUY: My name is Wes Lanhupuy. As a member of this committee, I would just like to endorse what Steve said earlier in terms of Labor Party support and cooperation in terms of the very important right of the people of the Northern Territory to be involved in the development of their constitution.

We are encouraging that involvement by going out to major communities throughout the Northern Territory. In fact, we will be visiting over 59 communities in the Territory, making people aware of the fact that one of these days the Northern Territory will become a state and that, before that happens, we need to have a constitution that we can be proud of, a constitution that has been made up by the people of the Territory. As Steve said earlier, we do not want it to be a politician's document nor specifically for one interest group in the Territory. We would certainly like it to be a constitution made by the people of the Territory for the people.

I stress that your views are important and that you should feel free, if you wish, to get in touch with the committee's executive officer who can make arrangements for myself, Steve or another member of the committee to come to Adelaide River to address specific issues which may be of concern in this community. It is important that people start talking about the issues, so that we will end up with a constitution that is broadly acceptable. I believe we can do that without a political fight. The Labor Party and the CLP have agreed to approach this issue on a bipartisan basis and if we can do that, I think the Northern Territory people ought to be able to do that.

Mr HATTON: Thank you very much Wes. Basically, what we are saying is very simple. We do not expect people to have a million ideas, to have considered all the clauses of the constitution and to make written submissions to us. What we would like to think is that we can stimulate your interest so that you will start to think about the issues and talk about them amongst yourselves or within your community. We are more than willing to come back, either individually from time to time, or later as a full committee when the community can come forward with its views.

For example, I will put several questions to you. Should there be an upper house and a lower house in the new state parliament or should there be only one house as is the case now with the Legislative Assembly? Should the governor be able to sack the parliament and, if so, under what conditions? How much should electoral provisions, such as who has the right to vote and who has the right to stand for parliament, be written into the constitution? How much should the courts have a role to interfere with the work of the parliament or the government and how should the

judiciary operate? Should certain rights be entrenched in the constitution? The issue of the possible inclusion of a bill of rights has been raised. Earlier this week we discussed the possible provision of constitutional guarantees of freedom of information or the alternative of dealing with such matters through legislation. Should there be some provision, as a number of Aboriginal communities have suggested, for entrenchment through constitutional guarantees of Aboriginal land rights or the concept of Aboriginal land rights?

All of those questions are being asked. We have brought along copies of a booklet which has been prepared as an introduction to some of the issues in developing a constitution and you are welcome to take copies. The booklet gives more detail in relation to various issues and will help you to consider them. If you want further information, we have a toll-free telephone number which will connect you to the executive officer in the Legislative Assembly, who can provide you with additional information. Other documents have been prepared and can be sent to you. One deals with land matters on statehood, including the questions of federal land, Aboriginal land, national parks, and the other with the matters of mining and minerals and energy on statehood. Other documents are being produced on topics such as industrial relations and financial arrangements. As far as the constitution is concerned, they might provide some interesting additional information.

The important working document, particularly in the initial stages as you consider the issues, is the one we have brought along tonight. It poses some of the questions we have been asking people as we have moved around the Territory. For example, do you agree that the parliament should have the same powers, privileges and rights as existing state parliaments? That is a valid question to ask. Should there be less rights or more rights? Do you think the governor should have to give assent to legislation? Should the number of members of the new state parliament be fixed by the constitution or by ordinary legislation? You will find a lot of questions like that. This is your chance, as the people of the Northern Territory, to set the ground rules. For the first time in our history, this is the people's chance to set the ground rules for the politicians instead of the other way around. Please do not miss the opportunity to have your say.

Would anybody like to comment?

Mr LANCASTER: What role would a constitution play before the achievement of statehood, once it has been drafted?

Mr HATTON: Once it has been drafted and approved by the Northern Territory people, it would almost certainly be sitting, ready to come into operation as soon as the Territory becomes a constitutional state. The advantage of doing the preparatory work now is that the constitution will be ready, rather than having to be prepared at or close to the time statehood is granted. If we do it now, we have time to do it carefully and properly.

Mr SETTER: Steve, if I could just enlarge on that point, it is very important that we do the groundwork ourselves and do it now because the reality is that, under the federal Constitution, the Commonwealth has the right to impose statehood on the Northern Territory or any other new state. I understand that there has not been any new state formed since federation in 1901, but nevertheless the Commonwealth has the authority to develop or establish a state under rules as it thinks fit. I will just read to you from section 121 of the Commonwealth Constitution which, together with section 128, sets out one of the ways of granting statehood. It says: 'A new state can be created by

an act of the Commonwealth parliament under section 121 of the Commonwealth Constitution, under which statehood may be granted on terms and conditions, including the extent of representation in either house of parliament, as it thinks fit. That means that the Commonwealth parliament is the sole authority in establishing a new state. It can establish that state under any terms and conditions that it wishes. If we have not done our homework, and if we have not already put in place a constitution that we want and established the guidelines, we could have something quite unacceptable imposed on us.

For example, although this might not happen again, there was recently a referendum in the ACT on the question of whether or not the ACT should have self-government. The people of the ACT rejected that proposition. They said that they did not want self-government. Nevertheless, the federal government decided that it would go ahead and give the ACT self-government, which has now occurred in spite of the views of the people. So the Commonwealth, if it chose, could easily impose statehood on the Territory under any terms and conditions that it wishes.

The other option is that statehood be achieved under section 128 of the Commonwealth Constitution, by way of referendum. The record of referenda in this country is very poor, and the committee therefore recommends that the Northern Territory seek statehood under section 121; in other words, an act of the Australian parliament when the time is appropriate.

Mr HATTON: These matters are covered in the publication I mentioned a while ago. To drive the message home, and I am sure that our legal adviser can confirm this, I will point out that if we do not have a constitution in place at the time of statehood then it is arguable that the federal government, after statehood, would have the power to amend the new state's constitution. If the constitution exists before statehood, the Commonwealth loses the right to amend it. It is purely the responsibility of the state and its people. If we have the constitution in place before statehood, it provides us with a protection. The constitution is very much the property of the people of the Northern Territory and there is no way the federal government can impose its rules upon it.

Mr LANCASTER: Can I ask about the economic consequences of statehood and whether the constitution has anything to do with them? We all know that the Northern Territory has a very low population and is supported by the southern states, so what will the economic consequences be?

Mr HATTON: I am always delighted to receive this question because it gives me an opportunity to kill some of the biggest furbies about the whole issue of statehood. Everyone says that we are funded by the Commonwealth and asks how we can afford statehood. That seems to be what is on your mind.

Mr LANCASTER: Yes, exactly.

Mr HATTON: Think about it. We already have in place a parliament. We already have in place the full court and judicial system, right through to the court of appeal. We already have in place the entire trappings of a state administration: the public servants, police, hospitals, schools and so forth. All the infrastructure is in place now and we are paying for it now. That is the first point: there are not many additional things to be added on.

Secondly - and this is what most people do not realise - every state in Australia receives the majority of its money from the Commonwealth at the Premiers Conference every year.

Mr LANCASTER: Some more than others.

Mr HATTON: Yes but the average is 60%.

Mr LANCASTER: New South Wales and Victoria are the supporting states of Australia.

Mr HATTON: No. New South Wales and Victoria get approximately 60% of their funding from the Commonwealth. We get about 70%, as does Tasmania. It is important to realise that, as of 1 July last, the amount of money we get comes out of the same pot of money as that supplied to that states, the same Commonwealth state tax-sharing pool. Our share of that pool is calculated by the same body that calculates it for the states, which is the Grants Commission, and it does it at the same time as it does the states, through the relativities review. It uses exactly the same formula and factors that it uses for the states. In other words, the amount of money we are getting from the Commonwealth now, as a territory, is what we would be entitled to get as a state, not a cent more or a cent less.

Upon the granting of statehood, some additional functions may come across to us. These might include some form of industrial relations control. Perhaps they might include the management of Uluru and Kakadu National Parks through the Conservation Commission. In such cases, the Grants Commission assessment would take those additional responsibilities into account in calculating our needs. That is the whole purpose of the Grants Commission: to provide an equality of opportunity in the provision of services and facilities right across Australia. That is why the per capita funding in rural areas is higher than in urban areas. That is why our small population, our rural population, the fact that 25% of our population is Aboriginal, and other such factors, are taken into account. The Grants Commission looks at the cost of services and compares that with what we can raise through taxes levied at the same rates as the states. Already we have in place the full range of taxes which apply in the states. In fact, whilst we currently have all the functions and responsibilities of a state, we do not have the constitutional rights of a state. Does that answer your question?

Mr LANCASTER: Yes, that is fine.

Mr SETTER: Steve, a couple of other points arise from that and you can probably expand on them. Because a number of mines such as Gemco on Groote Eylandt, Nabalco at Gove and Ranger at Jabiru were established under Commonwealth agreements, the Territory receives very little in the way of royalties from their operations. Those royalties go to the Commonwealth. If those mines came under our control at statehood, we would receive the royalties, thereby increasing our capacity to generate income locally.

The other point that needs to be mentioned relates to the per capita income in terms of wealth generated by the Northern Territory by way of mines, oil or whatever. That figure, on a per capita basis, is greater in the case of the Northern Territory than most of the other states.

Mr HATTON: Net international earnings from the Northern Territory are about 2½ or 3 times the national average, per head of population. We are earning about \$4500 per head of population ...

Mr SETTER: We are not getting benefit of that.

Mr HATTON: In respect of mines, that is true. The Commonwealth has retained control over uranium mining and receives all the royalties. The Nabalco operation is controlled by a Commonwealth act and the royalties are paid to the federal government. The royalties from the pre-self-government mines operated by Gemco are paid to the Commonwealth. Because the Commonwealth took over the radical title to the whole of Kakadu, any royalties from operations which might start at Coronation Hill would go to the Commonwealth. On statehood, all those royalties would come to us. On the other hand, because we would be collecting the money ourselves rather than from the Commonwealth, the net effect would be zero. We would be shifting the cargo in the ship rather than providing increased cargo. The advantage will be in terms of having more say over our own lives through the opportunity to develop in such a way that we will provide our own tax base controlled by ourselves.

Mr LANCASTER: Will the decision-making in terms of existing mines and the opening of new mines be handed over?

Mr HATTON: That is a critically important issue. I would ask you to read the paper on mining and minerals and energy. It deals specifically with the case that we would be putting to the Commonwealth in relation to the terms and conditions of statehood. Of course, the Commonwealth will retain control over export licensing powers. That applies throughout Australia. We do not want more power than the states. What we want is equality.

Mr ROSS: So statehood does not give us any additional powers in relation to mining.

Mr HATTON: It does give us additional powers. Mining activity would be covered by our own act, with all the environmental approvals and other processes. The Commonwealth control, as in the other states, would apply through its power over the issue of export licences.

Mr ROSS: So it does not give us any great advantage.

Mr HATTON: It will certainly overcome about 90% of the administrative disasters that the mining industry has had to deal with here.

Mr FAWCETT: What will happen to parks and wildlife?

Mr HATTON: The proposal is that, upon statehood, all Territory parks should be managed by the Northern Territory Conservation Commission just as all the parks everywhere else in Australia are managed by state authorities. That means, in effect, that Kakadu and Uluru will be returned to management by the Northern Territory Conservation Commission. As you know, those parks are on Aboriginal land. It is proposed that the parks would be leased back to the Conservation Commission instead of ANPWS.

Mr LANCASTER: Kakadu is federally run at the moment, isn't it?

Mr HATTON: Yes. That is part of our statehood proposal as set out in the booklets I have mentioned.

Mr ROSS: So statehood does not mean that we automatically get control of Kakadu National Park. The federal government has to give it to us.

Mr HATTON: Yes, we have to go and fight for it.

Mr ROSS: Even if we want it, we may not get it.

Mr HATTON: There are some fairly complex legal arguments around that. We are sailing into uncharted waters on the whole issue of making a new state. It has never been done before.

Mr ROSS: Have you had any reaction from the federal government on that?

Mr HATTON: No.

Ms ROBERTS: Mr Setter mentioned that there have been no new constitutions since 1901. Isn't there a chance that once we could put forward all our ideas and draft a constitution only to be told that New South Wales and the other states do not have constitutions like that and that, if the Northern Territory has, there might be effects on the other states. People in New South Wales might say that, if the Northern Territory has it, they should have it.

Mr HATTON: That is a matter for New South Wales people.

Ms ROBERTS: Isn't there a chance that the federal government will say that, because the rest of the states do not have it, the Northern Territory should not?

Mr HATTON: It would take a very brave government of any persuasion to stand against the will of the people on something as fundamental as their democratic right to frame their own constitution.

Mr ROSS: They did that in relation to the ACT.

Mr HATTON: That is very different. If the people of the Northern Territory voted to have a constitution ...

Mr ROSS: Like Canberra did.

Mr HATTON: They did not vote for a constitution.

Mr ROSS: Rick just told us that they voted against self-government.

Mr HATTON: But they got self-government.

Mr FAWCETT: Without a constitution?

Mr HATTON: Yes. There is no constitution.

Ms ROBERTS: Does each state have a definite constitution?

Mr HATTON: Yes. Each of the states, when they became self-governing colonies, set up their own constitutions. They were all in existence when federation occurred in 1901. At

federation, each of those states handed up some powers and formed Australia by drafting the Australian Constitution. Effectively, the colonies had existed as 6 separate nations and then came together to form a single nation.

We were part of South Australia then, as you know. In 1911, we were excised from South Australia and handed to the Commonwealth as a Commonwealth Territory. At that point, we lost the rights that we had as citizens of Australia. There is so much of the Australian Constitution that is built around the states. The rights are there. They are the rights of the citizens of the states, states rights. Section 122 of the Commonwealth Constitution basically says that in the case of a territory, the Commonwealth can virtually do what it wants. Even as a self-governing territory, the Northern Territory only derives its powers because of a federal act of parliament. The powers of your Territory government are set out in the regulations under an act of parliament, and the Commonwealth can amend regulations and change the powers of the government. It can wipe out all forms of government in the Northern Territory by repealing the Northern Territory (Self-Government) Act.

Mr WILKES: Where do all our basic laws come from? Which state do we follow?

Mr HATTON: We have our own set of laws in the Northern Territory.

Mr WILKES: Even though we are not a state we can still make our own laws?

Mr HATTON: Yes. Because of the Self-Government Act.

Mr WILKES: Right.

Mr HATTON: That gave us the power to do that. It formed what is called a body politic.

Mr WILKES: Now just where do you draw your basis for these laws from?

Mr HATTON: From the Self-Government Act. The federal act of parliament.

Mr WILKES: Do you draw from ideas used in other places?

Mr HATTON: Some were ordinances that existed before self-government and we amended them. Most of our laws actually come about as a result of representations from people in the Territory. It is your government, and if people have a hassle about something they put arguments to the government that we should have a law for this or a law for that or we should be repealing that law or changing some other law.

Mr WILKES: So this is where the constitution comes in for us as citizens off the street.

Mr HATTON: What are your rights to tell us? That is what a constitution does. It sets out your basic rights and it sets out things that we cannot change.

Mr WILKES: Once it is written down in black and white, that is it, eh?

Mr HATTON: Once it is in the constitution, the politicians have to live with it. It provides the foundation stone and the framework.

Mr WILKES: No matter who gets in from whatever party from time to time.

Mr HATTON: They cannot change it. The only way you can change it is in accordance with its own rules. You have a constitution for your club, right? The committee cannot change the club rules because the club has something called a membership. The membership has to approve an amendment to the constitution. You are looking at community government here and are in the process of developing a constitution for your community council. If you want to change that constitution, you will have to go through a great rigmarole of all of the people involved. It is the same with a state constitution, which is the set of rules which you give to politicians, judges and the Administrator.

Mr LANCASTER: Once the constitution is drafted, it goes to the people for their vote on whether or not to accept it.

Mr HATTON: That is our undertaking.

Mr LANCASTER: What are the processes when it possibly is not accepted? Do you just keep trying until you can get the ...

Mr HATTON: We go back and find out what is wrong with it, work it out and keep going back until we arrive at what the people want.

Mr LANCASTER: That would be an interesting process because Australians are pretty lethargic and staid in their attitude to change. It is very hard to get anything passed in a referendum.

Mr HATTON: That is right and that is why it is so important, at this very early stage, that we get the people involved, talking about the issues and feeding in early.

Mr FAWCETT: Steve, there is one thing that has got me a bit beat. I am only a buffalo catcher and never had much education. You ask whether the governor should have the right to sack the government. Well, that is a bit deep for me.

Mr HATTON: You do not have to tell me whether you want to or not.

Mr FAWCETT: I reckon it might be a good idea, to keep you honest.

Mr HATTON: If you want to think about it, having an education is not important. Most of us are going to work from a gut feeling about what we think is right, what we think is wrong, what we think is fair or not fair, aren't we? At the end of the day, the lawyers and our advisors will tell us whether it is technically right or technically wrong.

UNIDENTIFIED: And make a million dollars.

Mr HATTON: If you are interested in a particular issue, you can pick up this book and it will give you all the different arguments, for and against, to think about.

UNIDENTIFIED: He can't read Steve. He can't see out of his glasses either.

Mr HATTON: That is what it is for. You can talk about it amongst yourselves over a few beers one night.

UNIDENTIFIED: That is what he needs so he can understand it.

Ms ROBERTS: Don't you think a lot of it will be knocked back because of technicalities?

Mr HATTON: The booklet also explains where the technicalities are in terms of restricting how far we can go. For example, we have to have a monarch. You cannot set up a Northern Territory republic because Australia operates under a monarchical system and the states have to fit into that. It limits what you can do. We are going to have to have a Governor, who will be the Queen's representative. He will be the head of state, like the Governors in the other states. The question is how important a role should he play? Do we want our constitution to say that he can only act on the advice of the Cabinet?

Mr LANCASTER: Can we annul his powers effectively via a constitution?

Mr HATTON: You can control, limit and direct those powers, yes.

Mr BROWN: So we have to have an actual Queen's representative?

Mr HATTON: Yes.

Mr BROWN: It cannot be a body of people appointed by, say, popular opinion in the Northern Territory or the new state.

Mr HATTON: No. Another question is, of course, is who has the right to appoint the Governor as the Queen's representative? I don't think you can have it as an elected representative.

Mr BROWN: The Governor-General does it now, does he not?

Mr HATTON: The Governor-General appoints our Administrator.

Mr BROWN: Or our Governor in a new state.

Mr HATTON: No. Let us just understand the difference between what we have now as a territory and how a state operates. We have an Administrator, who is the Governor-General's representative. He is appointed by the Governor-General on the advice of the Prime Minister and the federal Cabinet. The states, because they are sovereign constitutional entities, have direct links to the Crown. They make direct recommendations on who will be their Governors. They do not have to go to the federal parliament. We are a subsidiary of the federal parliament. The states are not. Their rights are set out under the Australian Constitution. We have none of that, which is one of the reasons we are seeking statehood.

Statehood is not a matter of how much money you have or do not have. It is a matter of constitutional rights. I have described it to other people by likening it to a child growing up. When you are a child, someone guides you all the way, helping you and nursing you along. As you move into your teens and adolescence, you start to stretch your wings and try out things. But you still have someone to fall back on. One day you have to stand up and make decisions for your own life. I

use that analogy because everyone understands it. The same things apply to a community. Before self-government, we were like the child. We are now going through our adolescence as a self-governing territory. One day, we will take the step to adulthood on constitutional terms. We will set our own destiny. That is effectively what statehood is about. However, before we can even think of achieving that goal, or when or how or under what conditions, we need to work out what we want our society to be like. The constitution provides the framework for that.

Mr ROSS: I would like to register my support for a couple of things. One of them is freedom of information. I think that too much is kept secret at the moment and I would like to see freedom of information in the constitution rather than at the whim of the government of the day. The other thing, in relation to the terms of parliament, is that terms should be 4 years long. I would like to reduce the ability of the Chief Minister or the Premier to manipulate the length of the term of the parliament. I think that a 4-year term would be nice and that a government should have to serve at least 3 years or, say, 3 years and 3 months.

Mr HATTON: It is interesting because that is exactly what the committee has recommended: constitutionally entrenched 4-year terms with a minimum of 3 years. The only option would occur in the case of an inability to form an effective government because you cannot find anyone who has the support of the House. It is interesting because that is one of the issues that we have thrown up and are asking for comment on. You seem to like what we have recommended.

Mr SETTER: The Northern Territory currently has a 4-year term.

Mr ROSS: That is right but that is unusual, isn't it?

Mr SETTER: Yes. There is no limit on the length of time we have got to run.

Mr ROSS: Yes. That is also unusual, isn't it?

Mr SETTER: I do not think there is a limit on the length of time in any state, is there?

Mr HATTON: Yes, I think there is in a couple of states.

Mr ROSS: Most states are 3 years.

Mr HATTON: Some have to serve a minimum of 2 years.

Mr FAWCETT: I disagree with you. I reckon it is 3 years.

UNIDENTIFIED: Too long?

Mr FAWCETT: No, 3 years is right. If you have 4 years, it just drags on further.

Mr ROSS: But with 3-year terms, they usually only serve 2 years anyway.

Mr HATTON: That is true. History shows that, where there are 3-year terms, there tends to be an election about every 2 years. Where they have 4-year terms, they tend to have elections about every 3 years.

Mr ROSS: If it is going to be a 3-year term, I reckon you should make them serve the 3 years.

Mr HATTON: That is the matter we are asking for your opinions on. In fact, our recommendation is for a 4-year term with a minimum of 3 years ...

Mr ROSS: It costs too much money.

Mr HATTON: ... to be written into the constitution so that parliaments cannot fiddle with it.

Mr WILKES: Yes, but it is no use keeping them in there for 4 years if the state is going down the tube, mate. You have to look at the economics of it.

Mr ROSS: I think the power of the press and everything like that would soon get them out.

Mr LANCASTER: Yes. That is where the no-confidence motion comes in.

Mr ROSS: If you want a 3-year term, fair enough, but I reckon you should make them serve 3 years rather than 2 years.

Mr LANCASTER: Will that issue be entrenched in the constitution regardless?

Mr HATTON: It is up to you, the people, to make those decisions. This is your constitution we are talking about. I can tell you what the committee has recommended but it is up to you to say what you want.

Mr WILKES: I came in late. You might have talked about this point earlier. What about the funding from the federal government? Once we achieve complete statehood, what will happen?

Mr HATTON: I did go through it. I was asked the question earlier.

Mr WILKES: Oh, right.

Mr HATTON: I will just deal with it very quickly. Some of the other people can you fill you in on the details or I will do so later. The reality is that we are now funded exactly as if we were a state, from exactly the same pile of money.

Mr WILKES: So once we achieve ...

Mr HATTON: There will be no change to the basis of funding.

Mr WILKES: Once we get this constitution up and running, the actual base of funding and the running of the Territory, which will become a state, will not change.

Mr HATTON: There are things, such as the structure of the parliament, which might change if people want them to. The funding, however, will not change.

Mr WILKES: Okay. The funding will not change. But what about the government departments in Darwin?

Mr HATTON: We have all the state structure of different departments now. We are set up as if we were a state. We have all the departments, the department heads, the schools, the hospitals, the public servants, the parliament, the courts. They are all in place.

Mr WILKES: Well, why aren't we a state now? That is probably the basic question.

Mr HATTON: That is the question I keep asking. People are not really sure about what they are walking into. That is why we are not a state.

Mr WILKES: We could look at the Territory as a big company. If the big company is running smoothly now, why are we not independent? That is what I am trying to ask you?

Mr HATTON: On a personal level, as you know, I am a very strong advocate for statehood as soon as possible. My job as chairman of this committee is to talk to you about a constitution. That is why I am reticent about this. I am not trying to push the statehood line too hard in this role. After the meeting is over, I will be happy to give you a good run-down. I have got to be very careful about what I say here because the committee's job is to talk about the constitution. It is not my role or our committee's role to say: 'Are you for or against statehood'? I just ask you to accept the reality that one day we will be a state. It is a question of when, not if.

Mr WILKES: You have just convinced me that the Territory has been running more or less as a state for the last 4 or 5 years. I am just trying to get out of you what is the actual hold up. Why don't they just sign on the dotted line?

Mr HATTON: When all the people of the Northern Territory stand up, or the vast majority of them, and say that they want statehood, and we can demonstrate that support to the federal government, it will come about as a result of the expressed will of the people. It will not come any other way. They will not give it to us. We have to go and take it.

Mr WILKES: Well, what do the books show as far as you know?

Mr HATTON: Money?

Mr WILKES: Exactly. Can we survive on our own?

Mr HATTON: Yes. We are now, aren't we?

Mr WILKES: Well, I am not quite sure.

Mr HATTON: We go through good times and bad times but everyone does.

Mr WILKES: I don't live in the Treasury so I do not really know.

Mr HATTON: We have consistently had a balanced budget. We have never run a deficit budget since self-government. Our level of borrowing is low by national standards. If I can put it in company terms, our assets are backed by \$3 for every \$1 of borrowing. That is contingent and actual liabilities. From memory, we have over \$3000m worth of assets.

Mr ROSS: Is our level of borrowings rising or falling?

Mr HATTON: It has been rising but not as a proportion of budget. Our borrowings have been used to provide infrastructure. The bulk of our borrowing is in areas like the power generation system, which is to be paid off over a 20 or 30-year period. It is a commercial borrowing, or a company buying something on a lease basis.

Mr BROWN: Are they offshore loans or from within Australia?

Mr HATTON: I am not sure about the current situation because I am not in Cabinet but, to the best of my knowledge, we only went offshore for money once and that was for part of the loan for Yulara.

Mr BROWN: That would not be a very large percentage of your borrowing.

Mr HATTON: We have deliberately kept out of the overseas borrowing area so that we would not have to hedge against the fluctuating exchange rates.

Mr FAWCETT: How would you suggest the voting go? One vote one person, Queensland style, or what?

Mr HATTON: Again, the committee has made recommendations which are discussed in the booklet. We have recommended one person one vote. We are proposing 1-member electorates, as we have now. As far as tolerances are concerned, we have a 20% tolerance arrangement in the Territory now and there is dispute as to whether it should remain at that level or be reduced to 10% and set down in the constitution.

Mr LANCASTER: What do you mean by tolerance?

Mr HATTON: You have an average level. Say the average electorate size is 3000. Tolerance is the percentage allowed above or below that figure.

Mr LANCASTER: So it is worked on population rather than size.

Mr HATTON: Yes, on population.

Mr SETTER: That is why we have some electorates that are very small in area and some that are huge.

Mr HATTON: My electorate is just over 2km². You can literally walk around it in an afternoon.

Ms SETTER: That is the difference between our electorates and Wesley's.

Mr WILKES: Next time we go to vote, for each electorate that we are voting for, we only have to put a tick for the candidates that we want.

Mr HATTON: No. That is the difference between first past the post voting, which is that sort of thing, versus a preferential voting system.

Mr WILKES: I do not agree with that preferential voting.

Mr HATTON: You have to be careful about putting those sorts of things in a constitution or whether you write them into an electoral act. People's attitudes change. There might be a period when everyone says that preferential voting is the way to go whilst, 5 or 10 years later, they might want to try optional preferential or first past the post. They might try it and say that it does not work too well and decide to go back to what they had in the first place. If you want that sort of flexibility, it is better to have it in an act of parliament than in the constitution.

Mr WILKES: I do not see how, if I believe in something, my views are going to change. Nobody is going to convince me or change my views on that.

Mr HATTON: The broad community does change its mind. That is why laws keep getting changed.

Mr WILKES: Yes, but you have to see my point from ...

Mr HATTON: The argument is between first past the post and preferential voting. I will just explain the differences. First past the post voting occurs when you have, say, 3 candidates. You mark your favoured candidate with a tick or a number 1. The candidate who gets the most votes wins the election.

Mr WILKES: Exactly.

Mr HATTON: However, if that candidate only has 35% of the vote, that means that just over a third of the people want him. The other two thirds wanted one of the other candidates. The way preferential voting works is such that, at the end of the day, more than half the people would prefer that candidate to the others. That is what preferential voting is about.

Mr WILKES: I know. That is where it is wrong.

Mr HATTON: Some people say that is a better reflection of the views of the community.

Mr WILKES: Well, the way I see, and I am just a basic person ...

Mr HATTON: As a politician, I would love to have it. I would ask that this not be put in Hansard ...(not recorded).

Ms ROBERTS: You have said that we are operating as a state although we do not have statehood. Could you tell me where our laws and system came from for self-government. Did they come from Adelaide?

Mr HATTON: No, until 1863 they came from Britain. From 1863 to 1911, they came from South Australia. From 1911 till 1978, there was a mixture of Territory ordinances through the federal parliament. After 1978, we converted a lot of those across into our own laws and, certainly since 1983, there has been a significant effort to go through our old ...

Ms ROBERTS: (inaudible).

Mr HATTON: Yes. All the existing ordinances then became Northern Territory acts of parliament. That formed the basis of our laws. We have gone through some of the very old laws since then and repealed a lot of them. The Adelaide Tramway Drivers Act was repealed.

Ms ROBERTS: So, if we achieve statehood, those laws will remain and there will be a constitution on top of that.

Mr HATTON: Yes. There would be a provision that they would continue.

Ms ROBERTS: We cannot change those laws now. It is just the constitution that we are making up.

Mr HATTON: Yes. The process of changing laws is a process of lobbying government.

Mr SETTER: Over the past 4 years or so, we have removed many hundreds of old irrelevant laws in the Northern Territory. Some of them came from as far back as the time when New South Wales was the source of our legislation and many of them also came from South Australia.

Ms ROBERTS: Once you get all the information together, all the submissions from all over the Northern Territory ...

Mr HATTON: What we are talking about tonight will actually become part of the permanent public record of the committee.

Ms ROBERTS: And you will then set up a committee of representatives from all over the Northern Territory and go through them. How will you then decide whether you will go by vote on so many issues?

Mr HATTON: That is a good question. That is another thing that we are asking you. How do you think we ought to do it? We have some views and we have set some of them out in the booklet. Do you think that they should be elected people or should they be appointed? How much do you ensure that there is representation from particular interest groups or sections of the community?

Ms ROBERTS: I think it should be elected from the community because people on the committee might know people who are appointed.

Mr HATTON: How large should that convention be?

Ms ROBERTS: It should go by population I suppose.

Mr HATTON: Should there be 50 or 60 people forming the convention? Should there be representation from the trade union movement? Should there be representation from industry, Aboriginal representation, local government representation?

Ms ROBERTS: If they are not represented, they will shout loud enough.

Mr HATTON: That is what we are asking. We could probably sit down and map out what we think is a representative cross-section of the Territory but we might not think of everyone.

Mr FAWCETT: Steve, there might be 50 little communities in the electorate of Victoria River. You would have 50 different people. There might be 30 Aboriginal men in that, 1 from each community, and you end up with 2 representatives, 1 from the Aboriginal side and 1 from the white side.

Mr HATTON: Or do you have a collegiate system where each community elects one person and they come forward into some sort of a conference which elects its preferred representative and so on up the ladder?

Mr FAWCETT: It would be good if they could get 1 person.

Mr HATTON: Remember that there are a whole lot of areas which need to be covered. Do you think that there is a need to ensure that there is expert legal advice on the convention, representation of the Law Society or the Bar Association for example? Maybe the form of representation you have suggested might be the way to go, at least for a percentage of the representatives on the convention, with other specialist representation as well. That is another way to think about it. Have a think about how large it will be so that it does not become so large that it will be unwieldy and unworkable.

Mr ROSS: I think we have to get the grass roots people, not all unionists or whatever.

Mr HATTON: You cannot exclude them either because they could do an awful lot of damage if they are not part of it.

Mr ROSS: One of everybody.

Mr HATTON: How do you get the mixes together to get something that is going to be workable, not too big and not too small, and the people feel that it is representative.

Mr BROWN: Has your committee got a recommendation on that?

Mr HATTON: Not a clear recommendation.

Mr BROWN: Is that why you are still asking for submissions on that?

Mr HATTON: Yes. Very much.

Mr BROWN: Getting back to some of the basics and taking a quantum leap, let us suppose that we have reached the point at which we have a constitution in place and everybody agrees to go to statehood. This is getting to something that Rick was onto earlier. In that situation, who decides what steps we take or how we approach the federal government on which way to go? I do not think that they are going to push it on us until we ask for it so ...

Mr HATTON: I think we are going to have to scratch and bite to get it.

Mr BROWN: Given that there are 2 ways of being granted statehood, would the constitution direct which of those ways was the avenue chosen?

Mr HATTON: No. That would not be something which would be included in a constitution. Obviously we would be happy to get your views on the matter, but I urge you to read the paper called 'Options for a Grant of Statehood'. I will tell you why we are opting to use what is called the section 121 route. It is this. Section 121 says that the federal parliament can accept a new state under such terms and conditions as it sees fit. The argument which we have to put is that those terms and conditions are equality with the rest of Australia. To achieve statehood via that route, the federal parliament would have to enact legislation which would become an entrenched act of parliament because it creates a constitutional state.

If we wanted to use another route to statehood, we would have to use section 128, which means physically amending the Australian Constitution to incorporate the Northern Territory. That requires a referendum like the one last year and, before it can be held, the federal parliament has to agree to put forward an act of parliament to have a referendum. Either way, you need an act of the federal parliament.

Mr BROWN: That was the question I wanted answered.

Mr HATTON: We have to work out what we want, to develop our log of claims or put our case together so that we can take it to the federal parliament and maybe even to the states. That, of course, would come after we have adopted our constitution.

Mr BROWN: Yes, that is right.

Mr HATTON: At that stage, you know what you want and you sell that concept to the Australian community and the federal parliament and negotiate the arrangements. Of course, that is a fair way down the road.

Mr FAWCETT: Steve, after we have done all that work, Canberra might just say: 'See you later'. What happens if we get in first and say we want statehood? What are they going to say? That Bob is going to sort it out?

Mr HATTON: The Prime Minister has said, I think in late 1986, that if the people of the Northern Territory say they want statehood then he will work towards achieving it. Certainly the coalition parties have both said they support Northern Territory statehood and support the basis of cases put by the Northern Territory government in relation to the handover of powers to put us on an equal footing.

Mr FAWCETT: You don't see any hiccups?

Mr HATTON: I see a million hiccups but we have to remember that some things are really powerful political weapons. If you can walk in with a referendum mandate showing that 70% of the people of the Northern Territory have said they want statehood on certain conditions, you have the mandate of the people and it is an almost irresistible political force. That sort of thing has the political force to push through.

Mr LANCASTER: So once the constitution has been accepted you are on the move.

Mr HATTON: Then the issue of statehood starts.

Mr LANCASTER: That could take as long as getting a constitution.

Mr HATTON: It could. It is a long hard road and we have to start walking down that road one day. Why not today?

Mr WILKES: When do we get a vote on this constitution?

Mr HATTON: When we have gone through this first stage, hopefully we will have people actively involved in talking. We will be in a position, hopefully, to present our recommendations to the parliament in April or May next year, although that is only our recommendations.

Mr WILKES: Sorry for interrupting. Before you go any further, will that be the majority of the people that you have spoken to in this tour?

Mr HATTON: This is only the first round. We will be back again.

Mr WILKES: Yes, what I am saying is that, if we take this group as an example, you have not got the majority of the population here tonight. Right?

Mr HATTON: I hope I am stimulating you and encouraging you so that you will go and stir up the other people to think about it.

Mr WILKES: Yes I know. That is why I am trying to ...

Mr HATTON: I want you to go out and stir up the other people to think about it. We will be in Batchelor tomorrow lunchtime.

Mr WILKES: You are going to compile all the information which you gather here tonight and from the communities rightaround the Territory and then you will sit down and compile that, making ...

Mr HATTON: Recommendations on a draft constitution

Mr WILKES: Then you will come back to the people and say: 'Here it is. This is what you mob have recommended'.

Mr HATTON: We also want recommendations relating to the constitutional convention, that giant drafting committee, and our work will go to it.

Mr WILKES: And it just ...

Mr HATTON: It will work through and say yes it likes this or does not like that or wants to change it. The convention could accept or change or vary it.

Mr WILKES: Now where does that committee come from?

Mr HATTON: That is the second question I am asking you. How do you want us to put it together? How big should it be? Who should be on it?

Mr WILKES: That is the people Tommy was talking about before, the key people who have to come from all of the communities around the place.

Mr HATTON: That is right.

Mr WILKES: So it could be me, it could be him, it could be ...

Mr HATTON: That is right.

Mr WILKES: Any which one of us type of thing, right?

Mr HATTON: And when that committee has worked through it all, it comes back with a proposed constitution, which goes to the people at a referendum to say yes or no.

Mr WILKES: Is that a vote on statehood?

Mr HATTON: No. It is a vote on the constitution.

Mr WILKES: Oh right. What is the next step after that?

Mr HATTON: Then we start talking about statehood.

Mr WILKES: I am with you now - a bit thick but it got through.

Mr RUZSICKA: It does not make any difference to the federal government whether we are a state or a Territory. They do not really ...

Mr HATTON: It does. It limits their powers.

Mr RUZSICKA: I mean for us.

Mr HATTON: The great fight we have with the federal parliament is because, quite frankly, it lost a lot of power and influence when we achieved self-government. It lost a playground and an area for social experimentation and when we become a state we will take even more power away from Canberra. A lot of people in sitting in Canberra do not want to lose that and they are going to fight us.

Mr RUZSICKA: If the community gets a body representing the majority of the Territory and puts this constitution forward to the federal government which then turns around and says: 'No, we will not accept that ...'

Mr HATTON: Well then we have a war. Not a shooting war but a political war.

Mr RUZSICKA: It is like what we have seen in the past, with the differences between Labor and Liberal.

Mr HATTON: In the Territory, Labor and the CLP are not fighting about this.

Mr RUZSICKA: I am talking about the federal level. I am not saying that this is right or wrong but, while the Labor Party is in power, it appears that the Liberal-run states tend to suffer. To me it is like the national parks being run by the Australian National Parks and Wildlife Service. That is not what the majority of Territorians want but we have no say in it at all. It is obvious that they know that we do not want that but they continue to do it. It is the same with the handing back of Ayers Rock and a number of other issues.

Mr HATTON: This is where, on statehood, political representation becomes really important. You have heard all of the arguments about how many politicians we should have in relation to the size of the population. This is the other question. Forget the House of Representatives. The House of Representatives is what is called the people's house, where each electorate is about the same size. We all think that that is how it should stay. If we only have enough people for 1 or 2 seats in the House of Representatives, that is all we should have because that is the house which proportionally represents the population.

You know and I know that 80% of the people live in the south-eastern corner of the country. It was like that at federation and all the small states said: 'Hey, this is a bit unbalanced, politicians being what they are. If all of you guys are coming from down there, you are going to look after your own electorates and the rest of Australia is going to be left to rot'. That was their real concern. They decided that they wanted a way to counterbalance that and they said: 'We want a Senate, where it will not matter how big a state is. All of the states will have equal representation in the Senate and that will stop you throwing all the money in where all the people are and force you to look at the whole of the nation'. That is why there is equal representation in the Senate, the states house.

Mr BROWN: But how many Senators would we have to have from the northern state?

Mr HATTON: To be equal, we would have 12 Senators. I know that is frightening and in my view it could and should be changed. I think the only reason there are 12 Senators in every state now is because of a clause in the Australian Constitution that says you have 2 House of Representatives seats for every 1 Senator - the 2 to 1 ratio. The growth in the Australian population led to the creation of more House of Representatives seats and that led in turn to more Senators. That is why the number of Senators keeps growing. It has gone from 6 to 8 to 10 to 12, simply so that we can have enough seats in the House of Representatives. The 2 to 1 nexus should be broken so that every state can have 6 Senators. It would not matter because all states would be equal.

Mr BROWN: So how many House of Representatives ...

Mr HATTON: You would be interested in telling all those federal Senators that they will be gone.

Mr FAWCETT: We are going to run out of brains up here, aren't we? It is costing us enough now.

Mr HATTON: I made this comment before. There are 14 500 people in the Northern Territory Public Service now. The cost of a Senator is about equivalent, if not actually cheaper than

the cost of employing an E4 in the public service. If we employed an extra 10 E4's in the Northern Territory Public Service, the populace would not even notice it.

Mr FAWCETT: It does not mean that it is right.

Mr HATTON: No it does not. The point I am making is that if you think of it in terms of cost, the effect of 10 Senators on the people of the Northern Territory and the political power of the Northern Territory far outweighs the contribution of 10 E4s, no matter how bright they are. That is the point that I am making. Frankly, I think that it would be a very good investment, particularly given that the federal government has to pay their wages.

Mr FAWCETT: Steve, would you accept statehood without equal representation in the Senate?

MR HATTON: I would not accept statehood without eventual equal representation. Although we should have equal representation from day 1, I think the political reality is that a phasing in of the transfer of powers would occur. The constitutional shift to statehood and the phasing in of representation should be on a pre-arranged fixed schedule based on extra representation every Senate election or every second Senate election. It might take 10 or 15 years to get equal representation but the steps to achieve that would be fixed. It should not be based on population or any other strange criteria. It should be based on a time frame. If that is the path we have to take, I think it should be done that way.

Mr FAWCETT: And would it be possible to get such a deal from the Commonwealth, taking into consideration the possibility of a change in government?

Mr HATTON: I think so. I am pretty sure that I would have a lot better chance of negotiating that than 12 Senators up front.

Mr LANCASTER: So long as you were certain that the federal government would not back down after agreeing to it.

Mr HATTON: You would write it into the statehood act, right?

Mr SETTER: There is a very strong political consideration as far as the other states and the Commonwealth are concerned. I have discussed this with a lot of federal and state politicians. Let me explain it to you this way. If we went immediately to 12 Senators, given that we already have 2, we would have an additional 10 Senators. That addition of 10 Senators would automatically create something like an additional 20 seats in the House of Representatives.

Mr HATTON: Which puts extra seats in New South Wales and Victoria.

Mr SETTER: Right. You ask yourself: 'Where are they going to be?' Obviously, in the population centres of Brisbane, Sydney and Melbourne. They will not be here. If we are lucky, we might get 1 extra member of the House of Representatives and the other 19 would be distributed around the states. When the major political parties sit down and do their sums, they say: 'These seats will generally be in metropolitan areas. Which political party is going to be advantaged?'

Mr HATTON: Because the redistribution ...

Mr ROSS: It does not really matter, does it, as long as the states have the power?

Mr SETTER: Oh, of course. You have to convince the political party in power at the time.

Mr HATTON: That is why, if we have a big jump up front, we will find ourselves in a very large political minefield. By phasing it in on a controlled basis, you minimise the disruption throughout the entire nation.

Mr LANCASTER: You are saying that situation would be avoided using a phase-in program.

Mr HATTON: It would minimise the effect. The other problem with doing it suddenly, with 10 additional Senators, is the possibility of changing the balance of power in the Senate. If the new Senate positions are created gradually, the potential for that is reduced.

Mr WILKES: What you are saying is that, during the phase-in period, we have more chance of getting more representatives from the Territory into the House of Representatives rather than from the populated areas down south.

Mr HATTON: There is a potential to get an extra seat. There are 154 federal seats at present. They allocate so many seats to each state, based on the proportion of the population. So, if 50% of the population lives in New South Wales, New South Wales gets 50% of the seats. In the Northern Territory, they only look at the number of people who are registered to vote, to see whether where we come up or down on the quota for an electorate, because the Northern Territory is 1 electorate at the moment. So all the kids who are under the voting age, all the people who are not Australian citizens or not on the electoral roll but are part of the population, are not counted.

Mr WILKES: That is a bit rude isn't it?

Mr HATTON: That is because we are an electorate. We are not a state.

Mr BROWN: And if we were a state, would that change?

Mr HATTON: We are at the stage where we need an extra half quota to entitle us to a second seat.

Mr BROWN: As everyone knows, we are a very young community. The average age in Darwin is 21.

Mr HATTON: You can argue that we are technically under-represented in the House of Representatives because we are a Territory and not a state.

Mr LANCASTER: Getting back to economics, what sort of economic restraints does your committee have in terms of getting this constitution in place?

Mr HATTON: It is a budgetary constraint, as always, but I must say that the government has been good. When we set this program in place, we needed more money than we had allocated

in the budget. We were able to get additional funding provided through the first budget review to enable us to do this, produce the advertisements, get the extra booklets produced for distribution and so on. We have to make bids for our budget, just as everyone else in government does.

Mr ROSS: Are any of the other states talking about reducing the numbers in the federal Senate? I don't suppose they are.

Mr HATTON: No. The politics of it are pretty hot.

Mr ROSS: So that is not an option.

Mr HATTON: It is an interesting argument, isn't it? Why have the 2 to 1 ratio?

Mr ROSS: There is no move at all to break that nexus.

Mr HATTON: No, not that nexus. They tried to change some rules in respect of the Senate in last year's referendum but they linked it in with so many other things that you could not pick out the good things and put them through whilst throwing the bad things away.

Mr ROSS: So to get equal representation, with the staged process you are talking about, by the time we get it we might have 14 or 16 Senators.

Mr HATTON: That is quite possible.

Mr ROSS: Bloody ridiculous, isn't it.

Mr LANCASTER: When the vote is put in terms of accepting the constitution or not, will there be lobbying from the political parties like there is in a federal referendum? To my way of thinking, that is ridiculous, the parties taking opposite points of view just for the sake of it.

Mr HATTON: I would hope not, and Wes could speak on this too.

Mr LANCASTER: I realise that you have a bipartisan approach and hopefully the input will all be positive.

Mr HATTON: We have been taking a bipartisan approach on this task for 3 years now and we have a very clear objective. There are some things that go beyond politics. It is important to the community that this matter go beyond party politics. The major political parties recognise that.

Mr BROWN: In terms of eligibility to vote once we became a state, would that be under the control of the Electoral Act or would it be in the constitution?

Mr HATTON: That is one of the questions we are asking: how much do you put in the constitution and how much do you leave as the province of an electoral act? We are recommending here that the constitution contain the basic provisions, such as single-member electorates with universal suffrage, the right for every adult to vote by secret ballot, voting eligibility based on Australian citizenship and so forth, like it is in the Self-Government Act now.

We are recommending one change. At the moment, a person who is a public servant, a policeman or an alderman in local government, must resign in order to be able to stand for the Legislative Assembly. We are recommending that the constitution contain a provision which states that such a person can nominate for election to the Assembly on the basis that, if elected, their previous employment will be automatically terminated from the moment of declaration of the polls. In other words, the current situation would be reversed. Instead of having to resign and automatically get your job back if you lose, we are saying that you will automatically lost your job if you get elected. Such a change will clean up a lot of the administrative problems we had with all the aldermen resigning at the last Assembly elections. Remember? We had the problem throughout the Territory at the last election and and the local government by-elections after it.

Mr WILKES: Did they all get their jobs back?

Mr HATTON: No. Most of them did not get re-elected. That is the risk you take.

Mr FAWCETT: Will you still have to be an Australian citizen to run for parliament?

Mr HATTON: Yes. And you cannot be currently in jail. It is important to write that in. You cannot be an undischarged bankrupt, things like that. Again, you will find those things set out in the booklet. It was actually printed in October 1987. We had a lot of difficulty getting people to pick it up and read it.

Ms FAWCETT: Yes, but now we can understand what it is about.

Mr HATTON: Right. That is why we are coming around now. They are free too.

Mr SETTER: That is why we will be back to talk to you again.

Ms FAWCETT: We will have some more questions to fire at you.

Mr HATTON: Hopefully you will not only have questions but you will have ideas.

Mr LANCASTER: Will there be a lot of meetings in Darwin? That is where a large part of the population lives.

Mr HATTON: There certainly will. We have had formal hearings there and we will do so again. At the moment, we are considering a suggestion that we hold a series of meetings in each of the electorates in Darwin.

Mr FAWCETT: It is going to be a bit hard in Darwin. You come down to Adelaide River at night and it is a big night out.

Mr SETTER: We have already met for 2 full days in Darwin, 2 full days of public hearings.

Mr FAWCETT: We were just wondering if you were getting to the grass roots.

Mr HATTON: We are working down. You have to come down through the layers. In my electorate, I have raised it in a couple of community meetings. Some of the people in my electorate are talking about getting discussion groups going within neighbourhoods and we will just go along

and sit down and talk about it, like we are doing here. We can set up vehicles like that, get discussion going through the schools, through parents, school councils and other avenues. You have to use different techniques in the bigger places. There are similar problems in Alice Springs for the same reasons.

Well, we have covered a fair bit of ground. We can go on for a bit longer if you like or close the formal part of the meeting and engage in informal discussion.

Mr ROSS: No, I am happy to leave it there. Thanks for coming down.

Ms FAWCETT: We might understand a bit more now.

Mr HATTON: We would welcome the opportunity to come down again to speak to groups or answer questions. If you have any queries you can ring the toll-free number and if you want any extra information we will get it to you. If you would like somebody to come down to talk about particular matters, let us know and we will organise it as far as we possibly can to give you a chance to think it through and work it through. I urge you to encourage other people in the area or district to get involved. I cannot stress enough how important it is for all of us.

Mr WILKES: You have to have the majority, don't you.

Mr HATTON: Thank you very much for having us. I formally declare this meeting closed.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

BATCHELOR — Friday 31 March 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Harry de SACHAN
Mr Ron PEARCE
Mr Ken MARSHALL
Ms Jackie HARGRAVES
Mr Dave SHOOBRIDGE

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

Mr HATTON: I formally declare open this meeting of the Select Committee on Constitutional Development in the town of Batchelor at 12.35. As I have said, thank you very much for coming along today. It is not a topic that immediately grabs the imagination and the attention of people. However, I trust that, by the time we have finished this afternoon, we will have encouraged you to think a lot more seriously about the issues that we are dealing with and to recognise the importance of this to you. Our committee is known as the Select Committee on Constitutional Development. It is a committee of the Legislative Assembly and is comprised of 6 members. There are 3 of us present at the moment. My name is Steve Hatton. I am the chairman of this committee and also the member for Nightcliff. There is also Rick Setter, the member for Jingili, and Col Firmin, the member for Ludmilla. There are also 3 ALP members: Brian Ede, the member for Stuart, who is also the deputy chairman of the committee; Wes Lanhupuy, the member for Arnhem, who I hope will be arriving shortly; and Dan Leo, the member for Nhulunbuy.

The committee is unique in the Assembly in that it has equal representation from both ALP and CLP. That, as much as anything else, is a reflection of the bipartisan approach that is being taken to our work in this process of constitutional development. It is not an issue where there is argument between the ALP and the CLP; it is not a political fight exercise, as some things are. Sometimes things come up in the process of government that actually are more important than the politics of it and this is one of those exercises. It is fundamentally important to the future direction and shape of the Northern Territory. What are we doing? The first thing to say is that we are not going to ask you whether you support statehood or are opposed to statehood. That is not the question we are dealing with and it is not a question we are asking of you.

The member for Arnhem, Wes Lanhupuy, has arrived.

As I said, we are not asking you the question about whether we should become a state or not. But I would ask you to recognise one fact: whether it is next year or in 5 years or 10 years or in 20 years, one day the Northern Territory will become a state. That is inevitable. You can argue about when you think it should happen but it will happen one day. However, before that can even be thought of, you need to have in place your own constitution. Your constitution will reflect how you want a new state to operate, how you want your rights protected, what the ground rules are that you are going to set for the parliament, the courts and the politicians. When you have that, you can start asking yourself the question: 'When should we become a state and under what conditions?' But, until you have got the constitution, you cannot even start to address that issue. That is why there has been so much waffling around the question about when statehood should occur, because this job has got to be done first and, when we have done this job as a community, we can then start asking ourself the other questions.

Our committee's job is to start that process and guide it. We have been working now for nearly 3 years and, as a result of that 3 years of work, we have produced a discussion booklet called 'A Discussion Paper on a Proposed New State Constitution for the Northern Territory'. It is fairly thick. It has got an awful lot of information, arguments for and against different things that would go into a constitution. That is the summary result of researching through all the constitutions in Australia, our own Self-Government Act and constitutions overseas and around the world, to come up with the sort of things that could be thought about in a constitution. None of us agrees with everything in there, but those are issues that need to be considered by the community when looking at the matter of a constitution. To give you a better and easier introduction, the booklet I have just

distributed is an easier introduction to what a constitution is and what parliament and government are. That is an introduction to the more detailed booklet on particular issues and we will leave copies of that with you.

We are now going around the communities encouraging people to read, to think, to talk about the issues and, as a community and as individuals, work out their own ideas and what they think should be in there. We want you to come forward and tell us what you are thinking. What are your views? We will take all those submissions, work through them and prepare a recommended draft constitution. We will also be making representations on the way we deal with the second stage. This is only stage 1 of a 3-stage process. The second stage is that we want to form what is known as a constitutional convention. In ordinary language, that means we want to get a giant drafting committee of a representative group of Territory citizens. How big that group should be, how we go about selecting them, who should be represented - all those are questions that we want you to think about and come forward with your ideas. There is an introduction in that discussion paper on representation in a Territory constitutional convention but that convention will be taking our work and all the submissions that come to us, all our research and our recommendations, and working through that. The convention will eventually produce a proposed constitution which will then go back to the Territory electorate in a referendum for acceptance or rejection. If it is rejected, then we will have to go back and start again and try and get it right and keep at it until we get a constitution that the Territory people say: 'Yes, that is what we want'.

And what are you looking for? You are looking for a document that sets the foundations and the guidelines on what sort of a society you want the Northern Territory to be as it goes into the next century. It is fundamental to the future direction, protection and development of your rights as citizens. That is why it is so essential for you to participate in it, not only for your own benefit but for the benefit of your children and your grandchildren because they will be affected by the results of this work. That is why, as a committee, we are working very clearly on a bipartisan basis to stimulate the Northern Territory people to participate in this process so that, in the end, it is very much the people's constitution, produced by the people and for the people. It is the foundation stone for our future.

Having said as much as I want to say, I briefly offer the opportunity for other members to make some comments and then I will be asking if you would like to give us some views or if you would like to ask questions or seek more information. Please take the opportunity to do so because that is what we are here for. We would like to provide the vehicle to assist you to start working on this task.

Mr LANHUPUY: Thanks, Steve. I thank the members of the community here in coming along to this meeting that the Constitutional Committee has organised. I do not necessarily want to go over old ground which I believe Steve has already done in explaining to you the basics of what this committee is on about, what we intend to do and how we hope to present our final report to parliament prior to going to our convention and then a referendum by the people of the Territory. I just want to stress the importance of the fact that it is essential that people throughout the Northern Territory give us their views and try and have other people interested in discussion on the issue at hand which, hopefully, is the processes for arriving at a constitution for the Northern Territory. I believe, as much as the other members of this committee, that that is crucial. No other state has done it for the last 100 years. We are now entering a new phase of development in the Northern

Territory and that is why it is crucial from my point of view that we get the views, the submissions, the questions. If you have any questions, put them forward to this committee or to the executive officer of this committee so that we can at least be aware of the issues that you want to raise and, hopefully, incorporate those, along with whatever submissions you may have, within our final recommendations to the parliament.

Once again, I stress that it is essential that people start talking about it. By generating that interest, at least in our own minds, we will be satisfied that the majority of the people in the Territory are talking about it and expressing their views to us. It is important from our point of view to be able to get out to the community as much as we can and exchange views on what we believe is a very important matter for the Territory's future.

Mr HATTON: Thanks, Wes. Col?

Mr FIRMIN: Thank you, Steve. I do not want to talk for very long but I would just like to expand on a couple of themes briefly, as I have done at other meetings that we have attended. Particularly, I would like to draw your attention to the sorts of things that I say when we visit Aboriginal communities. The Aboriginal community as much as the white community is going to play an important part in the development of the constitution. They are a very large proportion of our population and, unless we all get together and design a constitution which reflects the attitudes which will allow us to jointly develop the Northern Territory, the constitutional mechanism which we are going through now will not succeed.

I would like today also for you not only to consider the constitutional requirements as it relates to the white population but also as it relates to the Aboriginal population in the Northern Territory. We would like views from the white community on matters such as land rights and Aboriginal law as much as we would like that from the Aboriginal people. I have been putting that to them and I will put it to you. I keep saying to them that we must not adopt an entrenched view in putting forward or promoting those ideas. We must look at the promotion of the constitution in such a way as Steve and I have suggested to the Aboriginal people. We, who are living here now, our children who have been born here and their children into the future must be able to work together for the development of the Northern Territory, and not in a conflict situation. Part of what I would ask you to do, when you go away and talk to other people, is to consider that part of the discussion and reflect those views in the community as well.

On that point, I would also suggest that we do not necessarily expect to have a complete view from your community today. We consider that some of the things we will talk about will open up further avenues for you to think about and that you should go away and discuss those among yourselves and with other people whom you talk to and, at some stage in the future, we as a committee will be prepared to return to your community and pick up your views as they have then coalesced over a period of thinking about it and discussing it among yourselves.

Mr SETTER: Steve pointed out earlier that the role of this committee is that of developing a draft constitution. He also said that, at some stage in the future, the Northern Territory will eventually achieve statehood. That will certainly be the case and it is indeed my wish. Our role is to develop the constitution. I would just like to refer you to this document of which copies are available. It is entitled 'Discussion Paper on a Proposed New State Constitution for the Northern

Territory'. Within it, there are various options proposed on a whole range of issues. However, I would like to read to you one of the recommendations on page 2. The select committee considers that statehood for the Territory must provide for constitutional equality with other states. This in part can be achieved by the preparation and adoption of a new state constitution to replace the Northern Territory Self-Government Act.

It is important to understand that we operate at the moment under what is called the Self-Government Act of 1978 and that is an act of the federal parliament which granted statehood to the Northern Territory. That is as secure as the stroke of the Prime Minister's pen because he can take that away from us tomorrow by rescinding that act of parliament or amending it or amending the regulations that apply. There is not a jolly thing that we can do about it other than, of course, to create a political climate here that might be fairly unfavourable for his supporters. Nevertheless that is the reality of the constitutional position.

The other thing that the committee recommends, and it was a unanimous view of the committee, is that the new state constitution must be prepared by Territorians because, once again, it would be very simple for our committee to sit down and draft a new state constitution. In fact, we have come up with all these options. We could complete that and formalise it into a draft constitution. It would also be very simple for the government of the day in Canberra to do exactly the same thing. It could write a constitution on our behalf and force it on us and, again, we could not do a thing about it. It is our view that it is very important that we draft the constitution and that all Territorians have the opportunity to have input because, at the end of the day, we are going to come back to you and ask you to vote on a referendum supporting the draft constitution. We believe that unless you, the community at large, have had the opportunity to have input and discuss the constitution and all the matters that relate to it, then we cannot expect the majority of people of the Northern Territory to support it. That is why we are here to talk to you and seek your views, to discuss your concerns and explain about the constitution as best we are able to. At some time in the future, we will come back to you with a draft constitution and enlist your support for it.

Mr HATTON: The point needs to be made that we are not dropping this on your plate today and asking you to tell us all that you are thinking. We are not doing that to you. If you have been thinking about it, we would like you to tell us what your views are. You will notice microphones around the place and, in fact, this meeting is being recorded and will form part of the permanent Hansard public record of the work of the committee. Eventually, it will be going forward to the convention, as will the transcripts of all future meetings. We do not want to forget what is being brought to us today. We will certainly be coming back at least once more to the community but we want your community to become involved and get together and talk about it. If you want somebody to come down and talk about this or that aspect, let us know and we will organise that, within reason and practicality. You know, you cannot be in 3 places at the same time. Within that sort of reasoning, we are very keen to support any community discussion and involvement in the process. I cannot emphasise enough how important it is for you to take the opportunity to become involved in this task. Does anybody have any questions or would anybody like to make any comments?

Mr de SACHAN: You were talking about equality with the other states. It is quite simple. Under the federal Constitution, we have to have 10 Senators. There is no bargaining or anything. We cannot have ...(Indecipherable) ... It looks to me to be highly illegal and I do not care much

about it . But, it is only a matter of time before we will become a state and we must have the same number of Senators that are allowed under the Constitution.

Mr HATTON: The number is 12, by the way.

Mr de SACHAN: Sorry, it is 12. You are quite right. Numbers shouldn't come in to it now because they didn't in the first place. When the Constitution was drawn up, there was not one word of numbers. Each state was equal in the Senate.

While I am on it, and that's got the Senate over, what type of a government were you thinking of running here? Is it to be a 2 House affair or what?

Mr HATTON: That is one of the questions that we are asking you. You will find it in these booklets.

Mr de SACHAN: Well, if you are asking me personally, you will have to have a 2 House parliament. I do not know where you are going to get the members from, with such a small population, but it has to be the same as the rest of the states, baring Queensland which has gone backwards there. I think you have must have an Assembly like the one that you have got and you must have an Upper House of some kind that has a continuous existence. Parliamentary members come out every so often. At this stage, you have not got an answer on that?

Mr HATTON: No, there is a clean sheet of paper at the moment.

Mr de SACHAN: Yes, that is all right. I am saying what I think.

Mr HATTON: The committee is recommending that there be a unicameral system - that is, a 1 house system.

Mr de SACHAN: What?

Mr HATTON: Our committee is of the view that there should be a 1 House parliament. But, the arguments for and against both cases are set out in here so that you tell us what you want.

Mr de SACHAN: Well, I know what I want. I am telling you.

Mr HATTON: Yes, I heard that. That is good. You are the first person to raise that with us.

Mr de SACHAN: It is the only permanent way that you can run your own state. I have seen your book here. It starts off with 'if we become a state'. Now, it should not say 'if we become a state' because we are going to become a state, whether it is tomorrow or in 40 years time. We will become a state and we have got to have a constitution that will run a state. Now I am sure that we would become almost as bad as Queensland if we only have a single House. They had an Upper House once but they got rid of it for reasons best known to themselves. I am a Victorian and I would like to see it run the way we do in Victoria - or South Australia or New South Wales.

Mr HATTON: It certainly is an issue and it is an issue that you really need to think about. I just ask people if they would like to look at the arguments for and against. I know many people

have said they want 1 House, not 2. The arguments are in here for and against and we need to obtain a cross-sectional view of the community.

Mr de SACHAN: Do the people who want 1 House have any idea of what happens when you have got something like what happens in Queensland. You have got no state, no House of review, you have got no brake, you have got nothing. All you have got is the government. I can go on, if you like, on some other subject.

Mr SETTER: I was just going to take up that point regarding Senate representation. You said that we should have 12 Senators. The situation at the moment is that we have 2 Senators but the Australian Constitution is written for the Commonwealth and the states. The reality, as I understand it, is that as a territory we are really not entitled to any Senators at all.

Mr de SACHAN: That is correct.

Mr SETTER: Sure, so what you are saying is that, when we become a state, we should have the full quota of 12 Senators. We agree with you, but the political reality is that it is most unlikely that any of the political parties in Canberra would accept the Northern Territory becoming a state with a full complement of 12 Senators immediately.

Mr FIRMIN: From day 1.

Mr de SACHAN: What are they going to do with the Constitution then?

Mr SETTER: There is a reason for that. Because of the nexus between the states House, where there is an equal number of Senators for each state, and the House of Representatives where the number of members in the House of Representatives is approximately twice that of the number of Senators. If we go to 12 Senators, meaning an additional 10, there would be approximately an additional 20 members of the House of Representatives immediately. That is based on population as spread throughout this country. There is a formula for that. We would probably pick up an additional member but New South Wales and Victoria would pick up the majority of them and the rest would be picked up by the other states.

Mr HATTON: The Senate question ...

Mr SETTER: Steve is going to explain it again.

Mr HATTON: Because we are a self-governing territory, basically we have none of the protections of the Australian Constitution because it refers to the federation of states. We are not a state. That is why we talk about statehood being a constitutional shift. Under section 121 of the Constitution, the federal parliament can create a new state. That is the simplest and most straightforward way of doing it. Under that section, statehood may be granted on such terms and conditions, including the extent of representation in either House of the parliament, as the federal parliament thinks fit. Thus, there is not an automatic guarantee that a new state will get equal representation in the Senate. We are going to have to fight for it. Harry, the point you made about justice and why we should have equal representation is absolutely true, but please be clear that the way the Constitution is drafted, we do not have a guarantee of that. That is one of the issues that we will have to fight for at the time of statehood.

Mr de SACHAN: That surprised me very much because in the original ...

Mr HATTON: The original states have a minimum of 5 House of Representatives members and equal representation in the Senate.

Mr de SACHAN: That is how we got Queensland, Western Australia and Tasmania into the Commonwealth otherwise they would not have come in.

Mr HATTON: That is right. But they did not give the same guarantees for future states.

Mr de SACHAN: This has now been altered?

Mr HATTON: No. That was there.

Mr de SACHAN: No, I am sorry. My wording is not quite right. Now, any new state will come in under a different agreement altogether?

Mr HATTON: That's right.

Mr FIRMIN: Harry, they named the states in the Constitution when it was drawn up and they made a provision, for example, for Western Australia which was extremely reluctant to join the federation. There was a scenario in the constitution which allowed for Western Australia to join or not to join and the balance of the Senators and the House of Representatives were different in both scenarios.

Mr de SACHAN: Of course, we are all sovereign states still. We have only just joined the Commonwealth. At any time, any of our states can pull out of the Commonwealth.

Mr HATTON: No, they cannot. Because when they formed it, they formed an indissoluble federation of states.

Mr de SACHAN: I don't believe that.

Mr HATTON: That is the preamble.

Mr de SACHAN: It does not matter. It is not what we are discussing at the moment, is it?

Mr HATTON: No, it is not.

Mr de SACHAN: We can go into this with fewer Senators than the rest of the states have.

Mr HATTON: That is technically possible. Mind you, please understand that we are sailing into uncharted waters.

Mr de SACHAN: I understand that.

Mr HATTON: There has never been a new state formed in Australia and you have got to ask the question of how section 121 is interpreted. I reckon we will be in and out of the High Court at least a dozen times finding out what the Constitution means. This section relates to other sections

in the Constitution. When is a state a state? It is like: are you a little bit pregnant? It is a very complicated issue. We are trying to come back from a lot of those issues which are the ones you run into when you say, 'Let's become a state'. Before you can even think about that, you have got to say: 'What do we want to be on that day'? That is what we are talking about in our constitution.

Mr PEARCE: The first thing that pops into my mind when you start talking between 2 Senators and 10 for our population, and this is also a double-barrelled question, is how we will fund ourselves. I will come back to that. If you go into statehood with 10 or a dozen Senators, how is the state going to be able to finance those extra bodies? It is all a cost factor.

Mr HATTON: I will deal with the second part first - the question about Senators. The federal government pays the bill. They are federal representatives, paid out of the federal budget, not the state budget. When the federation of Australia was formed, why did they have a Senate and why did they provide equal representation? You know and I know that the way Australia is structured is that about 80% of the people live in that south-eastern corner and it was the same in the 1890s when they were looking at the Constitution. If you happened to live in Western Australia or Queensland or South Australia or Tasmania, you saw that and said: 'Okay, we are going to have a House of Representatives. Each electorate is going to be about the same size and there will be a whole bunch of politicians coming from that south-eastern corner and a few from the other areas which have low populations. The bulk will come from that little corner and, politicians being what they are, will make sure they get re-elected and will start punching all the money in where all the votes are - into that little corner - and the rest of Australia will miss out'. The other states said: 'That is not very fair. We want something to counterbalance that imbalance. To do that, we want a second House, a House of review where, irrespective of your size geographically or the size of your population, you are all on an equal footing. We want a states House that will force the federal parliament to look at all of Australia, not just that little corner where all the votes are'.

That is why the Senate was formed the way it is. That is why it is important, when we become a state, that we are standing on equal ground with the other states. Australia is not the only place that does that and I will quote you the United States example which is where our federal structure was developed from. In the United States, the state of Wyoming is the smallest state in the union. There are some 310 000 people in that state yet it has the same Senate representation as California which has 24 million people.

Mr PEARCE: And how many Senators is that?

Mr HATTON: There are 2 Senators.

The point that Mr Setter was making is why we have 12 Senators. I will tell you why we have 12 Senators. It is because the Australian Constitution says that for every Senator there will be 2 House of Representatives seats. As the population grew, they needed more electorates for the House of Representatives because the electorates were getting too large. They had to make more Senators to create space for more House of Representatives seats. We originally started with 6 Senators and they just kept growing and growing to make room for the House of Representatives. If they ever broke the 2 to 1 nexus in the Australian Constitution, they could bring the number of Senators down to 2 per state or 5 or 6 per state because it would not affect the House of Representatives. At the moment, they are locked in. The fact that they have decided that there

are 12 and they will not change that provision in the Constitution does not mean the Northern Territory should be perpetually made a second-class state. That is the issue.

Mr PEARCE: Automatically get our 12 Senators.

Mr HATTON: We should. Under the Constitution, we have got to fight for that. That is what it amounts to and the point that Rick Setter was making also is that all justice says that we should have equal Senate representation. It may well be that, to achieve that, you may need to negotiate a phasing in of that on a time scale, not a population scale, of equal representation. If we went from 2 Senators to 12 Senators, they would have to find an extra 20 House of Representatives seats around Australia and that would cause a major disruption in the electorate boundaries in all the states where all those extra seats would go and that would affect the voting prospects of one party or the other. If you cause major disruptions in the Australian voting system, you will cause a ripple effect right around Australia. Maybe phasing in is politically the only rational answer.

Mr de SACHAN: At one time, we broke the nexus. The nexus does not mean 2 to 1. The nexus means we have got to ...

Mr HATTON: No, it is 2 to 1.

Mr de SACHAN: Maybe my memory is not as good as yours, but I reckon it's not 2 to 1.

Mr HATTON: The Constitution clearly sets it out. There shall be 2 House of Representatives seat for every Senate seat.

Mr de SACHAN: Yes, that might be what it says but, for some reason, and I cannot remember why, about 20 years ago we broke that nexus.

Mr HATTON: No, we did not.

Mr de SACHAN: Yes, we did. I can remember the election quite well and I am trying to think. The Liberals tried to break the nexus.

Mr HATTON: Tried to but never succeeded.

Mr de SACHAN: They didn't?

Mr HATTON: They tried last year. At the referendum last year, they tried to break it but they mixed it up with so many other things that you could not pick it out and deal with it.

Mr FIRMIN: I actually think that both of you are correct. The Constitution provides for one House of Representatives seat for up to 250 000 population. What happened - you are quite correct - there was a point where the number of House of Representatives members produced a ratio where, under the Constitution, there should be more Senators. There was some fight about whether the Senate numbers should be increased from that proportion because the Constitution actually provided 6. Thus, the constitution in fact was in opposition to itself. There was a period where it was out of balance but there was an opinion in the courts that the number of 6 was

incorrect because the proportional representation overrode that other system. They brought it in and they increased the number. I think it was done in 2 bites - up to 8 the first time and then to 12.

Mr de SACHAN: I do not forget many things politically but, for some reason, I have forgotten just what that was. That sounds pretty correct to me. I can remember the election. It was not a High Court decision. There was an election or a referendum on it. I remember that I was at the top end of Queensland at the time. We come up to what we can do about the Senate. It all depends on what parties ...

Mr HATTON: As you can see, there are no simple steps in any of these. There is no simple, clear cut answer whereby you can just click your fingers and you have got it. There is a lot of thinking through to be done.

To come back from those issues, you raised the issue of money.

Mr PEARCE: Right, how we would fund ourselves. How we would fund ourselves because there was a memorandum of understanding in the first place that has been whittled and chiselled away.

Mr HATTON: It officially closed last year.

Mr PEARCE: Oh, did it?

Mr HATTON: I love this question, I really do, because it gives me an opportunity to make an important point. I will ask you to think. We have in place now a parliament and elected representatives. We have in place a formed public administration, the public service, hospitals, schools, a police forces - all the public administration is in place. We have in place the judicial system and courts right through to the court of appeal. All the infrastructure of a state is in place. We have a taxing regime in line with the rest of Australia. The financing that we get from the Commonwealth, as of last year, is drawn from what is known as the Commonwealth states tax-sharing pool which is the same bucket of money from which the states get their money. Our share of that is calculated by the same body that calculates it for the states - the Grants Commission. It is done at the same time as it is done for the states, through the relativities review, and using exactly the same formulas and factor assessment as for the states. In other words, what we are getting from the Commonwealth is calculated exactly as if we were a state. There are no differences.

I will just explain that, in addition to that, we get a special payment shown as an electricity subsidy from the Commonwealth. However, Western Australia gets a special subsidy for the losses it made on a take-or-pay contract to the gas pipeline. New South Wales and Victoria get \$300m or \$400m a year subsidy for their railways. Those are special arrangements that are accommodated for in the Commonwealth states financing arrangements.

We do not have any special deals because we are a territory. We are today standing on our own feet as if we were a state. Col makes the point that we do not have the revenue-raising capacity. Some of the royalties, like the uranium royalties, bauxite royalties and other things are currently going straight to the Commonwealth. It redirects some of that money as a special payment to us. It would come directly to us with our proposals for statehood. However, because of the way the Grants Commission works that increases our revenue-raising capacity and decreases the

amount of money the Commonwealth gives us. The net effect would be about zero and we would still be standing on about the same ground as we are on now.

Mr FIRMIN: But, it will dispel the myth that we are being supported at a far greater level than any other state. Then, you will actually see that we are returning quite considerable revenue.

Mr HATTON: But there is no financial bonanza at the end of the statehood rainbow. That is the point. And there is no financial disaster either. It is important to recognise that statehood is your constitutional rights, your rights as Australians.

Mr PEARCE: With money from the federal government, all the states will have ...(Indecipherable).

Mr HATTON: That is right.

Mr HATTON: On average, states get 60% of their money from the Commonwealth. During or just prior to the Second World War, they reached an agreement that the Commonwealth would collect taxes on behalf of the states.

Mr de SACHAN: That was during the war.

Mr HATTON: Yes, 1942 actually.

Ms HARGRAVES: Do we have control over our own destiny by becoming a state? Do we have control of our resources and who we sell them to and how we control them - leave them in the ground or take them out or sell them or not sell them?

Mr HATTON: To the extent that the states have that control, we would have the same control. That is the proposal. Our argument is that uranium mining, for example, should be operated under the Northern Territory mining legislation, environmental legislation etc, administered from the Northern Territory royalties paid to the Northern Territory, but recognising that the Commonwealth government, as it has everywhere in Australia, still has the export licensing power. If it refuses to issue an export licence, we could still produce uranium but we could not sell it overseas. We could sell it to elsewhere in Australia but not overseas. There are those sorts of limitations.

The proposal in respect to Uluru and Kakadu are that they should be leased back to the Northern Territory Conservation Commission. To delve into those issues more deeply, the government produced 3 discussion booklets and there are more coming out. One is called, 'Land Matters on Statehood', and there are copies available. It deals with Aboriginal land and federal land generally that should be transferred to the Northern Territory, ways of handling the Aboriginal Land Rights Act situation in the transfer to the Northern Territory act and protections that Aboriginal people properly are seeking to ensure that they would not lose their land overnight. That is of real concern to the Aboriginal people. A third booklet deals with minerals and energy on statehood.

Those are options papers which have more detailed discussion. They are available. Please also take them for further reading. This other book that I have been quoting from discusses how you go about becoming a state and what sort of things have to be done to become a state. That gives

the options for the grant of statehood and the different ways you go about it. I think we have done our homework and we can tell you how you can do this, that or something else. That is what have been doing for the last 3 years.

Mr PEARCE: Another thing that comes to my mind is that, if we become a state, will there be more or less restriction put on me as an individual than if I lived in a territory? My other question relates back to Territorians. There is a huge transient population in the Northern Territory who are tied in with public service. They come for a few years and then go back to wherever they came from. They spend 2 or 3 years here. How are you going to define a Territorian?

Mr HATTON: Firstly, I think that the historical situation of the 2- or 3-year visiting public servant has broken down a lot since self-government. We do not have transfers in and out. You will find that we have a high degree of stability and many public servants regard themselves justifiably as Territorians.

Mr PEARCE: I was not really picking on public servants.

Mr HATTON: But it is important.

Mr PEARCE: It is right throughout the mining industry. I was not really picking on public servants, but people who do come here. I do know this. They come to the Territory, make higher wages but they own a house in Perth or in Queensland or wherever and their ultimate goal is that, in the 3 or 4 or 5 years that they are going to be here, they will pay their land off. They are not in the Northern Territory. They are really ...

Mr HATTON: Visitors.

Mr PEARCE: ... transients.

Mr HATTON: I understand the people that you are talking about and the circumstances. I know what you are talking about and I think we all do but, in the end, the only thing that we can do is define who has the right to vote and who does not have the right to vote. At the moment, the provisions are in the Self-Government Act and that is expanded through an electoral act. One of the questions that we are asking is what should be written in the constitution about that. We are recommending that the clause that goes in there should be similar to the clause in the Self-Government Act clause. It gives the basics about people who are eligible to vote - you must be an Australian citizen, you have to have certain residency status of 3 months or 6 months in the Northern Territory, and so on. Every adult who meets those criteria is eligible to vote by secret ballot. You put that into your constitution and also who is eligible to stand for election. Who is excluded? Maybe somebody who is an undischarged bankrupt should not be eligible to stand. If you are not an Australian citizen, you should not be eligible to stand, and so on.

Ms HARGRAVES: Or a person who owns property commercially in another state.

Mr HATTON: Well that is a question you would need to deal with. You have the right to put that into your constitution. A constitution defines those things. If you put it into the constitution, it is very stable and hard to change. For example, I think that it would be undesirable to put voting systems into the constitution because at different times people might want to have different voting

systems. That is a matter that you should deal with by legislation, but within that framework. The constitution sets the foundations and the framework. It sets the rules around which the parliament is allowed to work. It sets the limits.

Mr FIRMIN: Ron, you raised 2 issues. The first was whether there would be any increase in restrictions on you as an individual as a result of statehood.

Mr PEARCE: Yes.

Mr FIRMIN: I do not believe there would be any change at all unless there were some restrictions written into the constitution. I cannot see that happening, to be quite honest, because one does not normally write a constitution that restricts the rights of individuals. Quite the reverse, it sets out your rights as an individuals and one would expect that that would reflect the attitudes of Territorians at the moment and would be similar to other states. In answer to your first question, I would say there would not be any increase in restrictions on you.

Steve touched on the public service turnover. He rightly says that there has been a marked change in the 2- or 3-year visitation by people from south since self-government in the Northern Territory. The Northern Territory Public service has stabilised enormously. The massive turnover that we used to see in the private sector - in banking, the insurance industry, the support industries, mining and fuel industries where they sent people to the Northern Territory for 18-month to 2-year periods - seems to have changed also. I am not saying that that has happened overall but, generally, there has been a change in that trend. People are now electing to stay longer.

The major area where there is turnover at the moment in the Territory is in the defence forces. However, with the sort of lifestyle that is now becoming apparent in the Northern Territory, you will find that many defence force personnel, when they are being asked to move and having served their 20 years, are electing to opt out of the service to stay in the Northern Territory. Thus, it is a matter of attitude about where you want to live that creates the environment for people to stay. I certainly would not like to see anything written into the constitution in respect of that matter, whether it be for voting purposes or for treatment commercially, as to whether you had been here 1 year, 2 year or 20 years. I think you will probably find there are many in this room today, like myself, who came to the Northern Territory in the first instance on probably a 1 or 1½ year posting to do a job. In my case, that was nearly 25 years ago. I fell in love with the place and I did not want to leave it. I think there are a lot of people in this room today who found the same sort of thing.

Mr SETTER: Can I just make a very brief comment, Ron, on your question about restrictions should we move to statehood. Currently, the situation is that we operate 99% under Northern Territory law which is put in place by the Legislative Assembly. That law is put forward, debated and then adopted by Territory people. It is most unlikely that, unless you have some government that goes right off the rails, any unreasonable restriction or law will be imposed on Territory people. There is some Commonwealth law that applies in the Northern Territory and probably the most well-known one would be the Land Rights Act which has quite a considerable effect here. However, generally speaking, there is no reason to think that there would be any additional restriction on people at all.

Mr PEARCE: What prompts my question on restriction is that I am at present fighting with a document simply to gain access to ride horses into Litchfield Park. The document is similar to the other very large documents that you have here and that have to be perused and gone over and put into place. I can understand the Conservation Commission's reluctance in going forward. However, we are in a business situation and they are in a guaranteed situation. Their wages continue every week whether the park is open or closed. I still have my mortgage payments to make and I still have to get up there. I have no access to the park at all. It might not be until very late in this year that I will even get an answer back as to whether I can do this or not. The aims and objects of this document are for horseback riding in the park yet for me to get access to do the same now - and I have been waiting in this town for 3 years just to find out where the road went. It becomes a bit frustrating. I am talking about laws. The Conservation Commission is an entity to itself. I feel that there should be a little bit more input to looking after small businesses and outside operators who have to make their commitments. As far as I can see, the department and the commission are an entity to themselves and just go on their own merry way.

Mr SETTER: Ron, I accept what you say. The point I was making was that there will not be any change to that situation when we move to statehood.

Mr PEARCE: Right, I was trying to explain to you that I am still fighting with this document and I do not want any more restrictions.

Mr HATTON: It would not affect the Litchfield situation because that is under a Northern Territory government administrative unit but I guess the essential element is that, in some areas where at the moment the decision-making responsibilities lie with the Commonwealth government and are of a nature that would normally be dealt with by a state - in other words, they are not transferred powers yet - the difference would be the government which is setting the rules and regulations. It relates to the extent to which you have influence over the decision-making processes of that government. I think that you have far more influence over a state decision-making process than you do over a federal government decision-making process simply because it is smaller and is directly responsible to you. It is not a clear cut 1-plus-1-equals-2 situation. You have to make a value judgment on how significant it is. I think it is an important consideration, irrespective of who is in power at any particular time either federally or in the Northern Territory. What is important is your capacity to influence the decision-making of that body. There are no guarantees under any government that you are going to overcome frustrations. That is the reality of life. I just hope that you have a better chance of overcoming them the closer you are to that government.

Ms HARGRAVES: I would like to ask Wes a question. Can you fill us in on what is going to happen with land rights in relation to the new constitution that we are in the process of building up in consultation with your people whom you represent? If we put this constitution in place, will we have any more continuous land claims or will they be dealt with as the constitution is drawn up? Will it be set in place instead of going on and on and on over the years? Will the constitution look at that area and make it solid as to your people's claims on the land?

Mr LANHUPUY: Jackie, as you know, it has been a very long and drawn out situation in the Territory. I guess that is one of the main arguments the Territory government has been trying to put forward to the federal government in Canberra. There has been constant argument by the Chief Minister of the day. With respect to this constitution, I suppose what we are saying is that we would

rather deal with land matters concerning the Territory at the Territory level so that at least we will be able to fix matters of concern within our communities among different sorts of people who have got land throughout the Northern Territory whether they be pastoralists, Aboriginal people and other people who hold properties in the Territory.

As Col Firmin said earlier, your views will be appreciated by the committee as will those of the Aboriginal people who make up 25% of the Territory's population. We want to look at how we should frame the constitution and whether people want the Land Rights Act as it exists in the federal legislation enshrined in the Territory constitution. Should we be given special recognition because of our prior ownership of Australia? Those sorts of aspects have got to be taken into account and the views you may stress to the committee, of course, will be taken into consideration.

At the convention which Steve spoke about earlier, we will be able to sit down and talk about the technicalities involved in formulating a policy that may have a consensus throughout the Territory as a whole. If the 25% of the Territory's population who are Aboriginal people are going to argue about the fact that they do not support the constitution or statehood, it is no use for us Territory politicians going out into the community and saying that we want a constitution. That is one of the reasons why we are going out and saying that it is an opportunity for people to express their views on matters affecting the mining industry, the pastoral industry and the interests groups like Aboriginal organisations throughout the Northern Territory. It is important to be able to sit down and face the facts of having to deal with a government that hopefully will make decisions that affect people in the Territory and cut that attachment that we have to Canberra. I personally am in support of having a constitution in the Territory and, hopefully, in the end when we gain statehood, it likely that we will achieve other things by discussing matters of concern to us on the ground. When we were at Hooker Creek, the people said that they do not trust the Territory government with land rights. That is the view that they hold.

Mr HATTON: And that wasn't a party specific statement either, I can tell you. I said to them: 'What if Wes was Chief Minister?' They said that they still would not trust it.

Mr LANHUPUY: That is right. Thus, you have those sorts of views expressed. The important aspect is that we are starting to get people to talk about an issue which I believe important.

Ms HARGRAVES: Yes, there are issues that will have to be put into the Constitution such as that the claims must be finished or we let them go on or there is so much land or so little land. There are many things to be talked about.

Mr HATTON: One the questions that is asked is whether the principle of Aboriginal land rights should be entrenched constitutionally and, if so, to what extent it should be entrenched. There are a whole lot of different scenarios from there to there. It is not necessarily right to assume that the act as it exists now is perfect or that there are not things that the Aboriginal people might like to see changed in it. As you say, Jackie, my feeling is that in the non-Aboriginal community people do not object to the principle of Aboriginal land rights but they would like to know what the end picture is going to be.

Ms HARGRAVES: Where does it finish?

Mr HATTON: How we get through this fighting stage and get down to living side by side.

Ms HARGRAVES: Yes, living together.

Mr FIRMIN: It may not even come down to the point of when it might even finish in the sense of claims being made. It might be a better interaction between the groups as to how we all manage our land and how we react to each other and what things we can achieve together with the use of that land. That may be the end product of all these discussions. We do not know yet. It is too early.

Ms HARGRAVES: We should not have to use 2 constitutions to solve an argument. First of all, we are Australians and, secondly, we are Territorians.

Mr SETTER: We are all Australian first, Jackie.

Ms HARGRAVES: Yes, and that is really the constitution that we ...

Mr HATTON: We fit under that. We cannot do anything that is in conflict with the Australian Constitution. That sets the Australian framework and, within that framework, we can set our own rules.

Ms HARGRAVES: In your own house. Thank you, Wes.

Mr LANHUPUY: Like Steve said earlier, if there are any comments or submissions that you may wish to make to this committee, feel free to do so.

Ms HARGRAVES: I would like to see it discussed face to face.

Mr FIRMIN: That is why I raised it earlier because, in any white group that we have met with so far, no one has really wanted to raise it in the sense of putting forward his or her views on what we should be doing with respect to land rights.

Ms HARGRAVES: It is not a racial view. It is a living together view. We all live together and, if the bloke next door is getting more than you and more entitlements than you, then that will cause dissension. If we can iron it all out before we put it in our constitution, we will all know the rules that we live under.

Mr FIRMIN: That is right. That is why we are looking for views from all sides.

Mr de SACHAN: What Jackie's asked for is a finish to the whole thing, one way or another.

Ms HARGRAVES: It seems to be an ongoing niggle, niggle, niggle, niggle, but if it ...

Mr SETTER: There is a sunset clause in there now, isn't there?

Mr HATTON: No.

Mr LANHUPUY: I think the NT has been negotiated with the land council as to a stopping date to land claims, where it cannot go beyond.

Mr de SACHAN: I have something entirely different to raise, if you don't mind.

Mr HATTON: Yes.

Mr de SACHAN: I come from Victoria and often we think up things that are first in the world or first in Australia such as seat belt legislation and alcohol limits. Maybe we can come up with something new. We do not have to be behind. There is a thing called the right of recall. That means when a politician or a council is elected and does not perform reasonably well, and this often happens - and I am not talking about here but about Australia and the world - the people should have the right to recall them and have another election. There is nothing to stop us being the first body to bring this in. This could occur if something like 10% of the electorate signs a petition. I use '10%' because that is what the Arbitration Commission puts on the unions if they want a court controlled ballot. I am using the 10% but I don't care if it is 40% or 50%. There must be some way. Look, there was a Senator voted in in Tasmania who did not turn up to any meetings. He went up to the Gold Coast, started a grocer's shop and had his wife working. He was paid for 6 years without turning up for anything. That is the law. There should be some way of recalling such people. I do not mean the Governor in a state or the Governor-General in Australia, but there should be some right of recall. It happens here and everywhere. For years, you are paying for and putting up with someone who is incompetent.

Ms HARGRAVES: You have a vote of no confidence already in place.

Mr de SACHAN: You cannot get them out of parliament.

Mr HATTON: No.

Mr LANHUPUY: Once they are elected, they are in for their full term.

Mr de SACHAN: There is no way we can get rid of them. There is no right of recall here in Australia.

Mr FIRMIN: Harry, the situation that you spoke about with the Senator does not apply in the Northern Territory with respect to the locals. If a member of parliament fails to attend parliament for 3 consecutive sitting days without leave of absence being granted by the House, his appointment is automatically terminated.

Mr de SACHAN: Then he is no longer in parliament?

Mr FIRMIN: That is right.

Mr de SACHAN: I have never seen you do it with anyone.

Mr FIRMIN: We all turn up and work.

Mr HATTON: If we are sick, we send in a sick form.

Mr de SACHAN: Yes, I know all that. If you are sick. That is nothing. I want the people to be able to do something about it. I do not mean to leave it in the hands of politicians because they will probably all stick together. The people elected them.

Mr HATTON: This is the second time that the argument has been raised and I guess that, in the end, the community will have to make a decision whether it supports that or not. I mean that seriously.

Ms HARGRAVES: Put it down in your report.

Mr HATTON: This is the second time this week that the issue of having some procedure whereby the electorate can demand that the member face re-election in a by-election has been raised. There are arguments in favour of that, but 10% - gosh, if you can't find 10% among hard-core party members to really cause trouble for the other side, you would have a real problem. If you were going to do it, you would need to have the numbers that are going to be real. Secondly, having done that, you will force a member perpetually to do things that are popular in his electorate, irrespective of the consequences or whether it is right or wrong. You would become a representative politician, a populist politician, and you will always avoid any hard decision.

Mr de SACHAN: I do not believe that.

Ms HARGRAVES: We have it now. For instance, I do not like Rick advocating that shops should have the right to sell liquor on a Sunday.

Mr SETTER: I am pleased that you do not live in my electorate, Jackie.

Mr LANHUPUY: I will give you a classic example which I think would happen in my case, in Arnhem. 35% of the people in my electorate are Aboriginals. On an issue like land rights, a sensitive matter that causes concern, coming from my background, I would, in my case, support the majority of my electorate. What you are asking me to do is to put my job on the line to obey or go by the wishes of that 35%. It would place me in a very difficult position.

Mr de SACHAN: You are elected as a member of parliament. I am asking not only you but everybody at least to do a reasonable job. If you do not do a reasonable job, you should not be there. All that person is doing is taking up that seat.

Mr LANHUPUY: I was just trying to give you an example. That is all.

Mr FIRMIN: But every 4 years we get thrown out if we are not doing a good job, Harry.

Mr HATTON: The point that we are making is that that is the whole principle of having to face re-election.

Mr de SACHAN: How long?

Mr HATTON: In the fixed time frames. The purpose of the re-election is that, if a person is not doing his job, you can replace him. That is where parties may change their pre-selection of somebody or the electorate might vote somebody else in. That is what elections are about. You are

saying that that the politician should be facing the continual potential for being taken to re-election at a moment's notice.

Mr de SACHAN: It would liven him up and keep him on his toes, yes.

Mr SETTER: You would have elections every month at horrendous cost to the taxpayer.

Mr HATTON: You are not going to liven him up, you are going to put him to sleep.

Mr de SACHAN: I have never heard one politician in any sphere of politics ever support that there should be a right of recall. They all claim, especially the Whitlam government, that once you are elected for a period, no matter how you perform, you should be in there for that period. That was his argument and his party's argument: once you are elected, you just sit on your behind and you are there for the duration. No politician agrees with the right of recall. This is just a move to keep them on their toes. I think it is a good idea. Other people, especially you people, do not agree with me. The 10% was simply a figure.

Mr HATTON: I would not even be frightened of that rule personally, I can tell you.

Mr de SACHAN: No, possibly you wouldn't, because you know your electors. If you think you can get back, and I have no doubt you can, why would you worry about it?

As I explained before, the 10% was the amount put on the unions by the Arbitration Commission to get a ballot. If you get 10% of the union, you will get a ballot. But, I am not interested in the 10%. I interested in the whole principle of the thing.

Mr HATTON: I understand that.

Mr de SACHAN: It could be 40% or 60% or any percentage that you wish, just as long the principle is there that, if someone does not do his job or plays up, there is machinery there to replace him by someone who is more competent. That is all.

Ms HARGRAVES: I think the House does that itself. If someone is playing up, it can tell

Mr de SACHAN: I will tell you what, in my fairly long lifetime I have never seen anyone put out of parliament by the parliament. I am not saying that has not happened, but I just cannot recall such an occurrence, and I have been interested in politics since I was that high.

Mr HATTON: There are 2 possible reasons for that. The first is that no one has broken the rules to be thrown out.

Mr de SACHAN: You can't sit there and seriously tell me that.

Mr HATTON: Well, I can.

Mr de SACHAN: Do not give me that. What about that chap up in Queensland?

Mr HATTON: I have never heard of him. I do not know who he is.

Mr de SACHAN: Well that is right.

Mr HATTON: I also do not know whether the Senate has rules about attendance.

Ms de SACHAN: I did not think that you would be happy with it.

Mr HATTON: To be honest, I do not think it is in your interests.

Mr de SACHAN: It is in my interest. Yes.

Mr MARSHALL: You do not think it is constitutional?

Mr HATTON: No, you can write it into the constitution, but I do not think that it would be in your interests.

Mr FIRMIN: If it was taken along that route and it was as frivolous as it could tend to be, you would find that probably you could not afford to have the elections that would be fought each time.

Mr de SACHAN: No, you are misunderstanding the nature of this. ... (Indecipherable) ... As a matter of fact, it could be put in the hands of the returning officer. The returning officer, in theory, is more powerful than a politician. He is beyond suspicion, like Caesar's wife. It should be put in the hands of the state returning office and have nothing to do with the politicians whatsoever.

Mr HATTON: As a matter of interest, can I canvass the views of other people in the room.

Mr de SACHAN: Eh? I do not know.

Mr HATTON: That is what I am doing. I am canvassing the views of other people.

Mr MARSHALL: If this is going to happen to politicians, is it going to happen to public servants and ministers and people from all walks of life?

Mr HATTON: The ministers are politicians.

Mr MARSHALL: What about heads of departments?

Mr HATTON: Ministers are more vulnerable than MLAs.

UNIDENTIFIED: Chief Ministers.

Ms HARGRAVES: In your instance, Steve, you were moved aside because possibly they did not think you were doing what you should have been doing. Thus, it is already in place. It can happen.

Mr HATTON: But I am still the member for Nightcliff.

Ms HARGRAVES: Yes. It can still happen. If somebody is not doing what the group think he should be doing, there can be a movement such as happened in your case. It has happened before.

Mr FIRMIN: You have a perfect example here in your own electorate with the previous sitting member having his own problems. In fact, his party turned around and said that he could not represent it any longer. It did not put him up for pre-selection.

Mr de SACHAN: He went for a few years though and there was nothing we could do about it. There was no machinery for us to do anything and you people would not do anything about it. His own party would not do anything about it. It was a real joke that. You people know that as well as I do.

Mr HATTON: You re-elected him.

Mr de SACHAN: Eh?

Mr HATTON: You re-elected him. Kicked Goff Letts out.

Mr de SACHAN: I didn't.

Mr FIRMIN: The electorate did.

Mr de SACHAN: It is a long story that.

Mr HATTON: Do not blame us.

Mr FIRMIN: Is there a different matter that someone wants to raise? I think we have probably canvassed this one.

Mr SHOBRIDGE: I would like to raise the subject of government involvement in private industry. I believe that there are certain instances where government goes into private industry to the detriment of private industry that is already operating in that area. I guess what I would like to see is some sort of criteria that the government should have to fulfil before it goes in. Indeed, when it does go in, there should be criteria in relation to its plans and expenditure, both proposed and actual.

Mr HATTON: Yes. I guess you could argue QANTAS does that. QANTAS, Commonwealth Bank, Telecom.

Mr SHOBRIDGE: I am thinking more of home matters.

Mr HATTON: But they are examples of businesses in fact.

Mr SHOBRIDGE: For example, we established a business here and, 3 weeks after we were given the government licence after a great expenditure, Manton Dam was closed. Possibly, this has the potential to send us bankrupt. I do not believe it will. In fact, we are trying to be very positive about it, but it has divided the market. We cannot compete with the government dollar.

Mr FIRMIN: David, you could use the same example, for instance, with a large trucking company setting itself up to transport goods backwards and forwards through the Northern Territory and, the next day, the government announces that it is going to build a railway and the railway comes into force within the next 12 months. Unfortunately, these sort of things will happen.

Ms HARGRAVES: But you are first putting an expression of interest out before you build the railway and the people have an opportunity to say that they do not want it. In that instance, nobody had a chance to make any objection.

Mr HATTON: Which way is it going in direct competition with you? Because it is a water sport facility?

Mr SHOOBRIDGE: For example, before we purchased the property, we asked the government about the infrastructure. We were told there was no money to do it and now a couple of million dollars has been spent in putting a nice new sealed highway right into Manton. There are no residents living there. There are no businesses there. At the same time, we had 17 000-odd visitors through last year. Is that treating our 17 000 visitors like second-class citizens?

Mr HATTON: You are looking for road access?

Mr SHOOBRIDGE: We are looking for road access but I think it is more general than that. I did not want to be specific on one issue.

Mr HATTON: I was aware that your mind was thinking about the Lake Bennett situation.

Mr SHOOBRIDGE: I guess that there are other instances of smaller operators, not the Warren Andersons of this world, who have put every dollar they have got into it. We cannot compete against the government and I just wonder whether there should not be some sort of criteria. For example, when I was researching to start our business, we should have been able to find out that these things were on and the extent of the government's intentions. In fact, we were told that it would be 10 to 15 years away.

Mr FIRMIN: I think we all thought the same thing, David. We had some considerable problems. I raised the Manton Dam recreation lake proposal when I was an alderman on the city council back in 1976. In fact, I attempted to get the Manton Dam proposals up then. We had considerable problems with the health aspects and we fought for several years to try to change that. It wasn't really until Manton Dam became a residual repository of water rather than a primary water source for Darwin that we were able to convince people that it was capable of being used for recreation, and it did come up very quickly.

Mr SETTER: We were pushing the same issue back at about that time, 1976, but nevertheless your point is taken.

Mr SHOOBRIDGE: We raised it with the Darwin Sailing Club and it said it did not need any inland water.

Mr SETTER: When was that?

Mr SHOOBRIDGE: About 18 months ago.

Mr SETTER: Oh, right. I am talking about back in the mid to late 1970s. It certainly was fairly high on their agenda in those days.

Mr SHOBRIDGE: I agree but, if the intentions were known then, I might not have gone the way I have gone.

Mr SETTER: I think that is a fair enough point.

Mr SHOBRIDGE: But, I am trying to generalise in so far as I believe that there should be some sort of criteria, perhaps like you have environmental impact studies if you are going to create a new park. There could be some sort of a commercial impact study. I think that is the point I want to make.

Mr SETTER: It is important to generalise in these matters because we are talking about a broad-based constitution as opposed to specific issues.

Mr HATTON: It also raises the quite conflicting situation that faces the community. Do you allow motorised water sports on Lake Bennett?

Mr SHOBRIDGE: No, because we only built it back to non-powered standards. Let me state that, if Manton was to be used purely for powered craft, we would have no objection whatsoever.

Mr HATTON: Okay, fine. I understood that the motorised people were very heavily lobbying - the water skiers and the motor sports people.

Ms HARGRAVES: 10 people.

Mr HATTON: I was lobbied a lot and so were many other ministers and MLAs. We were being lobbied to make Manton Dam available for that. We could not do that until we had drained it and got the logs and stumps and Lord knows what else out of it. One of the premises was to provide informal access for picnickers and water skiers etc. The longer term proposal was to have the potential to develop areas near Manton Dam as a site for future significant tourist resort development to attract some investment in the tourist industry in the Top End. That was, if you like, the thinking process in the development of that basic resource at Manton Dam. I have been out of it now for the last 9 months, and I am not using that as an excuse. I am also not dodging the fact that I was part of the decision-making for that construction of Manton Dam. If you like, I am putting the thinking processes that led to it. In fact, in relation the question of whether it would impact on you, our advice was that it would not.

Mr de SACHAN: Was this by a competent person?

Mr HATTON: We thought it was at the time.

Ms HARGRAVES: Ask us.

Mr HATTON: I understood that, on a number of occasions, people talked to you about it, Dave.

Mr SHOOBRIDGE: Can I say that a feasibility study was done. Now I have read that study and I do not propose to discuss it because we were given it in confidence. However, the consultants never once approached us - not once.

Mr HATTON: Well, that is news to me.

Mr SHOOBRIDGE: If they did, they did not identify themselves.

Mr FIRMIN: David, the only quick point I wanted to make was that the same sort of thing has been said to us with respect to operators of sailing craft at Mindil and Fannie Bay beaches in regard to the Sailing Club teaching people to sail. They all felt that the same thing would happen. They felt that was an insider trading situation and that it would reflect on their commercial activity. The reverse of that has occurred. I hope that, in the future, we can say the same thing happened with you. By opening up the opportunities to a wider range of people, we have expanded the market. In expanding the market, it then overflows into those commercial areas at a greater rate than would have occurred in the first place. I hope the same thing happens to you. That is all I wanted to say.

Mr SHOOBRIDGE: I must comment that, although I raised a specific matter, my remarks were made in relation to a future general context.

Mr HATTON: It might be a good time to put down on record some of the concerns at the decision-making process. The issue is government becoming involved in providing a community facility where private enterprise has provided a similar community facility which, naturally, it must charge for the use of. That will always be a source of conflict. We must recognise that because governments are faced with the competing pressure of the community demand for access to facilities. On the other side, there is no reason why the government would want to spend money on an area that has already been adequately catered for by the private sector. Inevitably, when the private sector is doing that, there is another area that is not being catered for and the pressure is on the government to do it. Where they intermesh is where the conflict arises, isn't it? I do not know how you solve that. I really do not. I know the problem. They are competing pressures but how do you say to the citizenry: 'We are not going to allow you to have access to that potential facility because we do not want to adversely affect 1 or 2 or 3 businesses'. I understand that.

Mr SHOOBRIDGE: In the same context, if I can give you another example, a couple of months I bought a hydraulic winch. I was told the price had gone from something like \$480 up to \$800. Why? Because the Commonwealth government had put on a protective tariff because, all of sudden, there was a Victorian company that had said that it wasn't producing it but it had the potential to produce it. I guess there is also that problem too.

Mr HATTON: You will not find a protectionist here.

Ms HARGRAVES: Could we put things like that in our constitution? That the government of the day, whoever it may be, should liaise with the people more before it makes decisions affecting businesses, because without business we have got nothing?

Mr HATTON: I do not know, Jackie. It is an issue you can wrestle with. There is nothing to prevent you doing it, if I can put it that way. As a total community, you can address any of those

sorts of issues and write those sort of rules in. When you are doing it, you need to work out whether that is the appropriate mechanism or whether what you are really arguing for is some sort of legislation.

Ms HARGRAVES: Well the government brings in the legislation, doesn't it?

Mr HATTON: Yes, but governments react to lobbying pressure. They brought in environmental impact statements and the whole lot of other things as a result of lobbying from the community. You need to consider whether it is appropriate for a constitution, whether it is something you want dealt with through some other mechanism or whether you want what they call some sort of appeal mechanism.

Ms HARGRAVES: That would be better. I think it also covers what Harry was feeling about it too. An area of appeal.

Mr HATTON: Whom do I turn to when I am not happy with what the government is doing - that sort of thing? Ms HARGRAVES: Yes. In any regard. An appeal. We just do not want to be told that is it.

Mr HATTON: An administrative decisions review system.

Mr de SACHAN: I can't see that that has got much to do with the constitution, but I repeatedly asked our local member what was going on with Manton Dam and I never heard a peep from him. As a matter of fact, I still do not know. At that stage, there was all the row about the reservoirs and that is another source of water. I tried to find out why it is not used as the town water.

Mr HATTON: That was the argument that Water Resources gave the government for many years. Every time somebody asked why Manton Dam was not used, the answer was that it was a backup system for water research. When we brought all the water units together and started to get some real answers out of the system, we found that in fact 80% of the water from Manton Dam goes over the top of the wall every year. It is so shallow that it has very little holding capacity and it is absolutely useless for that purpose.

Ms HARGRAVES: I think that the ... (Indecipherable) ...would have been better there.

Mr HATTON: That is another option to look at but our advice is that there are better ways of doing it. That does have the potential to be an excellent community facility and, more importantly, the surrounds there have excellent potential for development for the tourist industry, to create market development for tourism in the Top End. That was also a lobbying pressure that we were under from the industry, you might remember. Everything was seen to be going to central Australia and nothing in the Top End.

Ms HARGRAVES: These are the fears that come to people overall. This is why people have got to have some input and some liaison with the government of the day about these things that happen because they affect our lives as well as our businesses. For a government to go ahead and just do something because they have been lobbied by one other group and damn the rest of them, that is when it creates bad feeling among the people.

Mr HATTON: The community had been talking for many years about Manton Dam being opened up for recreation.

Ms HARGRAVES: And then knocked it back. But, I am not talking about that. It is the principle of it.

Mr HATTON: The only reason they were knocking it back is because people were saying that it has to be kept pristine for drinking water. When you find out that that is a nonsense, which it was ...

Mr de SACHAN: Is it used in the system now, for Darwin?

Mr HATTON: No, it never was.

Mr MARSHALL: If Darwin River Dam failed, what other sources of water have we got?

Mr FIRMIN: There are several different ones but the McMinns Bore system is the immediate backup for Darwin at the moment. In fact, it is utilised concurrently with Darwin River Dam all the time. I suppose that, in an emergency, we could probably fall back on Manton Dam if everything else failed. But Manton Dam would not be sufficient by itself to maintain the Darwin reticulation area.

Mr HATTON: If Darwin River Dam failed ...

Mr FIRMIN: It would be a catastrophe like Cyclone Tracy.

Mr MARSHALL: Why shouldn't we get on with building one of our new dams. Have that in place and then put Manton Dam in as a recreation area.

Mr FIRMIN: But even so, I could go one step further than Steve. With respect to Manton Dam, for example, I did some studies in England a couple of years ago. I had a look at the sort of water usage in England. They use reservoirs in England for recreational purposes but they drink from them all the time. They have no other source of water. There a place very close to the city of London that is the major area where they water ski. It is the water skiing championship area for central Europe. They have a swimming baths in it. It is the actual water that is consumed every day.

Mr SETTER: They have done the same thing with the lake at Mt Isa for years.

Mr FIRMIN: The whole question in the original sense was a bit of a nonsense.

Mr HATTON: Can we please come back to the constitution? We are getting from it. This is suppose to be a bipartisan select committee not a government ...

Mr de SACHAN: Mr Chairman, would you excuse us please. We must go.

Mr HATTON: Thank you very much for coming. Are there any other issues that people would like to raise with us on the constitution? Then perhaps I would take the opportunity to thank you for coming. I hope we have been able to deal with those issues. If you would like to talk about other matters informally with us afterwards, we would be happy to do so. If you would like one or

two of us to come back at different times to talk on the issues when you have organised a group, we would be happy to do that.

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

MANINGRIDA — 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:

Mr YIBARBUKK
Mr HART
Ms Helen WILLIAMS
Mr Milark WINUNGUDJ

NOTE: This is a verbatim transcript that has been tape-checked. However, due to poor recording, or many people speaking at the same time, some of the recordings were inaudible and unable to be transcribed.

FINAL EDIT: 11 MARCH 1991

Mr HART: On behalf of the council, I would like to welcome Mr Hatton and Mr Firmin and their party who are here to talk to the council and the community about the constitution which the Territory will need if we are going to become a state. With that, I hand over to Mr Hatton.

Mr HATTON: Thank you very much. Firstly, I would like to apologise for the muck up that occurred in the notice here. We had thought that we had advised and that the Office of Local Government had been following it up to ensure that the council was well aware in advance of our arrival. However, it appears that something went wrong with the administration of the system. I offer my sincerest apologies for the inconvenience that we have caused and I must thank Stan Tipiloura for letting people know on Saturday that we were coming. I will ensure that I do that.

My name is Steve Hatton. I think that the last time I was in Maningrida was early 1987 when there was much talk about ensuring that you could have the boat ramp fixed. However, this time I am here in a totally different role. I am here as the chairman of a committee of the Northern Territory parliament. This is not a government committee, but a committee of the parliament. Both the government and the opposition have equal representation on the committee. At the back of the folder that we have distributed, you will find the names and photos of the members of the committee. There are 3 members from the CLP - myself, Rick Setter and Colin Firmin - and 3 from the Labor Party, Brian Ede, Wesley Lanhupuy and Danny Leo.

It is the only committee of the Northern Territory Legislative Assembly that has the same numbers of government and opposition. That is because, on this particular matter, the government and the opposition are both working for the same purpose. We are not fighting about it. In politics, it seems that, all the time, the ALP says one thing and the CLP says something different and that we are arguing all the time. In relation to this particular matter, we have said that it is too important a matter for us to become involved in party politics and fighting. Thus, we have sat down and we are really working very hard in a bipartisan manner to do this job.

The committee is called the Select Committee on Constitutional Development. The terms of reference of our committee are shown at the back of the booklet. That is the job that we have to do over a period of years. But, what we are doing at the moment is working towards involving the community in the writing of the Northern Territory's own constitution. Before I talk about that, I would like to make one thing really clear. We are not here to ask you whether you think the Northern Territory should become a state or should not become a state. It is not a question of saying that we know the issue of statehood is very emotional. Some people think it is important to do it now and other people are really nervous about it and want to hold it off. Other people are simply against it at the moment. There are people for it and people against it. We are saying that you cannot even think about the question of statehood until you know what it means. It will take considerable time to work through. However, we do ask people to recognise that, one day, whether it is in 5 years time or 10 years time or in 20 years time, the Northern Territory will become a state, just like every other place in Australia. We will eventually obtain equality with the rest of Australia. It is only a question of when. One day, it will happen.

But, before you can even think about that, you need to know what you want and how you want the Northern Territory to be. You do that by writing a law called a constitution. This is the one law that is written by the people. It is the people's law. This is the law that the people make to control the government and to control the courts. It is not like, say, the dry areas law or other

laws that are made by the parliament and where the governments make the law and, when governments change, the law can change backwards and forwards. This law is made by the people and it stays. Only the people can change it and it is the most important law. It is a law that is the boss over the government. It says what the government can do and what it cannot do. In that law, you can write in rights that are really important to you that you do not want the government to muck around with. These are things that are so important that you say that no government, no matter who it is, can touch them. It might be your right to vote or to speak freely about anything. It might be protection of religion, culture, sacred sites or Aboriginal land.

You remember that, last year, you were asked to vote in a referendum. There were 4 questions from the federal government on which you were asked to vote yes or no. That was to amend the Australian Constitution. The people looked at it and said no and therefore the government could not do it. The government wanted to do some things. It had to ask the people and the people were not happy with it. The people said no and therefore it could not happen.

However, we do not have such a thing in the Northern Territory. Every state - Queensland, Western Australia, South Australia, New South Wales, Victoria and Tasmania - has a constitution. The federal government has a constitution which says what it can do and what it cannot do. We are the only place that does not have a constitution. The only thing we have is the Australian Constitution which says that the federal government can do what it likes with us. A constitution is not something that gives power to the government; it is something that limits the powers of government. Without a constitution, the government can do what it likes. The federal government can do what it likes in the Northern Territory. It has that power. It cannot do that in the states because the constitution stops it.

In the Northern Territory, no one has ever asked the people how they want the Northern Territory to work, how we should make the rules for the election of parliament, what sort of a parliament we should have, how the courts should work, what the Administrator's job should be or what sort of protection there should be for the people's rights. No one has ever asked the people those questions before because we have been a territory. We are now going out and telling the people that we are going to start work as a Territory community to write this law. Through that, as a community, we will work through the issues that are important to us. What do you want this Northern Territory to be like for your children, for your grandchildren and for your great-grandchildren? What are the important things that you want to protect for them? How do you want the constitution to be written? How do we ensure that we can build a way that Aboriginal people and non-Aboriginal people can live together side by side with respect for each in the future? How do we make rules that will encourage that to happen? How do we talk through and overcome the fights that have been going on for years?

We can do that by talking and making this law which cannot be made just by politicians. Our job is to tell the Northern Territory people that they need to do this job. We have brought these books which tell you a bit about what a constitution is and the sort of things you might want to look at. But that is just a beginning. We have other material. We have been working for about 3 years on research. We looked all round the world at different constitutions - in America, the West Indies, Canada and Africa - and all around Australia. We have come up with a lot of different ideas. Some things in here we do not like and other things we think are really good. There would be things in there that you would like and other things that you would not like. It is important that

you have a look at that as a community and talk about it. If there are some things that you are not sure about, we can arrange for somebody to come and explain them to you. The community should talk and determine how it wants this Northern Territory to be and how to write the people's law that will set the ground rules for the future.

It is a job that we have to do. We are here to ask you to have a look at it. I will explain how we are going to go about it. We come here at the moment to give you some material that we want you to read, think about and talk about. We will come back later this year or early next year when you have had a good chance to work through it and then you can tell us what you think should go in there. We are doing this all over the Northern Territory. On this trip, we are visiting 59 different communities around the Territory. We have been all through central Australia. We have just started to travel around Arnhem Land now. We have been over to VRD. Bit by bit, we will visit as many people as we can.

When we have heard from all over the Territory and you start to hear what other people are thinking too, we will sit down as a committee and try to put down on paper what we think the people are telling us. We will have a first go at it. However, this constitution is too important to let politicians or lawyers or academic people write it. We want the people to write this constitution. Thus, we will put some ideas together on the basis of what the people have told us and then we will form a big committee of people from all over the Territory. It will be called a constitutional convention. It will have representatives from the desert country, from Arnhem Land, from Darwin, from Alice Springs and everywhere else. They will come together and look at what we did. They will argue it out and they might have to meet time after time as they work through it. Eventually, they will come up with a draft constitution which will be put to a vote of the people at a referendum. If the people vote yes, then we will have a constitution. If the people vote no, we will have to go back and start again and keep working through it until we get it right.

It is important that we get it right. When you make that law, it will be your law - not my law, not the government's law but your law. It will be the law of the people. In many ways, it becomes like Aboriginal law. It does not change. It stays there. It is the core which sets the direction in which we are going to go. It gives the foundation for our future direction. The people's rights will be in there so that no one can muck about with them. The government cannot touch them if they are in this law. This law is the boss over the top of the government. This is the way the people say that that is how the place will work. The government has to work inside that. It cannot do something different from what this says it can do. Thus, it has the important things, the rules within which the government must work. It is the people's law and, from that, we build. That is why it is so important that the people ensure that those laws are the right ones. You must bear in mind that you will be making the laws that will determine what the Northern Territory will be like for your grandchildren and their grandchildren.

Mr YIBARBUK: How many more years before this can become effective?

Mr HATTON: It cannot become effective until all the people say that it is what they want.

Mr YIBARBUK: How many more years?

Mr HATTON: That depends on the people. If everything went really smoothly and we did our job really well and the constitutional convention went really well, it could take 3 years. However, I reckon that it could take 5 years or 7 years. Time is not important. Getting it right is important. I do not want to put a time limit on it. That is not possible because it is too important. You have got to get it right and I am here to plead with you as a community to make ensure that you have your say and that you become involved in it from the very beginning so that what you think is part of the whole debate. You should have your say. Who should go on that constitutional convention? We want to hear about that too because we do not want just the government or the politicians to say who will go on that convention. We want the people to determine that. What sort of Aboriginal representation should there be? How do you break it up for the Centre, for the Top End? How do you ensure that you get the people who can truly represent the community and speak for the community? The number of times that they meet will be up to them. It took 13 years to write the Australian Constitution. Maybe we can do it a bit quicker than that, but it is important to do it properly. Therefore, we are not rushing.

Mr YIBARBUK: Is there any chance that Aboriginal people can have their own provisions in this?

Mr HATTON: Yes, there is. You can do that in a constitution. There are sections in this book that deal with Aboriginal rights for example. This book goes into a lot more deal on some of those. Questions have been raised such as whether we should put in the constitution a guarantee of protection for Aboriginal law and land rights. Those things have been asked. Then, you can talk about how that can be done. However, you have to talk to the whole community. You have a Top End mob, a central Australian mob, the Darwin mob as well as the Arnhem Land mob, right? I know that there are things that are really important to Aboriginal people, that they want to ensure are totally protected. Through this, you have to get the understanding of the non-Aboriginal people too. This is the way that you can do that. They are not opposed to it. Many people just do not understand. This will force all the Territory people, black and white, yellow and brown, to sit down together and work out together how they will live together. That is why it will take a bit of time but it is something we have to do, isn't it?

The answer is that you can put them in there. There is one question that is asked, for example, about the possibility of special Aboriginal representation in parliament. Should you have special seats set aside for Aboriginal members like they do in New Zealand? However, there is a catch to that too. In New Zealand, for example, all the Maoris can go on the Maori roll to vote for the Maori representatives or on the general roll to vote for their electorate member. They cannot do both.

Mr YIBARBUK: Catch 22.

Mr HATTON: Yes. That is the problem. There are other ways. Maybe you could look at some sort of representation in relation to having an Upper House and a Lower House. There are all sorts of hang-ups in respect of that. That is why it will not be quick. When you sit down and start talking, there is good and bad on all sides and you have to make a balanced decision on which is the best way to go. However, you have got to involved and talk about it because this is your chance. When wrote the Australian Constitution and the state constitutions, they did not go out and ask the people. They have never asked the Aboriginal people, have they? But, we are

doing that, right up front. You are part of this Territory; this is your home. It is our home too. You would argue that it is more your home than my home. I am not going to get into that fight. What we are saying is that we have all to sit down and talk this through because we will all be living here in the future and we need to work out a way to do it together.

That is really what we are here for. We ask you to read this and perhaps say: 'I do not understand some of this. I want someone to come and explain more to us'. There is a toll free telephone number in here. Write to us or ring us up and we will organise someone to come out and talk about it. We really want people to start talking about it. It is really important that you become involved early and stay involved. Do not let the other mob do the job. Do not say that it is too hard and that you do not want to know about it and, in 3 years time or 5 years time, when it is time to vote on it, complain that you were not consulted. We are asking you now.

Ms WILLIAMS: If this one is going to happen, what are you going to do about land rights and sacred sites within Aboriginal communities? What will happen in the future?

Mr HATTON: It will not have any effect at all on land rights unless you want to write a special protection into the constitution. Could I explain this to you? I know and you know that Aboriginal people do not trust the Northern Territory government about land rights and sacred sites. There has been a lot of arguments and fights over many years about it, hasn't there? Aboriginal people are a bit nervous about it. If you write it into a constitution, no matter who is in government, they cannot touch it. Only the people can change it. Therefore, that is a way. At the moment, your land rights are held under the federal Land Rights Act. That protects your land rights and your ownership here. But, do you know that, if there was a change of federal government or if the people in Sydney and Melbourne became anti-land rights and that became politically advantageous, the federal government could just wipe out that Land Rights Act and you would lose the lot? There is no protection. There is no protection because what the government can give, the government can take away. What is in the constitution, the people give and only the people can touch. Whatever you put in there would only strengthen your position. All right? So far as sacred sites are concerned, it would be the same thing.

Mr YIBARBUK: Would it be a stronger?

Mr HATTON: You can make it stronger by putting it in there.

Mr FIRMIN: When talking about a constitution, I have found that people understand it a bit better if they look at it in terms of a building. A building has a solid foundation that is very strong. On that, you build the walls and the roof and put the fittings in. The foundation always stays there but you can change the walls or the roof or the fittings. The constitution is like the foundation. It is solid and it stays there. When you want to change something, you change it by legislation but the foundation always stays the same. You might say that the building is no longer the right size or the right shape and you change the outside parts of it. Legislation is what you use to change those outside parts and fittings. However, the foundation is always there. It is like the land that you sit on and stand on. It is solid and it does not change. That is how the constitution works.

Mr HATTON: That is right. Let us say that you put into the constitution something to the effect that Aboriginal sacred sites must be preserved and protected in accordance with Aboriginal

law. If that is in the constitution, then the government has no choice about it. The only way it could ever change that is if it went back to a referendum of the people and the people said that it could be changed. The people have got to vote yes or no. When you write your constitution, you can also write in how the people can change it. It might be that, in relation to some clauses, 60% or 70% of the people would have to say yes before it could be changed. The government might change the administration but it cannot change the fundamental protection of the sites. It cannot turn around and say that it will wipe out all Aboriginal sites.

We have had some men say to us that they want to write into the constitution that Aboriginal law must stand. In fact, they were saying to us that Aboriginal people should not have a choice, that they should be dealt with under Aboriginal law and, after they had finished dealing with them under Aboriginal law, we could deal with them under white man's law. That is the view of some of the old men. Now that is a thing that you can talk about. It is possible to do that. It is just a matter of talking it through and determining that that is exactly what you want to do. If you do that, it has to go that way. You cannot change it afterwards. It is going to be stuck there. You might decide that that is a bit strong and that you want a choice. I do not know, but all those things can be talked about.

The only thing that you cannot do in a Northern Territory constitution is go outside the Australian Constitution. You cannot make a republic. You have to have the Queen's representative. However, within the Australian Constitution, it is up to the people of the Northern Territory to determine how they want this place to work. It is the way that you can protect those things that are important to you, certainly from the Northern Territory government, no matter who is there. We cannot write into our constitution something that will tell the federal government that it cannot do something that it is permitted to do under the Australian Constitution because it is the government over the top of us. But, at least, you can set the rules for the Northern Territory. Does that explain what I am talking about?

Mr WINUNGUJ: I still do not understand.

Mr HATTON: Okay, I will give an example. You know that there are big fights going on in the parliament about the Sacred Sites Act. People believe that the Northern Territory government is changing the law so that the power to protect the sacred sites is being taken away from the Aboriginal traditional owners and being given to the government, to the minister. That is what is being said, isn't it? You could put into the constitution that the government cannot touch sacred sites without the approval of the traditional owners or the custodians of the site or you could write into the constitution that decisions in respect of Aboriginal sacred sites shall be in accordance with Aboriginal law. The government would then not have a say about that. It would just have to do that. It cannot just say: 'Oh, we do not like that. We are going to change it'. It cannot do that if it is in the constitution. Do you understand that?

Mr WINUNGUJ: Sometimes I cannot. My people are looking at this. When I say 'my people', it doesn't matter what tribe we are. My countrymen. Sometimes your government is introducing a lot of ideas designed to meet the needs of the 30% of the people who are Aboriginals. In the past, we have not had any say because we are always known to be in the back. Sometimes I come to think that our people, this community and elsewhere in the Northern Territory, should have more say in parliament if elected and in writing down in black and white in

the constitution to ensure that the people are secure, that this constitution will somehow meet the needs of (indecipherable) besides the balanders and Aboriginal people. We need to have a better understanding of how we are going to talk about looking at statehood. We do not want to be told: 'Okay, this is going to happen and it is best if you go along with us and join the party and we sort of look at it'. All right, 50-50. We have a say but some time back in the preliminary work. This is the foundation. Our people are living here. All right, we are consulted now about how the constitution is going to be ...

Mr HATTON: About how we are going about doing the job.

Mr WINUNGUJ: How we go about doing the job. It hurts my feelings sometimes. All right, if we are going to look at statehood, people have the vote. All right, we forget about the federal government. I am trying to say too much now.

Mr HATTON: No. Keep going.

Mr WINUNGUJ: What I am saying is: how can we be sure that your government is going to protect us under the local community government? We are going to be unsure that the referendum is going to be clear in minds and that we are not going to be put aside and dealt with like back before 1970, before the referendum came that we were recognised to have the vote. How are we going to ensure that we are going to be involved in this new constitution that your government is introducing?

Mr HATTON: The parliament. It is important.

Mr WINUNGUJ: Yes, okay. I am coming to that one. Then again, how we are going to be sure about our foundation, click click, our land rights under that act? We are still under the federal act. How we are going to ensure that the parliament, the Northern Territory parliament, will consult us saying: 'Okay, we are following on the same kind of Land Rights Act and we are following on the same kind under the referendum before 1970'? You know what I am trying to say?

Mr HATTON: Federal referendum, yes.

Mr WINUNGUJ: The federal referendum. After the constitution, if everybody agrees in the Northern Territory, then we turn around and we are put aside. Then, we have no foundation. We have nothing.

Mr HATTON: There are 2 ways.

Mr WINUNGUJ: These people, my people here, the Yolgnu people, will lose their lands as their foundation. We live here. We work here. With this new constitution and every policy in this that I have just scanned through that you are introducing to the community, we would like to talk about it, to clear our minds. We would like to see that better resource person come. We would like to be not only with you but with other people, so that we do not get brainwashed in this community or some balander people will turn around and say: 'Oh, you know, the same old system will again be happening'. It is not like that way. We would like to stand in a better position where we can be secure and have our rights to say how we would like to introduce our Aboriginal law that can adapt into your parliamentary law. Where today every constitution has been

introduced into an Aboriginal community or in parliament or elsewhere in other states, I am sure they go and consult them, but we would like to find ...

Mr HATTON: They do not. That is the problem.

Mr WINUNGUJ: Yes, that is what I am getting around, you see.

Mr FIRMIN: At least we are.

Mr WINUNGUJ: Okay. I thank you for that, for coming here. But, then again, we would like to be consulted. Let every individual person know, the landowners, every tribe sitting here, every elder, that we have a voice. Otherwise, we are talking: 'What do you think? This is the best thing. Okay, we'll follow on the constitution. It is proposed. Maybe the next stage, stage 1 and 2 or 3. Let's go. We have the statehood'. But, before that, we would like to clear our mind about how you are going to go about debating in parliament or outside with other Aboriginal leaders. We would like to make sure rather than be put aside back to square 1 where we started.

Mr FIRMIN: What you should do is what a lot of the other communities are going to do and that is to write down the things that you feel that you want in the constitution. We touched on most of those important issues such as the retention of your voting rights and the ability to put your representative view forward in the right environment. We touched on the law and land rights. Many people have said such things to us as we have been travelling around. For example, some people have said that they want to retain land rights but they do not necessarily want to retain them as they are today because the land rights that they have today do not allow them to do anything with their land other than to say that it is their land.

Mr WINUNGUJ: Yes, of course.

Mr FIRMIN: They are saying that they cannot work with the legislation that is in place at the moment. People are starting to say those things to us and we are saying: 'That is fine but it is up to you to decide how you would like to work with land rights, and how you want to change them and how you want to have them protected? These are things that we ask you to think about.

Mr WINUNGUJ: We would like to be doubly sure beyond any doubt.

Mr HATTON: Could I suggest how you do that? Firstly, we are going around now saying that we are going to start this job and that we want you to think about it. We are trying to encourage you to become involved, to have your say in it and to make sure that you are part of it and you are not being left out. That is what we want. If you want to ensure that Aboriginal people and your landowners will be involved all the way through, you must think about how the representatives of this constitutional convention should be chosen. Who should be on it? How should we go about selecting them to make sure there is proper Aboriginal representation on that convention? That is part of it. And then, you will say: 'Okay, we get this constitution together. How do we know that, after it is all over and done with, you are not going to turn round and do all these nasty things to us'? You do that by putting it in the constitution in such a way that we cannot change it.

Mr WINUNGUJ: This is where I want to feel secure. If this constitution becomes finalised, we would like to know - Aboriginal people, not only in this community but elsewhere in the Northern Territory - how we are going to go about cooperating with each other and working together.

Mr HATTON: That is right. That is why you must be involved in the writing of it. Put those things in there.

Mr WINUNGUJ: Yes, but then again it is not quite an issue to overcome today.

Mr HATTON: No. We are just here to say that you must start thinking about it.

Mr FIRMIN: But, as Steve said earlier, and I thought it was extremely true, unless we all get this right, unless we all sit down together and understand each other's point of view, we are not going to be able to live together over the next centuries in harmony. It is not going to work. We all have to be satisfied at the end of the work and therefore we intend to keep working until we get it right.

Mr HATTON: The other protection you have is that, in the end, before any of this can come into place, the federal government has to approve it too. Statehood cannot happen until the federal government says okay. You cannot even think about statehood until you have a constitution. If we do not take into account the Aboriginal people's point of view and properly protect their interests, the federal government will not go along with it. It is not going to work unless all the different types of people in the Northern Territory are happy with where we are going - Aboriginals, balandars, the lot.

It will force all Northern Territory people to come to terms with the realities of the Northern Territory. It will make us talk to each other. I do not have enough of them here, but there is a book called 'Land Matters on Statehood'. I do not know whether any of you have ever seen these. You might have seen this through the Land Councils because copies were sent out to them. It sets out different ways of dealing with the Land Rights Act. That is a government matter and not one for this committee. It says there that what they want to put in the Land Rights Act is what the Aboriginal people are going to tell them. They want to talk directly to the Aboriginal people about that. But, maybe in talking about this, things can start to pop into place.

Mr WINUNGUJ: Speaking in Aboriginal language with occasional English words.

It is very important we go through this proposed constitution work. It is the same thing that I have explained.

Mr YIBARBUK: Speaking in Aboriginal language.

Mr WINUNGUJ: Speaking in Aboriginal language. Step by step by step by step. It will take us 5, 6, 7 or 10 years. It is for us to make sure that this proposal will protect us and will protect human rights.

Mr YIBARBUK: Speaking in Aboriginal language.

Mr WINUNGUJ: Let us talk and clear our minds on how we are going to put our words into black and white.

Mr YIBARBUK: With this constitution, will there be any effect on community local government?

Mr HATTON: It should not have much effect on community government. You can write in a constitutional protection for local government. That is another thing that you can talk about. You make the rules.

Mr FIRMIN: The government supports community government as you are probably well aware. It is not likely to change.

Mr HATTON: You cannot say to me: 'Look, can I do this in there'? I have to say to you: 'What do you want in there'? That is the way it works. It has to be from all the people. And it is not only what you want but what people in Alice or Lajamanu or wherever want.

Mr YIBARBUK: These proposals came from the 2 parties, I suppose?

Mr HATTON: Yes. There are equal numbers on the committee. It is the only committee of the parliament on which there are equal numbers of government and opposition members. There are 3 from each. All the other committees have 3 government and 2 ALP members, but we are running together on this one. Wesley Lanhupuy is on this committee. Stanley Tipiloura was supposed to be here today, but he sent his apologies for not being able to make it.

Mr FIRMIN: He is not on the committee, but he is helping.

Mr HATTON: He is not on the committee but he wanted to come out here because he has been involved through the parliament.

Mr YIBARBUKK: (Ndjebbana language)

(English Translation):

Yes, slowly look look paper this that rain they said long time yet. Think run along go which way. Find the law, many lawyer, lawyer they have own, and we have, and others have. Over and over, different. lawyers dealing with different matters. Slowly look where road we go. Other good and other bad.

Mr MANGKUDJA: Big mob country.

Mr HART: What Steve and Colin are saying basically is they are introducing this to us and it is up to us now to have a think about it in the community and see if we like it.

Mr HATTON: We will leave other books here for you too. There is this book that sets out some different ideas on the setting up of a constitutional convention. We want to hear what people are saying about that too. What I am saying to everybody is that they cannot simply trust the politicians to do this job. The people must become involved and have their say. Do not let the politicians do it all themselves. It is too important.

Mr WINUNGUJ: I think every politician should go around the communities swapping different ideas.

Mr HATTON: That is right. That is what we are trying to do, but you must be riding us all the time.

Mr YIBARBUK: They sit in the office there. They make their own decisions. We have no say.

Mr HATTON: You have to talk to the local fellow.

Mr YIBARBUK: Every time they come up with different issues and we do not know what the issues are. They are making up the issues in there.

Mr HATTON: That happens in government all the time. It drives you crazy. This job will take a lot of work, but I believe that it is the most important job that we have to do in the Northern Territory in the next 100 years. If we walk away from it and do not do it, our grandchildren will say: 'Why didn't they do this job when they had the chance?' If we do it well, we will leave a Northern Territory about which our grandchildren and our great-grandchildren will look back and say: 'Those people did a really important job and made the Northern Territory a good place for us. They gave us a good heritage'. It is up to us to do that. It is not simply our opportunity, but our responsibility to future generations. You fought for land rights and for other things for your people and this is just as important, if not more important.

Mr YIBARBUK: Sometimes I feel that we have been left out in the dark.

Mr HATTON: That is true. You have been a lot.

Mr FIRMIN: Sometimes we all feel the same.

Mr HATTON: People in the white communities often say the same thing too. It is true, and for lots of different reasons. There have been lots of fights going on. You know that and I know that. People do not trust each other and do not talk. When people come and say, 'What do you think about this?', people are not prepared to say what they really think. We do not get out to the communities often enough to talk to people and listen to them. It has got to change. But, as a citizen, you have to stand up and demand the right to be heard. These sorts of things are not just given, you have to fight for them. Demand the right to be listened to, demand that your local member come and tell you what is going on and demand that the government explain what is going on. And you will find that they will be quite happy to do that.

Mr YIBARBUK: Some don't.

Mr HATTON: Well, sometimes you are so busy going backwards and forwards. You are running all over the place and the one who yells the loudest is the one that you go to. A squeaky wheel gets the oil, doesn't it? That is a lot of the problem. The Territory is a big place.

Mr FIRMIN: It is expensive to get around too.

Mr HATTON: But, it is really that you do not think about it rather than trying to exclude people. You do not get around to including them because you are worrying about other things. That is where the local member's job is really important. It is his job to come along and say: 'This is going on in the government here, there and everywhere else'.

Mr YIBARBUK: They should probably open up a position within the Territory government and explain what is going on.

Mr HATTON: Yes, I believe that that is what the Office of Local Government people are supposed to be doing. They are supposed to be doing that and are available to do that.

Mr FIRMIN: Do you see the Office of Local Government people very often?

Mr YIBARBUK: Not very often.

Mr HART: It is more often lately.

Mr FIRMIN: We have found the same in the south too. They say that they are starting to get more visits now. Perhaps that will build up as more communities take on local government and the staff increases.

Mr HATTON: Since we moved those OLG people into that separate area ...

Mr FIRMIN: That has made a lot of difference.

Mr HATTON: .. away from community development so that they can concentrate on local government roles, they became more focused on the job.

Mr FIRMIN: But, we will certainly take that comment on board when we go back. We will talk to the local government people and suggest that they get out more often. We did the same thing in Alice Springs. We told them that the Willowra people told us that they had not seen anybody for some months. They said that they would make sure that they went out to Willowra.

Mr HATTON: Are there any other things that you want to talk about?

Mr HART: That is food for thought.

Mr FIRMIN: Thanks everybody.

Mr HATTON: Thank you for gathering to meet us at such short notice. Again, I apologise for the muck up. Next time, we will make sure that we talk to each other on the telephone and we know exactly what is happening. My apologies for what happened today. I do not like doing this. If there is anything that you want me or Wesley or Brain Ede or Mr Nicholson, our constitutional lawyer, or someone to come out and talk about anything relating to this, please let us know. We have been talking about putting some of this material on videos or tapes, perhaps in language, if people think that would be worth while.

When you get some ideas together, we can relay them to Yuendumu and other places and we can tell you what they are thinking. In that way, we can have different ideas going around the

place. Therefore, if you come up with some ideas, perhaps we could put them on video or tape and send them out to all the communities.

Thank you very much.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

OENPELLI — Tuesday 9 May 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. LeoMr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Stan TIPILOURA
Mr Joe SINGH
Mr Steven MANSFIELD

NOTE: This is a verbatim transcript that has been tape-checked.
ISSUED: 4 October 1989.

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

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

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

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

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

Every other government in Australia, including the government in Canberra, the federal government, has a constitution on top of it. The governments in Queensland, Western Australia, New South Wales, South Australia, Victoria and Tasmania all have constitutions over them. But we

do not have one in the Northern Territory. Because of that, the federal government can do what it likes with the Northern Territory. There is a clause in the Australian Constitution which says that the federal government can do what it likes with the Northern Territory. It can do that because your rights are not locked up inside this people's law.

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

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

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

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

This is a job that we have to do, not just for ourselves but for the young people, their children and their grandchildren. It is something we are doing for the future, to make this Northern Territory a place that the people of the future will be proud of. We want them to look back and say:

'Those old people did a good job for us. They made these laws. They made this place go the right way so that it is a good place to live in'.

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

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

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

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

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

Canberra and the Northern Territory. The bosses of land rights would be Northern Territory people.

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

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

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

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

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

If we believe and if we try hard enough, we can find a way of writing a constitution that everybody can agree on. We can put in the things that are very important for us as Territorians and, afterwards, we can look back and say: 'We made a good start. We have a strong constitution and

we can go ahead together, Aboriginal and white people working together to make the Territory a good place for all the kids and young fellows without the big fights that have happened in the past'. That is why I am here on this committee and that is why I want everybody to think about this business.

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

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

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

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

You will see this poster in your community very soon. It says: 'Have your say on proposals for a new state constitution for the Northern Territory'. That is what it is all about. We are coming here to explain what we are trying to do and to ask you for your help. We are asking you to think about this matter, to read these books and to have discussions amongst yourselves. One day, perhaps early next year, we will come back and ask you for your opinions. When we have spoken to everybody in the Northern Territory, we will consider what they have said and then we will be able to write the constitution. That is why we are here today. We are here to explain what is happening and to ask you to take an interest and to think about what you want to say to us when we come back next year. Thank you, Steve.

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

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

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

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

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

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

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

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

Mr SINGH: Yes, during the process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr HATTON: I will say something else too. You know that, if I talk to some people in Alice Springs and Darwin about things like land rights and sacred sites, they are not very happy. A lot of that is because they do not understand. What you say is right: people have to get involved and put their view. There will be a lot of arguments. It will not all be smooth and easy with everybody patting each other on the backs and saying what good blokes they all are. We will have lots of arguments. However, if you want to make something for the future, you have to talk things through. People have to be prepared to have their say and explain why things like land rights, sacred sites, the law and language, are important to them. There might be some fights, but the more you explain things the more chance there is that people will understand and work out a way together. Other people have their problems too and, if both sides hear what the other is saying, there is a better chance that they will come to an agreement about the best way for the future. The process of making this constitution should develop understanding and, through that, respect. For that reason, I believe that the process is at least as important as the actual document.

Mr MANSFIELD: What I was coming around to saying is that, if people do not say anything about this, when the constitution is finally drafted and put to the vote, the vote might be 60-

40 or something like that. In that case, it will be in and people will not be able to do anything about it. It will be a new law and people will not be able to say anything about it.

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

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

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

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

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

I think we have probably talked enough. I just ask you not to just walk away from this. If you need any information, there is a telephone number in the back of the book. Please let us know if you want someone to come out and talk to you, whether you want it to be a member of the

committee, a lawyer or somebody else. We really want you to make sure that you are part of this. In 3 years or in 5 years you will not be able to ask why we did not ask you to be part of this. We are asking you now. Okay? Thank you very much.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

JABIRU — Tuesday 9 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:

Mr Stan Tipiloura
Mr Don DITCHBURN
Mr Warren LOFTHOUSE
Mr Mick MARTIN
Ms Lesley EAST
Ms Helen LUGLIETTI

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

ISSUED: 4 October 1989.

Mr HATTON: Thank you very much for the opportunity to speak with you today. Although it is probably not necessary, I might take the opportunity to formally introduce ourselves. My name is Steve Hatton. I am the member for Nightcliff and the chairman of this committee. I have with me Brian Ede, the member for Stuart and deputy chairman of the committee, and Rick Setter, member for Jingili and a member of the committee. Mr Stan Tipiloura, who is not a member of the committee, is also present as your local member. We are seeking to involve members of parliament in the activities of the committee within their electorates.

This committee is called the Select Committee on Constitutional Development. It is a unique committee of the Northern Territory Legislative Assembly. It is unique in that it has equal representation from both the government side and the opposition side of parliament. Most committees of the parliament have 5 members, 3 from the government and 2 from the opposition. The equal representation in this case springs from the fact that we are taking a very positive bipartisan approach. This is one area in which the CLP and the ALP are working together on something which we believe to be of vital importance to the future of the Northern Territory. We are not playing party politics in the process. In fact, we have all assiduously avoided the opportunities to do that which arise from time to time. I think it is to the credit of both sides of the House that people have recognised that this issue should be above the day to day political processes of our system as we work together as Territorians towards a single objective.

Our objective is to write a constitution for the Northern Territory or, more particularly, to work with the community and to assist the community, the people of the Northern Territory, to write a constitution for the Northern Territory. Neither this committee nor the parliament intends to write this constitution. The committee's job is to stimulate people, encourage them to think about the issues, provide them with background research and information and encourage them to bring forward their ideas. The role of the committee is to act as a catalyst and then as a coordinator in the process of bringing together the views of Territorians and bringing together representatives of Territorians to undertake the task of preparing a proposed constitution which will be put to the people in a referendum.

We will not be writing this constitution ourselves. You will appreciate that, having worked at this task for some time, we are probably quite capable of sitting down and preparing a draft constitution and, as a group, going out and selling that constitution to the community. Such an approach, however, would not address some of the underlying concerns and needs of the Northern Territory. It would not address the need for Territorians to come to terms with the reality of the environment they live in and to work out how they want to run this place we call the Northern Territory in the future, not just for themselves but for the generations to come.

The task is one of putting down a set of rules, guidelines, rights and responsibilities for people, to provide the basic framework of society and democracy for the future of the Northern Territory. We do not believe that this is a job which should be entrusted to politicians, lawyers or academics, and we do not believe that it is wise to leave it in the hands of a series of special interest groups. We are working towards involving a broad cross-section of ordinary citizens of the Northern Territory, the so-called silent majority, and to come up with something that has broad community support, something which we can all support and be proud of, something in which we can all have a sense of ownership. That is what we are working towards.

We are not here today to ask you what you think should be included in a constitution, although we are quite happy to receive any views which you may have. What we are here to do, as we have done in some 60 communities around the Northern Territory, is to let you know that this task is now beginning. We are encouraging people in the Northern Territory community to start thinking about this issue and to get some ideas together and ensure that people have their say so that the issues which are of concern to people can properly be addressed in developing this most fundamental document for the future of the Northern Territory. We have to pull together a whole range of very different communities and to create a broad common direction for the future. That is the challenge which faces all of us.

This is a unique moment in Australia's history. It will never happen again. It has not happened before. It is a chance to make history for Australia and to do something unique. Most people do not have the opportunity in their lifetimes to set the framework for the structure of society and for the structure of their own democracy and rights. That is what this task is about.

Because constitutions have a habit of being very enduring, we must do the job properly. We have to take it very seriously and not get carried away with our own short-term political games, envies or egos. We need to genuinely think in terms of future generations and what are we going to leave for them. If we do this task well, future generations will look back on their predecessors with pride. If we walk away from the job, I suspect that they will look back with some disappointment, if not disgust, at our failure as a generation to take up the opportunity, the challenge and the responsibility that happens to have come our way. I cannot walk away from that and I do not believe that most people can or will. I do not believe people will treat this frivolously. It is too important.

I would like now to deal with some of the issues that can arise in a constitution. We might start by asking: 'What is a constitution and why is it important?'

The first point that needs to be made is that, if there is no constitution in place, the government is all-powerful. There are no restraints upon it. In a democracy which has no written constitution, such as Great Britain, there are no limits on the power of parliament. That power is limitless.

Through a constitution, the people place limits on parliament, the courts and the government. It sets the structure of government by stating how governments are elected and how frequently elections are held, by determining electoral provisions and the shape of the government in terms of Upper and Lower Houses, by defining the relationship between the parliament and the courts and the Governor or Administrator.

Developing a constitution means that you have to address fundamental issues which relate to the functioning of a democracy. Do you believe, for example, that the Governor should be able to sack the government as occurred in the dismissal of Whitlam? If so, under what circumstances? How do you believe that heads of government should be elected? Should they be elected directly or should they be elected by members of the party elected to govern? Should such leaders have the right to select ministers only from within the parliament or should they be able to choose people from outside the parliament? These are the sorts of questions you can ask. Do we have what is called executive government or do we have what we have now, which is known as responsible government

and in which the parliament is responsible to the people and the government is responsible to the parliament. In an executive government, on the other hand, the head of government is elected by the people and then appoints ministers. The parliament is elected separately and there are checks and balances between those 2 independent units. That system operates in the United States.

You can wrestle with such ideas and put together a structure which you feel is best suited to the Northern Territory. You can consider the electoral provisions and whether single-member or multi-member electorates are preferable. You can discuss such issues as whether there should be guaranteed representation of Aboriginal people. All of these issues have been raised and can be debated.

Having developed a structure, you come to the next and in some ways the most significant element in putting together a constitution, which is that of entrenching individual and community rights. This relates to the things in your life which are so fundamentally important that you believe no government should be able to touch them. These are the rights which you believe should not be able to be interfered with. Core rights might include freedom of religion, the right to speak freely, the right to vote, the right to stand for parliament.

The only way of properly protecting such rights from government is by entrenching them in a constitution. A constitution stands above the government. It provides the framework and the rules within which the government must work. Provided that appropriate amendment clauses are included in the constitution, governments or parliaments cannot amend or change that law. You can write the constitution so that any proposed change must be put to the people. In that way, it stands above the government and cannot be interfered with by the government.

You know that, when governments want to fiddle around and change the federal constitution, they have to go back and ask the people. If the people are not satisfied with what is proposed and vote no, that is bad luck for the government and the constitution stays as it is. It does not change unless the people want it to change. That is why the constitution has to reflect the views, attitudes, and direction which the people want. It is the cornerstone of democracy. It enables the power to flow from the people. Without it, the power flows directly from the parliament and that is what happens in the Northern Territory.

We do not have a constitution. Being a territory, we do not have any of the constitutional rights that flow to the states from the federal Constitution. The federal Constitution sets up a federation of states and we are not part of that. The Commonwealth government has the power to acquire your property without compensation, and without any good reason. Its power to do that is upheld by the High Court. That cannot happen in the states because the Constitution protects the people from acquisition, except for Commonwealth purposes. Even then, just terms must be paid. However, that is not the case in the Territory.

The very existence of government in the Northern Territory depends on an act of the federal parliament. Although I do not believe that this would happen, it is possible for the federal government, simply by repealing an act of parliament, to wipe out your right to vote and your right to have any form of government at all, including local government. By amending a regulation of an act of parliament, the Commonwealth could wipe out the entire Northern Territory education system.

That would not even have to be debated on the floor of parliament because that power flows from a regulation. The states, however, are constitutionally protected from such intrusion.

Land Rights are a very significant issue in the Northern Territory. By repealing an act of parliament - and I again stress that I do not really believe this would happen - a federal government could wipe out Aboriginal land rights in the Northern Territory. It could make that land revert to vacant Crown land. It has the power. There would be no requirement that permission be asked or compensation given. Legally, nobody could do anything about it and we have only 1 seat out of 154 in the federal parliament.

Please understand that that is the situation you are in now as a Territorian. The process of preparing a constitution starts the process of entrenching your rights. The ultimate achievement of those rights will occur at some time in the future when statehood is fully attained. Ultimately, this is what statehood is about. It is not about mining or development; it is about your constitutional rights as a citizen.

Statehood, however, is a separate question. I have been very careful in relation to that, as all members of the committee will be. You cannot even consider the question of statehood until you know what you want and you do not know what you want as a community until you set the framework in place. That is why our first job is to write a constitution, to set in place what the Northern Territory people want for the Northern Territory. Having done that job, you can then begin to talk about statehood, when you want it and what conditions you want it under. However, until you do this job, the shape such a state would take is undefined. This is the first job. It does not threaten you and there is nothing it can take from you. It can only give you rights.

We are here to give you a say in preparing this constitution. We are saying: 'Please be part of this process from the beginning. Let it grow with you'. We want to ensure that you and your community are part of the process and that your views are properly taken into account in the development of the constitution. That is why we have come here today, to talk to you and to ask you to be part of this exciting, frightening, but absolutely vital task for the future of the Northern Territory and, most importantly, for the future of our grandchildren and their grandchildren.

To assist in this process, we have widely circulated this book, which I call a starter kit. It sets out some of the basic questions and ideas and, when you have read it and are looking for more information, this green book, which is called a Discussion Paper on the Proposed Northern Territory Constitution, presents a whole range of ideas and options in some detail.

For example, there is the question of whether you want an Upper and Lower House, which is known as a bicameral system. The Northern Territory has only 1 House at present, which is known as a unicameral system. The arguments for and against these systems are set out in the discussion paper, among many other things. The book contains some ideas which I like and some which I do not like. There are some which I like and which some of my colleagues do not like, and vice versa. You will find that there are things in here which you like and things you do not like. There may be things that we have forgotten about. Already, in our visits to various communities around the Territory, people have raised issues which are not addressed in the book. That is fine. That is why we want you to have a think about these things and to work out what you think is important to be included in a constitution.

The discussion paper is set out like a reference book. You can pick a subject from the index and read up on it, get your ideas together and then move on to the next point. Step by step, you can develop your ideas on a range of issues. Do you want a unicameral or bicameral parliament? Do you think it should be a fixed term parliament, should the government be able to call an election whenever it likes, or should it be something in between? That is discussed in the discussion paper. Who should have the right to vote? Do you think that, if somebody turned up in the Territory last week, that person should be able to vote at a Legislative Assembly election next week or should there be a residential qualification? Should non-Australians be allowed to vote? You have the chance to actually talk about those sorts of things in this context.

Equally importantly, have a think about how we should put together the constitutional convention, that drafting committee of representative Territorians which is to take the submissions that we receive and the draft that we prepare and work through it. It is vitally important that we get the structure of that convention right so that it properly represents the diversity of the Northern Territory and so that people can be confident that the members of that convention will genuinely speak on their behalf. That convention needs to bring forth a wide range of ideas. Its members will have to have the tenacity to continue talking through the inevitable fights, and to listen to the viewpoints of other people in an effort to find a solution together.

This is a great challenge. Territorians will be forced to come to terms with important issues. Aboriginal people have already said that they do not trust us with land rights. They say that they want some constitutional guarantee of Aboriginal land rights so that governments cannot take them away. They want constitutional guarantees for the protection of Aboriginal law, sacred sites, language and culture - things which are fundamentally important to Aboriginal people. How do we blend that with the concerns of the non-Aboriginal population in its quest for what it sees as equality with Aboriginal people. There is a perception among the non-Aboriginal population that Aborigines have more than equal rights in respect of land rights and so on. On the other hand, when I talk to Aboriginal people, I find that they believe that they are severely disadvantaged in areas such as education, health, housing, access to water, and jobs. We both reckon that the other has an advantage. Both want equality but both are looking at it from a difference perspective.

The Northern Territory as a community needs to resolve those sorts of issues and debating them in the process of writing a constitution may well be a vehicle for achieving that without the interference of the politicians and various interest groups. I think we would all like to see that happen and, through that process, to leave behind us a place that we can be proud of and our grandchildren can be proud of. That is the task before us. We are here to say: 'Hey, this is important. Please be part of it and please ensure that you have your say'. Thank you.

Mr EDE: There is very little I can add to that, Steve. You covered the ground fairly thoroughly although I would like to reinforce your remarks on one point. A number of people have said to me: 'This is pretty strange, seeing you as the deputy leader of the opposition working alongside Steve Hatton in a committee of this nature'. Unfortunately or fortunately, the fact that we are both on this committee does not mean that we have been able to reconcile all of our differing views in relation to the development of the Northern Territory and are now ready to form a coalition, as has happened in the ACT as a result of its strange election system.

It does mean that we have been able to see that statehood and the constitution are 2 different things. As Steve said, what does statehood mean when you really try to pin it down? It is not trees and rocks and the land. Those things were there well before statehood was thought of and they will be there for a long time afterwards. In fact, statehood is a parcel of things which come together in the constitution. The grant of statehood is the grant of those things which are embodied in the constitution: the various rights, freedoms and constraints, the system of government and so on. It is like the incorporation of a company. Statehood incorporates a body politic in a particular form with a particular range of powers and functions. The constitution is what limits those powers and functions. What we are saying is that there is no point talking about statehood at this stage because, until you have a constitution, its parameters are not really defined. If you have a constitution, you can then start to ask whether or not you want to move to statehood.

I do not think that many people in the Territory would believe that we should not be attempting to work out some basic principles that all Territorians agree on, the things which we as Territorians hold to be fundamental. These are the things which we would agree upon as governing our lives and those of our children and grandchildren and which make us Territorians. To the extent that we can work together and find agreement on those principles from the Labor side and the CLP side, we are going down that track. We will go as far as we possibly can. It does not mean that either side will sell its principles. We will find out what we can agree on and, when we have all that recorded, we will start to look at the areas in which we do not agree and ask how we can explain our position to the other. How do we do that without walking away from the whole process and without standing outside throwing rocks on the roof? We intend to get in there and keep talking and explaining our points of view so that we can arrive at positions which we agree on as being fundamental. Those fundamental agreed matters will be incorporated in the constitution.

Maybe we will succeed and maybe we will not. My own belief is that, some day, we will succeed. If we do not succeed the first time, we will start again. That is why the power has to remain with the people. The people have to have the power to say: 'Nearly, but not good enough. Go back and have another go'. A constitution is not something that you have for only 10 or 15 years. You cannot just say: 'Well, the Territory is pretty new to this sort of stuff so we can do with a second-hand one or something bodgied up overnight'. The constitution will be around for a long time and we should take the time to get it right. If we do that, we will all benefit.

We cannot get it right by having a couple of academics sit down with a couple of lawyers and politicians in a back room of the Chan Building knocking up a set of ideas, saying: 'Oh well, I think we can sell that one but we will not tell them about this one'. The only way that we can get it right is if we take it out bush and if we get people in the various communities, people from all walks of life, to sit down and discuss their ideas, and to keep throwing those ideas back and forth in a process of working out what they want.

Mr SETTER: It is 15 years since the Northern Territory achieved its first fully elected Legislative Assembly. Prior to that, we had various Legislative Councils and appointed groups which looked after the interests of the Northern Territory under Commonwealth control. For 10 of those 15 years, we have been a self-governing Territory with its own Cabinet - which met here today - and with control over most of the normal state-type functions. You have probably heard that the Chief Minister has made application to the Prime Minister for the transfer of the remaining powers.

I think we are all agreed that now is the time to take this whole thing a step further. The next logical step appears to be the development of a constitution. In spite of the fact that the states and the Commonwealth have constitutions, we in the Northern Territory do not have one. It is important that we take that step. It is not an easy step because it is the best part of 100 years since a constitution was developed in this country. That was the Australian Constitution, which came into place in 1901 and which took 13 years to put together. Of course, things have changed since then. The Northern Territory today is nothing like the states were when they developed their constitutions. We have a larger population than Queensland had at the time it developed its constitution.

We face a whole range of issues. Steve and Brian mentioned Aboriginal land rights and Aboriginal issues generally. Those issues were not considered when the state constitutions were developed. They have only come to the fore during the last couple of decades, along with things like the environment, human rights, and a whole range of other matters. We are in a changing world and developing a constitution is not an easy task. We cannot just sit down, look at the state constitutions and select from them to create a Territory constitution. We do not believe that would be appropriate.

This committee has spent 3 years on this task and in that time we have produced a number of documents, which are all available to you. I think that the most important of those is the Discussion Paper on a Proposed New State Constitution for the Northern Territory. In compiling that, we went through all the matters that we felt were appropriate. As Brian indicated, we have not agreed on everything and nor will we. Where we were not in agreement, we included options. These matters are very complex. We have put a lot of time into the process already and we are now consulting with communities.

During this round of discussions, we are visiting about 60 communities and giving out information. We will be returning to the communities within the next 9 to 12 months and talking with people again, after they have had time to fully consider all the issues. There is no point in us coming here today and asking for your views if you really do not understand the implications.

Interjection: We may not.

Mr SETTER: The majority of people certainly would not. Most of the issues are set out in the discussion paper, if you would like to study it. It gives you a starting point for your discussions.

Following the second round of our discussions with the community, at some time in the future, probably within the next 2 to 3 years, a constitutional convention will be convened. There is a discussion paper on representation in a Territory constitution convention. It is anticipated that the delegates will number between 50 and 60, although we do not have any firm position other than that set down in the discussion paper. We are asking ourselves and we will be asking you how people should be selected for that convention. Should they all be elected? Should they be all appointed? Should they be partly appointed and partly elected? Should they be elected or appointed on a regional basis? There are many questions and the matter is very complex but the fact is that, at the end of the day, we will have to convene a constitutional convention. That convention will consider all of the material that we have gathered, or at least the main points arising from it, and put together a draft constitution which will then go back to the Northern Territory parliament and, eventually, to the people of the Northern Territory by way of a referendum. So you can see it is a long process. We

have only scratched the surface. There is still an awfully long way to go. We would like you to participate and assist us to do the job.

Mr TIPILOURA: I think members of the committee have covered most of what I would like to say. I do not want to add anything at this stage.

Mr HATTON: If we can now move on to perhaps the most important part of the evening, I would ask people present whether they have any questions or would like to make any points.

We are really here to inform you as much as possible, to answer any queries or concerns, to resolve any misunderstandings or, for that matter, if you want to, to take down any points you want to make. You will notice that there are microphones located in various places. We are taking a Hansard recording of this discussion, so it is a bit like being in parliament. We want to ensure that we have a record of every point which is made to us so that all that material can be analysed, including the discussions we have had out in the bush communities. It is not meant to be intimidating. We just want to make sure that all the material is available for the constitutional convention in the future. So, are there any matters that people would like to raise?

Mr DITCHBURN: I like the way you are going about this. I certainly would not like to see you doing what Rick talked about - picking ideas out of various other constitutions.

You mentioned that this is the first constitution that has been developed in Australia for almost 100 years. I think it would be a good idea if you limited the application of the proposed constitution to 100 years. Obviously, the present Commonwealth constitution does not reflect what this modern community is about now and I am sure that the situation which will apply in 100 years time will be dramatically different from that which applies now. I think it would be good to have a review of the constitution every 100 years.

Mr HATTON: That is a valid point. Again, I am not prepared to say yes or no. Please do not think a non-response from us is anything other than an indication of the fact that we are being very cautious in our efforts not to guide discussions along our own lines of thought. It is certainly a valid point which should perhaps be taken up by the convention.

Mr DITCHBURN: I accept what you are saying. Another thing which I have noticed concerns language. It seems to me that the language used in the Constitution and in today's laws is suitable firstly for bureaucrats, secondly for judges and lawyers and thirdly for politicians. The people get left a long way behind.

Mr HATTON: Do not blame us.

Mr SETTER: They are written by lawyers.

Mr DITCHBURN: I think the only place where you can really change that is in the constitution. The parliament makes these laws and I think it should have some means of controlling the way in which they are written. I would like to see them written in such a way that they could be understood by a 15 or 16 year-old kid of average intelligence. At the moment, people have to go running to solicitors and lawyers to do simple things like making their wills. I think we lose a lot of

time and go to great expense in trying to find out what is or is not applicable under the law and I think that a way should be found around that.

Mr HATTON: I feel exactly the same as you do in respect of the writing of laws. We hear frequent complaints from people in the community who ask: 'Why can't you write the laws in plain English so that people can understand them?' The trouble is that, when laws are written so that you and I can understand them, lawyers seem to be able to drive trucks through them. I am reminded of section 92 of the Australian Constitution, which simply says: 'Trade and commerce between the states shall be absolutely free'. You cannot get much clearer than that, can you? The intention was to stop tariffs. There used to be customs duties and tariffs between the states, or colonies as they were then.

Mr EDE: They used to have navies.

Mr HATTON: Yes, they even had their own armies and navies. This provision was inserted in the Constitution to stop them imposing tariffs and customs.

'Trade and commerce between the States shall be absolutely free'. That section has made more lawyers into millionaires than any other provision. You know the story of the truckie working on the border between New South Wales and Victoria? He goes across the border and comes back in order to avoid paying road tax. He does that on the basis that, if he crosses the border, he is transporting goods interstate, and such trade has to be absolutely free under the terms of the federal Constitution.

That illustrates the problem. Laws often end up being complicated in order to prevent smart lawyers driving trucks through the intention. I hope we can find a solution but the reasons for the problem are worth noting.

Mr SETTER: Steve, if I could just make a comment, I believe that the wording of the Australian Constitution - and we are talking about constitutions rather than legislation - is relatively easy to understand. Would you say so, Graham? I might mention here that Graham Nicholson is our legal advisor.

Mr NICHOLSON: Well we seem to spend a lot of time in the High Court trying to work out what it means.

Mr SETTER: Certainly, but the clause which Steve quoted is quite understandable in layman's terms. The language is fairly simple, but its interpretation by the courts is another matter. If we compare it with the language used in the legislation which politicians debate in parliament, it is quite simple.

Mr HATTON: I really do not want to continue the debate. The point has been well made and I certainly have a lot of sympathy for it. In all fairness, however, I must make the point that, rightly or wrongly, when a person wants to stretch his rights to the ultimate limit, he will run to a lawyer and pay big dollars to find a way of manipulating the words.

Mr DITCHBURN: Can we write our constitution in such a way that it has the effect of controlling the lawyers?

Mr HATTON: You may be able to but I do not know whether you could restrict the rights of a lawyer to actually carry out his job.

Mr DITCHBURN: I do not mean that. I am trying to find a way of avoiding the entanglement between what is meant in the written constitution and how the lawyers want to interpret it.

Mr HATTON: It may be possible. I know that Mr Nicholson has some thoughts on common language and usage which may assist in overcoming some of these variable interpretations by judges in terms of the meanings of words. There needs to be a lot of work by the legal profession and the judiciary to develop what I think is known as a common terminology of jurisprudence.

Mr NICHOLSON: I was thinking of it more in relation to human rights

Mr HATTON: Yes, but it could be applied to other elements.

Mr NICHOLSON: If we followed the international ruling more closely, we would be able to use global precedents rather than trying to work out our own specific wording in relation to human rights.

Mr EDE: I have said at various times that developing a constitution is a bit like dealing with a cheeky dog that races all over the place and barks and bites people. You might decide to put a rope around its neck and tie it up and, depending on how bad its behaviour is, you make your decision about how long the rope should be. A constitution is a bit like a rope around the neck of the government. In effect, it says: 'You are quite free to wander around within this area but you are not allowed to go any further'. I think the function of lawyers is to try to turn that rope into an elastic band.

Mr LOFTHOUSE: The crux of the matter seems to be that the constitution can be written in simple language which the people can understand but that legislation tends to be written in complicated language. That is where the lawyers have a field day as they try to manipulate their cases in order to get the best mileage for their clients. I think the constitution should be written in very simple language.

I support the development of a constitution even if we do not proceed to statehood in the near future. It is quite appropriate, even under the system of self-government which we have now. Statehood can come when it is most appropriate and the constitution will provide a good basis. I do not have much to add except that the material in the discussion papers should be presented to the public in the simplest possible language so that people have the best possible chance to digest it and make comment. The more simply it is written, the easier it will be for people to understand.

Mr MARTIN: While we are talking about constitutions, we have to remember that, when our founding fathers drew up the Commonwealth Constitution in 1901, they were subject to the colonial thumb on the forehead. Although I do not think we should try to imitate the American constitution, we should go in that direction rather than to try to imitate the British model because we have moved on from being a colony into being a nation. The constitution will not stand the test of time unless it gets away from the old thumb on the forehead style. That is in line with what you said,

Steve, about it not being a good idea to take bits and pieces from other constitutions. Times are changing. The Territory is developing a more cosmopolitan outlook and our constitution should reflect that. We have people from many nations living here, far from the other states.

Mr HATTON: I think that is right Mick, provided that we recognise the need to stay within the framework provided by the Australian Constitution. We cannot declare the Northern Territory a republic, for example. We have to maintain a monarchical system of government. I do not know whether you believe in the monarchy or are a republican but the reality is that that is a national issue and, under the Australian Constitution, we have to create a monarchical system of government. So, just as the Administrator is the Governor-General's representative now, with the Governor-General being the Queen's representative, a Governor would represent the Queen in the Northern Territory under the Northern Territory constitution. That element of the framework would have to apply, but within the general framework there is great scope for formulating the rules and determining their operation.

Mr EDE: I believe that it is possible that the Governor could be elected. It would be possible to have what is basically the US system, with an elected president appointing a ministry, as well as an elected parliament. Whilst it would not be a republican system, I suppose it could be called a monarchical presidency.

Mr HATTON: I do not think you could actually elect the Governor. The Governor would be the head of state. It would be possible to elect the head of government as distinct from the head of state.

Mr MARTIN: Maybe you misunderstood me. I do not mean this in the light of a hierarchy with a president, vice-president and so on.

Mr HATTON: I think I know what you mean.

Mr MARTIN: I am talking about a major enlightenment when we compare today with 1901, which was in an age of semi-darkness. We are in a period of evolution and we have to create an enlightened constitution which is better than the federal Constitution created in 1901. Although we have to stay within the framework of that Constitution, we could create a constitution which is more open and enlightened than those which the other states suffer under today.

Mr DITCHBURN: I would not like to see something which is more or less a copy of the American constitution. Most Australians do not know much about the various forms which government takes in other democratic countries. I do not know most of them although I know that Switzerland has a system which seems very peculiar when compared with ours. I would like more information about the way democratic governments are set up in other countries and I think it would be a good idea to give some publicity to those other forms.

Mr HATTON: You know the 2 systems which are discussed in the book, executive government and responsible government. If needs be, we could get our experts to put together some other ideas about the various forms of democratic government and issue them in the form of a discussion paper.

Mr DITCHBURN: I would certainly like that sort of information and I do not know where to obtain it.

Mr HATTON: That is what this committee is here for. We want you to ask us those sorts of questions and, if it is possible to get the information to you, we will do so. We will take a note of your question and see what we can find, so that we can send it to you. If you can state your name and address for the record, we will have the information we need.

Mr DITCHBURN: Don Ditchburn, 4 Fisher Place, Jabiru.

Mr HATTON: Thank you.

Ms EAST: Apart from Don, the remainder of us are councillors and it will obviously be the Jabiru Town Council which pulls people together here. Steve, how do you suggest we go about getting some community interest in this? We have advertised in *The Rag* and we have had information available at the front counter but we have not received many responses. What are other communities doing?

Mr HATTON: The opportunities are there. We are coming around to open the subject up and I can promise you that it will be an ongoing process from now on. We would welcome opportunities to speak at community gatherings such as Rotary meetings, school council meetings, or meetings of senior students in schools, so that we can discuss things with them. It is fairly obvious that, in the Territory's larger towns, people are not particularly enthralled about the prospect of going to special meetings to discuss the constitution. However, when they are already gathering for some purpose, it could well be appropriate for a member of this committee to go along as a guest speaker. We are trying to find avenues which will enable us to make contact with the broad community so that we can get the message across. It does not matter whether it is a meeting of a trade union, the local chamber of commerce, the local branch of the Confederation of Industry, a meeting of a Rotary or Lions club, or a meeting of a school community. It can be any kind of meeting.

Mr EDE: I have recently been invited to address a branch of the CLP in Alice Springs.

Mr HATTON: Yes, see.

Mr MARTIN: Did they run out of speakers?

Mr HATTON: I am waiting for an invitation from the ALP.

Mr SETTER: The council could set up a subcommittee and charge it with the responsibility of going through these documents virtually clause by clause, determining its views and adding anything which it considered appropriate.

Mr HATTON: Like Nhulunbuy, which we visited last night, there are some particular interests which apply in Jabiru because of the nature of the town. One issue that has been raised is the constitutional right to local government. If there is a constitutional right to take local government if you want it, what are the implications for a mining town? Those sorts of issues have to be

addressed. They are of concern to the citizens of the Northern Territory and they cannot be ignored, just as we cannot ignore the realities of Aboriginal law and culture.

Mr MARTIN: I was going to mention that. I believe that putting the right to local government in the constitution would be a backdoor way of weakening land rights.

Mr HATTON: I do not believe that is true and I do not believe that Stanley Tipiloura, who is a former Chairman of the Tiwi Land Council, would support that view. Local government and the Tiwi Land Council operate very effectively together. However, because people in the community have those sorts of concerns, it would be very worthwhile for them to sit down together and talk seriously about their competing interests so that the aspirations of people can be met. That is why it is essential to develop the process through the constitutional convention, so that the issues can be raised and so that people can talk about them rather than walking away from them. It is very easy for people to stand on the far side of the river and throw stones. It is much harder for people to sit down in the same room and find answers. That is the challenge before you now. We are all saying that it is time for everybody to get into the same room to try to find answers to those questions.

The mining company has interests in Jabiru. The town is on Aboriginal land which is subleased to a national park under Commonwealth control. It has all the elements and the people are saying that they want a right to their own local government. That is the reality of the concerns which need to be addressed. Nhulunbuy is effectively a company town on a mining lease of Aboriginal land where the Northern Territory government has virtually no say. All the public assets are owned by the mining company, not even by a town authority. People there are also asking how they can get local government and how their interests can be looked after in this context. Other towns in the Territory are in similar situations. I think that people at Yulara would have a similar viewpoint. These issues are just as real as the issues of protection of Aboriginal culture.

Mr MARTIN: I think they go hand in glove in terms of community councils.

Mr HATTON: That is right. Somehow, we will have to bring all that together and say: 'This is the road we are going to walk down. This is how we are going to sort out this confusion as a community, and set a direction for the Territory'. This process involves some issues which really affect your lives here.

Ms EAST: They are all raised in the discussion paper, are they Steve?

Mr HATTON: I do not think that the mining town issue is raised there although the issue of local government is certainly raised and you can follow through its implications in terms of your community.

Mr LOFTHOUSE: One of the frustrations of the Jabiru Town Council is its effort to become a bit more normalised in terms of municipal government. It is moving in that direction slowly. Things do not happen overnight. It is exactly the same as putting together a constitution and eventually reaching statehood. You have to learn about the process and develop it in a logical and systematic manner. We have had some frustration in doing that but we will get there in time.

I believe that most of the issues have been addressed in the discussion paper and that people have to really have a good look at them and start talking about them.

Mr HATTON: Think about them from your perspective and bring your perspective forward but, please, be prepared also to listen to other people who are looking at the issues from a different perspective. We have to start to think as an entire community. We have to look after our own interests and ensure that they are understood by other people but we also have to be prepared to look at views that are coming from very different communities with very different needs. That is the secret of this process. It will take a lot of persistence and patience.

Mr DITCHBURN: Perhaps you get a few ideas from the community by using a series of referendums on particular issues. Last year, the referendum put a series of questions which required a yes or no answer. I remember saying: 'I would have voted yes for that but it is not quite what I want'. I wanted something slightly different. I think you could use that sort of process, although it would not be compulsory. You could ask a series of questions on an issue and the people could give their answers which you could then assess. Those questions might get the information about what people do and do not want.

Mr HATTON: You are talking about a series of sub-referenda on particular issues rather than an all or nothing thing at the end of the day.

Mr DITCHBURN: Yes.

Mr SETTER: It could perhaps be done by means of a questionnaire sent to each household or each voter rather than asking people to come out and vote formally on a series of questions.

Mr DITCHBURN: That is right, but without trying to make it too comprehensive. It would be best to have each series of questions relating to a particular subject.

Mr HATTON: One issue could be the structure of the parliament.

Mr DITCHBURN: Yes. You could give multiple choices as well as leaving space for people to put forward their own ideas.

Mr HATTON: That would be a good approach either for this committee or the constitutional convention. This committee has to be very cautious about not taking over the task and dominating it and your suggestion might provide a way of taking the issues to the community and it would provide good background information for the convention.

Mr EDE: It could be a way of developing ideas, putting up options and so forth.

Mr LOFTHOUSE: What are you thinking of in terms of the convention?

Mr HATTON: First of all, we have to get through this round of community consultation. We then have to sit down and sift through what we hope will be an avalanche of submissions, to try to assess the broad feeling of the community. Theoretically, we are supposed to present a report to parliament in April next year but we are unlikely to make that deadline. I think that we will probably make a report to parliament some time during next year.

Mr EDE: That would be prior to the constitutional convention.

The multiple response questions could be an interim step between the time we receive the first lot of submissions and our next round of community visits. It would enable us to see how people are beginning to focus their ideas and, once the results had been collected, we could visit the communities with some information. We could start to identify areas of common ground and see where there was a fair way to go in terms of finding common ground. After that round of visits, I think it would be time to hand over to the constitutional convention. There is a temptation for us to solve all the easy problems and to hand all the difficult ones to the constitutional convention. We have to leave some areas in which the convention can solve problems and have some success because that will be an important part of its group dynamics.

Mr MARTIN: Perhaps the question and answer format could be useful. At some stage it would have to deal with the the question of the separation of powers, which is probably the most important thing in any constitution. You could have to break it down into various questions because you could not have a carte blanche situation.

Mr HATTON: I think that the really emotive issues will be those relating to human rights, individual rights and entrenchment. That is where I think most of the emotional debate will occur. I think that the mechanical clauses will shake themselves out relatively readily and that the human rights provisions will be the focus of most debate.

Mr DITCHBURN: In terms of the enshrinement of rights, I often wonder why their reverse does not apply. We have freedom of religion and freedom of speech but what about having the opposite written into the new constitution? I am talking about freedom from religion and freedom from someone rapping in your ear when you do not want them to.

Mr HATTON: A privacy factor.

Mr DITCHBURN: Or freedom from association. Most of these rights exist through other legislation but they could be written into the constitution.

Mr HATTON: Yes. Perhaps I could deal briefly with the various issues relating to freedoms. There are 2 competing viewpoints which come from what I describe as the British psyche and the North American psyche. The pysche of the North American system is such that people believe that, if something is not written down and locked into statute, it does not exist. In early April I was at a conference where an American said: 'You Australians have no rights because you do not have a bill of rights'. People who have that perception believe that rights do not exist unless they are written down. The view from the British pysche, on the other hand, is that rights have evolved and been refined over the centuries through the common law process. Most people are absolutely convinced that they have a right to practice their religion freely, a right to freedom of speech, a right to a freedom of assembly and rights to freedom of association, aren't they? We all believe that we have those rights.

Mr DITCHBURN: Unless you live in Queensland.

Mr EDE: Yes, they can be legislated away.

Mr HATTON: They can be legislated away.

Mr EDE: The argument for writing them down is that they cannot be legislated away because they are entrenched in the constitution. You have to go through a constitutional process to limit those freedoms.

Mr HATTON: That has been the focus of debate in Australia. A bill of rights would cut across centuries of common law and the whole process would have to start again. That can lead to some extraordinary situations. The discussion paper makes reference to the Canadian experience. The courts have made some extraordinary interpretations of the Canadian document, which is known as the Charter of Rights and Freedoms. Gradually, over a period of 5 or 10 years, the courts eventually arrive at practical interpretations but many disruptions occur in the process. Whilst there is a right to privacy in the Canadian charter, there was incredible debate at the conference about a situation in which a policeman walking past a car flashed his torch inside it. In so doing, he found stolen goods and proceeded to search the car. It was argued that, when he made an arrest, the evidence of the stolen goods in the car would not be admissible in court because the act of shining the torch into the car would constitute an invasion of the right to privacy. Members of the legal profession debated that issue quiet seriously.

That is the sort of problem which can arise when rights are enshrined in statute rather than in the common law. I am not arguing the case one way or the other. I am merely trying to bring forward the competing arguments which have led to emotional debates in Australia and, I am sure, will lead to the same sort of debates in the Northern Territory.

Mr NICHOLSON: It has only just become apparent because the federal Labor government tried to introduce a bill of rights.

Mr HATTON: It was voted out by the people. But the issue will have to be addressed in this context too. There is plenty to think about, isn't there? That is why the best approach is to deal with the questions one at a time. We have developed a list of questions. For example, 'A new state must have a parliament. Do you agree that that parliament should have the same powers, including legislative powers, privileges and rights, as existing state parliaments?' You can look at the information in relation to that question and consider it, and arrive at your viewpoint. If your answer is no, how should that parliament be different?

Just take one thing at a time. 'A new state must have a Governor as head of state. Do you agree that the Governor should have to assent to any legislation passed by the new state parliament before it becomes law?' Look at the material in the reference book which relates to that question. If you want more information, contact us. Just look at the various questions step by step and come to your conclusions. At the end of that process, you will have arrived at a structure which you can see and feel. You will be able to say: 'Yes, that is how I would like to see this come together'. That approach makes it less frightening.

Ms LUGLIETTI: It is frightening. It is very deep, very broad and very frightening. I think you need to look at it every day.

Mr HATTON: That is why you need to take it in little bite-sized chunks.

Ms LUGLIETTI: I think you will have a heap of questions and many more questions during the year.

Mr HATTON: That is right. That is why it is not going to be quick.

Mr SETTER: If you through this book, you will find that a lot of them are explained. It covers most of the questions that you would ask and gives explanations or options.

Mr HATTON: It gives you some good starting points.

Mr MARTIN: Eventually, right down the track when you are all well and truly finished, this will go to a referendum of the people to accept or reject.

Mr HATTON: Yes.

Mr MARTIN: It might take up to 10 years to reach the referendum stage, and I think it is possible that the early inputs received now and during the last 3 years might not be the flavour of day politically. Depending upon who is at the helm, people might be confused about how to vote at a referendum. Whilst you are working together in a non-political way now, the political flavour of the day will have a big influence over whether or not the constitution is passed at a referendum. The information you are collecting now might not be relevant if we have a change of government.

Mr HATTON: Mick, we are talking about a dynamic process. The convention will be representative of the people and the feeling of the people will come through as the debate goes on. I have enough faith to believe that the people will recognise that this is more serious than party politics. That has always been the case when we get down to the real fundamentals, such as amendments to the Australian constitution. Time and again, it is clear that party politics has nothing to do with it. When you walk into that ballot box, your mind changes.

If you are voting in an election or a by-election, party politics and the events of the day are in the forefront of your mind. But when it comes down to amending a constitution or debating a constitution, those really fundamental issues, I have faith in people's ability to take a very serious view of matters. They will really want to get it right and they will be very conservative in their approach. When I say conservative, I do not mean it in the sense of being radically right or left. People will look not just at today but at the long-term future. I have that faith in people.

Mr MARTIN: As long as our society is affluent when it goes to the polls.

Mr DITCHBURN: I do not really share your faith. I think that the attitude of most people when voting on constitutional matters is: 'This has been right for the last 50 or 60 years so why bother mucking around with it?' They take the easy option and vote no.

Mr EDE: I think you are right. I am a bit more cynical about what happens when people go to those polls. I also think that Mick had a point. If people are fairly affluent at the time when the constitution is put to the vote and feel relatively comfortable with the kind of society they are living in and see that society reflected in the constitution, there is more chance that they will vote yes. On the other hand, if it is a time of controversy and argument between different sections of society, people

will tend to be less trusting of claims that the constitution will make things change. They will be more likely to say: 'No, it needs more work'.

We may have to live with this constitution under self-government for a time. That is a possibility. It may also be useful to take up the suggestion about having what is essentially a sunset clause, so that the constitution has to be reviewed after 100 years. Under the constitution, the body politic will continue. But the way that it operates can be reviewed periodically. That may make it easier for people to accept degrees of entrenchment. If they can see that things will not be entrenched for 1000 years but will have to be looked at in 100 years, they may be prepared to look at them differently.

Mr LOFTHOUSE: I think the evolution of this new constitution is different from efforts to change established constitutions. We are putting in the preliminary work, canvassing people from all sections of the community in a totally non-political exercise. Everybody is represented, no matter what their colour, creed or way of life. The homework is being done properly and I do not think there will be a problem with acceptance. The problem with change to established constitutions is that the people who want to make the changes try to rush things through without doing their homework properly. It then becomes political because one party wants change and the other does not. The homework is not done and, as a consequence, the electorate says: 'Forget about it. We are not interested until you do your homework properly'. Doing the homework is what makes the difference.

To get things up and running, you have to go out and collect everybody's opinion and formulate the information so that you get a feel for what society's attitudes are. When you are able to match the document with those attitudes, it will be passed. People will accept it if it is properly put together and if they are convinced that there are no shonkies going on. The big problem comes when people want to make changes to it. They come across as representing pecuniary interests or the interests of one political party. I share Steve's belief that this constitution will go through fairly easily ...

Mr HATTON: If the process is followed through.

Mr LOFTHOUSE: It has to be done thoroughly and properly.

Mr HATTON: People will be part of it all the way through. They will understand it because they have been part of it.

Mr DITCHBURN: I think it would help the Australian Constitution if it was set out so that people could contribute to it rather than just saying to them: 'Here is a proposed amendment. You can say yes or no'.

Mr HATTON: If they went through a process like this one, they might have a better chance of getting some real amendments through.

Mr LOFTHOUSE: I agree with Don that there is probably a need to provide for a review period. One of the major areas of change is language. Things that were written 100 years ago can take on a different meaning now simply because of changes in the use of language. In the same way, things that we write now will have different meanings in 100 years. It is a process of evolution.

Mr HATTON: We were talking about how we might involve the community. Perhaps it would be possible for the council to let us know about any functions which you have where it might be possible for us to come along and meet with people without the Hansard recordings, formally or informally, just to get them talking about particular subjects. A couple of communities are forming small discussion groups. People have told us that they want to talk to their friends about some of these things and discuss the various bits and pieces one at a time. Of course, starting this process is the difficult thing.

I have said as much as I need to say. Would anybody else like to add something?

Ms LUGLIETTI: As I said, you need to go through it very thoroughly. You need to read a lot. It is very broad and complicated.

Mr HATTON: But it is fairly exciting when you think about it, isn't it?

Ms LUGLIETTI: It is in a way. It seems easy in some respects but it is also complicated. Psychologically, you think: 'This is for my own benefit. I really should get involved and do something'. On the other hand, you worry about whether you know enough about it and whether you will do the right thing. There are a lot of questions to be dealt with.

Mr HATTON: What you should know is that, if you do not get involved and do something, you are doing the wrong thing. That is the key, isn't it?

We have discussed the issues fairly thoroughly. I would just urge you to encourage other people to get involved. If we can work up from the 5 people who have attended this time and aim for 10 people next time and 20 the time after that, we will be on the right track. Please do not hesitate to contact us if you would like us to come back and talk with you individually or if you would like us to send somebody out to talk about particular issues. We are looking for opportunities to meet with and involve the community. Thank you very much for coming along tonight.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

MINJILANG — Wednesday 10 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:

Mr Stanley TIPILOURA
Mr Wayne WAUCHOPE
Mr Lloyd BOYLE
Mr Jumbo GUNGGIBARA
Peter
Mr CLOGH

NOTE: This is a verbatim transcript that has been tape-checked.
ISSUED: 21 August 1989.

Mr HATTON: Thanks for coming to meet us to talk about this matter. I will introduce myself and the people with me. My name is Steve Hatton. I am the member for Nightcliff in the Legislative Assembly in Darwin. I am the chairman of this committee of the Northern Territory parliament, which is called the Select Committee on Constitutional Development. I have with me here today Mr Brian Ede. He is the member for Stuart in central Australia, and he is the deputy chairman of this committee. There is Mr Rick Setter, the member for Jingili, who is also a member of this committee and, of course, Stan Tipiloura, your local member, is travelling with us as well. If you look at the back of the books which we have just circulated, you will see the pictures and the names of all the members of our committee.

This committee is different to other committees of the parliament because this committee has the same number of Labor Party people as Country Liberal Party people. There are 3 from the government side and 3 from the opposition side. That is important because on most of the parliamentary committees there are 3 government members and 2 opposition members so that there is a majority of the government people. But, for the job that we are doing now, this is one of those unusual times when both the government and the opposition, the CLP and the Labor Party, are actually working together and not fighting about it. That is why we have equal representation here and why we are going around together to talk to the communities about the job we have to do.

I know there has been a lot of talk around the Territory about statehood. Some people think statehood is good and that we should move as soon as possible to get statehood. Other people are very nervous about it, and some people just do not want it or certainly not now. Well, please, we are not talking to you today about statehood. We are not asking you whether you think statehood is good or bad. That is a question for the future. What we are talking about today is the writing of a special law for the Northern Territory, a law which is called a constitution. Until we have done this job, we cannot even think about becoming a state, so we are not talking about statehood.

We are going around now and explaining to the communities, to the people, what we are doing to try and get the people to work together to write this law called a constitution, and to explain what that law is and how we are going about doing it. We want to encourage people to make sure they have their say in this law to make sure it is written so it will properly look after the interests of their community and their people.

This is necessary because this law is not like any other law. This is a law - how can I put it? It is a people's law. You write this law and you set that as a law that sits over the top of the government. This is the law that stands on top of the government. It tells the government what it is allowed to do and it tells the government what it is not allowed to do. In this law the people say how you go about electing the government and how you go about electing the parliament. You say here what the courts are allowed to do, how the courts and the judges work and what the Governor or the Administrator is allowed to do. The people make that law, and you put all that together. You say: 'Okay, this is how we are going to let the government work, and what we are going to let the government do'.

You also say what you are not going to let the government do, because it is just as important in this law that you say that there are some things that are so important, our rights that are really so important that no government is allowed to muck around with them. Governments are not allowed to touch those things. That might be your right to vote and it might be your right to speak and meet

like this. It might be to stop the government from being able to muck around with Aboriginal land rights, to protect Aboriginal land rights. It might be to protect sacred sites or Aboriginal law, language and culture, the really important things that you say: 'Now, no government is allowed to muck around with that. That has to be there forever and the government cannot fiddle around with that'. Those are the sort of things you put inside a constitution and that sits over the top of the government.

This law is the boss over the government and the government has to go the way that law goes, and the government cannot change that law, if we write it properly. Only the people can change that law so it becomes your law, not the government's law. That way, the people have the power over the top of the government. If you do not have that constitution, then the government can do what it likes. The government can make any law it wants to make because you have not got that constitution over the top of them. This is a way that people say which way they want the Northern Territory to go in the future. It is done through that law. It is the way you put a rope on the government to stop it going too far.

You lose nothing from this, you get only rights. It gives you rights that are protected. It does not take anything away from you. And it says how the people are going to live together and work together and that you have to respect each other's rights in the future. That is what this sort of law does. It is a people's law.

We are travelling around now saying that we - the Northern Territory people - have to write this law, not the government and not the politicians. The people have to write this law, and they have to say to the government: 'There is the law. That is how we want the Northern Territory to go. Now you get on that road and you go down that road'. That is what this law is about.

If you look around Australia, the federal government in Canberra has a constitution over the top of it. All the states, Queensland, Western Australia, South Australia, New South Wales, Tasmania and Victoria, each has a constitution over it. Some of them may not be very good constitutions but they each have one over the top of them, and they were written 100 years ago, or more.

The Northern Territory does not have a constitution over the top of it. Even that federal constitution in Canberra does not help us. What it says is that the federal government can do what it likes in the Northern Territory, because we are a territory. We are saying to people: how do you want this Northern Territory to go in the future? What sort of place do you want this to be for your children, for your grandchildren and for their grandchildren? What do you want this Northern Territory to be like in the next century? How are we going to fix up the arguments and the fights that are going on between our European community and our Aboriginal community? How are we going to work out how we will live together in the future with respect for different cultures? How do you want this government to be put together, and what do you want the government to be able to do? These are the sort of questions we are asking, and it will take a lot of work to put all that together, and it will not be done quickly.

We are just coming around now saying that this is a job that we really have to do. The people have to do it. The people have to think about where they want this Territory to go, and here is your chance to have a say in it. You make the law and you set the direction you want to go in,

and you make that law over the top of the government and make the government go down the road the people want to go down. We are just coming around to you to say: 'Please, in this job, make sure you have your say'. Think about this. We have got some stuff for you, some information for you to think about. This book here has some ideas in it and some questions in it, but that is like a beginning one. We have a big book here, a thicker book, like that. That has a lot more stuff in it but it is not too hard. It says one thing at a time.

We have been working for 3 years, looking all round the world. We have been looking at things they have in America, in Canada, the West Indies, Africa and all around Australia and getting different ideas. Some things we reckon are good. Some things I do not like. If you look in this, you will say you like some of these things and you do not like others. You might think of something that we have not thought of that should be looked after in this people's law. We are asking you to have a look at it, have a think about it, talk about it amongst your community, get your ideas and think about them and, later on this year or next year, when we come back, you will have a chance to make sure you have your say about what you think should go in that law.

We are doing the same thing all over the Territory. We have been to nearly 60 communities, down in the Pitjantjatjara country, to Docker River and Mutitjulu, through Finke and up through all the desert country and on up to the Gulf and through Arnhem Land and the VRD. We have been all over. We have been in Darwin and Alice Springs, Katherine and Tennant Creek, and over to Nhulunbuy. We have been to all those places saying the same thing to the people: 'Please, have a look at this. How do you want the Northern Territory to go? How should people live together? What do you think the government should be allowed to do? What things are so important that no government should be allowed to muck around with them? What rights are so important that no government is allowed to touch them?' This is a way you can put it together, through talking to other people around the Territory, to make that law.

We are not going to write that law for you. Do not trust the politicians to write this law. You cannot trust us to do this job. The people have to do it. We are just coming here to say that we can give you some information to help you to start thinking about it. Get your ideas down and then, when we get them all together, we will try and put down what we think the people are saying, but that is only your first go at it. Then we want to go a second stage and we are asking you about that too.

We have to put together a big committee of people from all over the Northern Territory, people who can represent the communities and speak for them, people that you trust to speak for you. They have to come together, from all over the Territory, to look at what we have done and to say whether it is good or bad or whether it should be changed. They will work through it and they will write up that law and put it together. When they have finished that job, that will go back to the people for them to vote in a referendum. They will vote 'yes', if they think it is good. If it is not quite right, then you say 'no', and they will go back and start talking to people again. It will keep going back until the people say: 'Yes, that is what we want. That is good'. When the people vote 'yes' on it, then it becomes a law, and that is the law you put over the top of the government and it becomes the boss over the government. That law will make the government go down the road the people think they want to go down.

This has never happened before in the Northern Territory. It has never really happened like this before in Australia. When they wrote those other constitutions, they certainly did not talk to the Aboriginal people, did they? When they wrote those constitutions, they did not write things in them to protect Aboriginal culture and law. Now, in the states where they did not do that, those constitutions are still there and the people do not have their rights protected. It is important that this time, now, when we do it for the Northern Territory, that all the people take part in this, so that it becomes your law as much as it is balanda law. It has to have the things in it that are important for Aboriginal people just as much as it has to have the things that are important for balanda. Together, you have to talk it out and talk out where you are going. Maybe there will be a few arguments, but that is fine. Even if you argue to start with, if you talk and talk and talk, bit by bit you find an answer. The people will find an answer on how people are going to live together in the future.

It will not be a quick job either. Do you know how long it is going to take? I don't know. Maybe it will take 3 years or perhaps 5 years. It may take longer, but that does not matter. What does matter is that, when you write that law, you get it right, so the people say: 'Yes, that is what we want'. Then people will be happy to go down that road and they can leave this for the future, for the children and for future generations. They can set the direction for people in the future and make this a place we can all be proud of. Then, when our grandchildren look back, they can say: 'Those old people did a good job. They sorted out those problems and they made this a good place to live in'.

If we do not do this job, if we say: 'Oh, it is too hard. We are not going to touch it', the problems will still be here and our grandchildren will look back and say: 'Why didn't they do what they should have done? Why did they leave this mess behind?' That is the responsibility we have. We have to work out where we want this Northern Territory to go. It is a responsibility we cannot walk away from. We all have to work together to sort out these problems and work out where we want the Territory to go, and the people have to do that.

We have come here to say: 'Please, be part of this. Think about it and talk about it, and make sure you have your say in this and make sure that, when that law is made, it is the right law for your people as well as other people'. That is why we have come here today. We are not asking you to tell us now. We are asking you to think about it and, later on, we will come back and you can tell us. If you are not sure about something and you want more information later, then Stanley, or I, or Brian or Rick can come across to talk about anything you want to know about, to give you any information you want so you can start to work out how you want it to go. Then, later, you will be able to tell us which way you think this law should go.

I might ask Brian if he wants to say some words.

Mr EDE: Thank you everybody for coming here. My electorate, Stuart, is down in the desert country. It is all around Lajamanu and Yuendumu and across to Ti Tree, Utopia and Ali Curung, and across the Queensland side from Lake Nash.

The reason why I am here from the Labor Party side along with the CLP side is because I think there may be a chance, whilst going through this job we are doing now, to see if we can find a way that we can get rid of many of the problems that we have in the Northern Territory and we have

around Australia. I mean the problems we have from the Aboriginal side and the white side having arguments all the time, and the way those problems come up and get to be big problems.

Now, there are 2 sides to that. One is that I know what could happen later on, in the future, if we do not do something to try and tie things down. For example, now, in Canberra, we have our Land Rights Act, the Land Rights Act for all Aboriginal people in the Northern Territory. That is a law of the Canberra government. But, what would happen if, for example, the Labor Party got chucked out down there in the government House and the Senate and some other mob got in that did not believe in land rights at all? They might say: 'We are really against those land rights', and they could just pass a law and that would wipe out that land rights law. And where would we be then? All that land would go back from the people to being like unalienated Crown land, and people could come and apply to set up a pastoral property or a business or whatever. That could happen. We would not be in charge of it. We could make a big fight about it. We could scream and yell and get in roaring trucks and charge off down around the place. We could make a big noise, but they have the power. We do not have the power here in the Northern Territory to stop that happening.

So, what I am trying to do for this one, is to put as many blocks as possible in the way for anybody who might try to do that, and another way to do that is to have it in a constitution. A really good way would be to have it in the national constitution, for all of Australia, but we are not going to win that for now. But, we should be able to win it for the Northern Territory. We all have to live here in the Northern Territory, and this is where land rights is, here in the Northern Territory. We should be able to talk to all the white people and the Aboriginal people in the towns about how we can get things like land rights into a constitution here so that they are locked up. Then, if the mob in Canberra changes around and tries to kick it out, it cannot do it because those land rights will be locked in here too, under our law here in the Northern Territory, in that strong law that the government up here cannot change and which has to go back to the people if it is to be changed.

So this is to try to look after things like land rights and sacred sites. And what about language and culture? They have to be protected. And what about the other rights that people have? There is the good side, the things that we do not have now that we can talk about how we can put into a constitution, like the rights of people to be able to have a proper education, the rights of people to be able to have good health, the rights of people to be able to have proper things like water and accommodation and that sort of thing so they can live. That way, we can all be square like that here in the Northern Territory. That is what we are all looking for. That is what we are trying to achieve here for the Northern Territory so that we can all be proud together, all the same, Territorians.

That is the reason why I am working with CLP on this. There might come a time later on, in the future, when we might have a big blue about it and we might not be able to work together, but we do not want to go that way. What we want to do is to work through all the things we can agree on and see if we can explain them to each other, but it cannot be just us politicians sitting in there talking about things. It has to be all the people. We have to have Aboriginal people talking to whitefellows. We have to get people together. We have to get people to explain to each other why some things are really important. We need to explain why we need to hold on to those land rights and why we need to hold on to that culture.

The other people might just sit back there in town and think that Aboriginal people are just greedy buggers who want to have all that land out there. They might think that because they do not understand. We have to get them to understand and to see why that law that came from thousands of years before all the way to now, that strong law, must keep going ahead for all those kids. We have to explain that to them so they can see that that law is the strongest law and that is why that Aboriginal law and this new whitefellow law have to be side by side like that. They have to go together, side by side. Not like this so they keep on with one changing all the time and knocking into the other one so that we have a fight about it. We have all got to try to pull them together so that they are going like that.

To me, that is worth trying for. I do not know if we are going to win or not, whether we will succeed, but it is worth trying. It is really worth having a go. It is worth putting a lot of work into to see if we can get it. We must talk about it. If you say you do not understand any of it, well, let's argue about it, let's go and talk some more. Because, if we do not do it, if now, when everybody is talking about having a go, we say 'Oh no, that is too hard' or 'no, there might be an argument' or something like that and we walk away from it, what will happen if later on something does happen and we lose those land rights or lose those laws? When we make a fuss about it then, people will say: 'But you had a chance. Everybody asked you to come and talk about it to try and fix it up and make it work properly, but you did not want to'. It will be really hard then to come back and say: 'No, now we are ready and we want to talk now'. I think it is really something we have to try. We have to try for now and talk together about it and see how far we can go.

It is not statehood. This constitution can work under self-government, the same as now. We can work up that constitution and then we can talk about that statehood thing later on. We cannot be talking about statehood now because we do not know what statehood is. You cannot eat it, you cannot feel it, you cannot see it. It is just a name - statehood. We have to get this constitution down so we can see how we can all work together. If that constitution works all right, then we can start looking at whether we are going to have statehood and in how many years and how it is going to work. But this one has to come first because this is like the map, it is like the land. It is something that stays there, all the time, and that we all live on and stay on, and we will work from there to see how everything will work together and how everybody gets on so they can hand things on to their kids, their rights.

As I say, I do not know whether it will work out all right in the end but you mob have the power. Everybody has the power. If they do not like what comes out later on, they have the power to say no. Then we will have to go back and start again. It is not something where, if you say: 'Yes, we will start talking now', you will be tied down at the other end and have to agree to it. You can say 'no' later on if you do not agree with it, but the best thing is to try and start now to see what things we can agree on and lock up those things and, if we are going to have an argument later on about some things we cannot agree on, okay. But, let's put that back for later. Let us work on those things we can agree on, get those all down first and see how far we get.

That is really all I want to say today. As Steve said, this is just a start. We are only out here really to talk about how it is a start and how important it is, and how we really need for people from communities like this to be talking about the things they see as being important to be in this constitution. They can talk about it in council meetings, school meetings, community meetings, women's group meetings and in everything else and, as people keep talking about it, say: 'Okay,

let's send in a letter. Let's put in this idea and this idea'. All those ideas can be in there and then people can start working them out and putting them together to see how they come together. That is where we are starting from now.

Thank you.

Mr HATTON: Thank you. Stan, do you want to say anything?

Mr TIPILOURA: No, not at this stage.

Mr SETTER: Thanks Steve.

You know, in this country there has been a lot of change and, in the Northern Territory in the last 20, 30 or 40 years, there has been enormous change. Your chairman there was telling me before how he used to work in and around Darwin, for the Conservation Commission maybe, or whatever it was called then, in the timber industry. I am sure he can tell you about the enormous change that has occurred, particularly in Darwin, and in Alice Springs and other places. It is a lot different to what it was a few years ago. Even here, in your community, there has been tremendous change. Now, a barge comes in here maybe every couple of weeks. Aeroplanes come in here probably every day, and sometimes 2 or 3 aeroplanes come. You have the telephone ...

Mr Ede: Radio telephone.

Mr SETTER: Radio telephone - you have AUSSAT here and probably you pick up Imparja television. Do you have Imparja television?

A Person: It is ABC. We are not getting Imparja.

Mr SETTER: ABC television? You know, 10 years ago you did not have any of those things. So things are changing all the time.

As far as the government in the Northern Territory is concerned, there have been changes as well. Maybe 15 years ago, we were totally controlled from Canberra by the Commonwealth government and then, in 1974, we established our own fully-elected government in the Northern Territory, in Darwin. Not long after that, in 1978, we achieved self-government, and now we have our own representatives, our own politicians, who sit in the parliament in Darwin. Stanley is your representative. Brian, Steve and myself and many others do that, and we are making decisions about the Northern Territory and we are making them in the Northern Territory. They are being made by Northern Territory people and some of those people, Stanley and Wesley, are Aboriginal people and they are there looking after your interests.

But now, maybe, it is time for some more change because, in this country, we have the Australian government and we have the state governments and they each have a constitution. They all have this very strong law and they call it a constitution, and it is like their Bible. It is very strong like the Bible, and you know the Bible has been there for 2000 years. So, now, we think it is time for a further change in the Northern Territory government. It is time for us to establish our own strong law, our own constitution, and that is what we are here to talk to you about today.

It would be an easy matter for us to sit down in Darwin and write a constitution because we could look at the Australian Constitution and the state constitutions and we could look at constitutions from other places in the world, like Papua New Guinea, where they wrote one about 20 years ago. We could do all that, but there is no point in doing that if we have not been out to speak to you, to the people, to ask you what you want in the constitution. Unless we ask you what you want, the one that we write might be wrong. You may not agree with it. You may not like it and, unless you support it, it is no good to anybody.

We are not here today to tell you what should go in that constitution. We are here to advise you about what is going on and to leave these booklets and some other booklets with you so that you can read them and talk amongst yourselves and decide what you want in the constitution. We are going to come back and talk to you, maybe early next year, and at that time we will have a much bigger discussion and you can tell us what you would like in that constitution.

We have already been to about 50 communities in the Northern Territory, all through the centre and right down to the bottom part of the Northern Territory, and the majority of those have been Aboriginal communities so we are making a very honest attempt to consult with people. We would like you to have a think about it and have a talk about it. If you have any questions this morning, please ask us. We would be only too happy to answer them for you and, when we come back next time, early next year maybe, then we will have a big discussion and you can tell us what you think.

Mr HATTON: Just to finish off, Rick was talking about change. The change we are talking about is that, for once, let the people tell the government where it has to go rather than what has always been happening before. It has always been the government telling the people where they have to go. Let's turn that round. This time, it is time for the people to take control and set the rules. That is what this job is about.

We have come here to explain what we are doing. If you have any questions or you would like to say anything, please understand that we want you to. We would welcome any questions or comments. Please, tell us what you are thinking. Do you think this is a job worth doing? That it is something we should do?

Mr Wayne WAUCHOPE: Mr Hatton, looking at the states in Australia, you have to have a constitution. What about the constitutions they have? You know, the Aboriginal people in Queensland and Western Australia, they have a state and they have a constitution. What is going to happen in the Territory if it does - you are talking about a constitution now, and you said statehood is going to come in the future ...

Mr HATTON: Later.

Mr WAUCHOPE: Yes. What is going to happen to the Aboriginal people then?

Mr HATTON: You see, when they wrote those constitutions in those states, that was 100 years ago. People were very different then. When they wrote that, they did not even go and ask the white people. Some lawyers and politicians got together and just wrote it. And they certainly did not go and ask the Aboriginal people. When they wrote that, they did not put laws in

there that protected Aboriginal law, Aboriginal culture, language and land. That was not done. But a constitution stays. It was not done properly, as we see it now, and people have suffered. You do this job properly and you put the protection in place for the Aboriginal people. That is what this is about. That is why it is important, really vital, that all the communities are part of this and make sure this is done properly.

Mr WAUCHOPE: What you are saying is that, if something gets put into the constitution, it cannot be changed.

Mr HATTON: That is right. A constitution is the people's law and that people's law sits over the top of the government. I think you should put in there - but you have to write it in - that the only way that law can be changed is by a vote of the people. Do you remember that, last year, they wanted to change the federal constitution and they had to go and ask the people? You were asked 4 questions and you had to say 'yes' or 'no' to show whether you agreed or did not. In the end, the people said 'no', so they had to leave that constitution alone. They could not touch it. You make the same sort of rules in here so the government, the parliament, cannot touch that.

Mr Lloyd BOYLE: Doesn't that work both ways, though? You were saying just now that there are a lot of things that need changing, because of the changes in time and that, but it is just about proved that that constitution cannot be changed because to do it, it needed nearly 90% of the people to say 'yes', didn't it?

Mr HATTON: No, it needs half the people to say yes. Well, that is why I am saying now, when you write a constitution, you do not have to dot every 'i' and cross every 't', but you have to get in there things that are absolutely basic and fundamentally important, like freedom of speech, maybe, and the freedom to practise your own religion or the right to vote - those sort of things. You have to lock them in. At the moment, do you know that, just by changing an act of parliament, the federal government can take away our right to vote? We have no protection. We do not have any protection because we do not have a constitution.

A person: So - a constitution.

Mr HATTON: It might be hard to change this law. We hope it is hard to change. Can you change Aboriginal law?

Mr WAUCHOPE: No.

Mr HATTON: It stays there, doesn't it.

Mr BOYLE: It stays.

Mr HATTON: It stays there, doesn't it? It goes the one way all the time, and you say that is the way it should be so that everyone knows where they have to go and how they have got to live together. They know what the law is because it is always going the one way. This sort of law is the closest thing we have to anything like Aboriginal law.

Mr WAUCHOPE: Ours is different. If you try to change Aboriginal law, you die. With balanda it is different. He can change it tomorrow or he can change it in 300 years.

Mr HATTON: That is right. I am saying a constitution is the closest we get to Aboriginal law. It is there. It stays the same. It has to be hard to change. It is the foundation. Do you understand what I mean? And it has to be owned by the people.

There are other kinds of laws, you know, liquor laws or whatever. They can go backwards and forwards all over the place, can't they? And people ask why that is so. But with this one, you are saying: 'Right, that is the road we are going to make. Now, you can change your laws, but you have to keep on that road. You can wander around on the road a bit, but you have to go down that road'. Now this is the closest we get, in our way, to a law like Aboriginal law.

Mr Jumbo GUNGGIBARA: I think that law might be - is going to be respected. Any laws, whitefellow laws, Aboriginal law, must be respected to stay under that law. But it is no good, once (indecipherable).

Mr EDE: That is why I think it is really important that everybody is involved as we go through this time and whilst we are talking about it because it will be hard to change this law afterwards. And that is why, if people are not happy with the way it is coming up, when it comes round to their chance to vote, they should vote 'no'. If they are not really happy with everything that is in there, they should just say 'no' and tell us to start again, and we can go and work it up again. We might do this for 5 years, 10 years or even 20 years. That does not matter. We have plenty of time. If we do not finish the job, our kids can take it up and they can keep going with it until they get it right.

Mr GUNGGIBARA: We cannot rush. We have got to think slowly and look at it slowly to see where we have to go and mostly, Aboriginal people, give them a chance to get (indecipherable). That is all it is, but we want really to get more education, more and more and more. Then we can get up and say: 'Look, good day my friend, me and you walk together now'.

Now today we just say: 'You stay there. I will stay here. I will hang on to my law, you hold your law there but, if you want to clear up problems, you come and see us or, if we have problems, we will come and see you and we will work together slowly'.

Mr EDE: What we are trying to do is to put people's rights into this. At the moment there is no right for people to say: 'We are going to stay here on this land and, if people want to come and visit us they have to have an entry permit or have some rights for that'. That is covered up, as I said, in that Land Rights Act. Those things can be cut out tomorrow.

Mr HATTON: We do not expect that they will.

Mr EDE: I do not think that they will. I mean, we would make a big fight and we would all be out there trying to stop it if they did ...

Mr HATTON: And no one wants to anyway.

Mr EDE: ... but the law can be changed like that because it is the same as a liquor law or a law for carrying car licences or for all those sort of things. It is all that same sort of law.

What we are trying to do is to see if we can make up a law which is stronger than that so that it has in it those things which are really the most important things about living together here in the Northern Territory. We want to see if we can put those into a law which will not change all the time, which cannot be changed by a government, which can only be changed by the people.

Mr GUNGGIBARA: What we are really worried about here is our Land Rights Act. That is the important one for people, you see? Land rights holds all sort of things. It is holding Aboriginal culture, the Aboriginal way he lives and all that, all sorts of things. That is why we keep that, because that land rights is just like hard ground.

Mr HATTON: You see, if you do not trust the government and you say: 'I do not trust that government, they might take this land away from me and I want to make sure they cannot'. If you want to keep that, what you do is write a law in a constitution. That is the way you stop governments from doing things like that. It is when you do not trust the government that you put it in a constitution.

Mr GUNGGIBARA: That is all right. They can set down our law. That is good, but ...

Mr HATTON: Yes, you see, if you put it in there the government cannot touch it. If it is not in there then the government can make the laws and change the laws. You lock it up in this constitution ...

Mr GUNGGIBARA: The only thing that we are worrying about is new generations. When the new generation will come up, he will be European. He will not recognise Aboriginal law. He will not recognise anything. He will not have a ceremony. He will not have anything. That will be just - might be just for Europeans, and he will need to know nothing. He will be losing all that. That is why the land rights will hold that in the future, for the children, from generation to generation to generation.

Mr EDE: That is why I believe we have to try and get those things about land rights, looking after culture and language and things like that into the constitution because nobody else can teach your kids. You have got to teach your kids. But all that we can try and do is make it so that nobody is stopping you from teaching your kids and doing all those things by mucking around with that one.

Mr GUNGGIBARA: That is a very important thing that you remember that for our children there will be no languages, by that time. There will be no languages, nothing, only just English in the long run. Just be careful of that one. That is why we need land rights to stay on that.

Mr WAUCHOPE: So you reckon, Mr Hatton, that as soon as land rights is put in this constitution and it stays up in the Northern Territory, no one can touch it, even the people from Canberra, the government from Canberra?

Mr HATTON: The government cannot touch it.

Mr WAUCHOPE: The government from Canberra?

People: That is right.

Mr HATTON: No, the Northern Territory government could not touch it. You see, this would be a Northern Territory constitution and this would set the rules and the limits on the Northern Territory government. It does not make the rules for the federal government. They do that under their own ...

Mr WAUCHOPE: Oh no, what I am saying is that, once it has been put in this ...

Mr HATTON: We cannot - the Northern Territory government has got to obey this law. They cannot change it.

Mr GUNGGIBARA: It will stay there. They cannot take it away.

PETER ?: What about the federal government?

Mr HATTON: They can, they can, but again - well, I understand that, down the road - let's assume that, down the road, the Northern Territory Land Rights Act became a Northern Territory act, and that the constitution says that Aboriginal land rights have to be protected, that they cannot be taken away. Right? It becomes Aboriginal land in the Northern Territory and it is protected under the Northern Territory constitution.

When you become a state, a constitutional state, you then get the protection of the Australian Constitution and, under the Australian Constitution, you get protections. For example, they cannot acquire land off you without special cause and they have to pay compensation. Those are protections that flow from the federal constitution later, when you become a state, but your first job is to get your rights locked up and protected from your own government, because this is where we are and the government that manages land is the state government, or the Territory government in our case. You need to lock it up in there so that it says: 'That is it. Those are the rules'.

Mr EDE: Could we just ask our lawyer about this. He might be able to explain that in the lawyer's way because really you are asking, if we have a constitution here and we have land rights in there and that is all accepted, and we go a bit past there, can the federal government turn around and change something which is in our constitution? That is what you really want to hear about.

Mr PETER ?: Yes.

Mr NICHOLSON: The answer is that it is not clear.

Mr HATTON: We don't think they could.

Mr NICHOLSON: At least you could say it would be very difficult for the Commonwealth government to do it ...

Mr HATTON: They have never done it in Australia.

Mr NICHOLSON: ... because they have other problems like the acquisition problem. They would have to pay compensation. The Australian government has not passed a land rights law for the rest of Australia anyway because of the problems.

Mr HATTON: That is one of the reasons why.

Mr NICHOLSON: But, as to the strict legal answer, I am afraid there is no precise answer at this stage.

Mr HATTON: But it is reasonable to say that, if there was a constitutional entrenchment of land rights in a Northern Territory constitution and the Land Rights Act became a Northern Territory act, then that would give constitutional protection to the ownership of that land for the Aboriginal people.

Mr NICHOLSON: Certainly, in respect of ...

Mr HATTON: So far as the Northern Territory government is concerned.

Mr NICHOLSON: Oh yes, definitely. No doubt about that.

Mr EDE: There is no problem about it stopping the Northern Territory government. The federal government, because it is over the top ...

Mr HATTON: It is not bound by our constitution.

Mr EDE: But what we are saying is that it would make it really hard for them. They have never done it anywhere in Australia, gone beyond a state constitution. They might find a way of doing it but I think they would have to try and find something under external powers, or something like that ...

Mr HATTON: The only way they could do it is to use the acquisition powers. The federal constitution says that the Commonwealth government can acquire property for Commonwealth purposes under just terms. So if it became important to, say, have a defence base in a particular location, that is a Commonwealth purpose. If the Commonwealth government said that it needed to acquire that land to make a defence base, it would have to pay for the land.

Mr WAUCHOPE: Even if it is a sacred site?

Mr EDE: It depends if there is a state of war. If there was a war on ...

Mr HATTON: They have the power. Right now, they can come in and acquire land and not pay for it, because we are a territory. So there are limits, but they can take it whether they need it or not. Because we are a territory, they can come in and say: 'We want to take back the Gove Peninsula, or Croker Island', and just take it. They do not have to pay a cent. There is no legal protection.

Mr GUNGGIBARA: It is the same thing like if that is a sacred site sitting on uranium over there and the Northern Territory government wants that uranium to be taken away. Then you have got to put up a fight and say: 'Look, it is sitting there, and the sacred sites, you cannot beat that'. And you can argue and argue and argue. I do not know how far, it might be 2 mile or 3 mile you can come underground and pick it up and close it again. But you cannot take the sacred sites away. It is the same thing.

Mr HATTON: If you put it in a constitution ...

Mr GUNGGIBARA: Yes, if you put in the law.

Mr HATTON: That is where you lock it up. That is where the people make the law and it is the law of the people put down for themselves that the government has to obey.

Mr SETTER: I think it is important to realise that the Land Rights Act is a Commonwealth act of the federal government, not of the Northern Territory government but the federal government. It is only an act of parliament and, as was said earlier, they could change that tomorrow if they wanted to. They could take it away tomorrow if they wanted to. We do not think they will, but it is possible.

Mr WAUCHOPE: What was that?

Mr SETTER: What I said was that the federal government has the power to take away the Land Rights Act. It has the power. I am not saying they are going to do it at all, but they could amend it or change it to suit themselves, because the Land Rights Act ...

Mr HATTON: It is not protected.

Mr SETTER: ... is not protected in the Australian Constitution. It is only an act of the federal parliament, and they can change that at any time.

Mr HATTON: In the same way, just by repealing an act of parliament, the federal government could wipe out any sort of government in the Northern Territory. By changing legislation, they could take away our Senators. They could take away the right for our federal member, who is Warren Snowdon now, they could take his right to even speak in parliament. They did that from the 1920s through to 1968. We elected someone but he was not allowed to speak. He could not vote. He just sat there, as if he was sitting in a cupboard for 40 years. That is true. Because we are a territory, we do not have those rights. It is only what they give us by their good heart.

Mr WAUCHOPE: So what you mean and what you are saying is now when Labor is in power, it still does not matter.

Mr HATTON: Labor or whatever. Whether they do it or they do not it, they have the power to do it. What a constitution is about ...

Mr EDE: You see, the first stage is they have to decide they will not do it. They can decide they are not going to do it because they believe in land rights. But that does not mean that they do not have the power to do it. It is like the fact that you might not want to go swimming, but you have the power to go swimming. It is as basic as that. Labor does not want to change it, but we do not know what other government might come in later on. Some other party that we do not even know yet could get in, in 10 or 20 years time, and it would have the power to change that law if it wanted to.

Mr SETTER: I do not think any of the major parties would change land rights.

Mr HATTON: They will not take it away, certainly. Do you want to raise something?

Mr Alan CLOGH: I have a question for Mr Setter.

I was very interested to hear that you had been studying the Papua New Guinea constitution very closely. You probably know then that title in the land in Papua New Guinea is vested in the traditional owners. The country is owned by the people who live there and they own everything that is on it. I would like to get your comments on that if you could, please.

Mr SETTER: I have not personally made a study of the Papua New Guinea constitution. I do not think I ever said that I had. Perhaps our constitutional lawyer here could comment on that or Rick Gray over here, our Executive Officer, who was involved at the time when the development of the Papua New Guinea was being done ...

Mr EDE: And this fellow here, too.

Mr CLOGH: Thank you. I would appreciate that.

Mr SETTER: ... and Brian. Perhaps one of you gentlemen could answer that question.

Mr EDE: When I was involved in the development in Papua New Guinea, yes, the idea was that the land and everything was vested in the rights of the people. As you know, they then worked on the idea of organic laws which I think is another thing that it would be a good idea for us to look at as part of the way of getting around some of our problems here.

For example, we may decide that the things which are in the constitution, down to a certain level, may even need a 75% majority to change. That could be written in there. Then we could decide on other things which required 50%, and we could have organic laws to do it. It may be that people say that we will not put every word of the Land Rights Act into the constitution. The act contains provisions about how the land councils meet and the delegation of powers down to communities and those sorts of things, and people may say that, rather than having those actually in the constitution, we will have the basic things in the constitution and some of the operational things may be in organic laws to change which may require, for example, a two-thirds majority of parliament and that they have to lay there for 6 months for discussion. And other things may be covered just by ordinary law. It can be broken up like that to get different powers or lock it in in different ways. It is a question of how far you lock it into concrete.

Mr HATTON: As long as you do not break the Australian Constitution and do not go outside that, you can set up the Northern Territory the way you want it to go. You can set whatever rules and directions the people want to go in, subject to the Australian Constitution. That is to say that, we cannot, for example, become a republic because it is a monarchical system in Australia. Subject to those basic limitations, the Northern Territory people have an opportunity to set up a democratic structure that they want.

Mr CLOGH: I was more concerned with the ownership of the land under the constitution.

Mr HATTON: Land ownership issues, yes. Rick?

Mr GRAY: On the ownership of land, PNG is vested in the public under the constitution to the people of Papua New Guinea. I think only 5% of the total land mass of PNG was actually alienated land and most of that has been converted now to leasehold to the foreign people there.

Mr CLOGH: Converted to leasehold?

Mr GRAY: Yes, on a 50-year lease. What the government does is that it is making laws for that traditionally or customarily owned land and, if people wish to develop that land, they get it surveyed and so on and register it. So there is that type of process also.

Mr CLOGH: So you are saying the beginning of land ownership in Papua New Guinea is vested in the constitution and the traditional owners own the land. Then, later on, the government develops special laws, in consultation with those traditional owners, for different development projects.

Mr GRAY: Yes. There was a conscious decision of the Australian administration not to alienate the majority of the land, when it was there.

Mr CLOGH: And also by the traditional owners of Papua New Guinea?

Mr GRAY: Oh, yes, for sure.

Mr HATTON: Are getting an idea of what we are talking about? It really is wide open. It can be rather frightening when you try and think of all the different things that people are asking questions about but, if you bring it down and just take it in bite-size chunks, and just do it one piece at a time, bit by bit by bit you start to put together an entire picture of how you think the Northern Territory should go. And that is what this is about. There are a lot of questions in there. We have listed out all the questions that arise in this booklet. There are 11 typed pages of the questions. But they are one after the other.

Coming back from land rights and sacred sites and those issues for a moment, do you think we should have, as they have in Canberra, an Upper and Lower House - the Senate and the House of Representatives? Most of the states have that. Here, we have just the one House. We call it a unicameral system. Do you think we should have 1 or 2 Houses of parliament? Then, how do you elect a Chief Minister or Premier? Should you allow him to choose ministers who are not politicians, as happens in the American-type of system when they put their government together? All those sort of things are talked about in here.

This is like a reference book. You pick a subject, and it gives the different arguments backwards and forwards on that particular subject. You can look at that and say: 'Oh, I think this way', and bit by bit you start to get a picture of how you would see the parliament going. Should the Governor be able to sack the government like they did with Mr Whitlam in 1975? And, if he can, under what rules? You get a chance to write those sort of things in here.

In most people's lifetime, a situation like this never happens. It is unique. It is a once-off thing to try and set up a society, a democracy, that reflects the aspirations of the people and the directions that people want the place to go. The process of talking together, fighting and arguing about it but trying to work through it is part of everybody learning to understand other people's

needs. Really, it is through knowledge and understanding that respect grows, the development of respect for different cultures and different races. We have to work out how we are going to pull a very mixed community together to go down a road, not all looking and acting the same, each maybe with their different cultures and laws, but still being able to work side by side with respect for each other.

Mr WAUCHOPE: Excuse me, gentlemen. Why is the Northern Land Council so touchy about this?

Mr HATTON: I do not know. They have not come and talked to us yet. We are trying to set up a meeting to talk with the land council. We think it would be valuable for the land councils themselves to be part of this process.

Mr WAUCHOPE: Are they frightened that, when this comes into power, there will be no such thing as the Northern Land Council?

Mr HATTON: I do not know. I have not spoken to them about it.

Mr EDE: Can I just say something. I think that they think that we are doing a constitution so that we can jump into statehood, and that they think that those two things are coming together and that, if they say all right to this one, then everybody will think they are saying all right to statehood. What they want is for the Land Rights Act to stay under the Canberra government and not come under the Northern Territory government. They are frightened that, if they come a little bit of the way, people might think that they have agreed to everything. I think then they have said: 'Oh, well, we will play safe. We will stick out all together'.

I disagree with them on that because it is a bit like if there is a meeting going on inside a room, and everybody is in there working through and making decisions and you just sit outside. Then, when they come outside you say: 'Oh no, I do not agree'. You lose credibility, unless you were actually in there being part of the discussion and arguing it out. Then, if you do not agree at the end, you can go outside and say: 'Well, I do not agree'. You can say the same thing but at least you have been involved in the discussion and in talking about it. It may be that, because they are there, it might end up with us getting to agreement on all the things that they are after.

Mr HATTON: But I will be surprised if we find that they agree. Because you have your say, and that is part of convincing other people about what is important to you, and then hear what the other bloke is saying and try to find out a solution.

Mr EDE: We will still be going back to them all the time to see if we can get the land councils to be part of the process. I think it is really important that, not just land councils but the other Aboriginal organisations too are involved because a lot of them have been working in things like Aboriginal health and Aboriginal education and those areas and they have very important things to say about the rights that people should have under a constitution. Those are things that are really important to Aboriginal people.

In central Australia, we have trained Aboriginal lawyers who really would be good people to be involved in talking about how the things are to be written down because then they can make sure that none of the white lawyers are doing something a bit funny, a bit sort of clever with it. They can

see that it is written up properly so that it actually says what people mean. All we can really do is talk around out bush to people and then ask you to talk to people back there and say: 'Well look, why don't you just have a bit of a talk to start it off. If you do not like it, okay, you can walk away, but give it a try first'.

Mr HATTON: Is there anything you would like to ask?

Mr GUNGGIBARA: Speaking in own language. Has anyone got some more questions?

Mr EDE: We will be sending stuff out and what we would really like is for people to ring up or send in. They can do it in language, do it on tape or in writing or however. Just tell us about any things that come up in meetings that people want to talk about or, if you just have questions about it or are not happy about the way we are doing it, let us know so that we can see if we can fix it up and keep working through it better.

Mr HATTON: Thank you very much.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

PULARUMPI — Thursday 11 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:

Mr Chris BROGAN
Mr Graham WHITING
Mr Cyril RIOLI
Mr Stan TIPILOURA

NOTE: This is a verbatim transcript that has been tape-checked.
ISSUED: 4 October 1989.

Mr HATTON: Thank you very much for giving us this chance to meet with you. We have all introduced ourselves over lunch. Thank you also for that lunch. It was great and provided a great way for us to meet people before we sit down formally to talk.

Our committee is a committee of the Legislative Assembly and it is called the Select Committee on Constitutional Development. The booklet that we have just distributed is what I call a starter's kit on talking about writing a constitution. At the back of this booklet you will see photographs of the members of this committee. There are 3 members from the CLP and 3 from the Labor Party. I have with me today Brian Ede, who is the deputy chairman of the committee, and Col Firmin and Rick Setter, who are members of the committee along with myself. The other 2 members are Wes Lanhupuy and Dan Leo.

Unlike most things in politics and government, this time both sides of politics, the Labor Party and the CLP, are working together to try to develop a constitution for the Northern Territory. For once we are not in the middle of a political fight and taking opposite sides and arguing and confusing everybody. We are doing that because both the Labor Party and the CLP believe that this particular task is too important for that. It is so important that we really should put our party politics aside and work together, as Territorians, with the Northern Territory people to write what is a people's law. We should work with the people to assist them to write that law.

No doubt, over the last few years, you have heard a lot of discussion about statehood. Some people are in favour of statehood,. Some people think it is too early, and some people just do not understand it or are nervous about it. Can I say to you that we are not asking you now whether you are in favour of statehood or against it. The issue of whether we become a state or when we become a state is something for the future. You cannot even consider that question until you know what you want and how this new state is to operate: how you are going to set the parliament; how you will protect people's rights; how you will set the rules by which people are to live and work together in a future Northern Territory.

What is a state? What is the state that you want? Before you can even say that, you have to sit down and think through it all first. How do you want the Northern Territory to work in the future? How do you want to go about electing governments and electing the parliament? What things should the parliament be allowed to deal with and what things should be outside of its control? What sort of rights are so important that nobody should be allowed to interfere with them? For example, that might be the right to vote. That is a right and you do not want a government to be able to take it away from you. It could be the right to freedom of speech so no government is allowed to touch those sorts of things.

There may be issues associated with Aboriginal law or Aboriginal culture that may be so important that you say that, no matter what, no government should be allowed to interfere with or change them. The way you do that is by preparing a special law, which is called a constitution. It is no different in principle to preparing a constitution for a community government, a town council or a football club, for that matter. You have to write the rules on how you will elect the committee or the council and how long members are to serve for, and what things the council is allowed to do and what the council is not allowed to do. You write the rules when you set those sort of constitutions up. This is the same sort of thing but it is for the whole Northern Territory. Because it is for the

whole Territory and because it affects government, it will really shape the way the Northern Territory will develop over the next century.

It is not something you can do easily, it is not a thing you can treat lightly and it is not a thing you can afford to ignore and let other people do for you because it will affect your lives, your children's lives and your grandchildren's lives. Because it has such an effect on the whole of society, it is absolutely vital that, in writing this law, we involve the people. In fact, the people have to write this and they have to understand what is going on. They have to think about it, talk about it within their communities and get their ideas together. They will need to choose representatives, who the community can trust to speak honestly on their behalf, to come forward with representatives from other parts of the Territory to sit down and work through this as a Territory community - representatives from all over - from the Centre to the Top End, east to west, black and white. They will have to work through all the hassles, the fights and the problems and find out how we can work towards setting the Northern Territory up for future generations. That is the task we have in front of us.

As I said, we have prepared this booklet as a sort of starter's kit. It raises a few ideas: how do you want your parliament to operate; how do you go about electing the parliament; do you have single-member electorates or multi-member electorates? Who is to have the right to vote? Who has the right to stand for parliament? How long should the parliament sit for? What is the role of the courts and the judges? How much can the courts interfere with what the parliament is doing and how much can the parliament interfere with what the courts are doing? What about the Administrator or the Governor, what is his job? What should he be allowed to do and how much control should he have over the parliament? What about local government, community government? Should you put in a guarantee, a constitutional right, to have community government or local government, where a community says it wants that, so nobody can stop them from having it?

I mentioned before some sort of rights that people will want to talk about including in a constitution. There are a lot of really complicated questions there, but we are saying that we all need to start thinking about it.

The reason why it is so important is this. Some countries do not have a constitution. It is not essential. In Britain, they do not have a written constitution. Because they do not have a constitution in Britain, the parliament there can make any law it wants to. It can override the courts and make any law it wants to make, technically. It has that power. The parliament there has unlimited power. Some countries, like the United States of America, Canada and Australia, operate under what we call a written constitution. The written constitution puts limits on what the parliament can do and on what the government can do. It is where the people say: 'Yes, we will let the parliament do that, but it cannot go past that line. It cannot interfere with our lives past that point', and they write that down.

As you know, the federal government operates under a constitution, the Australian Constitution. It says what the federal government is allowed to do and what it is not allowed to do. It sets out how the parliament is to be elected and all those sort of things that we have been talking about for the Territory. That is for the whole of Australia.

Every state in Australia has a constitution. They might not be very good constitutions. They were written during the last century, when the states were colonies, but they do have them. When those constitutions were written, they did not go out and ask what the people thought. A group of politicians got together with a couple of lawyers and they sat down and wrote it themselves, put it into law and dumped it on the people. This is the first time in Australia that someone has gone out to the people and said: 'How do you want to set the place up? What do you think is important, essential to make the Northern Territory a better place to live in, a place where there is justice for everybody and opportunities for everybody and where there is true democracy for everybody?' You now have the chance to be part of making those sort of rules.

We have come here to say: please, start to look at the material, think about the questions, discuss them amongst yourselves and discuss them in the community. If there are things about it you are not sure about, things you would like to learn more about, please ring us up or write to us and ask us to come across and discuss the particular matter. We want to help people in the community to understand the issues and to be able to develop their thoughts, and to make sure that you all have your say in writing this.

The process we are going through is to make sure that this does become a people's law, that sets the direction, the future road for the Northern Territory, and a law that will sit over the top of the government. It needs to be a law that the government cannot change, that only the people can change so it becomes the property of the people. To do that, what we are doing now is going around to people saying: 'This job is coming up. Please start to think about it'. Look at this work that we have been doing for several years now, in this book. It is a discussion paper. It has different ideas in it - some things you will like, some things you will not. It sets out choices, different options, that deal with different ways of doing things. Have a look at it and read it. Think about it, argue about it amongst yourselves, talk it out and get an idea of how you think it should go. Get your ideas together.

Later this year or early next year, after people have had a chance really to come to grips with it, we will come back again as a full committee and then we will say: 'Okay, you tell us what you think'. We will be looking to take submissions from all the communities. Now we are going around asking you to become involved with this. Next time we come, we will ask what you want and what you think should go into a constitution, what rules there should be.

We have visited some 60 communities over the last couple of months, everywhere from Docker River and Finke, right up to here, east and west, saying the same thing. And we have to go back to all those communities. As you give us your ideas, and having collected people's ideas from all over the place, our first job will be to try and work through all that and see if we can work out what we think the people are saying - what the people want. But we are not going to do the job. We are just going to put a draft of the first ideas down.

The second important job we have to do is to put together a thing called a constitutional convention. That is a large committee of representatives of the people right across the Territory. It might be 50, 60 or 100 people. They will be the representatives of different interest groups and different communities, the whole diversity of the Northern Territory.

Those people will have to come together to look at our work, the submissions we have received, the research we have done and our suggestions, and then they will have to go through it all and start deciding what they think, as a group, and take that backwards and forwards to their communities. All the horny problems will need to be argued out. Argue out all the hard questions. For example, do you put rights into the constitution or do you not? Sort out between the white communities and the Aboriginal communities about land rights and sacred sites, Aboriginal law, culture, customs and how they need to be protected. It will be necessary to explain things backwards and forwards between the communities and sort out where people think the convention should go. In the end, those representatives who form the convention will prepare a proposed constitution.

Then that proposed constitution will have to go to the people for them to vote on. If it is not right, if the convention has not got it right and the people vote 'No', we will go back and start again and work to improve it, and we will keep building on it and building on it until the community has something that they are happy with and the people vote 'Yes' for. Then we will have that law, that constitution.

It will not happen quickly. It will take a lot of time, a lot of effort and a lot of patience. It will be necessary for people to be prepared to listen to the needs of other people and not just think selfishly for themselves. If you are prepared to do that, you can make this Northern Territory something fine. You can create a heritage in the Northern Territory that you can be proud of and future generations can be proud of.

If it is too hard and you want to walk away from the job and ignore it, you have to understand that the problems will not go away. They will still be there, and future generations will have to do this job. And I think those future generations will look back on us with some disgust because we were not prepared to take on the job. I guess we have a choice. Either, we can take up a unique opportunity and accept a unique responsibility to make the Northern Territory the way the people want it to be made and so earn the admiration of future generations, or we can walk away from it and earn the disgust of future generations because we will leave the mess behind for them to sort out. That is what we are faced with. I think the people of the Territory will take up the challenge and will be prepared to work and get this job done. I certainly hope so, and I am asking that you be very much a part of this and make sure you have your say in this whole process. Make sure that, at the end of the day, you are happy with the end result and that you have set in place something for the future.

That is what we came here to talk about. I would ask Brian and others to have a say. Really, we are here to explain what we are doing and to answer any questions and concerns. If there are things you want to talk about or argue about, we are happy to do that too. If we can keep our conversations on a constitution and not get sidetracked on other issues, it will be a great help to all of us. Other issues we are happy to talk about after this meeting.

Mr EDE: I think you have already covered most of it, Steve. The reason why the Labor Party is involved in this process in such a strong way together with the CLP is that we believe that there is a possibility that, by going through the development of the constitution, we can put in concrete, if you like, sort of fix in place, some of the things that we think are really important about being Territorians.

I have been told, and I do not have to tell anybody here, how Aboriginal law has this great strength that has been the same from right back and going all the way forward. It goes one way, straight, so it does not change, it does not move, it is always there. We know it and we live around it and it controls us. One of the difficulties that Aboriginal people have with non-Aboriginal law is that it is changing all the time. As soon as you think you get to know it, someone throws another change and people say: 'Well, how can you live with a law like that?'

Constitutions are an attempt that some countries have made to get something which will stay essentially the same for generations. The idea is that the constitution controls the government. It is on top of the government, on top of the Administrator, the courts, the police, the councils, the whole lot. All the other laws have to answer to the constitution.

If there are things that are so important that you do not want them to be changed around, then the constitution is where you look to put them. If you put them in ordinary laws, one government can put them in and the next government can come along and take them out. They have not got any strength. But what goes in the constitution, the people and only the people can take out. People will tend to say: 'It is our constitution. We worked bloody hard to get it in place and we are not having anybody mucking around and telling us what to do and changing it all the time'. So constitutions tend to stay pretty well as they are organised.

There are 2 points. One is that it is important to get it right because it will not be something that we will be coming back to every 4 or 5 years and having another go at. Once it is in place, it will be there for a long time. There will be some ways of changing it, but it will be hard, so for anybody who is not happy with the way it comes out the first time, the best way is to say 'No' and go back and start again.

The other point is that you have to work out which are the things that we do not want governments changing all the time. Steve has mentioned things like the right to vote and maybe having councils. But a lot of people are really worried about land rights and they say: 'We have land rights now. We do not want to do anything that might make that right weaker because we might lose it'. A lot of people have said that they want to keep the Land Rights Act with the federal government because they are worried about losing it. One of the possibilities I would like to put to you is that, in this constitution, you can have some form of land rights. You can have the principles there or you can have the lot there, or however much you can argue through with the other people you can get in there. If it is in a constitution, it is much harder to change it. You will not then have the same fear about changing governments and changing things about because certain things are going to be a lot harder to change than changing the government.

Whether that means that we are able to have a system where there is a federal Land Rights Act and it is in the Territory constitution as well as a Territory Land Rights Act so that you are locking things in, up and down, so that it cannot be moved around, cannot be changed easily, so that everybody goes backstop for each other, will depend on the strength of Aboriginal people talking and arguing their case. If Aboriginal people say: 'No, it is too hard. We just want to walk away from this thing and we will come back and have a look when you have finished', it will not end up being the type of constitution that most Aboriginal people would like.

This is going to be one of those things where people are going to get in there and discuss and talk about it. You must make yourselves heard as to what you want, through talking to other communities, talking through organisations and making sure that there is a strong, central voice coming out and that it is the voice that you are after.

We are here really just to put you on notice that this is going to start along those discussions right now. You have our addresses. Stan is always around here and it is not that far to Darwin if you want to sing out for people to come back. If we go along for a few more months and something comes up and you say: 'Well, hang on, we have thought of something that could be a problem' or 'we have some questions we would like you to go through with us' or whatever, you can contact us. It can be by phone or any way you want.

We just want to wake people up and make sure that this is a people's constitution for all the people in the Territory and that everybody is involved and putting their ideas forward and negotiating how to do it.

That is why, as soon as possible, and it might be in another 12 months or so or as soon as we can, we want to move to set up this big committee from all round the Territory so there will not be politicians who will be doing what we are doing now, it will be the committee. It will have Aboriginal Territorians, men and women, the people from the bush, the towns and everybody else in it who can say: 'This is what we feel is important'. Another group will say: 'No, you are not understanding what we are saying'. Then people can argue that inside.

People may be saying: 'We want to have strong sacred sites legislation. We want to have those fundamental principles of sacred sites for protection in the constitution'. The other side may say: 'No, no, we do not agree with that', then the one side has to get up there and explain why that is important so the other side can see that people are not just saying that because they want to grab something, they are saying it because it is something that is absolutely necessary for them and their culture.

That is the way it has to go, with people learning from each other, learning how to fix the problems and learning how to go ahead. If, at the end of it, we end up with an agreed constitution, which 95% or 99% of the people agree with because they reckon it says what all Territorians are looking for, this will be a much better place to live in because we will not be having all these arguments and things later on. People will not be frightened about losing their land rights and they will not be frightened about desecration of sites, because they will know that both the Aboriginal and the white law are together, like that, and both are saying the same thing.

Mr HATTON: Thanks, Brian. There is one point I would like to make if I may.

We have a Northern Territory government, a Northern Territory parliament, and you go and vote for that. Stan is your local member in that parliament, and that government has some powers and to provide education and health services, and to build roads and bridges. It has a police force and all those sorts of things. You can say: 'Well, that is there and it is working all right. Why do you want to change?' Well, do you know that the very existence of that government depends on the federal government's goodwill? If they wanted to and if they could convince other people in the federal parliament, just by repealing an act of that parliament, they could wipe out all government in

the Northern Territory. I do not think they will, in fact I am pretty sure they will not, but they have the power to do that, because we do not have the protection of a constitution and we are not protected by the Australian Constitution because we are not a state.

Even land rights come only under a federal act of parliament. Everyone says it is strong and it cannot be taken away and it is perpetual inalienable freehold title. If the politics in Sydney, Melbourne and Brisbane changed and, to get elected, somebody had to stand up and say: 'I am going to get rid of land rights', and all the people in Sydney, Melbourne and Brisbane voted to get rid of land rights - the Northern Territory has only 1 seat out of 154 in the federal parliament - and they could throw land rights out. They have the power to do that, just by repealing an act. They can take us right back to the welfare days if they want to. They have the power to do that, and all the gains people have made, their right to vote and the right for the federal member to go down there could be lost. Sam Calder fought and won the right to vote. Before Sam Calder, you remember, Jock Nelson was our member and he was never allowed even to speak in the federal parliament. It was not until 1968 that our federal member was allowed to speak in the federal parliament.

Do you remember the days before we had a Legislative Assembly, the days before we had any voice? The federal government has the power to take us back to that because we do not have any form of constitutional protection.

We have extra things here - and this is also a matter of hanging on to what you have. That is equally important and that is part of what this whole process is about. It is not about money and development and all that sort of thing. It would be nice to be able to run your own life more. It is like when you grow up and become an adult, and you get a chance to run your own life. Sometimes, it is very comfortable to be a child. Your parents feed and clothe you, and you can go fishing. You might have to go to school and your parents will tell you you have to do this and you have to do that. You have to behave yourself and do the dishes after dinner or whatever, but it is comfortable. You do not have to go to work. You do not have to have a job, because your parents are there to look after you and protect you and all the rest of it. But, one day, you want to stand up and be an adult, and take control of your own life, don't you. Now you cannot explain why that is important, why that is good, but you would not want to be a child all your life. You want to be a grown-up. You want to have the right to make decisions for yourself. You also want to have the responsibility that goes with that and you feel better as a person because of that, and you have your own family.

It is no different for a community like the Northern Territory. Before self-government, the Territory was like a small child, nursed and protected by the federal government, but we never had a say over our own lives. Then they gave us a bit of a say, but they are still there, like the parents looking at their teenage child. They give him a bit of freedom but still keep a bit of that rope on him so he does not go too far before he becomes an adult. The point is that, one day we have to become an adult. But we cannot even think about becoming an adult until we know what we want and, if we want to make decisions on how we want to run out own lives, let us make our own decisions on those rules as a community, and that constitution does that.

I am talked out. It is up to you. Is there anything you would like to raise? Is there anything you are not sure about?

Mr BROGAN: It frightens me a bit to know that if Melbourne members of parliament or whatever decide they want to run, they can get the federal government to cut out land rights or things.

Mr HATTON: They have the power. I do not believe they will do it, but they have the power to do it, because we are just a territory.

You see, Australia is what is called a federation of states and the Australian Constitution deals with how all those old colonies came together in 6 states, and how all the rights flow down to the people of the states. We are outside that because we are a territory, so even individually we do not have that constitutional protection. For example, the Commonwealth government has the power to come and acquire your property, for whatever purpose they want it for. They do not even have to have a reason, and they are not required to pay you for it. They are not required to compensate you, because you do not have the protection of that clause of the Australian Constitution that people in the states have. They cannot do that in Queensland because in Queensland it is tied down. Which clause is it, Graham?

Mr NICHOLSON: 51(29).

Mr HATTON: That is the acquisition power?

Mr NICHOLSON: The acquisition power.

Mr HATTON: Section 51, subclause (29).

Mr NICHOLSON: Do you want me to check it?

Mr HATTON: Yes, is you would Graham.

That clause says that the Commonwealth can acquire property for Commonwealth purposes, but on just terms. What that means is they can only take it if they can demonstrate that they need it for their own purposes, for example, for a defence base or something like that, and then they have to pay you for it, and you have the right to go to court over it. But, in the Territory, the High Court has already said that that does not apply. They can walk in and say: 'We want to put a radar station just outside Pularumpi' and they could come in here and say: 'Right. We are taking that bit of land'. If necessary, they would amend the Land Rights Act to say that that land is excluded. They have the power to do that, under this section 51 here which says: 'The acquisition of property on just terms from any state or person for (inaudible) respect that the parliament has power to make laws'.

In section 122 of the Constitution, which is the section that deals with the Northern Territory, it says: 'The parliament may make laws for the government of any territory surrendered by any state to and accepted by the Commonwealth' - and that applies to the Northern Territory - 'or of any territory placed by the Queen under the authority of and accepted by the Commonwealth or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the parliament to the extent and on the terms that it thinks fit'. In other words, in layman's language, that says that they can do what they like with us, and that includes giving us the

right to have a government or taking it away from us if they do not think we should have it any more. That is pretty heavy stuff, isn't it?

Mr NICHOLSON: If I could just explain that. The High Court has held with that 122, that the Territory's power is not qualified by that 51(31). So, if one was acting under 122, it does not have to provide just terms.

Mr HATTON: That is right. That was that High Court (inaudible) Tower case.

Mr NICHOLSON: It was a Papua New Guinea case.

Mr HATTON: That was when New Guinea was a territory of the Commonwealth - - Bougainville, when the traditional owners of the land wanted payment when they put the mining company on there. The High Court said the government did not have to pay. That is an example.

If you want to work to overcome those problems, start writing the rules and, after you have the rules in place, after you know what you want down the road, then discuss how you become equal with everyone else in this country. You cannot even talk about that until you have done this job because you do not know what you want.

Mr WHITING: Obviously, the biggest hurdle, as far as a constitution for the Northern Territory goes, will be land rights. This is my personal view. I think the referendum taken in 1967 or 1968 ...

Mr HATTON: 1967.

Mr WHITING: ... whether rightly or wrongly, I think the average person in Australia thinks that land rights has gone well beyond what most Australians envisaged. Definitely some sort of compromise has to be reached in the Territory because otherwise Aboriginal people will be out-voted on it, that is for sure, unless some perspective and some sense is brought into it. Whether rightly or wrongly, I think that has to come up because if it gets to heated debate and that sort of thing over it, it will set one side against the other and the Aboriginal people will not (inaudible).

Mr HATTON: My reading from going round the country is that white people in the Territory are not happy with a lot of the land rights and to say they are would be wrong.

They are not against land rights. They are not against the Aboriginal people and people having ownership of their land. That is not the issue and, except in very rare cases, most people are not saying they want to take the land back from Aboriginal people. The concern in the non-Aboriginal community is the belief that Aboriginal people have some rights that those other people do not have, and they regard that as being unfair. Would that be a fair comment?.

Mr WHITING: I suppose so.

Mr HATTON: And, they are looking for equality also.

Equally, I go around to Aboriginal communities, and they believe that they do not have treatment equal to that given to the European community on health, education, housing, power and

water services, access to jobs for the kids, and, a whole lot of things like that. The thing is out of balance, both ways. There is no point in me standing here trying to talk it through, and there is certainly no good in someone in Canberra trying to do it. If we are going to make this Northern Territory a decent sort of a place, the best thing is to put everyone in the same room and start talking and try and to come up with a set of rules that everyone is happy to live under, or is prepared to live under. That might be a better way to put it: rules they are prepared to accept, to give everybody a bit of breathing room.

As much as anything else, I think it would be a great help if there was some definition of how long this whole acquisition process under the Land Rights Act is to continue. If people knew what the end picture was going to be on that, they could say: 'Okay, let us stop that fight. We have got that done. Now let us work out where we are going from here'. That is another point that is valid too, isn't it, arguments over land claims, and those sort of things?

But it is not going to be easy. I did not come here to say that we have an easy job in front of us. But then again, really important things are never easy to get right.

Mr WHITING: Even amongst the Aboriginal community, some people are pro mining some are against mining. I think they have to sort out amongst themselves too what they really want. I think it would be hard enough to get a compromise there, let alone to get a compromise with (inaudible) the government.

Mr HATTON: I think what will be essential is not to try to put into a constitution the entire Land Rights Act. I mean, the whole of the administrative structure of land councils, all in place, identical and forever. What is the real core substance that you are talking about? The core, the heart of it, that is what you put in a constitution. The law deals with the bits and pieces on how it is operating. You can set some process in place over it, if you want to, but do not try to lock everything into the constitution, because that would also lock it up for future generations. It might be that people will want to go about handling and managing it in a different way in the future. There has to be a balance between what you put in a constitution, what you put in a law and what you put in regulations.

Mr RIOLI: What if, at the end of the day, the majority of Aboriginal people decide not to have a state?

Mr HATTON: That is after we have done this. We then ask the question about becoming a state.

Mr RIOLI: But what, at the end of the day?

Mr HATTON: At the end of the day? I think the reality on that day is that, unless there is substantial support from all sections of the Northern Territory community - and that includes the Aboriginal community - it will not happen. It will need substantial support, not just the entire population ...

Mr FIRMIN: There has to be a very strong will from the majority of people.

Mr HATTON: But, understand that, once we get this constitution written and Aboriginal people as well as white people vote yes for that constitution, what I think you are going to need to do then is go to the federal government and say: 'Look, we want you to put this into law to replace the Self-Government Act, so it becomes the Northern Territory Constitution Act. That would then become the way we operate as a self-governing Territory, so that constitution comes into operation.

It is essential that we get a constitution in operation even before we become a state because, under clause 106 of the Australian Constitution, it says:

a constitution of each state of the Commonwealth shall, subject to this constitution, continue as at the establishment of the Commonwealth or as at the admission or establishment of the state, as the case may be, until altered in accordance with the constitution of the state.

That means that, if the constitution is in operation, if it is working when you become a state, then it can be changed only by the state in the way the state constitution says, so the federal government does not have a say about what goes in the constitution. But, if a constitution is not in place when you become a state, and later on you make one, there is an argument that the federal government can interfere and change it, if they want to. So, if you want the constitution to be the property of just the Northern Territory people, then you have to have it in place before you become a state. It has to be in place even while you are still a Territory.

Mr RIOLI: What would happen ... ? Mr HATTON: Then, after you do that, people like me will come around and say: 'You have got your constitution in place. You can see how we are operating. When do you want to become a state?' They will ask that question. Then they will ask you how many people we should have in the House of Representatives? What power we should take. Whether land rights should become part of the new state operation, and so on. At that time, those questions will be asked.

Then, if the Aboriginal people say 'no', well, the federal government has to agree with it. If the federal government says: 'If you cannot get the Aboriginal people to agree with it, we are not going to do it', it will not happen. That is why everybody has to be part of this.

Mr FIRMIN: Also, if the majority of Aboriginal people did not want it, we would find also that there would be a large body of the white population who would not want it either.

Mr HATTON: That is right.

Mr FIRMIN: So, there would be no way that anything could be forced through. It is something that we all have to get together on and work out.

Mr HATTON: I do not think it is fair to say ...

Mr SETTER: No, it is not. Of course, it is not.

Mr HATTON: People are going to think for themselves.

Mr SETTER: They have all got their own views, even amongst the Aboriginal communities, the same as with the non-Aboriginal communities.

Mr BROGAN: So we cannot become a state without a constitution?

Mr HATTON: No. You cannot even ask the question until you have done that. That is the point I am making. You do that job, then you think about statehood, after that.

Please, there is one point I do think we should make. Whether it happens in 1 year, or 5 years or 10 years, or in 20 years time, you must recognise that one day the Northern Territory will become a state. I do not know when, but one day we must and will become a state, if for no other reason than to overcome the problems we are talking about, to stand as equals. There are no special money benefits. It will not cost us anything but also we are not going to earn any extra money for the Territory by becoming a state.

Mr WHITING: Well, it would in one way, wouldn't it? You would get a lot of money from the mining that you don't get now.

Mr HATTON: Yes, you do, but that gets offset against the grants because of the way the Grants Commission operates. There are no financial benefits or costs from statehood. Statehood is all to do with rights.

The way it operates is that we are now funded exactly as if we are a state. The way that that operates is that there is an organisation called the Grants Commission, and we have to prepare submissions for it. It looks at what it calls the 'standard states', based on New South Wales and Victoria. It says what are the range of government services and government facilities that the standard states provide and how much it would cost to provide that range to people in the Northern Territory. That involves things like health and education services, police, fire and emergency services, labour and administrative services, Treasury - all the functions that our government carries out.

They estimate how much it would cost for a reasonable range of those services, and they calculate that out, on what we call a factor assessment method, using the same formula they use for the states. Then they ask, if we charge the same sort of taxes and charges as are charged in New South Wales and Victoria, what our revenue raising capacity is. How much money can we raise, through the same taxes and charges? They work out how much our revenue raising capacity is and then the difference between those, roughly, is the amount that we get by Commonwealth grant.

They divvy that up, and they pool the money in what is called the Commonwealth/States tax-sharing pool, and they share that out between the states. That is what they do with at the Premiers Conference. We are in that pool now. We get our share, in the same way that the states do. Now, we always argue that we do not get enough, where it is a legitimate argument, because the Commonwealth decides how big that pool of money is to be, and then we argue about what share we get from it. If they make the pool smaller, all the states get less money. If they make the pool bigger, the states get more money.

Every state gets funded by the Commonwealth. New South Wales receives about about 60% of its money from the Commonwealth. Now, if suddenly we got royalties, from the uranium

mines and the Coronation Hills, and the offshore oil and gas, that lifted our revenue raising capacity so it closed that gap off, ...

Mr WHITING: You are no better off.

Mr HATTON: But you are no worse off either. The only way you make more money for more spending, is if you expand your economy, if you make more industry and more jobs ...

Mr WHITING: (inaudible).

Mr HATTON: (inaudible).

To create wealth, you have to go to work, open up new industries and create an economic base. You build your population and that builds up your tax base. But to get the population, you have to have jobs for the people to do, and so on. That is how you expand, as a Territory or as a state. But, you are not going to lose money by becoming a state. People get frightened that they will go broke because they cannot afford to be a state. The reality is that we are operating as if we are a state now, financially. On land rights there will be argument. The whole issue of having these human rights written into a constitution has led to so many arguments in Australia. They held a referendum to try and get a Bill of Rights and we have had arguments about formulating a Bill of Rights. Some people do not think that should be put into a constitution. Some people think it limits the people's freedom by writing it down, and there are arguments about that too.

I think that is where the main disputes will be, on the issues of rights. I think these other matters will be sorted out. Most people will come to agreement on those reasonably easily - the (inaudible) of parliament, how you elect people, what the Governor can do and what the courts can do - when you get those things together, I think the real discussions and arguments will be about those rights. But at least let us get together what we agree on and then start talking about the things we have arguments about. Then we can all sit down and talk about it.

Does that answer your question?

The reality is that, if the Aboriginal people do not agree with it, it will not happen and it is the same if the white people do not agree with it - it will not happen, and that will be sad. I am confident though that the more people learn about this and understand it the more they will demand it.

Mr FIRMIN: It gives us a good opportunity to get together and talk to each other about the things we find important.

Mr HATTON: That is what the reality is going to be.

Mr BROGAN: With the land rights for the Aboriginals, all you need is a dozen or so politicians to get in who think like Joh, then the land rights will get kicked right out.

Mr HATTON: Dead right.

Mr SETTER: That is right.

Mr EDE: But not just federally. We are talking now about developing this constitution and how it may or may not have various rights in it. Those rights will not be included automatically; you will need to demand that they be included and say: 'We want to have them in there'. There will not be anything in there about land rights unless you demand to have it in there. If you do not say anything about them and do not say: 'This is how we want to have it locked in', the most likely thing that will happen is that land rights will end up being moved from the federal government down to the Territory government.

We talked before about how, if there were enough votes against land rights in the federal parliament - and we have only got 1 vote in that parliament - the federal government could turn around and wipe out land rights. If it came to the Territory government, well, in the Territory you only have 1 vote and a Territory government could turn around and wipe it out, because it would be in that act.

Mr BROGAN: Then it is going to be in both.

Mr EDE: I believe both would be great. Getting it into a constitution would be great, locking it into a constitution, so that it does not matter which government is in power up here, they cannot be the ones that decide whether or not to knock off land rights. It has to go to a referendum of the people, and those things will be so entrenched, as they say, tied in there, that they will have to have a bloody good reason to want to change anything. It will have to be made so that it is not just a matter of non-Aboriginal people agreeing and Aboriginal people going down on racial lines. It has to be that, basically, people have had a look at it and said: 'We reckon we can make it weaker or stronger', and it may be that everybody wants to make it a bit stronger in the constitution. Whatever change they want to make, there will need to be good strong grounds for what the people need for the back-up.

Mr FIRMIN: As Brian said earlier, when we started, the reason why the CLP and the ALP are both together on this is because we both believe in it, so it is not likely that the present government will try to get rid of land rights.

Mr EDE: No, but we are doing this constitution for a long time down the track, for 100 years or 200 years.

Mr FIRMIN: I cannot think that we would never get an opportunity to put land rights in the constitution in some form or another.

Mr HATTON: That is right.

Mr SETTER: But the reality is that, in the Northern Territory, unless it is written into a constitution, you will have no protection for your land rights, none whatsoever, other than an act of parliament which can be amended or rescinded or whatever at any time.

Mr TIPILOURA: Not even in the Commonwealth one?

Mr SETTER: No, not even in the Commonwealth, Stan. You have no protection in the Commonwealth right now.

Mr TIPILOURA: Not even an act of parliament?

Mr BROGAN: (inaudible).

Mr EDE: The ideal would be if it was entrenched in the Australian Constitution, but that is a massive ...

Mr SETTER: That is an interesting point just as ...

Mr EDE: Virtually nothing has ever happened.

Mr SETTER: That is an interesting point, because even ...

Mr BROGAN: Even if you had that land rights in one, like if you have it in the state constitution, the Commonwealth government can still wipe it out.

Mr HATTON: If we ever come into ...

Mr EDE: If we could have it in the other constitution, in the national constitution, that would be really tied up.

Mr BROGAN: Can the federal government overrule anything that is in the ...

Mr FIRMIN: But if we ever got to a proper constitution in the Northern Territory ...

Persons talking amongst themselves.

Mr FIRMIN: If you get it in the constitution of the Northern Territory, and we became a state, land rights would be protected with the constitution so, within a very short period of time, the rest of Australia would find that the pressure would be so great in the states that that would probably take place. You would see land rights.

Mr EDE: Yes, quite possibly in Western Australia and places like that.

Mr FIRMIN: Certainly in Western Australia and in Queensland.

Mr SETTER: It is well worth noting that even the current federal Labor government has not attempted to entrench land rights in the Australian Constitution. They have not tried to do it.

Persons talking amongst themselves.

Mr RIOLI: We have to get the people to understand it properly first ...

People talking amongst themselves.

Mr HATTON: ... (inaudible) you get those sort of wars going on too. That is, interpreting what that says. You will not get rid of those fights. It is like uranium mining. It is all very well to get control of uranium mining and operate here. We do the environmental assessment, get the mining approvals and all the rest of it, but the federal government, under its foreign affairs power, issues export licences and you cannot send anything overseas without an export licence from the federal

government. So if the federal government does not want any uranium mines to go ahead, it says it will not grant an export licence, so you cannot sell it to anyone.

Mr EDE: That is whether you are a state or a territory.

Mr HATTON: Yes, whether you are a state or a territory. So it will not solve every problem. It will not make us better off than they are in the states, but it will stop us from being worse off.

Mr EDE: You mean, if we have a constitution?

Mr HATTON: Yes.

Mr SETTER: It is the first step.

Mr HATTON: The federal government will still be there. But where have all the big fights been between the Northern Territory and the federal government? They have all been over matters where the federal government is involved in activities in the Northern Territory which are done by the state governments everywhere else in Australia. Land administration is a state government function, except in the Northern Territory in respect to Aboriginal lands.

Half our land is administered by the Northern Territory and the other half is with the Commonwealth. It is not even the Land Rights Act as such that is the main problem with that. Really, it is the fact that, because it is a Commonwealth law, it has a clause that says: 'Northern Territory laws shall apply on Commonwealth land to the extent that they are not inconsistent with the Land Rights Act'. Well, that could mean anything to anyone. It is a great clause for lawyers to make money through. We had to go to the High court to find out whether the Control of Waters Act applied on Aboriginal land.

There are 400 or 500 acts of parliament, so do we have to do that with every one of them? Every time you have a meeting, do you have to check it out? Because the Land Rights Act is a federal act, there is a whole network of laws in the Northern Territory and that creates confusion, which is where most of the fights come from. It sits differently to everything else. That is where a lot of the arguments are. They are not about the fact that land rights exist and not about the fact that you own your land here, it is more to do with why it cannot be administered by the Northern Territory government. That is what the argument is.

Mr EDE: By the same token, Steve, one reason why it is not is because most Aboriginal people do not trust the Northern Territory government.

Mr HATTON: That is true. I am not denying that. It was interesting at Lajamanu. I do not think you were there, Brian. I was with Wesley, and we were sitting there at Hooker Creek and this came up. One man said: 'I do not trust the Northern Territory government', and I turned around to Wesley said: 'What if this man was in government, not us?'. He said: 'I do not trust him either'.

Laughter.

Mr HATTON: So it has nothing to do with the ALP or the CLP. It was just the Northern Territory.

Mr EDE: It is basically because on the other side they have 2 cracks at the Territory.

Mr HATTON: They have got what?

Mr SETTER: What did you say?

Mr EDE: They have got 2 cracks at the Territory - there is the Senate.

Mr SETTER: Oh, I see.

Mr EDE: (inaudible) people like up there is that if you have one party that is in government, whether it is Labor or Liberal, in the bottom house there, the House of Representatives where Warren Snowdon sits, up on top of that you have the Senate, where Bob Collins sits, and that is generally not controlled by Labor or the Liberals. There is one mob that sort of sits in the middle there. It does not matter which one has the power down the bottom, Labor and the Democrats have power at the top. I think that people take too much comfort from that because it has only been there since about 1977 ...

Mr HATTON: It is only while governments keep calling double dissolutions.

Several persons speaking at the same time.

Mr HATTON: (inaudible) double dissolution to get rid of the Democrats. The quota is so small, it is about 7.5%. They get (inaudible) of the vote and they get somebody in there. If you only get a half Senate election, the quota is 16% or 17%, and they cannot get that percentage raised.

Mr SETTER: It is a long time since we have had a half Senate election.

Mr HATTON: Are there any other issues you would like to raise? Has this given you something to think about?

A person: Yes, we will think about it.

Mr HATTON: We will leave some of these books with you also. That is that discussion book. There are more copies up there. This is one that gives some ideas on the setting up of a constitutional convention and, just for information, the options on how you go about making a state, it shows the way to do it. I will leave those for you.

Meeting concluded.

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

NGUIU — Thursday, 11 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:

Mr Stan TIPILOURA
Mr Bernard TIPILOURA
Mr Jimmy TIPUNGWUTI
Mr Walter KERINAIUA
Mrs Hyacinth TUNGATULUM
Mr John Baptist PUPANGAMIRRI

NOTE: This is a verbatim transcript that has been tape-checked. However, due to poor recording, or many people speaking at the same time, some of the recordings were inaudible and unable to be transcribed.

FINAL EDIT 15 MARCH 1991

Mr HATTON: Thank you very much for coming today to give us a chance to talk to you. If I may, I will introduce myself and the people that are with me. My name is Steve Hatton. I am the chairman of this committee of the Northern Territory parliament which is called the Select Committee On Constitutional Development. Our job is to work with the community to write a special law, a law called a constitution. We have come here today to talk to you about what we are doing and what this law means, and to try to encourage you to be part of making this law, to make sure it is a law that will represent you and your community properly.

With me I have this man here, Mr Brian Ede, who is the deputy chairman of the committee. This is Mr Colin Firmin, the member for Ludmilla in Darwin, and he is a member of the committee. This is Mr Rick Setter, the member for Jingili, and he is a member of the committee and, of course, you know your own Stanley Tipiloura. He has come along with us today because this is his electorate.

In those books we gave out, you will see in the back the names of all the members of the committee. This committee is different to other committees of the parliament, because this one has equal numbers of members from the Labor Party and the Country Liberal Party. There are 3 from the government, from the CLP, and 3 from the Labor Party, the opposition. That is because, on this job, the Labor Party and the CLP are working together. For once, we are not fighting about something. We are working on it together because we believe this job is so important we should not fight about it but should work together as Territorians to do this job. I hope that at least explains a bit about how important we think this is for the people.

What is a constitution? That is what we have come to talk about. A constitution is a special law made by the people. It sets the rules and sets the law on where the Northern Territory goes. This is one time the people make a law that sits over the top of the government and which the government cannot change. It tells the government which way they have to go and it says that there are some things, some rights, that are so important no government should be allowed to muck around with them. When you want to protect those rights so the government cannot touch them, you put them inside this constitution. That way, the government has to do what that says. It cannot change that.

We have never had a law like this in the Northern Territory before. Always, the government comes and says that it wants to go this way or, later on, it says that we are going to go over that way. It does not matter whether it is a government in Darwin or whether it is a government in Canberra, the same thing happens. They keep coming to you and they say: 'Now we want to go down that road there' and then something changes, and they say: 'No, we are going to go over this way now'. Everything goes backwards and forwards. Never have the people said: 'We want to go that way. You can go and make it like that, but you have to go down that road'. That is what people do when they write this law. They make that road, and they say to the government: 'You have to go down that road. You cannot come over here and muck around with this and you cannot go over there and muck around with that. You have to go down that road'.

This is the way the people can say how you want your parliament to be made. How do you go about electing people for parliament? How big should it be? You have the right to say that in this law. How do the courts work and the judges? The Administrator or Governor, what can he do? What do you want to let him do? Well, you, the people, can make those decisions. You can

protect your rights. It might be to protect your right to vote, so that no government can take away the right to vote. It could be other things that are really important to you. It might be to provide protection in this law so that people cannot take your land off you, to protect land rights, sacred sites, Aboriginal law or culture. Those sort of things can be written into a constitution, if all the people agree, and the government has to follow that, because this law becomes the boss that sits over the top of the government. It does not change. This law can only be changed if all the people say that they agree to the change.

You know that the federal government in Canberra has a constitution sitting over the top of it. It is the federal constitution. You will remember that last year you were asked to vote for a referendum. You had to say 'yes' or 'no' to amend the constitution. You see, the government wanted to change some things in that, but they had to go and ask the people. When they asked the people, the people had a look at it and they were not happy, so they said 'no'. So the government could not change it then, because that is the people's law, not the government's law, and only the people can say what can be done about that.

So, Canberra has one of those laws over the top of them. Each of the state governments has one too.

Queensland, Western Australia, South Australia, New South Wales, Victoria and Tasmania each has a constitution. Only the Northern Territory does not have a law from the people, does not have a constitution, and the government can do what it likes. The government in Canberra, the federal government, can do anything it likes to do, because you have not got any rights protected. No rights are protected.

By changing an act in the parliament in Canberra, they could take away your right to vote. They could take away all government in the Northern Territory if they wanted to. I do not think they will, but they have the power to do that because the people are not protected by a constitution. They can take away - but I do not believe they would do this either - but just by taking away one act of parliament, they could take away all land rights. They have that power. They could take us right back to the way it was in the welfare days, just by changing an act.

They could change a law in Canberra, and they could take away the right for our members in the parliament even to vote or speak, as it was before, in 1968. We have got rights here only because the government says it will let us have them, and what the government gives to you, the government can take away from you. What the people take for themselves in this constitution, the government cannot touch.

We believe it is time now for all the people of the Northern Territory to start to think about what is important. Where do you want this Northern Territory to go? How do you want it to work? How are we going to get Aboriginal people and non-Aboriginal people - white people, Chinese, the lot - to work side by side? How are we going to get over the fights? How are we going to make sure people can live together with respect, as equals? How are we going to make a law of direction to do that for our children, our grandchildren, and our grandchildren's grandchildren, for the future people? How do we want this Northern Territory to go in the future? What sort of rights are so important that no government is allowed to touch them, that we should lock up? It might be the right to vote. It might even be the right to meet like this, to talk. You say:

'That is my right and no government can touch that'. It is those sort of rights you put in a constitution.

We are coming around now and we have been going all over the Territory. We have been down to Docker River and Kintore, at Finke and in the desert country. We have been over in Arnhem Land and in the VRD, the Gulf and the Barkly, and in Alice Springs, Tennant Creek and Katherine and, later on, we are going to talk in Darwin. We are saying the same thing to people. We are going to 60 communities saying the same thing: you have got to start working to make this law to protect your rights, so for once the people say how they want this Northern Territory to go. In white man's law, that is the way the people have the power and not the government. That is our way of making sure the people say where their community goes. That is the peak of democracy: the people's power.

This law is very much like Aboriginal law, you know. You have got your law that has been going on the same way and it keeps going the same way all the time. It does not change. This law is like that. It keeps going the same way. Okay, you might wander around on that road somewhere, but you have got to stay on that road that the people make. That stays there and gives some direction, some stability to where we want to go, and it is the way the people want to go. It is not what all the governments are saying. The people say: 'Okay, you are going go around like that if you like, but you have got to go down that road. If you want to go on the left-hand side of the road, that is okay, or the right-hand side of the road or down the middle, but you have got to go down that road'. That is what the people say with a constitution.

That is the job we are saying we want you to start thinking about. I do not want you to tell me today. This is too important. All I am saying is: please, we want you to start thinking about this, and talking about it. If there are things you are not sure about that you want to know more about, ring us up and we will come across. We will talk to you about it and we will send you information that you want. But, think about it and talk about it. Get your ideas together and, later on, maybe this year or early next year, we will come back and then, when you have had a good chance to think about it and talk about, come and tell us what you think and make sure that this law, this really important law, says what you want. We have got to get this one right because, this law, when you make it, is there. It will not change, or not much, and the government will not change it. It will keep going. It is going to send the Territory in one way, and it has to make a future for the children, and their children, and their children's children. The people have to make that future, through that law, through that constitution.

We are going to get the ideas, not just from here, but from all over, where we have been before and where we are going. People are going to have different ideas, aren't they?. We are going to try to put them together and look at all those different ideas, and try to say what we think the people are saying. But, again, you cannot trust us. Do not leave the job to us. You have to write this law. It has to be your law. You have got to feel: 'I own that. That is mine. That belongs to the people'. The way we do that is that we will get some ideas down. We will write down what we think the people are saying, but then we want to make a big committee, and it is called a constitutional convention.

What that is is a big group of people, representatives, from all over the Northern Territory. It will have people from the Centre, people from the Top End, people from the islands, people

from the towns, and people from the bush who are representatives of all the different sorts of people in the Territory. The people you know who you trust and who can speak honestly for you and say what you are thinking. We are going to bring all of them together in a big meeting and their job will be to look through this work and read all the things the people have been telling us, and they will go through all that and see whether we have done our job properly. If they do not think we have, they will change it and fix it up to try and get it right to what the people are saying.

Probably, they will have a lot of arguments, won't they? You know how one person says he wants to do this and somebody else wants to do that. They are going to have to talk that through and find ways by which they can agree on it, a way to go. When they have done all that and they have a book written, then it has to go back to the people for the people to vote on. If the people are not sure about it, they vote 'no', and we start again. We go back and talk again, and fix it up, and we will keep going back and going back until we get it right, and we get what the people want.

When we have that, and the people vote and say 'yes', then that law becomes the law that will sit over the top of the government and make the government go that way. That is what that law is about. That is the way you can make a future for this Northern Territory, make a future for the children. It is a way the people say where we are to go. But we have got to get together and talk and find answers to the problems that the people are fighting each other over, and make a law to make them go down the one road, together, as equals.

Now, you can say: 'Oh, this job is too hard. I don't want to know about that one', and put it over there. You can do that. But, what are those babies going to say when they are old people? They will look back and say: 'Why didn't those people do that job? Why didn't they take their responsibility to make this place go? Why didn't they work to make this a place that is good for us?' If we do this job properly, they will look back and say: 'Those old people, they did a good job. They made this Northern Territory a good place for us to live in'.

That is our responsibility. That is our job, our duty, not just to ourselves but for future generations. And that is why we really have to work hard to try and get this one right. Because, if we do not get it right, we are going to leave more problems behind us. A hundred years ago, when they wrote the constitutions in the states, they did not go and talk to the people and that is why, in a lot of the states, a lot of the problems are there, because they did not try to sort them out 100 years ago, when they should have. They left them there, and they just get worse and worse. They do not get better. You have got to work to make problems get better. You know that, and this is a way that you can do that. So, we have come here to ask you to start working on this job.

I have said enough now. I am going to ask Brian Ede to say a couple of words, and then we are going to ask if anyone wants to ask any questions or say anything, because it is important for you to try to understand what we are talking about. If you want to tell us some things you think are important, please tell us. That is what this is about. We are here to explain. Later on, when we come back again, then we will be here particularly for you to say: 'Right, this is what we think we want and what we think should go there'.

Thank you very much for listening to me. I will ask Brian if he will say a couple of words.

Mr EDE: The first thing I want to say is what we are not here about. We are not here to talk about statehood. Statehood is something which may come later on. It might be 5, 10, 20 or 30 years away. We are here to talk about a constitution. It is a law.

My electorate is down in the desert country. It covers that area around Lajamanu, Yuendumu over on the western side, all the Warlpiri mob, all the Anmatjira mob and Alyawarra mob right over to the Queensland side over on Lake Nash, past Utopia and Ali Curung. Over there, people tell me the same as people tell me in the Top End. They say: 'Aboriginal people have got the law. We have got Aboriginal law. We have got that same law that came right back from the Dreamtime and it came right up to now, and it is going ahead the same way, for our children, grandchildren and great grandchildren. It is the same, never changing, all the way right through'. They say: 'When you whitefellows come along, you have laws and you change them every week. One time it is going this way. Another mob comes along, and they have got another law going that way'. They say: 'How can we understand that law? How do we know where you are going? How do we know where we fit in there?'. We are trying to stand on this ground. It is like our law. It is there. It stays. It does not move around. It is the law. But you whitefellows, you are all over the place'.

But, there is one thing we try and do, in lots of countries with whitefellow law, and that is to make one law that does not change so much, that goes a little bit like Aboriginal law. It is the one that the people put on top of the government. They put it on top of politicians, on top of the public service, on top of the council and on top of the Administrator. That one is the one that says how they can run everything. It says what they can do and what they cannot do, in the same way that Aboriginal law says you can do this but you cannot do that, you cannot go over that country there, and you have got to do that. It does not cover all the same things as Aboriginal law, but it covers lots of things about how government can run. And we can work that so that it is very hard to change. It is not as strong as Aboriginal law, which cannot change at all, but a little bit like that so that it is really hard for it to be changed. Only the people can change it. Governments cannot change it.

That law, that constitution, they have one in Australia, for all over Australia. They have them in Queensland, Western Australia, South Australia and all those other places, but the Northern Territory has not got one yet. Now, people say 2 things about that. They say: 'Righto, you say Queensland has a constitution. What about Aboriginal people over in Queensland? They are not doing too good. They have not got land rights'. So they say they do not want to be like Queensland. I tell them that that is fair enough. It is true, but the problem in Queensland is that, when they did that constitution, they just had a couple of politicians and a couple of lawyers who got away in a corner of a room somewhere down in Brisbane, and they wrote it themselves. They said: 'Oh, we reckon this one will do. One page. Just set them up and let them go'. They did not go out talking to everybody. They did not go up to Cape York and around to Mt Isa talking to all the Kalkadu mob and everybody else, no way. They just did it themselves and wrote down what they thought.

Now, we do not want to do it like that in the Northern Territory. In the Northern Territory, we want to make sure all the people are involved, that all the people are talking about how we are going to sit down together, and how we can have this law and make it run properly so we can all be

really good for the future. That is why we have come to talk here today, just to start it off and to start everybody thinking about these ideas.

Another thing people say to me is that I am in the Labor Party. I am Deputy Leader for the Labor Party in the Northern Territory. Some people say: 'This mob, them, they are CLP. What are you and Stanley doing going around with all the CLP mob?' We do it because there is one thing that we all agree on. We might still be arguing which road to take to get to the end. We say we should go this way, and they say we should go that way. We have these arguments - Labor Party, Country Party and National Party. We believe the Labor Party way is the right way and they say we should go this way. Okay, we still have those arguments, but we all believe that up there, where we are trying to get to, is the same place. We are all trying to get to a place where everybody can sit down and be equal, where people can have a fair share.

We might think that place is a bit different to what they think, but we are all trying to see how much we can agree on. We will be working together as long as we can agree and work it out and see how we can write this thing out, and get it going. Because, one thing that people in my electorate keep telling me is: 'We do not want it like this. We don't want Aboriginal people down here and whitefellow mob up here'. They say: 'But we don't want to turn them around like that. We don't want Aboriginal people up here and whitefellow mob down there. We want square, equal. We want a fair share so people can be equal'. That means equal for getting good education, for good health, for housing, for jobs, and for sitting down here in the Northern Territory country. I say that that is a good way for people to be thinking.

Then they say: 'Another worry about that one is that that law of ours, going like that, going straight ahead like that, we want you mob to pull your law up to go alongside like that. Not the same one, but to go like that. We do not want them to go bumping each other, because when one comes up against the other, we cannot change, and then we end up with an argument going on about it. It might be about sacred sites, or land rights, or something like that'. So they say: 'We want you mob to pull them up so they can both go ahead like that'.

That is why I am backing this constitution because, if we can write into that constitution those really important things from that Aboriginal way of thinking like that, and put them into that constitution and make them strong, we can stop having arguments because whitefellow law keeps moving all the time. That is why we have to talk about how we are going to put in some things about land rights, how are we going to put in things about sacred sites, and about law and language. What other things are we going to put in there? What about putting in things about everybody having a proper equal right to good health, for health services and for education, so everybody can get equal education, so they can go out and find equal jobs?

These things, these rights for people, they are the things we can write into a constitution, but we have all got to be part of it. It cannot be just a couple of lawyers and politicians sitting down in Darwin doing it, no way. If it goes like that, we will get it wrong. We have got to get this one right.

That is the last thing I want to say. The first time you hear about this one we will come around, people will put up their ideas and put them all together, and then you can have a look at it. When they come and ask you to vote or say if it is all right, you have a good look. Look really carefully at it. If you are not happy or you think something is not quite clear, that is when you can

say 'no'. Say: 'No. Go back and do it again'. That is what this one is about. Everybody is going to have a right to say 'yes' or 'no'. If you are not really altogether happy, your best way is to say 'no'.

What we have got to realise is that everybody has been here for thousands and thousands of years, 50 000 years. Right back from the Dreamtime Aboriginal people have been here. People are going to be around the Northern Territory for thousands of years to come. We do not have to rush this one. We do not have to say that we have to finish it next month, or this year or next year. It does not matter.

We have got to get it right. If it takes us 5 years or 10 years, that is all right, as long as in the end we get it right, get it done properly. But it is no good if everybody says: 'Oh well, 5 or 10 years, I will go out and I will not have anything to do with it. And then come back in 5 years'. No. If you do that, somebody else will take it and they will run with it. So, that is why everybody has got to be in on this, thinking about it, talking about it and working out what sort of things can be in there. When you are talking in the council meetings, talk about what things you will send in messages about the most important things for that constitution. When you are in school council meetings, talk about it then. How it is going to work. When you are in meetings for business or meetings for adult education, or anything, talk about it, keep talking about what it is important to have in there.

Those books have come out. If anybody has any questions, they can send them into us later on. If people have got questions now, they can ask us now. If people have got questions, they can ask Stanley. Stanley is over here. Stanley can help everybody. We will just keep on going and work them up, work them up. We might try a first time and it is no good, so we will try a second time, a third time and a fourth time and so on until we can get it right.

That is all I want to say. I will hand over to someone else. Thank you.

Mr TIPILOURA: (Tiwi language)

Awi, amapa kayi nuwa lijini properly kayi. Awuta kapinaki murruntawi punuwuriyi, api wuta committee awarra naki ngini naki committee ngini constitution development awarra wurimamula awarra naki punkaringini ngingingaji Law, law wayana law, law. Api awarra kuriyuwu awarra kuriyuwu awarra. Ngarra Karluwu awarra parliament law ngarra kaga awarra nyoni awarra, ngarra different awarra. Ngawa awarra Tiwi ngawa Law awarra ngingingawula awarra. (can't hear) kapinaki. Ngawa awarra naki waki naki, patrolling everywhere ngini community visiting, community tunuwuwi, murruntawi awunganuwanga, small town. Api ngajiwanga kayi take time awarra nayi paper nayi ridim nyirraami properly. (Can't hear) It must take us five, maybe ten years for awarra naki to go through. But kayi it's not for ngawa for ngamirampi, nga-mampi wayana, ngarra different awarra law naki. So you got to make sure properly everybody understand law naki awarra niyi kapi niyi book niyi. Ngaji every ngaji Mother's Club Meeting or Association meeting or Council meeting yangwarri, bring it up awunganuwanga. Nimarra nyirraami ngaji once every three or four months. Amongst yourselves. Pili, if you don't understands awarra niyi, wuta kapinaki, you can write to them, kiyi come back wunirimi, wunipakupawurli tuwawanga, nimarra wurimi tuwawanga ngini nuwa nyimpitimarti awarra. Or Mother's Club (can't hear) ngini nuwa karluwu understand nuwa mamirnukuwi, wuta come back tuwawanga kapinaki, come back

wurimi tuwawanga, wuta awarra waki awarra, wuta awarra payday wunga awarra. Api kayi properly understand nyirraami properly awarra niyi. We've got to get involve. Ngini karluwu, wuta murruntawi, they'll just chuck us other side like they do like other states. Only Territory, ngawa ninganuwanga state ninganuwanga. But before we become a state, we've got to have constitution pakinya (can't hear). You got to have nimini naki ngingingaji ngingingawula murrakupupuni, land rights, culture. You've got to be all taken there, about courts, how they elect government. Awarra everything awarra. Karluwu kapinaki politician, karluwu lawyers. They don't write the peoples law. But before that comes in ngaji convention wiyi. Constitute ngamamanta tunuwuwi, mwanari yangwarri, murruntawi from around the territory. Wuta nimarra wurimi wiyi. Kiyi about awarra naki awarra law niyi. But kayi don't rush. There are alot of question awunganuwanga. Yingarti awarra question awunganuwanga. Lot about murrakupupuni awunganuwanga. But about health, education, about jarrumwaka yangwarri, kurrampali, you know all that it's all in there to awunganuwanga about mining about naki ngingingawula fishing licence, driving licence yangwarri, everything awarra question awungarruwu. And about local government, it's all in there. So ngajuwanga take note nyirraami, pili kayi if you don't get involve ngawulamiya, wuta murruntawi wangata wupakuturramiya. Api ajuwanga properly understand nyirraami awarra, pili kayi, kapi waya pirripangiraga, we got to get involve awarra naki to have a say, ngini kutakamini ngawurtimarti, wayana. You don't have to ask them now, but you can come back ngingingaji kapinaki wuta ngaji twelve months time tuwawanga. Kiyi ask them tuwawanga question. If you want to ask them row, ask them tuwawanga question ngini kutakamini nyimpirtimarti. If you not sure kutakamini awarra ngini kapi pirripangiraga api ask them awarra awunganuwanga. Like I said kayi, understand nyirraami properly, wayana. Because it's important for ngawa. Pili wiyi pirriminjakinya, they might take our murrakupupuni. (Can't hear) funding for kurrampali yangwarri or wiyi pirriminjakinya ngawa wiyi murruntawi. Everything ngawa wiyi look karrikamini left. We might go back ngaji fifty or twenty, thirty years ago. So ngajuwanga think nyirraami awarra marri. Api kayi if you got question api nyirrawayorri kapinaki, ngini kutakamini nyimpirtimarti anything nyirrawayorri kapinaki, wayana.

Wait and listen. These people are from the the Committee on Constitutional Development and they are here to talk about laws, the highest of laws. These papers here are about laws, not parliament laws - they are different. We have our Tiwi laws. We are visiting Aboriginal communities and European towns in the Northern Territory talking about these laws, so read these papers properly.

This process (constitutional development) might take us five or even ten years for this to go through. It's not only for us but it's for our children and grand-children. This law is different. So you've got to make sure that everybody understands these laws that are talked about in this book. You need to talk about it in Mother's Club meetings, (can't hear) Association meetings and Council meetings. Meet together every three or four months amongst yourselves and talk about it. If you don't understand you can write to this committee and they will return and talk to you again about what you need to know. Their job is to make sure you understand these papers, this law. We've got to get involved, everyone. If we don't these Europeans will throw us to the side like they have done in other states. We are

only a Territory, we are not a state. Before we can become a state, we've got to have a constitution first. We've got to have our land rights and culture put into these laws, how to elect government and all of those (not clear). Politicians don't write these laws, lawyers do. Before this happens we will have a convention (constitutional convention) where Aboriginal people, half castes and Europeans from around the Territory will meet to discuss these laws. We shouldn't rush with this one. There will be a lot of questions about land, health, education, roads, houses, mining, fishing licences and driving licence. So take note, listen to this committee and try and understand and ask them what you need to know. If you do not understand, then they'll come back in twelve months time and you can ask them more questions about anything. If we don't look at this carefully they could take our land away from us or our funding for housing etc. We might end up with nothing left like fifty, thirty or twenty years. So think about this.

Mr HATTON: Well, we have said what we need to say. Now, if anybody has any questions and anyone wants to say anything, please ask us, or tell us what you are thinking.

Mr Bernard TIPILOURA: How strong is our Land Rights Act in there? Is it much better than the old one?

Mr HATTON: Okay. Bernard asked how strong would the Land Rights Act be. It is like this. Right now, the Land Rights Act is a federal act. It is under the federal government in Canberra. It is an act of parliament. Now, when you make an act of parliament, the government makes that, and the government can also, if they are strong enough in the government and they want to do it, they can take that away. They just repeal it. Because, that is the way governments work. If you have an act of parliament, the government can take away that act.

Say, for example, that the people in Sydney, Melbourne and Brisbane became really anti against land rights, so, when the people are standing up to vote for the federal parliament, the person says: 'If I get in there, I am going to take away that Land Rights Act'. If the people vote for them in Sydney and Melbourne, and they get strong enough in the parliament, they can take that away. And, then you have nothing. You have got no protection, no rights.

If you put it in the Northern Territory, and you have a thing in the constitution that says the government cannot take away your land rights, then the government cannot change the law, no matter what. That can only happen if all of the people in the Northern Territory vote to change it. So, the government does not have the right to change it then, if it is in the constitution.

That is the difference. Do you understand the difference?. That is what we mean when we say it can be stronger if it is inside a constitution. Do you understand?.

It is not in the constitution in Canberra, it is only an act, just the same as the Liquor Act is here, or to get a driver's licence. It is the same sort of law.

Mr Jimmy TIPUNGWUTI: Steve, just going back to what you said. You said that the Northern Territory people make the decision, and that is part of the (inaudible) comes into the government. Now, when you say that, I think it (inaudible) back to the numbers of population. If

you look at the population in Darwin and you look at the population of the Aboriginal people all over the states and the Territory, we do not have that number. And, when you say it has got to go back to the government, the power still does not exist because the power always wins.

Mr HATTON: The power is still with the people. And, if the people in total vote in a referendum to change it, they can.

Now, when you make that law, you write into that constitution the rules on how you can change it. It is called 'entrenchment'. It might be that you say that more than half of the people have to vote for the change. With some things, you might have to have three-quarters of the people agree before they can change it. They call that 'the level of entrenchment'. That is one of the things that you have got to talk through.

But what I am saying, and what I think is most important is - you see, I do not know anyone who wants to take away land rights. Okay, there are a couple of people, what I call a couple of crazy people. They just do not understand and they think that land rights are wrong and those couple of people want to take it away. But, that is not the CLP and it is not the National Party, and it is not the Labor Party. It is not our parties. We do not want to take it away. We want to protect it. What I am saying is, if you do not trust us, that is when you put something inside the constitution.

But I cannot speak for people in 100 years time. I cannot speak for people in 50 years time. I can only speak for now, and you can too. But you can try and make the rules, the laws, that help for the future. And most importantly, in writing this constitution, why don't we make people sit down together and explain to the other people why the land rights are so important, so they understand. And, equally, let those people tell you what the things about it are that they do not like and that make them angry. Why not talk about it, and see if you can find a way where everyone can agree and understand? If you can do that, from understanding comes respect, and from respect, you get strength as a community. I think the way we go about it is as important as what we end up with.

Mr Bernard TIPILOURA: You say it is going to take 10 years. And, then when they are going to change the act, we will have nothing.

Mr HATTON: To write this law might take 3 years or 5 years. We don't know. However long this takes, it has got to be done properly. That is all I am saying. It is how hard we want to work at it that says how quickly it will be done. If you want to just take it slowly, slowly, it will stretch out. If you want to get to work on it and are prepared to talk hard to other people, and listen to other people, and try and to make a law for everyone, it will get a bit quicker. But what is important is that we do it properly, not that we do it quickly. That is the important thing.

Mr TIPUNGWUTI: Steve, how long will your members be in office. How long will you be in there?.

Mr HATTON: Me?

Mr TIPUNGWUTI: Yes. All of you, I mean, elected.

Mr HATTON: I have been there since 1983.

Mr TIPUNGWUTI: And the rest of them too?.

Mr HATTON: 1983, 1983, 1984, 1987.

Mr TIPUNGWUTI: The point I am asking that is because every year, or whenever the year terms come up ...

Mr HATTON: Every 4 years.

Mr TIPUNGWUTI: ... a different government always changes in and different people have different ideas.

Mr HATTON: Yes.

Mr TIPUNGWUTI: We may put in the constitution to your office now but you may not be there in about 3 years time. A new body will come in and probably chuck it away and it is a waste of time and taxpayers money here. So this is ...

Mr HATTON: That is always possible. But, one thing you have got to know is that we are both saying the same thing. Whether it is the Labor Party, or the CLP, or all the people in our party, or all the people in the Labor Party, we are all saying the same thing. We are all working for the same purpose. Now, that is a pretty strong thing to have, isn't? It does not matter which one is in or out. We all agree that we want to do it this way, and it does not matter who is in government, we still want to go down that road, in the way we go about doing this. That is why also we are saying that the people write this one, not the politicians. The people write this law.

Mr Walter KERINAUIA: So, all the things that we want to put in the constitution, can that be guaranteed to be carried out?

Mr HATTON: Yes. But you have got to argue that out with the other people in the Northern Territory, not just with me. My job is to get you and other people together, and to get you talking together. You have got to convince those people in Alice Springs and the people out in the Pitjantjatjara country, the people over in Arnhem Land and in Darwin, and they have got to convince you what they are thinking about. You have got to talk. The people have to talk together. That is the way you make the law.

Mr KERINAUIA: Do we have any representative in that government?.

Mr HATTON: In the what?

Mr KERINAUIA: Do we have any representative?

Mr HATTON: Well, you see that is what that convention is about. What we want you to do is not just think about what laws you want, we want you also to tell us how we should go about making that constitutional convention. Who should be on it? How do we go about picking them to make sure we get that right? Because those representatives are going to be the most important group and they have got to be able to speak properly for the people.

Mr TIPUNGWUTI: I think it is about time we had Aboriginal people in the government. We may put a lot of our views and it is the whites (inaudible) there is no one there to represent us.

Mr HATTON: Yes. There is one thing in there that is talked about, and that is that, maybe, you have special guarantees of Aboriginal representation in the parliament.

Mr TIPUNGWUTI: I think that is not enough.

Mr HATTON: Pardon?

Mr TIPUNGWUTI: That is not enough.

Mr HATTON: No, it may not be. You see, I think there are other problems with that too. They do that in New Zealand with the Maoris. Did you know that?

Mr TIPUNGWUTI: Yes.

Mr HATTON: But what the Aboriginal people have to do then is to say: 'Well, do I go on that roll there to vote for the Aboriginal member, or do I go on a general roll, like now, to vote for my local member?' You do not get 2 votes. You go that way or that way. That is what you have got to talk over. For every good part, there is another side to it. You have to draw a balance.

Mr KERINAUIA: What if the Aboriginal people stick to the federal Land Rights Act?

Mr HATTON: That is an option to be argued about, but even that thing is down the road for the future. The issue of whether the Land Rights Act changes is not so much with this constitution. You can put it in a constitution, but this law stands over the top of the Northern Territory government, not the federal government. Do you understand that? So, if the Land Rights Act is still in Canberra and you had in the constitution that, for example, the Northern Territory government cannot touch land rights, that is not going to change. It is a separate argument whether the Land Rights Act goes federal or comes to the Northern Territory. That is another argument. Don't confuse the statehood arguments and the transfer of powers arguments, don't confuse those with this one, of writing this constitution.

Mr KERINAUIA: But, would you give us a guarantee of this land ownership?

Mr HATTON: I could give you a guarantee. The question is whether you believe me.

Mr TIPUNGWUTI: It is a bad way really. It is a bad way really.

Mr HATTON: Yes, that is right. That is what we are saying.

Mr EDE: Could I just talk about that federal land rights business? One of the ones that ...

Mr KERINAUIA: That is the more important to us.

Mr EDE: Exactly. That is why one of the ones I have been looking at with that one is whether it might be possible and ...

Mr PUPANGIMIRRI: (Tiwi language)

Awi, awi, awi nyirrawunjawurli.

Hey, hey everybody keep quiet.

Mr TIPUNGWUTI: (Tiwi language)

Nyirramuwuyala, nyuntayawayorri kapinaki murruntawi.

Everybody sit down and ask these Europeans questions.

Mr EDE: The most important one that everybody is really worried about is land rights. Everybody knows that one came up in the federal government. It came through and still it is going and everybody is frightened about what happens if that Northern Territory government gets hold of land rights. That is one of the main ones we are going to have to work out as we go through this one.

I will tell you one thing I am frightened about. I will get frightened if the Labor Party gets chucked out in Canberra. What is the other mob going to do with land rights? I do not think they are going to chuck them out, but they might make them real weak. I don't know. I am worried about that. That is why, every time I work on land rights, every time I talk about it, I try and make another one to block it up, to put something around it and lock it up to make it stronger all the time. That is why before, when they were talking about national land rights, I tried to talk about seeing if we could get what I called national non-uniform land rights, so we could have a Land Rights Act in Canberra, and land rights acts in each of the states all saying the same things. I thought, if we got them in both levels like that then, if this mob wanted to change them, this mob could hold. If this mob tried to change them, this mob could hold. So, one mob would go backstop for the other. I was looking at that way.

But one of the things I am looking at now is maybe that, as I was saying, if we put them in the Northern Territory constitution as well, that might be another way we can lock them up, and hold them. We have got to try and find every way we can to try and lock up land rights, so that they are strong and so that no one can change them. We might be able to do it this way. These are the things we have got to work our way through, and argue and talk about. We will have to get lawyers in, talk to the federal government and the Northern Territory government and everybody to work that out.

Maybe, we might be able to make it that we can have federal legislation there and another one with the main points from all of the Land Rights Act in the constitution for the Northern Territory, and make it that maybe 75% or 80% or something has got to vote before they can change those principles, and then having the other legislation locked in as well, into here, and then the act as well. Perhaps we could put them into all the different parliaments so if they knock off from one side, we have another side holding us together. If they knock off that one, then we have another one holding us together. Like that, you know?

That is one of the reasons why I am looking at this one. The constitution may be able to be another one we put them in, another thing to hold them up, lock them in. If, at the end of it, if when

we are going along with this and you turn around and say: 'Hang on, no. I do not believe that is making it stronger. I think that is making it weaker'. That is the time to say: 'No. I don't want it'. Walk away and say: 'No, we will stay where we are now'. So you only work for changing if you reckon it is making it stronger. That is why everybody has got that power to say 'yes' or 'no'.

I know one of the things people keep getting worried about. They say: 'Look here in the Northern Territory. We have something like 70% or 75% whitefellows, and only 25% or 30% Aboriginal people. How are we going to be able to win in that vote?' Well, we have got to remember that we have still got that federal government backstop down there, because we have got to go and work with the federal government about getting this constitution sorted out, and getting it put into the Northern Territory for it to run. If it turns out that all the Aboriginal people are saying one way and all the other people are saying the other way, that is when we go down to Canberra and say: 'Come on, you too. You have got a responsibility under your constitution for looking after Aboriginal people'. And we go and we petition them like that. We work it out like that to get them to hold it off until we can get it all together, and we have got Aboriginal people and non-Aboriginal people agreeing how this constitution is going to work.

Because, if we end up at the end with this constitution and we have put something in that constitution where whitefellows are up here and Aboriginal people are down there, it is finished. It is no good. We have got to chuck it out, and keep working until it is both together, like that. Until we can say that, right, it is the fair way. Aboriginal people will be able to hold their culture and their land, and whitefellows will be able to do the things they want to work together on with Aboriginal people here in the Northern Territory for thousands and thousands of years, coming down the line like that.

Mr PUNPANGANIRRI: Like you were saying earlier, Brian ...

Mr EDE: First-first - the same way around.

Mr PUNPANGANIRRI: What you were saying earlier, about what those people tell you down in the Centre about laws and cultures, and ours never changing. We don't change it?

Mr EDE: You don't want to change it. That is right.

Mr PUNPANGANIRRI: We don't change it.

Mr EDE: We don't want to change it. That is right.

Mr PUNPANGANIRRI: Those laws have been there all the time with our forefathers. No one can change it.

Mr EDE: Yes, that is right. That one has been working up from 50 000 years, way back in the time of the dreaming it all started to come together. Everybody worked it up. They got it right. They got it done right, and it came through that way. That is because they got it right. They could all fit in the land. Everybody knows. Everything has a place for it. It all fits properly. That is why with this one we have got to make it fit.

Mr Hyacinth TUNGATULUM: It never changes, our law.

Mr EDE: That is right. It never changes.

Mr PUNPANGANIRRI: Why don't you set up a committee throughout the Northern Territory with Aboriginal involvement in it. Have a committee. Can you set up a committee?

Mr EDE: That is what we want to do. But we want to know how to get people on that committee, who we are going to pick. So that is something we want to just start talking about now. How can we set up that committee from Aboriginal people and non-Aboriginal people, all over the Northern Territory, to come together to get all the ideas the people put in, to get all those ideas and argue them out. People who will say: 'Okay, this is what we are talking about'. We must get people to talk face to face, like that, in a meeting, men, women, all sides, getting in there talking it out, saying: 'That is why we have got to hold on to this one'. Then you can explain it to all them whitefellows, and say ...

Mr PUNPANGANIRRI: When can you set up this committee?

Mr EDE: When we finish going our round. Because what we want to do is to talk to everybody, get those ideas together, and then, it might be towards the end of this year or it might be next year.

Mr TIPUNGWUTI: Can you also give us a rough idea of what numbers you are looking at of representatives?

Mr HATTON: Perhaps I can. We have got these books. Stanley was telling you about these green books. We are thinking on that committee - there is a book here about it which has some ideas in it. We think maybe 50 or 60 people from across the Territory might be on that committee. But we are not fixed on that. We are saying to you: how many people do you reckon should go on that? And how do we go about getting those people? Do we just have a vote like for the Legislative Assembly or do we say that there have to be representatives of the different communities? Do we say that you vote here for somebody to speak for you? Maybe. It maybe someone from community government. You have got to give us your ideas on that. Now we can give you some thoughts, but we want to hear what you are thinking too. That will give you some ideas there.

I do not know how quick this is going to be, this job. We would like to get that committee together maybe next year, late next year. But I cannot do that job for you. If you do not talk and do not sort it out amongst the people, it might take longer. If people can get ideas in quickly, and all agree, we can do it quicker. But it is not just for the government and the parliament to do this job. The people have got to do it. I could sit down tomorrow and I could say that I think we should do it this way, and write it out. I could decide that we elect people this way, that we will pick those ones and we will put it all together like that. I can do that. I have been thinking about this for 3 years. I started working on this in 1986. I have lots of ideas. But I am not going to tell you because I do not want to try to push you down the line. Right? I do not want to push you down that line. I want you to think without my influence. That is the only way to get what the people really say. I could write it down, but I bet that, the moment I did, they would say: 'Oh, he rigged that. He fixed it up so it gives the answer he wants'. Wouldn't you say that?

Well, I am not going to let you do that to me. You have got to do some thinking. You tell us what you are thinking. You make that your committee, your convention. Our job is to come out and encourage you to talk, encourage you to think, and get you and other people talking together. That is our job, so that, in the end it is all the people talking together that makes that law.

Mr TIPUNGWUTI: Steve, our main biggest problem, especially in this community is - can you tell me how effective this community government is?

Mr HATTON: How effective community government is?

Mr TIPUNGWUTI: Yes.

Mr HATTON: I think it is very effective. What do you think?

Mr TIPUNGWUTI: No, I want you to tell me. You are the one that made community government.

Mr HATTON: I think it is a very effective form of government. I think it is a stage towards full local government. But that is a decision again, like - you took the decision here to go to community government. You made the decision yourself to do that and you set up the rules for it and you wrote a constitution for it, didn't you?

Mr TIPUNGWUTI: Can you tell us what that community government covers please? I know all about it, but it is just for the interest of the others, please, if you do not mind.

Mr HATTON: There are 3 levels of government in Australia. There is a federal government, which looks over things that are for the whole country, like the army, defence, and doing things with other countries, things that affect the whole country together.

Then underneath that, there are governments in each state and in the Northern Territory. We are a bit different, because we are not a state. But those state governments they look after things that just affect that state. That might be like building roads through the Northern Territory or health and education, just for the state or for the Northern Territory.

Then, down underneath that, there are some things that are really just important for a community. So you form that third level of government which is called local government. And that local government decides on things that just affect that community.

That is basically the levels. What it says is, if this particular decision only affects that group of people, then it should be made by the representatives elected just by that group of people. So you do not have people in Alice Springs working out things for this town here. That has nothing to do with them. Let them look after their own town. Is that right? So that is where you have the local government level, for those sort of decisions.

You know some of the things that you do here in the community government. There are arguments backwards and forwards all the time about what should be done by community government and what should be done by the Northern Territory government, just as there are

arguments about what the Northern Territory should be doing and what the federal government should be doing. Isn't that right? It is sorting out those different jobs, different powers.

Mr TIPUNGWUTI: Steve, the point I am trying to make is we made the council under the community government. Now, we are talking about constitutions today. Now we have a community government body here representing the whole Tiwi nation in this community, just this community. We have been going through a whole lot of difficulty in this community because we have 3 organisations that are different, independent individuals. We are trying to get through a lot of the things that we want to say but a lot of these people are being split.

Mr HATTON: Through different organisations?

Mr TIPUNGWUTI: Right. We have the Catholic Mission here, we have community government there and we have the Housing Association. This is why this community here is 100% different, and it is hard. That is why we cannot get anything done here. Everyone is just going the way everyone thinks because half of these people here, my people, are being brainwashed. A lot of white people in this community are putting ideas into Aboriginal ideas, and they are being brainwashed. I do not think this constitution will help if they keep listening to the white people. If there is going to be Aboriginal people having their own say, then it is about time for these people to back off and leave us alone.

Mr HATTON: Well, I am not going to buy into that particular fight because I do not know what it is about. You can say that to other people and talk it out there, but let me say this. I agree, I think there are too many organisations ...

Mr TIPUNGWUTI: But if we talk about a constitution, we are trying to do something we think is best for our people and for our children, and there is a lot of interference. That is why we cannot get through. No matter what you try and ask us, to make a policy or a constitution or whatever, we try to get into it, but there are always some bureaucratic people around the community who will stop it.

Mr HATTON: That is always a danger. How strong are you?

Mr TIPUNGWUTI: It is dangerous.

Mr HATTON: How strong are you? Tell them to go away, that you want to think for yourself.

I agree on one thing. I think there are just too many organisations in Aboriginal communities. In Darwin, we do not have housing associations and this and that and everything else. We have a council. We have the Northern Territory government and we have the federal government, and that is enough.

Mr TIPUNGWUTI: What I am saying is that we cannot make any decisions amongst ourselves because we are all split, we are all divided. That is our biggest problem.

Mr HATTON: Maybe, in the process of writing a constitution in the Northern Territory, you may work out a way to sort out whether you should have a lot of different organisations or whether you want to bring them all together.

Mr TIPUNGWUTI: This is why I think we should have more - you know, we should lay back a bit and talk a bit more about this constitution.

Mr HATTON: I think you ought to. I do not want decisions now. I just want to get your mind going.

Mr TIPUNGWUTI: Sure.

Mr KERINAUIA: To come back on land rights again, Brian mentioned that people have to work together. But what happened to the people who own the pastoral areas? I think Aboriginal people and white people will have a lot of confrontations.

Mr HATTON: Yes, I think there has been a lot more confrontation than there needs to be. Let's be honest about it. There is a lot of land, like the pastoral land, where white people are living now and they say that they bought that land off someone else and someone else. Now maybe, way back there, it was taken away and maybe that was wrong. But that happened and, as this white man says: 'Okay, I think this is my home too'. For example, I live in Darwin and that was Aboriginal land before, wasn't it?

Mr KERINAUIA: Yes, but ...

Mr HATTON: And I would not want to walk away from my house. It is my home. I cannot change that. I cannot change that.

Mr KERINAUIA: Yes, but what I am saying is ...

Mr HATTON: It is the living areas you are talking about. Yes, I understand that. I talk to everyone and they want to find an answer to the excisions and living areas, and that includes the pastoralists. But the people do not trust each other. The cattleman, he does not trust the land councils. He thinks those land councils are going to go behind his back and keep coming from behind his back all the time.

Mr KERINAUIA: But how can they work together?

Mr HATTON: I tried when I was Chief Minister, as you know. We had talks with Gerry Hand, with the cattlemen and the land councils, with everyone. We thought we were going to get it sorted out, and we got a long way, we covered a lot of ground. But then ...

Mr KERINAUIA: But (inaudible) never get into it.

Mr HATTON: It keeps breaking down, but it keeps breaking down also because, out there on the ground, I have to tell you that there is an awful lot of politics that goes on out there. There is a lot of pushing and shoving around.

If people are prepared to be honest and were prepared to sit down and talk honestly, I reckon that could be fixed up, and it would not take too long. But as long as people want to play silly political games out there, it will not be fixed up. The people are suffering.

Mr KERINAUIA: I know. That is not because ...

Mr HATTON: It is not because the cattleman wants to keep them down, and it is not because the governments do not want to do something about it. It is because too many people are playing politics out there. That is the problem. And I have been in the middle of that fight for about 3 or 4 years so I can tell you.

Mr KERINAUIA: (Tiwi language)

Ngajiti wangintajirri, ajuwanga nuwatuwu awungaji punyipunyi. Ngajiti karri ampirimirrawuli awungarri yingarti money wuntayamangi nyimpirimamuliya.

Do not separate, even though you 've all got brains. Do not think you somebody when you are drunk, when there's a lot of money.

Mr HATTON: There is a lot of concern about the sacred sites and what the Northern Territory government is doing now. That is true. You know that the minister is going around trying to talk to people about what we are trying to do and hearing from people what they are saying.

Mr KERINAUIA: And who is going to make the final decision?

Mr HATTON: That is going to happen in the parliament because that is where it is now. You have no constitution.

Mr KERINAUIA: Yes, but how come they are taking the sacred sites committee off?

Mr HATTON: They are changing the sacred sites committee. That is what they are trying to do.

Mr KERINAUIA: That will be lesser power.

Mr HATTON: Well, I don't agree with that.

Mr KERINAUIA: Yes, I think so.

Mr HATTON: Well, I do not agree with that.

Mr KERINAUIA: Well, I agree with it.

Mr HATTON: Well, okay, we can disagree on that one. I know what the government is trying to do ...

Mr KERINAUIA: Because he is a delegate.

Mr HATTON: Okay. What the government is trying to do is to get it so that the sites authority does not have to identify the site, register it and declare it, and give all the stories about it.

Mr PUNPANGANIRRI: They do not do that. I am in the committee. They do not do that.

Mr HATTON: I know - I am saying ...

Mr PUNPANGANIRRI: People ask for them to go out and have a look (inaudible) at their country, those people what to do ...

Mr HATTON: If you are on the committee, well you tell me then, of the Sacred Sites Authority, why is it that the Sacred Sites Authority charges Northern Territory government departments to do surveys for sites, they charge the mining companies to do surveys for sites, and they do it for free for the land councils?

Mr PUNPANGANIRRI: They do not do that, I reckon.

Mr HATTON: They do.

Mr PUNPANGANIRRI: No, I do not think so.

Mr HATTON: Yes, they do. You go and talk to Mr Ellis about that.

Mr PUNPANGANIRRI: I know Bob Ellis. I mean, still ...

Mr HATTON: So do I. And I can tell you it is true. They do it.

Mr PUNPANGANIRRI: People have to ask for them to help them.

Mr HATTON: I believe that, before anyone can go onto country, they should go to the people who are responsible and ask permission about what they can do and what they cannot do.

Mr PUNPANGANIRRI: That is what they do.

Mr HATTON: And they should seek to avoid the sites. They should be making sure they get - they should go and talk to the people who can speak for the country.

Mr PUNPANGANIRRI: Right, that is what they do.

Mr HATTON: Not a government committee. They should go and talk to the people on the ground, people who can speak for the country. That is what I believe.

Several people talking together.

Mr PUNPANGANIRRI: What change has been made (inaudible). I do not think people wanted that.

Mr EDE: We are going to have an argument about that one in the parliament, I think, unless they change it. But one thing they want to talk about first is about the mob living on cattle

stations, because that is all my mob. The biggest mob of that mob are down in my area there. And the thing that I keep getting cranky about is that I keep hearing this mob arguing between the federal government, the Territory government, the pastoralists and the land council, but everybody forgets about old Quartpot Corbett down there. He is an old man. He built up that cattle station. All he says is: 'All I want is this little matchbox, a little matchbox about from over there down the council chambers over to the boys' school over there, back over there and back to here'. He says: 'I just want this place so I can sit down and I can die, when I get old. I will be all right for a few more years, but I am nearly old. I just want to know that I am going to be all right in my own land, in my own little matchbox', he says. And people keep forgetting about that one.

They are up here. They are talking around here and fighting. They forget about that poor old man. He has got no water. He has got to get up there and get people to bring a drum of water and put it down there for him.

A person: (inaudible).

Mr EDE: He has nothing.

That is the sort of thing that we have got to make sure about, that when we get this constitution, we think about that poor old man, and we think about all those people that everybody has forgotten about. They are out there. They have not got houses like this. They cannot put down a bore. They cannot put a tank on it.

Mr PUNPANGANIRRI: They should be out the (inaudible). It is a pity job.

Mr EDE: The business there - what I am saying is these are the things that we work through in the process of developing a constitution. We look at those people who are in that situation and we say: 'How do we develop this into our area? Because they have got rights too'. I was saying earlier, there are land rights and sacred sites and those things, but there are rights for people to have proper health. There are rights for people to have proper education, and all that. These are things that we can build in, and they are rights that a lot of people do not have at the moment.

We are having an argument now about the sacred sites over in the parliament. If it was in the constitution, it would not be us up there in the parliament who would be arguing about. We could have it locked away there, so people could know they were safe. How far we can lock them in is something that we have got to argue about, negotiate on and talk about in this committee. If we can get it done properly, it will be better. If we do not get it done better, we say no. And the we say start again.

Mr TIPUNGWUTI: Excuse me, mate. Steve, how far we do have this Tiwi Islands freehold title? How far does that go to?

Mr HATTON: Your title?

Mr TIPUNGWUTI: Yes.

Mr HATTON: Oh gosh, look I could not answer that, honestly. Do you know? You own the land rights title?

Mr TIPUNGWUTI: Yes. The whole overall title, yes.

Mr HATTON: For Bathurst Melville, is it? For Bathurst and Melville.

A person: Yes.

Mr TIPUNGWUTI: We have a freehold title now.

Mr HATTON: Plus 2 km out.

Mr TIPUNGWUTI: How far does that go?

Mr HATTON: The Tiwi land title is all of Bathurst Island, all Melville Island, and for 2 km outside, in the water.

Mr TIPUNGWUTI: Now when I say that, is every asset on these 2 islands owned by Tiwi?

Mr HATTON: That is one of the difficulties with the Land Rights Act. What do you do if the government puts - say the government put a school over here.

Mr TIPUNGWUTI: Let us use an airstrip.

Mr HATTON: Okay, an airstrip. Let's use that. Now, that is one of the things that has never been sorted out with the Land Rights Act, has it?

Mr TIPUNGWUTI: No. But, I would like you to tell me about that.

Mr HATTON: I think. Graham, legally, can you confirm the situation? Legally, I would think that, if it came to a legal battle, it would be your airstrip.

Mr TIPUNGWUTI: Because it is on Aboriginal land, isn't it?.

Mr HATTON: Because it is on Aboriginal land.

Mr Graham NICHOLSON: There is a section of the Land Rights Act that says where there is (inaudible) public use, that public use is (inaudible).

Mr HATTON: That is right. Yes, under the Land Rights Act there is a clause that says that where there is something that has been in pre-existing public use, it will continue to have public use. Where it exists when the land right was given. So, I guess the airstrip would be one of those situations.

But, if the Northern Territory government came in now, say, and was going to build a hospital here or a police station on a block of land, if they do not organise a lease or something over that land then, technically, you could say, yes, that belongs to the community, because it is on their

land. That is where a lot of difficulty can arise. It came up a couple of times with power stations. They said that that power station is on Aboriginal land, therefore, it is our power station. And the government said: 'All right, you run it'. They said: 'No, we want you to run it'. But, of course, you cannot have it both ways.

That is why I think you have got to sort out a way you can get leases on Aboriginal land so, when the government puts a power station or water treatment plant or whatever there, they have rights to it, legal rights. Now that has to be sorted out one day, hasn't it?

Mr KERINAUIA: Yes. Going back to that airstrip. Lately, we have had a lot of problems with aviation.

Mr HATTON: Graham, can you ... ?

Mr NICHOLSON: I do not know of that problem.

Mr KERINAUIA: No, but he said that there was a clause about public use.

Mr HATTON: I am not a lawyer. Please understand, I am not a lawyer.

Mr TIPUNGWUTI: No, no! But, Steve, like you said, we have to tell you what we think is best for us.

Mr HATTON: Yes.

Mr TIPUNGWUTI: But we can only come up to a point.

Mr HATTON: Could I suggest that, if you want to talk about problems with the airstrip or interpretations of the Land Rights Act, when we finish this meeting, we can sit down together and talk with you about that, because I think that is the way to do it properly. And let us talk about the constitution now and deal with those other things later. I would like to have a lawyer there because I do not even know what - I am not a lawyer. I am not going to walk into saying things here which might give me big mobs of trouble.

Mr PUNGANGANIRRI: They reckon that airstrip does not belong to us, and it is our land.

Mr HATTON: I am not a lawyer. I will talk about it later on, when we finish this meeting, and I will find out. But I am not a lawyer, and I am not going to say something that is going to get me into big mobs of trouble when I don't know what I am talking about.

Mr TIPUNGWUTI: Yes, excuse me, Steve ...

A person: Steve, we could be made up (inaudible).

Mr HATTON: Let's get back to the constitution.

A person speaking language.

Mr KERINAUIA: Yes, But if we talk about a constitution, we want that answer as part of the Tiwi responsibility under the constitution. That is what we want to talk about. Instead of the government controlling it. That is what I am trying to get at.

A person speaking in language.

Mr KERINAUIA: If it is on Aboriginal land, we should have a say on who comes here and who cannot come here. That is what we want to put in the constitution too.

Mr HATTON: For every right there comes a responsibility, and you must understand that. Every right carries with it a responsibility. If you have the right to say what happens there, do you accept the responsibility for maintaining it and running it?

A person: (indecipherable).

Mr HATTON: Understand that. You do not get it one way and not the other. For every right there is a responsibility too. It is the same in your way.

Mr KERINAUIA: Well, that is what we are here for, to find out where we are going, which way we are going.

Mr HATTON: Right. Mr TIPUNGWUTI: If we are going to have a constitution, then you have to give us all those facts.

Mr HATTON: I cannot say that it is going to go this way or that way. I am saying now that I want you to go away as a community and talk. When we come back later on, then you tell us, after you have had a think through all of it. Read the books, read the stuff, and then tell us. I cannot answer every question you have got now. I can only give you ideas on how to go about doing it.

Mr TIPUNGWUTI: Oh well, we will speak to you about that.

Mr HATTON: That is a separate thing to the constitution. We will talk about that after the meeting.

Mr KERINAUIA: Steve, when can you set up this committee?

Mr HATTON: I can set the committee up once we have gone through - probably next year, late next year maybe. It will take at least that time to hear from all the people around the Territory.

Several people speaking at once.

Mr TUNGATULUM: You said it is around a figure of 60, is it?

Mr HATTON: Maybe. That is a suggestion. It could be 100 or it could be 20. I don't know. It is up to the people to tell us that.

Mr PURUNTATANERI: Steve, what would happen if we talk about a constitution like land rights, sacred sites, and (inaudible). They think that the constitution goes in your office, in your committee, and automatically you have 2 or 3 weeks meeting and you change it. Then it comes in the media, in the papers, people read news about Aboriginals lost their culture and all of that, and what would happen? Now, at the moment, we ...

Mr HATTON: You don't know.

Mr PURUNTATANERI: ... are walking on the straight road. The time you come and you change it all right then we are walking in straight road and you can get someone walking the other road. Then the next time, when you come back 1 year later, we report to you that people want to go on the other one, because you change it altogether. It might happen that way.

Mr HATTON: It cannot happen that way.

Mr PURUNTATANERI: Well, I give my point of view out.

Mr HATTON: It cannot happen that way. It should not happen that way. The people would say 'no'. If we tried to do that, there would be big arguments about it and people would say: 'No, we have not got it right'.

Mr PURUNTATANERI: Well, the government made the promises ...

Mr HATTON: This is not one for the government to do. Can you understand? I am saying that the government is not going to write this one. This committee is not a government committee. It is your committee.

Mr PURUNTATANERI: Well, you are part in the government yourself, aren't you?

Mr HATTON: Yes, I sit in the government. But I am saying that I will help the people make their own committee.

Mr KERINAIUA: (Tiwi language)

Ngarra Government naki constitution will be up. Ngarra more power wutatuwu Government underneath.

This constitution will have more power, the government are underneath it.

Mr HATTON: Please, let me say this. I believe that, when you start talking about the things we are talking about now - now I know, and you know, that there will be other people, maybe in Alice Springs and in Darwin maybe, who will say that that is bad. They will think something different, and there will be arguments about that, won't there? I know that and you know that. You know people are not going to sit down and say: 'Oh yes, that is all wonderful. Let's go that way'. You have got to work at it. You have got to be prepared to work to explain, to make sure those other people understand what is important.

One thing I do know. Everywhere I go, in the white communities and in the black communities, they all say the same thing: they want equality. Now, a lot of white people think that, with the land rights and sacred sites, and the DAA and ABTA, the Aborigines are up there. And Aboriginal people say: 'Hey, look, we haven't got any jobs, we haven't got decent health, schooling or housing, and we think the white man is up there'. They both think that, but for different reasons.

What you have to do is talk. You have to sit down and talk, and explain what is important. As you explain what is important, let them learn, so they understand, because from understanding comes respect. Then you will get it right. You will not get it right just by standing over the other side of the road chucking stones. You have got to work at this one. And it will not happen easily.

Mr KERIAIUA: (Tiwi language)

Waya juwana, pili wiyi ngawatuwu wuta kakirijuwi wupawumi dinner wutatuwu ngamirampi wanga.

Is that all, because we want to cook our meal for our children.

Mr PURUNTATAMERI: (Tiwi language)

Wutatuwu (can't hear) meeting kapinaki ngawamamanta. Explain wurami kangawula kapinaki ngini, karri kuta awunganari wunga, ngampawuriji kapinaki kapi ngawa own tiwi kapinaki. Kuta awunganari ngini wupawurinji. Kuta awunganari ngajingatawa Northern Territory kapi ngawa tunuwuwi, kuta awunganari wupawuriji wiyi, wupawuriji yirripilayini wuriyi awungarruwu. Wuta wiyi awarra nimarra wurimi ngini ka-ngawa naki

murrakupupuni. Wuta wiyi awarra nimarra awarra kapinaki kapi wupawuriji kuta awunganari. Wuta awuta try explain wurimi ka-ngawa, naki anything ngini kapi ngawa apalamiya ka-ngawa pungintaga ngini ngirramini awarra kiyija ngini complain ngawujingimi waya. Ngarra wiyi awarra waya karri ngapawuriji. Ngarra wujingimi kayi, ngimpirtimarti yatipili, api nyimpirtimarti arrami maybe next week tuwawanga. Partuwa kiyi write down nyirrakirimi letter or (can't listen) straight away. Waya juwa awarra wurtimarti. Karri wupangi j i k u t a awunganari. Wuta waya awuta nimarra wurimi, nimarrajirri wurimi awungarruwu kapi karri committee wupangaji nga-mamanta kutawunganari. Partuwa, kiyi wuta wiyi awungarruwu nimarra wurimi, ngini about nginaki airstrip, ngini about nginaki nginingawula murrakupupuni nayi. Kapi ngawa waya ngatumujingimi, kapi worry, worries about our land, api wiyi wumatawuriyi, kiyi nimarra wurimi wiyi awungarruwu. Kiyi wunimaja wiyi awarra ngirramini, paper yangwarri, kiyi show'em wurimi ngawa. Waya juwa, wuta wurtimarti awarra. That's all they want.

We want to see how many Tiwi will attend the meeting to discuss anything that we need to talk about such as our land, airstrip and where we live. Then they'll come back and try to explain to us again. If we need anything we ask the Constitution Development Committee.

Mr KERINAIUA: (Tiwi language)

Api kayi, thank you for all. Wuta waya wutipila ngam irampi wutatuwu yinkiti kakirijuwi. "Arnapa, arnapa, arnapa. Thank you for coming. Api kayi wiyi set the date next week, ngini tuwawanga meeting. Marri, pili yingwampa karluwu understand. Right through meeting awarra.

We are now going to get food for our children Wait! Listen Thank for coming. We'll set the date next week about the meeting again because some people do not understand.

Mr PUPANGIMIRRI: (Tiwi language)

Ngajiti nyimpajangiliparra awarra.

Don't forget that.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

MILIKAPITI — Thursday 11 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:

Mr Kevin DOOLAN
Mr Patrick HEENAN
Mr Robert TIPUNGWUTI
Mr Peter SIMONS
Mr Stan TIPILOURA

NOTE: This is a verbatim transcript that has been tape-checked.
ISSUED: 4 October 1989.

Mr DOOLAN: I would like to thank the committee for coming over today to give us the opportunity to sit down and discuss the proposed state constitution. There has been some confusion about the constitution and statehood and basically the reason why we have asked the committee over is so that it can explain the whole situation to us.

Mr HATTON: Thanks very much Kevin.

We are very glad to have this chance to meet with you and talk about what is happening because there has been a bit of confusion around the Territory about what is going on. It has been a very good exercise for us to move around the Territory during the last couple of months, explaining what is happening to communities in the north, south, east and west, and telling people why it is important for them to be part of this exercise.

Our committee is called the Select Committee on Constitutional Development. It is a unique committee of the Assembly because it has equal representation from both the CLP and the ALP, with 3 members from each. This book gives the names of the committee members together with their photographs. The reason for this equal representation is that this is one of those rare instances in which both sides of politics are working together towards a common objective and not becoming involved in party politics. Both parties believe in achieving a constitution for the Northern Territory. Of course, that is not to say that there may not be differences of opinion between the parties when we start getting down to matters of detail. Both sides, however, agree that we should be working towards a single aim as Territorians, which is to write down a very special people's law.

This law is not the normal sort of law. This one is written by and owned by the people. It is a law which sits above the government and tells the government what it can and cannot do. It says how you go about electing a government; who has the right to vote; who has the right to stand for parliament; what the parliament does; what the courts do; what the Administrator or Governor can do; what sort of rights are so important and fundamental that no government should be allowed to muck around with them. The constitution is what contains that law.

Another page of the book sets out the terms of reference of this committee. It talks about the job we are doing. At this stage, we are informing people about the process of drafting a constitution and telling them about the need for input. There has been a lot of talk around the Territory about statehood and you know that I have been one of those saying that we should become a state. Others are saying the same thing but some people are uncomfortable with the idea that we should become a state now. Some people think that we are not ready yet. Some people do not understand what it means and they are nervous about it. Other people just do not want it at all.

I am not asking you today whether you are for or against statehood. That is not the question. Not only that, you cannot even ask the question about whether you want to become a state until you know what you want the Northern Territory to be like in the future. How do you want it to go? How do you want our society to be set up? Until you know what you want, you cannot even think about becoming a state. What is a state? What sort of state do you want? I do not know. That is what the job of this committee is about. We want to get the first process done properly so that people are agreed on what they want, so that the whole community can say: 'That is what we want. That is how we want this place to work. That is how we want Aboriginal and

non-Aboriginal people to be able to work and live together in mutual respect and equality, together with the Chinese, the Greeks and everybody else in the Territory. We want to get together and work side by side as equals, with respect for each other's cultures, languages and laws but without clashing all the time'. That is what we have to try to work through in writing this law.

This law will be a people's law, a law which says where the people want to go. The government will then have to stay on that road. It might wander around on the road or go backwards and forwards a bit but it has to keep going down that road. It cannot go shooting off over here or shooting off over there. It has to stay on the path set by the people. That has never happened before because people in the Territory have never been asked to set that path before. It is new. It is a way you can influence the future for the generations to come, it is a way of making this place something that you can be proud of and that you can be proud to leave to your children. That is the job that we have in front of us.

When you have done that job, you can start talking about whether you want the Territory to become a state, how many Senators you want, how the finances should be structured and so forth. Until this job is done, you cannot even start to talk about those things. Do not get this confused with statehood. Certainly, if you do this job, you have taken a step down the road to statehood. At least it gets you in a position where you can say yes or no to statehood. You cannot even do that yet.

The other thing I ask everyone to accept is that the Northern Territory will become a state at some stage. We may be ready now or we may not be. It may happen in 5 years, 10 or 20 years but, one day in the future, the Northern Territory will become a state. We just do not know when. While we have the time, let us work on this job and get it done properly so that we can create the foundations and set the path for the future of the Territory with or without statehood.

The first part of that job is for people to gain an understanding of what a constitution is. Explaining that is part of this committee's job. We are telling them what a constitution is and why it is so important to become involved in creating our constitution. We are encouraging people to start thinking about the issues and talking about them. We are encouraging people to look at some of the printed material we have, such as this book, which I call a starter's kit. It gives you a few ideas and a few questions to think about. When you have read it and thought about some of the issues it raises, you might like to go into things in more depth, and the second book lets you do that. We spent about 3 years preparing it and it is called: A Discussion Paper on a Proposed New State Constitution for the Northern Territory. It contains many different ideas. We have looked at constitutions in the West Indies, Canada, the United States, Africa and around Australia. All sorts of different ideas have come up and we have set them down in the book. They relate to things like how the parliament is elected, how the government is set up and so on. The book gives different approaches to these things and arguments for and against. Take it and read it, a section at a time.

Here is a section about who should have the right to vote. It discusses various points of view. Read it and have a think about it so that you can say: 'I reckon that is the way to do it'. Another section asks whether the parliament should have a fixed term. Do you reckon 4 years is the right amount of time for a parliament to run or should it be 6 years or 3 years? Should it be fixed term? Should it have to go to an election at a specific date or should the government have a choice as it does now, or is there some other possibility?

The people can make the laws which will decide such things. This is the first time this has happened here; it is a new experience for the Northern Territory. In fact, it is pretty much a new experience in Australia. It is a chance that will not come again. It is a unique moment in Australia's history and it will create history. It will make the future. It will never happen again in this country. It has not happened for 100 years and this will finish it. When the job is finished it will complete the making of Australia as a nation. It is our job and the responsibility of this generation to work on that.

The books give some ideas but there may be some things we have not thought of and which come to your minds. That is why we want you to think about the ideas and talk about them in this community and in other communities nearby. We would like you to share ideas, discuss them, and come up with any ideas which you think might be better.

We will come back later this year or early next year. In the meantime, if there is something you are not sure about or would like to know more about, ring us up. Contact our executive officer and ask for more information. We will send the information or, if you want someone to visit you to discuss things, we will send someone over to talk so that you have an opportunity to develop your ideas and discuss things fully so that, when we come back, you will be able to say: 'Right. This is what we think'. Put your ideas down. All the other communities are going to do the same thing. They will put their ideas down.

The job of the committee will then be to collect all the ideas and to write a draft constitution. That is not the constitution itself. The draft will contain what we believe the community is saying. We will get the general feeling but we will not write the constitution. Do not trust the politicians to write the constitution. The states did and look what happened. Things are not very good for Aboriginal people in states like Queensland, Western Australia and South Australia. Their rights are not protected because the constitutions were written 100 years ago and the people who wrote them did not bother to ask Aboriginal people what should go in them. They never involved the people, but those constitutions are still in force 100 years later.

Mr DOOLAN: They have not been changed?

Mr HATTON: No, not in those sorts of places. Once a constitution is in place, it is very hard to change. That is why you have to go to great lengths to get it right in the first place. Because that did not happen in some places, those places have all sorts of problems. We have a chance to learn from other people's mistakes and get it right here. We cannot do that, however, if we sit in the corner and let someone else do the work.

Mr DOOLAN: It has to come from the people.

Mr HATTON: That is right. The people have to get involved. Otherwise another mob will do it and you will find yourselves saying, in 5 years or so: 'I didn't know about that. Why didn't they ask me?' Well, we are asking you now. We are asking you to get involved.

Mr HEENAN: We see a lot about the statehood campaign on *Imparja* Television.

Mr HATTON: Those are the advertisements about writing a constitution, which is the law I have been talking about.

Mr SETTER: Not statehood.

Mr HEENAN: I have another question.

Mr HATTON: Before we go on to questions, I will just finish explaining the whole process.

After this committee has written a draft based on the information we have collected from the whole community, a constitutional convention will be formed. It will be made up of representatives of people from all over the Territory. They will form a big drafting committee. They will have to sit down and go through the work we have done. The constitutional convention will go through the submissions this committee has received, the ideas of this committee, and the draft which we write. The convention will decide whether or not what this committee has done is the right thing or needs to be changed. It will decide whether our draft properly reflects what the people are saying. Perhaps there will be some areas in which different people have different points of view. The convention will have to find a solution in such cases, through negotiation, discussion and debate, so that the constitution provides answers to different needs amongst all the people in the Territory. The convention will bring people together to sort things out. Sometimes there will have to be a lot of talking and a lot of listening to arrive at something which satisfies everybody.

When that job is done, the convention will have written a proposed constitution. That then has to be voted on by the people. If they reject it, it will have to go back and be sorted out until, eventually, the people say yes in a vote. When that happens, but not before, the constitution will be law. Getting to that stage will take a lot of time, patience and perseverance. However, it is the way of ensuring that the end product is what the people want. That constitution, that law, will be the one which governs the government. It is like the boss of the government. That law is the means by which the people have power over the government and that the government takes the direction which the people want. That is why this is such an important job.

You know that there have been all sorts of arguments and problems in the Territory in relation to land rights and sacred sites, and there are arguments about all sorts of other things. The miners are fighting against the pastoralists and so on. Perhaps, if we do this job properly and people spend enough time talking to each other and explaining things so that everybody understands the point of view of the other people, we will achieve mutual understanding, respect and a united society. That is why the process of developing this constitution is as important as the final result. People need to understand what they are trying to achieve as a people and, again, that is why you have to be part of it. That is what we are trying to achieve.

Mr TIPUNGWUTI: Just a question. This thing that we are talking about, does it affect our Land Rights Act?

Mr HATTON: It can do. The constitution can be written in such a way that it affects land rights. It depends on what the people want to put in it. Whilst it does not affect the Land Rights Act as such, if people feel that land rights are of vital importance to them, and that they cannot trust the government not to take those rights away, they can create a constitutional guarantee which protects land rights. In other words, the government is under a law which prevents it from taking land rights away. Right?

Mr TIPUNGWUTI: This concerns us.

Mr HATTON: You can do that.

Mr EDE: Steve, can I just say a few things from the Labor viewpoint?

Mr HATTON: Yes, it would be appropriate.

Mr EDE: A lot of people have asked why members of the Labor Party are on this committee. What Steve said is quite correct. People are worried about things like land rights and sacred sites and how they are going to protect their land and their culture. They are frightened that this might be a trick and that, if people go along with it, they will be told that they have agreed to statehood and that they have agreed to this government looking after land rights. People are suspicious and worried because land rights is so important. The reason that I am on this committee is because I know that it is possible, even at the federal level, for a government to decide that land rights were not popular any more or needed to be changed. If such a government started to interfere, it could take away land rights. A government in Canberra has the power to do that.

Mr TIPUNGWUTI: It is the government which always has final say.

Mr EDE: This is what we are saying. We are saying that this constitution could be a backstop. I would like to have it that way. I would like land rights to be part of the law from Canberra and also in our constitution. If things went bad in Canberra and some mob chucked out land rights under that law, we could say that we are operating under our constitution which protects land rights. If that happened, the Northern Territory government would not be able to change land rights. It would have to change the constitution first and that means it would have to have a referendum to find out the opinion of the people. That is why we have to get Aboriginal people involved in making this constitution, so that it is strong on land rights. If Aboriginal people do not get involved, it will not be very strong. Some white fellows will argue for it and people like myself and Stan will argue for it, but we need everybody in there saying: 'Hang on. These are the important things about land rights, the basic principles. We must hold on to our land, our tradition and our law, and the constitution must be strong about that'.

Mr TIPUNGWUTI: We have to work both ways, your ways and our ways.

Mr EDE: Exactly. And that is what people down my place have been saying to me. They have been saying: 'Our law goes all the way back to the Dreamtime, for tens of thousands of years. That law comes down to us over all that time and we look after it now and hand it on, no changing, nothing. It goes on that way forever'.

Mr TIPUNGWUTI: We do not want to see our culture die out.

Mr EDE: That is right. People do not want to have the white fellow law which keeps changing all the time. They say it makes them go this way and that way. They want to have the white fellow law running alongside the Aboriginal law. We white fellows do not have the same way of making law as you have. Our only way is through a constitution. It is our way of putting down all the things that are very important and have to be in our law.

Mr HATTON: The things that do not change.

Mr EDE: The things we do not want to be changing.

Mr DOOLAN: Is now the time to start talking about issues like land rights?

Mr HATTON: If you want to.

Mr DOOLAN: There is confusion and I think that is fault of the media to a certain extent. It also seems that the land councils are putting out pamphlets which appear to be opposing the idea.

Mr SETTER: They do not seem to want to talk to us.

Mr DOOLAN: This is where there is confusion. Why don't they want to negotiate? That is what it is all about - negotiating and coming to an agreement.

Mr HATTON: We are trying to meet with the land councils and involve them in this process.

Mr DOOLAN: Why won't they become involved, Steve?

Mr HATTON: I do not know. I have not talked to them.

Mr EDE: I have tried to talk to them. To be fair, I think that the only thing holding them back from becoming involved in this process is the concern that people might believe that that is an indication that they are taking part in discussions about statehood and the possibility of control over land rights moving away from Canberra.

Mr DOOLAN: But if it becomes part of the constitution, it can be guaranteed and protected even if the Territory does become a state.

Mr HATTON: That is exactly right.

Mr EDE: Maybe the land councils just want to take it slowly. We definitely have to talk to them and try to get them involved. We have to get the land councils and other Aboriginal organisations involved, together with the people who live out bush and in the towns. They have good ideas about how things could be legally locked in. They have lawyers who have been working on that Land Rights Act for years and years and they can sit down and say: 'Okay. How can we get the right principles in? Which are the ones? How do we have to write it? How do we ensure that the things we want cannot be changed without a 75% majority'?

Mr HATTON: But you have to convince other people of that too.

Mr EDE: Of course. But if the land councils are involved and are talking about these things, together with the people from out bush, that will make the case much stronger. However, if they stay outside the process and just throw rocks on the roof, that will not achieve anything. We do not want to be saying: 'We nearly got what we wanted. We would have got it if they had been involved and given us a hand'.

Mr TIPUNGWUTI: I asked that question, Mr Chairman, because a lot of people do not know what people are talking about right now.

Mr HATTON: That is why we are coming around and trying to explain.

Mr SETTER: That is right. We are not even trying to force you to make a decision.

Mr TIPUNGWUTI: No, we do not make a decision yet.

Mr HATTON: We are saying: 'Please start thinking about it'.

Mr TIPUNGWUTI: We have to look to both ways, your ways and our ways. That is what the law is for.

Mr HATTON: We have to do the same thing. We have to look at our way and your way and together we have to work out how we are going to put them side by side so they do not fight each other.

Mr TIPUNGWUTI: That is right. That is what we are there for.

Mr HATTON: That is right. We are both there for the same purpose.

Mr EDE: We might get to the stage of voting in 5 years time. After this committee has finished and all the other work has been done, people might say at a referendum: 'It is nearly right but not quite. We are not really happy and we will vote no'. People have been here for thousands of years. They will be here for thousands of years to come. It does not matter if it takes a while; we have to get it right.

Mr TIPUNGWUTI: You have to think about the people of the future, not just people living now.

Mr HATTON: That is right.

Mr EDE: We cannot just be greedy and say that we want our names on the bottom of this law. We have to think about all the people who are going to live under this law.

MR HATTON: That is why it is important.

Mr TIPUNGWUTI: We are talking about generations and generations to come.

Mr HATTON: Understand this law. It does not take any rights away from any person. All it can do is give you rights. It cannot take anything you have now. It can only give things to you. That is what a constitution is about.

Mr EDE: It can only give them to you ...

Mr HATTON: It takes rights away from government and gives them to people. That is what it does. It puts a limit on the government. Brian Ede says that it is like having a crazy dog that keeps biting people. You put a rope around its neck and tie it to a tree so that, although it can run

around that tree as much as it likes, the rope stops it from going too far. The constitution is like a rope around the neck of the government. It can run around on the end of that rope but it cannot go beyond it. That is what the people do when they make a constitution. It can only give you rights; it cannot take them away from you.

Right now, you have no guarantees of anything within the Northern Territory. We do not have a constitution. The federal government has one and the states have them. We do not have one because Australia is what they call a federation of states. We are outside the federation and we do not get any protections under the Australian Constitution either. Just by changing an act of parliament, or just amending a regulation under an act of parliament, the federal government could wipe out the entire Northern Territory health system. That does not even have to be debated in the parliament. By repealing an act of parliament, the federal government could take away any form of government in the Northern Territory. By changing another law, they can take away your right to vote on anything.

Mr EDE: All of of our votes. All of us.

Mr HATTON: Yes, it applies to anybody's right to vote. You do not even have a guarantee of your right to vote because we are a territory. If things changed politically in Sydney and Melbourne and people down there became really anti-land rights, a party could campaign on a platform of getting rid of land rights. If that party was elected, it could get rid of land rights just by repealing an act of parliament. It could send us right back to the welfare days. It has the power. I do not believe that any federal government would do that but it certainly has the power. It has the power because you do not have any guaranteed rights.

Mr DOOLAN: So the control factor in our situation would be to have our own constitution with the protection of human rights as part of it.

Mr HATTON: Locked in.

Mr SIMONS: Would this constitution have to duplicate things that are in the federal constitution?

Mr HATTON: No. Picking up the constitutional rights of the federal constitution is a separate step which is finally completed when you become a state. In the meantime, as far as the Northern Territory is concerned, the important thing is for people to at least have the guaranteed constitutional rights which they want. The second question only arises with statehood.

Mr EDE: We could put those rights in a constitution and we could ask the federal government to allow us to basically operate under that constitution even before statehood.

Mr HATTON: Yes, it could do that by changing the Self-Government Act to a constitution act.

Mr EDE: At that stage, land rights could be in the constitution but it would not apply because land rights would still be covered by the federal Land Rights Act until we became a state. You have to take into account what Steve said, which is that a constitution will not take rights away. You do not get rights unless you ask for them and fight for them to be in the constitution. Land

rights are one example but there are lots of others. People here have heard of the International Declaration of Human Rights, which covers all sorts of rights which you might want to talk about.

Mr HATTON: Freedom of speech, freedom to practice your own religion.

Mr DOOLAN: Freedom of information.

Mr EDE: You can talk about people's rights to the sorts of things that provide for good health, and rights to education. You may want to include those sorts of things in the constitution. No other Australian constitution has those rights but that does not mean that we cannot have them here if people believe in them enough and are strong enough to ask for them, to keep fighting for them and to explain why they want them to people who say no.

Mr HATTON: We are talking about those aspects that are really very much at the core of things, the rights which are so important that you say: 'No government should ever be allowed to muck around with this'. When you identify those rights, you can lock them up in the constitution so that they are protected from the government.

Mr SIMONS: Can you put things in that are different from things which apply under the federal Constitution? For example, if the Northern Territory decided that only people over the age of 25 could vote, could we put that in our constitution?

Mr HATTON: In respect of state elections, yes.

Mr FIRMIN: But you could not do it in respect of federal elections.

Mr SIMONS: Just because something is in the federal Constitution, that does not stop us from doing something different in our constitution.

Mr HATTON: You could make people over the age of 12 eligible to vote for state elections if you wanted to.

Mr EDE: But they still could not vote for federal elections.

Mr HATTON: Yes, they could only vote in state elections. You set the rules. Can migrants who have not become naturalised Australian citizens vote in elections, or should there be a residential qualification within the Northern Territory before people are eligible to vote?

Mr FIRMIN: They must have lived here at least 6 months.

Mr HATTON: If you arrived last week should you be eligible to vote next week for the government? Some people say that people should have to live here for at least 6 or 12 months in order to find out what is going on. You write those sorts of laws into the constitution so that you can say: 'Okay, that is who has the right to vote'.

Mr FIRMIN: Should somebody who has been sentenced to a jail term of longer than 5 years have the right to vote? Should people who are criminally insane have the right to vote?

Mr HATTON: Should a person with a criminal record be eligible to stand for parliament?

Mr TIPUNGWUTI: This is the one we have to talk about.

Mr HATTON: Yes. All these sort of things.

Mr TIPUNGWUTI: This is the one. One more question, Mr Chairman. What about this local government council? How does that fit in?

Mr HATTON: You can write that sort of thing in. You can make your constitution say that there is a right to local government or community government.

Mr TIPUNGWUTI: That is why I asked that question.

Mr HATTON: You can put it in but you have to be clear about whether you are saying that people must have it or that they can have it. See?

Mr TIPUNGWUTI: But there are only about 4 or 5 places with local government now. You know, the place up in ...

Mr HATTON: That is the thing you have to talk about. Right? You can ...

Mr EDE: Let me just interrupt. Steve, I think you are missing the point of what is being said. Robert, you seem to be saying that only some places have local government now.

Mr TIPUNGWUTI: That is right. There are 3 in the islands, and Lajamanu ..

Mr DOOLAN: Some don't want it.

Mr EDE: The constitution could refer to another form of local government too. It does not necessarily mean that you have to accept community government.

Mr TIPUNGWUTI: That is right.

Mr EDE: It could be written so as to say that people have a right to have some form of local government if they wish. That form might be completely different to community government. It could apply under another sort of association.

Mr TIPUNGWUTI: I raise that point because this local government has a different constitution altogether.

Mr HATTON: And you argued and discussed and negotiated to get that together, didn't you.

Mr TIPUNGWUTI: That is right.

Mr DOOLAN: That is what we are doing now.

Mr HATTON: It is the same sort of process.

Mr TIPUNGWUTI: We have to discuss all of those things. That is my argument.

Mr DOOLAN: We were talking earlier about provision within the constitution to protect ongoing circumstances such as we have at the moment in areas like health, education, provision of essential services, and being able to have the money necessary to provide these facilities at a local level. Those things need to be guaranteed on a continuing basis after the constitution is completed and the NT becomes a state.

Mr SETTER: Yes. A lot of those services are already provided by the Northern Territory government.

Mr SIMONS: What about health services here? Is that a federal responsibility?

Mr HATTON: No, Northern Territory.

Mr SETTER: Education and health.

Mr HATTON: Some independent health services are funded by the Commonwealth, which confuses the whole exercise.

Mr DOOLAN: Freedom of information, Steve?

Mr HATTON: It is an issue that could be dealt under the constitution or, as occurs everywhere else, through legislation. Some places are against it, as you know.

Mr DOOLAN: I am talking about the right for people in the street to know where the taxpayers' funds are being spent.

Mr HATTON: You mean public accountability for finances.

Mr SETTER: The parliament has a Public Accounts Committee, of which Brian and I are members.

Mr HATTON: I do not want to say that you should do this or you should do that. I am being very careful not to do that. What I can say is that you have the right to include things if you can convince everybody else in the Northern Territory that they are appropriate. Right? The only thing you cannot do is step outside the framework of the Australian Constitution. For example, you cannot declare the Northern Territory a republic. You have to have the Queen and then the state because that is the way it is in Australia. Within those basic rules, however, you can set the Northern Territory up the way the people want it set up.

We have a system of what we call responsible government, in which the parliament is responsible to the people and the government is responsible to the parliament. That is the Westminster system. The head of the majority party becomes the Chief Minister or Premier and picks his Cabinet from within his party or parliament, thus forming a government. Another form of government is called executive government. The head of government is elected separately, as occurs in the case of the President of the United States. The parliament is elected separately and the head of government has the right to choose a ministry from wherever he wishes, from inside or outside the parliament. The members of government do not necessarily have to be politicians. That system is called executive government. In the USA, the Secretary of State is appointed by the

President and, when the President goes, he goes. The President simply chooses the person whom he believes is the best person for the job.

You need to write special rules about how the executive government relates, because the government is responsible directly to the people and the parliament is responsible to the people. You have to create the balance of power between the 2 of them, what are called the checks and balances which govern the relationship between the executive, the legislature and the judiciary.

There are different ways of going about this. We do not just have to do things the way they have always been done in Australia, although most people understand that and I think it is the way to go. All these options are discussed in the booklet.

You have the opportunity to consider how you want to set up a process of democracy. Take it step by step. Do not try to put the whole picture together in one go. Take it a little bit at a time. Ask yourselves who should be eligible to stand for election, who should have the right to vote, and so on. Pick up each point, one after the other, and bit by bit by bit you will fill in the jigsaw puzzle. At the end of that process you can ask: 'Does that picture look right?' If it does, you say: 'Well, that is what I think'. Then you have the answers to all the questions. Because you have talked them all through, you understand why you think that way.

Mr EDE: That is why this book is quite good. It has sections setting out the options in a whole range of areas including voting, entrenchment, executive governments and so on. There are some areas where we need much more detail, of course, such as Aboriginal rights and human rights. We need to develop some more ideas in those areas. To be frank, though, we were hoping that the land councils would come in on those areas and make some suggestions about how things could be done, so that we would have some more meaty material in the book.

Mr DOOLAN: Is it likely that the land councils will have a change of attitude and enter in to negotiations on this issue?

Mr HATTON: We are trying to meet with not just the executive but the whole land council. We want to meet all the councillors so that we can talk directly to them. Perhaps, if all the communities tell the land council that it should talk to us, they might be able to make it do so. The land councils are supposed to be responsible to the people. People could go and make them do it.

Mr DOOLAN: Have you had dealings with the Tiwi Land Council at all?

Mr HATTON: No, not yet. I do not think that it has any philosophical objection to what we are doing.

Mr TIPUNGWUTI: (Inaudible)

Mr DOOLAN: Discussion. That is basically what it is all about. Being prepared to sit down and talk about it.

Mr HATTON: We are really just urging people to have their say so that what is done will reflect the wishes and desires of all communities. We are telling people to look after their own interests in this process.

Mr EDE: There is a very good reason for that. Let us say that Aboriginal people got involved in the process and tried very hard to get things worked out the way they wanted them worked out. At the end of all that, it could be decided that particular things need a two-thirds majority to be included in the constitution. Aboriginal people might not have the numbers to stop something happening if there is a two-thirds majority in favour of it. However, if Aboriginal people had been heavily involved in the negotiations, they would be in a position, when people were starting to talk about statehood, to take their case to Canberra and the other states and to say: 'If there is going to be statehood, first of all we want some more work done on this particular aspect of our constitution'. Aboriginal people in that situation would get a lot more support if the federal government could see that they had tried their hardest to have the constitution formed the way they wanted it. There would be a strong chance that the federal government would say: 'Before there is statehood, these concerns must be looked at again'.

Mr FIRMIN: I think you would find that the Territory government would say the same thing.

Mr EDE: I would hope so. I would hope that the Territory government would say do that but, if it did not, I think other governments would. The other possibility is that people say, 'No, bugger it. It is too hard and we are not interested. We do not want to talk about it'. If that happens and the whole process goes ahead, in 5 years time when matters are coming to a head and those people suddenly realise they want input, the general feeling may be: 'Look, you had your chance to be involved and you did not want to do it'. Under those circumstances, change will be a lot harder to negotiate.

Mr SETTER: I think it is important to understand, though, that at the end of the day everybody is not going to get everything that they want in the constitution. People want all sort of different things and it is impossible to accommodate everybody's wishes.

Mr DOOLAN: As far as the Tiwi are concerned and, I believe, Aboriginal people in general, the main issue would be protection of land.

Mr SETTER: Yes, of course.

Mr DOOLAN: What if there was too much opposition to land rights from mining interests, the pastoral industry, and people in general in the Territory?

Mr HATTON: I do not think the opposition is to land rights as such. In the mining context, for example, the people of Nhulunbuy said: 'Look, we do not mind people having land rights but we want the right to drive to our home. We want access'. Is it unfair to ask for that? No. But people in Nhulunbuy have been fighting for it for 10 years. They want to be able to drive to their home without having to ask permission. Those are the sorts of things that concern people. It is not a constitutional issue because the constitution could simply say, in respect of land rights, that that is your land and nobody can take it away from you. That is certainly not the same as saying that the Land Rights Act is perfect. It is not necessary to put the whole of that act into the constitution and say that it should never be changed.

Can you say that the administration of the land councils will be perfect and should never be changed, that their powers should always stay the same? Are you going to say that the next generation cannot touch such things? You want to give people the right to say, in the future: Hey, maybe we have developed further. Maybe the role of the land council should change now and this land trust should be able to make the decision'. If you put things in the constitution, it is very hard to change them.

Mr EDE: What we could do ...

Mr HATTON: There is also the question of how much you put into the constitution.

Mr EDE: It is possible to have different requirements relating to different aspects of land rights and some of those would be better in an act of parliament than in the constitution. For example, some decisions in relation to controls over land might require a 75% majority whilst other less important decisions might require only a 50% majority. Matters such as the auditing of land council financial returns and so forth would not even need to be covered in the constitution. The constitution could even require that, in the case of legislation pertaining to certain matters, a three-quarters or two-thirds majority of members might be necessary, or the legislation might have to remain before the House for 6 months.

Mr HATTON: These are Brian's ideas. They are not necessarily the views of the committee.

Mr EDE: I am not saying that this is what will happen, nor even that this is what I think should be done. I am just trying to present a few ideas so that people can talk about possibilities and see how they fit into their way of thinking.

Mr TIPUNGWUTI: All right, I have another question to the Chair. These Tiwi Islands are our land but I think the government forgets about sea closures. How are we going about that in this constitution?

Mr HATTON: You have 2 problems there. You can certainly talk about sea closures in the Northern Territory although you know that there are big fights in relation to that. Secondly, a lot of that water belongs to the Commonwealth and therefore comes under the Commonwealth Constitution. Once you go more than 3 km offshore ...

Mr FIRMIN: No. It is 2 in relation to land rights, and 3 for the Commonwealth.

Mr HATTON: Yes, something like that.

Mr NICHOLSON: 3 nautical miles.

Mr HATTON: 3 nautical miles. After you get 3 miles offshore, it is all Commonwealth water.

Mr TIPUNGWUTI: Our concern is from the water mark to 2 km. That is what we are concerned about.

Mr FIRMIN: But you have that already.

Mr TIPUNGWUTI: I do not think so.

Mr FIRMIN: In part you have. These are the sorts of things which, you may find, the white community feels very upset about. We are talking about the right to close off waterways.

Mr TIPUNGWUTI: Everybody might be upset about it but it is a free home.

Mr FIRMIN: You do not understand. I am saying that, at some stage or other, you have to come to grips with the question of whether you really want to always be in conflict over that sort of arrangement. It may be or it may not be, I do not know.

Mr HATTON: You can only deal with these things if you sit down around a table and talk about them.

Mr TIPUNGWUTI: If we are talking about this constitution, that would be in too.

Mr HATTON: There is a right to talk about it in relation to the constitution. It can be talked about in the constitution.

Mr TIPUNGWUTI: It would have to be. We have to talk about a lot of things in this law.

Mr HATTON: There will have to be quite a process of talking. I can foresee some horrible arguments. I am sure that you can see them coming now. People on one side will be saying this and those on the other will be saying that and at first they will be fighting, just like they are fighting now. But if we can get people together and talking, so that you can explain to him ...

Mr TIPUNGWUTI: ... to anybody

Mr HATTON: ... or whoever it might be, why a particular thing is so important to you, and if you can get him to understand that, and he can also explain his point of view to you, maybe the 2 of you can find a halfway point so that you both get what you want.

Mr TIPUNGWUTI: A bit of privacy.

Mr HATTON: And a bit of understanding. If you get a bit of understanding between people, that is how respect grows, isn't it. The process of talking, arguing and trying to sort things out could develop the understanding and respect which we need to make us into one community even though we have different cultures, different religions and different ways. We need to understand what is important to the other person, why they have to have things a particular way. Then people can say: 'That is your way and this is my way. You understand my way. We can walk along side by side and not push each other out of the way all the time'.

Mr TIPUNGWUTI: You have to work as a team.

Mr HATTON: That is right. You have to work hard to get that but it is worth getting, isn't it.

Mr TIPUNGWUTI: Anyway, Mr Chairman, I have no more questions. All my questions have been answered.

Mr HATTON: We have lots of questions but you can think about them later.

Mr TIPUNGWUTI: Probably land rights.

Mr HATTON: It is all in there, in the book.

Mr TIPUNGWUTI: Yes, no time to talk about that here.

Mr HATTON: Yes, it will take time.

Mr DOOLAN: So there are no time limits on statehood or the development of the constitution.

Mr HATTON: No. We have to set this up properly.

Mr DOOLAN: How will this process go ahead? Who will do the draft?

Mr HATTON: This committee will do the first draft. We have to make recommendations to the Legislative Assembly on the formation of a constitutional convention. We are also looking for submissions on how that should be put together, what groups should be represented, how big it should be and so on. There is another paper which sets out some ideas about that. That is only some ideas and there could be others.

Mr EDE: That first draft will not be anything like specific in relation to issues. It will be very fuzzy because there is no way in the world that this committee will be able to come to agreement on fundamental issues that are being discussed.

Mr HATTON: We may well put 2 or 3 different options.

Mr EDE: We may not even specify whether there were majority or minority views on these things. We may simply say that these are issues which the constitutional convention needs to consider. Ultimately, it is the people who will have to make the decisions about these things.

Mr HATTON: If you believe this, you can write it this way. If you believe that, you can write it that way - and so on.

Mr TIPUNGWUTI: There are a lot of ways you can do it.

Mr HATTON: That is right. That is our job. After we make our recommendations to parliament, the parliament says: 'Yes, that is good. We accept your recommendations'. We then set up a convention. Perhaps by the end of next year we might be just about ready to put that convention together. Okay?

Mr SETTER: We are going to come back and talk to you again, probably early next year. By then, you will have had an opportunity to talk about this and to put some ideas together.

Mr HATTON: In the meantime, you can get a lawyer or anyone to come across and explain different things.

Mr HEENAN: Excuse me, Mr Chairman. I just want to ask one question. If we get statehood in the future, would all the Aboriginal communities suffer a loss of Commonwealth funding?

Mr FIRMIN: No, it would not change.

Mr HEENAN: Commonwealth funding for Aboriginal people is the same all over Australia. People in all states have the same rights to funding.

Mr SIMONS: We were talking to people from Western Australia just recently and they have been just sort of plonked onto the CDEP. They get no Commonwealth funding whatsoever.

Mr DOOLAN: For the provision of essential services.

Mr HATTON: Essential services are provided by the Northern Territory government, not the Commonwealth. That is Northern Territory funding now.

Mr DOOLAN: So that particular state does not provide those services.

Mr HATTON: Yes. The problem is that the state is not doing the job. In the Northern Territory, we provide funds for essential services.

Several persons speaking at once.

Mr HATTON: The Northern Territory government provides funds for essential services such as power, water, sewerage, roads, barge landings, airports and so on. They are funded under what we call the Aboriginal Essential Services Program. It is a Territory government program, not a federal program.

Mr DOOLAN: Do any of the states have the same sort of program?

Mr HATTON: I do not know.

Mr FIRMIN: If they have, it does not operate to the same extent as ours.

Mr EDE: They all do it.

Mr HATTON: They probably do. I do not know.

Mr TIPUNGWUTI: They do have it. They have it all over Australia. It has a different name in each state.

Mr HATTON: Anyway, it is a state function. It is not a Commonwealth function.

Mr DOOLAN: Once we become a state and our constitution is finalised, what power does the federal government have to say that particular parts of our constitution are not appropriate and should not apply?

Mr HATTON: Once we become a state, it cannot touch it.

Mr EDE: Hang on. That is not absolutely clear.

Mr HATTON: The Commonwealth has a say in the formation of our constitution because we are still a Territory. However, it would take a vary brave government to change something which had been approved by the people. If the constitution is in place at the time we become a state, our reading of section 126 of the federal Constitution is that the state constitution can only be changed in accordance with its own rules for the manner of change. The federal government would not be able to change that. At present, Mr Nicholson is working on a discussion paper which covers the technical aspects of that.

Mr EDE: There are 2 ways of becoming a state, by a law of the federal government or by an amendment to the national Constitution. In the latter case, there has to be a national referendum with all the states agreeing to it. If statehood were granted through a national referendum, it seems that any attempt by the federal government to change our constitution would have to come about in the same way. Some people have put it to me that, if statehood is granted through an act of parliament, the federal government may continue to have some powers relating to our constitution. Its hands may not be completely tied.

Mr HATTON: You should understand this has never happened before in Australia. A new state has never been created in this context before and some aspects of the federal Constitution have never been tested. We might be in and out of the High Court of Australia 20 times trying to work out what the Australian Constitution means in the sections relating to the formation of a new state.

Mr DOOLAN: I know that they were created a long time ago but there are constitutions for each state.

Mr HATTON: Yes, but they were in existence prior to federation, when the states were still colonies. The federal government has never touched them.

Mr DOOLAN: Well, how can they

Mr HATTON: The states did it themselves. It was nothing to do with the federal government.

Mr TIPUNGWUTI: I have one more question to the Chair. What about things that might change? What about change in this constitution?

Mr HATTON: That is the beauty of this one. You can write the constitution so that it can only be changed by a referendum of the people, just as you can write rules which apply to the amendment of the constitution of a club or a community government. Remember last year, when you had to vote in a referendum on proposed changes to the federal constitution? People said no to the proposed changes. The federal government could not make the changes it wanted. You can do

the same thing with this constitution. That is one matter on which I will make a comment about what we have to do. You have to make this constitution in such a way that the government cannot change it. Only the people should be able to change it.

Mr TIPUNGWUTI: Why I asked that question is because we have to know exactly which way we are going, which way we are heading.

Mr DOOLAN: So it is a long way away. In the meantime, what happens if there is a change of government in Canberra and the new government has the attitude that land rights should not be in existence? What powers have we got now? None.

Mr FIRMIN: We have spoken about this before and the interesting aspect is that, although there has been some conflict between the CLP government and land councils, that has not been manifest in recent years. There is support for land rights from the CLP government. It is in our platform that we support it anyway.

Mr SETTER: That is right, it is.

Mr FIRMIN: There are some minor disagreements in respect to, as I said earlier, land management problems.

Mr DOOLAN: Is this why the land claims that have been put up have been opposed by the CLP? Is that basically because of land management problems and access?

Mr HATTON: I should deal with this. I will. The Land Rights Act says that, if you are the traditional owner of an area of unalienated Crown land, you can claim that land. If you walk in and say that you are the traditional owner of that country and are claiming it, the first thing that has to happen is that there has to be a test in relation to your claim that you are the traditional owner. Do you know the stories of the land? What is your history? What gives you the right to say that you are the traditional owner? It might be someone else. So we have to test to make sure that we are talking to the right person.

Mr TIPUNGWUTI: You are quite right there.

UNIDENTIFIED: Look at Wagait.

Mr HATTON: There is not just Wagait. Look at that the Lake Amadeus one.

Mr TIPUNGWUTI: It is happening right today.

Mr EDE: I want a right of reply after this. I think we are starting to get political here. I do not know whether we want that. We could certainly debate what is being said now.

Mr HATTON: Okay, but the point I am making ...

Mr EDE: If you have to talk about it, we can have an argument. I am quite happy to sit here and debate land rights all night, all morning and all week.

Mr HATTON: All right. In answering the question, I will say that there have been disputes about whether particular areas should be claimable. I am talking about public purpose lands, national parks and so forth. Also, to be absolutely honest, there have been cases in the past when the Northern Territory government opposed land claims just as a matter of principle. It was habit. However, there are still sometimes good reasons for the government to be involved in testing claims and I believe that is what the government is doing now rather than just opposing the idea of land rights.

Mr EDE: My argument is that we have a judge's associate whose job is to ensure that those matters are dealt with properly. I do not like to see what has happened in places like Tennant Creek where the debate over the Warumungu Land Claim was drawn out for years and years for blatant political purposes. That is my argument about the way the Northern Territory government has gone on about land rights over the years but I really do not think that this is the time to talk about such things. I think we agree that, in future, we should put that behind us.

Mr HATTON: That is one thing we do agree on.

Mr FIRMIN: The question concerned what would happen if the federal government changed. My view is that that would not make any difference because the Territory government would support land rights.

Mr SETTER: I think it is also important to realise that it is most unlikely that any federal government based on the existing parties would change the present situation in respect of land rights. You have to bear in mind that it was a Liberal government which originally granted land rights in 1976.

Mr HATTON: No one wants to take land rights away.

Mr SETTER: The coalition will not take it away. It introduced it.

Mr HATTON: There is debate about whether it should be covered under a federal law or a Northern Territory law but not on the issue of whether or not land rights should exist.

Mr SIMONS: Don't you think that it is the principle of land rights which is the cause of all the arguments?

Mr SETTER: No, not at all. The Country Liberal party supports land rights. It is in our platform in black and white.

Mr HATTON: All parties do.

Mr TIPUNGWUTI: That answers my question, Mr Chairman. I have no other questions.

Mr DOOLAN: We have received all this printed material and gone through it briefly.

Mr HATTON: We have some more copies for you too.

Mr DOOLAN: We propose to go through all of it in detail, very slowly, with the council and as many people as possible, with the intention of then getting something in writing to the committee. Would that be in order?

Mr HATTON: Excellent.

Mr TIPILOURA: You need to get the people involved too.

Mr DOOLAN: Yes, absolutely. Council meetings and community meetings.

Mr TIPILOURA: It will not happen overnight. Just take your time and bring it up now and then.

Mr SETTER: And we can come back, Kevin. Once we have received your submission and considered it, we will come back and talk to you about it.

Mr HATTON: Or, for that matter, if something comes up in the meantime.

Mr TIPUNGWUTI: We need to talk about our different ideas in the community.

Mr EDE: We need to get your ideas. When we were down in the centre of Australia, people were asking: 'What about that mob up in Arnhem Land? What do they reckon about this?' We need to send your ideas down there and get there ideas up here.

Mr TIPUNGWUTI: This is why I am saying that every community will have a different opinion.

Mr EDE: We are finding that a lot are the same. Everybody wants to know what everybody else is thinking. They are saying: 'We are all in this together and we all want to be saying the same thing'.

Mr DOOLAN: This is a very important issue. Although the Tiwi Land Council has not, the other land councils have shown some opposition to discussion. I think that we, as communities, have to go back to the land councils and say: 'Look, be prepared to at least sit down and discuss it. There is no harm in that. It will be of benefit in the long term'.

Mr TIPILOURA: There is no harm in talking.

Mr TIPUNGWUTI: We ought to be prepared to talk about it. The NLC has not even talked to this community about it.

Mr HATTON: It has not bothered to talk to us. The land councils say that they know what we are doing but they have not even asked us.

Mr DOOLAN: You have to look at identities. Maybe the problem is with individuals within the land council executive. The idea of going to the whole land council is a good one.

Mr HATTON: Yes, not just the executive.

Mr TIPUNGWUTI: Discuss it with them.

Mr HATTON: So all the representatives are there.

Mr TIPUNGWUTI: Everybody, not just the the executive.

Mr SETTER: No, we should talk to the whole council.

Mr HEENAN: I think everybody should get together in one place and discuss it.

Mr HATTON: So you could get the view of the Tiwi people. That is a good idea.

Mr DOOLAN: An opportunity is coming up. The land council has ...

Mr TIPUNGWUTI: A couple of its representatives could sit down with our community members.

Mr HATTON: They could spend a day or 2 there.

Mr DOOLAN: The Tiwi Land Council recognises that a lot of the decision-making is not getting through to the grassroots level of the people in the community. To counteract that, it proposes to have a couple of meetings a year which involve not only the land council members but all the people in important positions, so that they can get together and discuss issues like this. I think that will provide an important opportunity.

Mr TIPUNGWUTI: (inaudible).

Mr HATTON: I think that covers the issues pretty well for now. Thanks for having us along.

Mr DOOLAN: Thanks very much. Tonight has certainly opened my eyes. It has been interesting to hear the various points of view. We would like to thank the committee for coming over. It is greatly appreciated and we look forward to further discussions on the issue.

Mr HATTON: It is always a great pleasure to come over here.

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

WADEYE —Friday, 12 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:

Mr Felix BUNDUCK
Mr Bernard JABNEE

NOTE: This is a verbatim transcript that has been tape-checked. However, due to poor recording, or many people speaking at the same time, some of the recordings were inaudible and unable to be transcribed.

FINAL EDIT: 14 MARCH 1991

Mr HATTON: Thank you very much for gathering to give us a chance to speak with you today. My name is Steve Hatton and I am the chairman of a special committee of the Northern Territory parliament. I have with me 2 members of that committee, Colin Firmin, who is the member for Ludmilla, and Rick Setter, the member for Jingili. I am the member for Nightcliff. We are here today to talk to you about a job that the Legislative Assembly is starting to do. We have come to explain to you what that job is and why we think it is really important for you to start thinking about this.

At the back of this book, you will see the photos of all the members of our committee. There are 6 members on our committee, 3 members from the government side, the CLP side, and 3 members from the opposition, the ALP side. There are equal numbers. The reason for that is that the ALP and the CLP are working together on this job of making this special law. You know that we spend lots of time arguing with each other. This time, however, we are working together because we think this job is so important that we cannot be fighting. We have all got to work together as Northern Territory people to get it right for future generations of people in the Northern Territory.

You have probably heard a lot of talk about whether the Northern Territory should be a state or not be a state. I have got to say that I do not want to ask you about that. I do not want to talk to you about statehood today because that is a thing for the future. Before you can even think about statehood, before you can even ask whether you think that is a good thing or a bad thing, you have to know what you want. What do you want the Northern Territory to be like in 10 years time, in 20 years time and in 100 years time? How do you want the Northern Territory to go in the future? What sort of a place do you want this to be for your children, for your grandchildren and for their grandchildren? How do you want this place to work so that everyone can live together as equals and with respect? How can you create a place that you will be proud to leave for future generations of Northern Territorians? Until you know what you want and how to get there, you cannot even talk about statehood because you do not know what you want.

What we have to start doing, as Northern Territory people, is thinking about how we want this Northern Territory to be. How do we want to go about electing the government or the parliament? What sort of things are really important? How are we going to overcome the fights between people and write a law about how people should live together? We must make a law that does not keep changing all the time but keeps going the same way.

That is what we have come to talk about today. We are going to start doing the job of writing a special law that is made by the people, not by the government. It is the people's law. You make this law to determine the way the people want the Northern Territory to go. When you make that law, you put it over the government and it becomes like the boss over the government. It makes the government go the way the people want it to go. In the white man's way of doing things, that is the way that the people can tell the government the way to go. The power is with the people.

We have been going all over the Northern Territory talking about the same thing. We have been down to Finke, Kintore, Docker, the VRD, in the Gulf and over in Arnhem Land. We have been to Alice Springs, Tennant Creek, Katherine, Darwin, the Tiwi islands and all over. We have been talking to people about how important it is for everyone to start thinking about making a law

to set the direction of our future. You must ensure that the Northern Territory goes the way that you want it to go and not leave this job to the government. For once, the people should say the direction that the Territory will take. We have come here to talk about that.

A constitution is the people's law. It is a very special law. You know that Aboriginal law has been there for thousands of years, back to the dreamtime, and it keeps going the same way all the time. It goes straight and does not change. It says how people live together, where they can go, what they can do. It is the law and it is always going that way. However, the white man's law, and many Aboriginal people tell us this, keeps on going backwards and forwards, keeps changing. The law changes with changes of government, and then back again. This confuses people. Sometimes the Aboriginal law and white man's law bump into one another and there are arguments. What we are going to try to do is work out how we can make the laws come side by side and how we can live side by side with respect for each other. But, how are we going to do that? I cannot write that, not by myself. How are you going to work out what sort of rights you have that should not change? There are some things that you think that the government should not be allowed to touch. It might be your right to vote. It might be land rights. How can you prevent the government from taking away your land rights? It might be protection for sacred sites or traditional law or culture.

It might be the right to meet like this and talk about things. Some things are so important to you that you do not want the government to be able to muck around with them.

But, how are you going to stop the government mucking around with them? You do that through this people's law. This is a law whereby the people say to the government: 'You can do that but you are not allowed to touch this thing'. You make those laws and you put them over the top of the government so that it has to go the way you are saying. That is what we are here to talk about because, if we are going to make this law, it will be a strong law that will not change unless the people want it to change. It is really hard to change it and that is the closest that white man's law comes to being like Aboriginal law. You put it in place and the government has to walk along that road. It might come over to this side of the road or that side of the road, but it has to stay on that road that the people have made. Every government around Australia, including the government in Canberra, has a constitution over the top of it. All the states - Queensland, Western Australia, South Australia, New South Wales, Victoria and Tasmania - have all got a constitution over the top of them whereby the people say: 'That is what you can do'. But, the Northern Territory does not have a constitution. We do not have a constitution over the top of the government. That means that the government in Canberra can do anything it likes here because we have no protection from a constitution.

We are going around telling the people of the Northern Territory that they must start talking and thinking about this. They must decide what direction they want the Territory to take and how they want to make it a good place for the future. We must start working to make this law. There are lots of things in there and it is not going to be easy. It is not going to be quick. We are not going to rush you. We want to give you time to think about it and talk about it as a community. Talk about what you think should go in that law. Talk to other mobs and, bit by bit, as a Territory people, we will start to work out how we are going to go. We will sort out the arguments and go the right way. However, you have to do this one properly because, when it is finished and in place, it will be there for a long time.

The last time they did this job in Australia was 100 years ago - in Queensland, NSW and the other states - and they did not ask the people. A group of politicians like us sat down and wrote it out. When they did that, they did not talk about things that are important to Aboriginal people. They did not talk about things that are important to other people either. And that law is still there, but it does not think about Aboriginal law or culture or language. They have problems in those states because they did not do this job properly. You have a chance to ensure that you make that law properly and take into account the important things so that they do not change. You make sure you put that inside that law so that the government cannot muck around with it.

That is the job that we have. If we do that job well, we will make a good place for future generations. They will know where they are going. They will have their culture, language and history and will go forward with that. If you do not do this and walk away saying that it is too hard, the Territory will be like the rest of the place and get worse and worse with more and more fights. You will leave a mess behind for other people. We have got to do this one properly. That is why we are coming around asking you to start thinking about this and about what we are saying. Look at it and have a talk about it. If there are things that you do not understand or are not sure about, give us a ring or write to us and we will come out and explain things to you. Then, when we come back at the end of this year or early next year, you can tell us what you think and have your say in this job.

However, it will not finish there. That is only the first part. The second part is that we have to set up a big committee of representatives of all the people in the Territory, people that you can trust to speak honestly for your communities. These representatives will come together and their job will be to look at what we have done. They will accept it or change it as they think necessary. They will argue out all the problems and, bit by bit, they will write it up. Because you will have people from Alice Springs, people from here and people from everywhere else in the Territory, they will have different ideas. They will have to talk and talk until they find an answer that everyone can agree with. When they have done that, they will have to take it to the people to vote yes or no in a referendum. If the people say yes, that will become the law. If the people say no, we will have to start working again and keep on working until we come up with a law to which the people will say yes.

When that is done, we will have a law that belongs to the people. It will be a strong law that you put over the top of the government. It will become the boss of the government and tell it that it has to go the way the people say. The government cannot change that law. Only the people can change that law. That is how you have your rights protected. That has never happened before in the Northern Territory. It is your chance to do something good for the future. And if we do it well and argue out all the problems, we can make a good place for the future. If we put it aside and say that it is too hard, our children and grandchildren will look back and say: 'Those old people did not do the right thing. They left a mess for us!'

Therefore, we might have a chance now, but we also have a responsibility to fix up the problems and work for the future. It does not matter if it takes 3 years, 5 years or 10 years. We must do it properly and make a good, strong law that will create a good place for the future. We have come here to ask you to be part of it and have your say. You must ensure that this law is right for your people as well as for other people. We want you to work with us on this. We want all the people to make this law.

I do not want to say any more. That is what I have come to say. Maybe my friends might want to say something and then, if you have any questions or you want to say something, please feel free to do so. We have come here to explain and to answer any questions that you might have.

Mr JABNEE: Can I ask you first?

Mr HATTON: Yes.

Mr JABNEE: You said a while ago that we have got to check the government. The rule for Aboriginal people, when we put our own way, don't change very much. Not like the government. As you just say, the government changes every rule, law and all that. We have got to track you people. It is a long way to catch you mob up, to try to understand and all that. Give us the time to think and talk about it and we will know then about this new rule. You mob making it now.

Mr HATTON: Yes, we are not going to do this one quickly.

Mr JABNEE: Yes, give it time.

Mr HATTON: Yes, there has to be time. That is why we have come now to say that we have to start walking down this road. At the moment, we are just taking that first step and telling people that we are going down the road.

But, it will take a long time. But, please, you have to start thinking now and take the time. We are not going to rush you.

Mr JABNEE: Taking a chance.

Mr HATTON: Yes, we will all take a chance.

Mr SETTER: We will come back next year and talk to you again.

Mr HATTON: If you look at that and say, 'I do not understand what that means; it is too hard to think about', you can ring us up and we will get one of our people to come down and talk about it, bit by bit. When he has explained it to you and you understand, he will go away and let you have a think about it. There is no rush, but it has to be done properly. The women will have a talk about the women's things and so on.

Have a think not just about what should go in that law but also about how we should pick the people to go on that constitutional convention. How should we go about picking that group or electing them? That is important too. They have to be the right people.

This book here has some basic ideas in it and some questions. How should you elect the parliament? What should the courts do? Those are the sorts of things to think about. After you have read that and you want some more material, there is also this book which we will leave with you. This green book, this discussion paper, took us 3 years to prepare. We looked at constitutions all over the world and all over Australia. We found different ideas and they are all in there. There are things in there that we think are good and things that we do not like. There are

some things that you will like and some that you will not like. Have a think about them and make up your mind what you believe in. Maybe you can think of some things that we forgot. We will leave that with you to think about.

Mr JABNEE: We can make a rule from ourselves? We can put law in through the government?

Mr HATTON: Yes, that is what this is about. You can set the whole thing up. However, but you have to work with everyone else in the Northern Territory too. People have different ideas, but you must start talking about it together. Bit by bit, you start to understand each other better and come to a direction that you can take side by side. Understanding what the other man wants and working out how you are going together is a big job.

Mr JABNEE: It is a big job all right.

Mr HATTON: It is bit frightening too but, if we get it right, it will be a good place, won't it?

Mr BUNDUCK: (Murrinh-Patha language).....

(English Translation) **So who else has something to say?**

Unknown: (Murrinh-Patha language).....

(English Translation) **Hey men, just like we curse (repeatedly) and talk when we're drinking, so speak up.**

Mr BUNDUCK: (Murrinh-Patha language).....

(English Translation) **He (the chairman who is speaking) has there that which he has named a constitution. We all have to work on this one (the constitution). We will make it for the Northern Territory. It's a big thing.**

Unknown: (Murrinh-Patha language).....

(English Translation) **That's right.**

Mr BUNDUCK: At the moment they have got 7 states.

Mr HATTON: 6.

Mr FIRMIN: We would become the seventh if we became a state.

Mr HATTON: We would be number 7, but that is for the future. Once we do this job and we have worked all this out and we know where we want to go and what we want, then we can ask if we want to become a state and, if so, when. But, we cannot do that until we have done this job because, until then, we will not know what we want.

Mr FIRMIN: You must have rules set down.

Mr HATTON: You have to make the rules. The people have got to make those rules. That is the first job. After you have done that, then you can start talking about the other things. But, you can take that extra step later. Right now, the federal government can do anything it likes with us. I do not believe that it would, but it could take us right back to the old Welfare days. It has that power because there is no constitution to protect us.

Mr BUNDUCK: (Murrinh-Patha language).....

(English Translation) **Okay, it is a big thing. So we especially should prepare ourselves for it. It (the constitution) will not turn us around (or point us in another direction), it will not destroy our culture. People ... We should prepare ourselves for this constitution?**

Mr HATTON: You want to talk about any other things?

Mr BUNDUCK: (Murrinh-Patha language).....

(English Translation) **Come on speak up.**

Mr BUNDUCK: Can I speak in language?

Mr HATTON: Yes.

Mr BUNDUCK: (Murrinh-Patha language).....

(English Translation) **This talk is for all of us. We are now just astonished by this constitution. This constitution is from Katherine, Melbourne, Canberra, Sydney, Queensland, Adelaide, from all over Australia and now it's coming to the Northern Territory. Only six states have it here (in Australia). It has not come to us yet. From this time on it will come to us just like he (the chairman) has proposed to us. This Constitution will come to us when we have made it. We will then be the same (all over Australia). We will not have to worry about Canberra (i.e we won't have to worry about what they say as we will have our own constitution) because the Northern Territory will have its own constitution also. That is why these men have come to talk to us.**

That is right. We will all take part in this constitution. We will enter into it. We now have that ability and the same rights to be like the rest of Australia. This constitution is a big thing and we all need to look at it and face up to it. The constitution is not here yet. We will have to wait, it is on its way.

I spoke in language but what I said is that, at the moment, we have 6 states and we are waiting till we get this constitution properly so we will be making 7 then. That is what I have said - that we are looking forward to dealing with the government people if we put a straight constitution from the community.

Mr BUNDUCK: (Murrinh-Patha language).....

(English Translation) **Well you know that all of us will have to speak straight (when we're ready for this constitution) here at this place. Yes, that's what we'll do. But, now, not yet (ie We don't have a constitution yet) .**

Mr HATTON: What is important is that the people have to start talking about this to make this law for the future.

Mr BUNDUCK: (Murrinh-Patha language).....

(English Translation) **We will all sit down and talk about this constitution like other people (i.e. local Aboriginal groups), those who understand this sort of thing, and we will talk and we'll talk about this constitution for the Northern Territory and how we will make it.**

We will make this constitution for the Northern Territory and we will make a deal with them (i.e. work it out together) with these men, or if others come (i.e. men representing the committee), if they come and do it in a wrong (unsatisfactory) way then we will say, "No, we do not want that, this is what we want". That's the way we'll do it, not just us here but for all over the Northern Territory wherever these men travel with this word of the constitution - this word they have brought to us here today.

Mr HATTON: Perhaps you can explain to them that what I am saying is that they must not trust politicians or lawyers or academics to do this job. The people have to do this job. We have come here to tell the people that they have to do this job themselves and that we cannot do it for them.

Mr JABNEE: If we have any problems, we will give you mob a ring.

Mr HATTON: If you look in the back of this book, you will find the telephone number and the address. It is a free telephone. Just ring up and speak to this man here, Rick Gray, or Joan if you want anything or you want someone to come out to talk to you.

Are there any other questions?

Mr BUNDUCK: These other people are not sure what it is all about. We will explain.

Mr FIRMIN: It is the same all around the Territory. People are all saying the same thing: 'We do not understand it yet but we must think about what we need to do'. We will come back and talk to you again when you have had a chance to think about it. It is serious business.

Mr HATTON: It is not a little job. It is a big one. Thank you.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

DARWIN — Wednesday 27 September 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Earl JAMES
Mr David SHANNON
Mr Graham NICHOLSON
representing the Baha'i Faith
Mr Max ORTMANN
representing the Small Business Association
Mr Robert TREMETHICK
Mr Richard CRESWICK
representing COGSO

NOTE: Edited transcript.
ISSUED: 9 October 1989.

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

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

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

Having said those few words, I am very pleased to note that we have a number of people here who propose to make submissions and a number of people who have shown significant interest in this subject. We may be set up in a formal way, but I hope the proceedings will not be treated in that way. The committee would like people to feel comfortable and express their views freely and have them recorded. I can assure you that everything you say will be recorded and used by us in the preparation of our reports to the Assembly. It will also be available for the consideration of the

constitutional convention. Therefore, if you do not think that we have put enough emphasis on what you have to say, a second bite of the cherry will be available later. That is part of the process of ensuring that the people will write this constitution.

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

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

Mr JAMES: I look like a witness.

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

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

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

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

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

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

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

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

elected member in local government and, as a result, I have an appreciation of problems facing those organisations.

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

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

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

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

With regard to the options for a grant of statehood, let me now move to those open to the Territory and, in particular, to make some comment on the options published in Information Paper

No 1. As stated in the paper, there are 2 ways in which a new state can be created. One is by act of the Commonwealth parliament under section 121 of the Australian Constitution and the other is by a national referendum under section 128. The select committee's preferred option is for the section 121 method. Although we realise that the method used will be decided by the federal government, we believe the Territory government should push for a national referendum on the subject and that is at odds with the select committee's view. It may be that our understanding of the system is not quite right but, from what we have read, we believe that only through a national referendum will the Territory gain equal rights with the other 6.

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

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

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

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

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

He goes on:

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

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

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

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

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

would ensure that rural interests are seen to obtain an equitable representation. The multi-member electorates suggested by the select committee may achieve that result. I am not an expert. However, it may be that consideration should be given to a number of new single-delegate districts together with the existing electoral districts as in the Alaskan experience.

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

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

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

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

Of course, this does not mean that the convention cannot be given some guidelines. The Alaskan convention drew on the experience of Hawaii, Missouri and New Jersey and a set of draft rules was devised by the Alaskan public administration for consideration by the convention. We

would hope that the same would be done here. In this regard, Fisher's treatise on the Alaskan convention contains a wealth of information which I would think must be compulsory reading for anyone making recommendations about the form and method of operation of this Territory's constitutional convention. We recommend that guidelines for the form and method of operation of the Territory's constitutional convention be drawn up using the successful Alaskan convention as a model and we offer the following comments on the subject.

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

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

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

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

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

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

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

Mr JAMES: I do have a copy.

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

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

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

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

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

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

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

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

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

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

Mr FIRMIN: Thank you very much.

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

Mr JAMES: I do not know how long it would take but I do know that it has to be professionally coordinated. This morning, I was telling someone who has been in the Territory longer than I have that I was coming to this meeting to present a submission today. He is a strong

member of one of the political parties. Even he said: 'What advantage will we get out of this statehood business?' People simply do not know.

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

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

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

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

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

Mr FIRMIN: Basically, geographical areas?

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

Mr FIRMIN: Thank you. I was interested in your comment that it was important to ensure separate recognition of Aborigines in the constitution but not by means of a treaty. We have some very similar views on that. There is support in this committee for that proposition. However, one of the hardest problems that we will face will be convincing people that we are genuinely interested in

that sort of response. At the Commonwealth Parliamentary Association Pacific Regional Meeting last week in Kiribati, the constitutional recognition of the rights of people was raised by a delegate from Victoria. In answer to a question raised by the Cook Islands in respect of sovereignty and constitutions, he responded that the Northern Territory had been pushing for constitutional development for some time, but ought not be granted statehood because it is too small, it does not recognise the rights of its people correctly and it does not do this that and the other. This was from a politician from Victoria who ought to have had much more knowledge of the way in which we are operating in the Territory and have been for some considerable time. I make that comment in the context of the need to educate people.

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

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

Mr JAMES: Exactly.

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

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

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

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

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

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

Mr HATTON: I believe that we and the constitutional convention will have some very interesting debates on that subject. In my opening remarks, I referred to the need for the Northern Territory to come to terms with its own reality. In the process of debating these issues and writing a

constitution, I believe the Territory community will be forced to come to terms with the society in which we live. The process of making the constitution is at least as important as the end result in that it will provide a vehicle which will enable us to determine how we can develop a common future that is based on mutual respect among the various cultures that make up the Northern Territory. That is an important element of the community involvement in this constitutional development.

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

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

Mr HATTON: I am not certain whether that in fact may be the case. As you know, a section 128 referendum is similar to a referendum to amend the Australian Constitution. First, there would need to be an act of the federal parliament to hold the referendum. As it is the terms of that act of parliament that would be put to a vote of the people, it is possible that the referendum could relate to the creation of a new state with limited powers. That is the reason why the committee opted for the section 121 method. Because of other sections of the constitution and the fact that it will affect the relative voting power of the existing states, it may require a majority in every state in Australia for the referendum to be carried. That is a far stricter requirement than any amendment of the constitution would require. Those were the types of reasons. We have to go through the section 121 process to begin with anyway.

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

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

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

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

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

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

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

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

Mr HATTON: Yes, we do.

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

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

Mr FIRMIN: A school assistant?

Mr SHANNON: Yes, it is a varied job.

Mr FIRMIN: Thank you. Sorry, Mr Chairman.

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

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

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

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

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

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

Mr FIRMIN: I have one question. On page 1 of your submission, you state that, if the Northern Territory becomes a state, the quality of life will decrease by 17% and the standard of living by 3% against that which we currently enjoy. Can you explain how you arrive at those percentages and what it really means?

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

Mr FIRMIN: No, not yet.

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

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

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

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

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

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

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

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

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

Mr SHANNON: Yes. The idea is ...

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

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

Mr HATTON: Or has the potential to.

Mr SHANNON: No, it does. End of story. I have yet to find an example in which it does not. In situations in which the government is continually accountable to its people, through whatever mechanism, the measures it takes are observedly better. Switzerland, for example, has provision for referenda to be held 4 times a year. They are not necessarily held 4 times every year, but the mechanism is available to the citizens at large. One of the results is that, in the 400-odd years since that was instituted, Switzerland has changed from being one of the world's most war-torn countries to a country without wars. That situation applies simply because the feedback mechanism is in place.

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

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

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

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

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

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

Mr SHANNON: Yes, that would be adequate.

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

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

Mr HATTON: It is the same process.

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

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

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

Mr SHANNON: This is the proposed Territory constitution?

Mr LEO: Yes.

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

Mr HATTON: Yes.

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

Mr LEO: Yes, that will be a problem.

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

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

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

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

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

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

Mr FIRMIN: Firmin.

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

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

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

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

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

Mr HATTON: What is this?

Mr SHANNON: The standard of living.

Mr HATTON: No.

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

Mr SHANNON: Have you got any figures?

Mr HATTON: We could get them without much difficulty.

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

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

Mr HATTON: It also removes the preliminary figures.

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

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

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

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

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

Mr HATTON: No, 11 years.

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

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

Mr SHANNON: Sorry about that.

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

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

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

Mr SHANNON: Okay.

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

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

Mr SHANNON: Will do.

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

Mr SHANNON: Yes.

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

Mr SHANNON: I would if I could.

Mr HATTON: That is what I am asking.

Mr SHANNON: Yes.

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

Mr SHANNON: Okay.

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

Mr SHANNON: Yes.

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

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

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

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

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

Mr SHANNON: Correct.

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

Mr SHANNON: Yes.

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

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

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

Mr SHANNON: Correct.

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

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

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

Mr SHANNON: Yes.

Mr HATTON: You chose the age of 17.

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

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

Mr SHANNON: Yes.

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

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

Mr SHANNON: I do not mind.

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

Mr SHANNON: Not particularly. No.

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

Mr SHANNON: That is not important.

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

Mr SHANNON: That is not important.

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

Mr SHANNON: Correct.

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

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

Mr HATTON: Fine. You say that on the hundredth day of every fourth year there should be an election. You are arguing for parliaments with a fixed term of 4 years.

Mr SHANNON: A regular fixed term, yes.

Mr HATTON: To be held on a particular day?

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

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

Mr SHANNON: Yes, or even 29 February.

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

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

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

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

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

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

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

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

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

Mr SHANNON: It is not important.

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

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

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

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

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

Mr SHANNON: Yes.

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

Mr SHANNON: No.

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

Mr SHANNON: That is a mechanism for voter recall.

Mr HATTON: Voter recall of an individual member?

Mr SHANNON: Of an individual member.

Mr HATTON: By way of petition?

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

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

Mr SHANNON: Yes.

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

Mr SHANNON: You could not.

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

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

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

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

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

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

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

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

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

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

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

Mr SHANNON: Yes.

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

Mr SHANNON: If I was running for office?

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

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

Mr HATTON: But you are talking about personal records.

Mr SHANNON: Yes, I am.

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

Mr SHANNON: Directly held by the public service.

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

Mr SHANNON: I am sorry?

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

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

Mr HATTON: Rather than 'public service'?

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

Mr HATTON: Private records.

Mr SHANNON: Yes.

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

Mr SHANNON: Yes.

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

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

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

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

Mr HATTON: So your allegiance must be to Australia?

Mr SHANNON: Yes, demonstrably.

Mr HATTON: A contractual allegiance?

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

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

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

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

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

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

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

Mr HATTON: For this one? Okay, fine.

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

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

Mr SHANNON: Unless otherwise specified by the House.

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

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

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

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

Mr SHANNON: Not without a referendum.

Mr HATTON: In any form?

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

Mr HATTON: To have any tax.

Mr SHANNON: For any form of taxation.

Mr HATTON: Right.

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

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

Mr SHANNON: I do not see how that applies.

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

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

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

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

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

Mr SHANNON: I know.

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

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

Mr SHANNON: They are appointed by the government.

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

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

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

Mr SHANNON: Who appoints the tribunal?

Mr HATTON: The parliament.

Mr SHANNON: Bingo. It makes no difference.

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

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

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

Mr SHANNON: Yes.

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

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

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

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

Mr HATTON: By changing the constitution.

Mr SHANNON: Yes.

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

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

Mr SHANNON: Yes, its books have to balance.

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

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

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

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

Mr HATTON: Privatise it?

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

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

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

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

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

Mr HATTON: Right.

Mr SHANNON: That should be the way it works.

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

Mr SHANNON: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Territory constitution. In contrast to the Tasmanian situation, section 116 of the federal Constitution is an entrenched provision which can only be changed by a national referendum.

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

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

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

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

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

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

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

Since the inception of the United Nations, the Baha'i Faith itself has been a very strong supporter of the United Nations system and the program of development of declarations and covenants dealing with human rights. In fact, the Baha'i Faith is a registered non-governmental organisation with the United Nations both at the General Assembly level and with the various subsidiary organs of the United Nations and frequently attends, in a representative capacity, at meetings of these bodies, including the Commission on Human Rights in Geneva. And it participates in the deliberations on the preparation of these various declarations and conventions. The Faith is of the view that these provide a benchmark, if you like, against which human rights should be tested.

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

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

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

Mr FIRMIN: 1776.

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

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

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

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

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

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

At page 3 of the submission are set out the freedoms of religion and so on - the freedom of speech, observance, practice and teaching and belief in worship. I have a little worry, and you may

be able to clarify it for me. Statement No 4 says: 'The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions'.

Mr NICHOLSON: Yes.

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

Mr NICHOLSON: Mr Firmin, I think the best way to answer that question would be to say that none of these freedoms is absolute. In fact, both the Universal Declaration of Human Rights and the International Covenant, from which this is taken, recognise that all these rights are to be balanced, firstly, one against the other and, secondly, against the wider public interest. In fact, the provision of the International Covenant provides for just that. It is contained in Schedule 2 to the Human Rights and Equal Opportunity Commission Act. It is part of the law of Australia, in that sense.

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

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

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

Mr FIRMIN: No, that is all right.

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

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

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

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

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

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

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

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

Mr NICHOLSON: Yes. I am assuming ...

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

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

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

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

Mr HATTON: Guardianship.

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

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

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

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

Any questions? Do you have any questions?

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

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

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

Mr ORTMANN: Good morning, gentlemen.

Mr HATTON: Please sit down.

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

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

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

Mr HATTON: Yes, we have.

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

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

The way we see it is that there should be equality, and that large businesses and union organisations who wish to stay within the arbitration system should be allowed to do so because, after all, it is a democratic right of the workers and the employers in that situation to make those decisions. However, we also see that the way small business and its employees are going today, really they are working outside the law, because they are working under a voluntary system. Although they are doing that under the guidelines of awards and wage structures, really they are

working under a voluntary employment system that, to date, is not legalised. So we seek the formalisation of that type of system and encouragement of trade-offs for productivity etc, etc. But please, do not draw any similarities with the pilots' dispute!

Mr HATTON: Basically, getting in first is it?

Mr ORTMANN: Yes.

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

Mr HATTON: Do you want to ask questions?

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

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

Mr LEO: So you would have minimum conditions?

Mr ORTMANN: Minimum conditions, yes.

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

Mr Hatton: Legally enforceable.

Mr LEO: ... the Northern Territory?

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

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

Mr ORTMANN: Yes, and I see ...

Mr LEO: And under the system developing these agreements?

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

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

Mr ORTMANN: The idea of it is ...

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

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

Mr ORTMANN: Exactly.

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

Mr ORTMANN: That is exactly it.

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

Mr ORTMANN: Yes.

Mr HATTON: Right.

Mr ORTMANN: The idea is ...

Mr LEO: Opposed to individual bargaining?

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

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

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

Mr HATTON: Presumably with the agreement of the employees.

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

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

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

Mr HATTON: So that ...

Mr ORTMANN: In some cases ...

Mr HATTON: So the rights of unionism are protected?

Mr ORTMANN: Entirely.

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

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

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

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

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

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

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

Mr ORTMANN: Yes.

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

Mr ORTMANN: That is right.

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

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

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

Mr ORTMANN: That is right.

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

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

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

Mr Firmin: No.

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

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

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

Mr ORTMANN: Yes, how it should operate.

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

Mr ORTMANN: That is true.

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

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

Mr ORTMANN: The problem we have ...

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

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

Mr HATTON: So you may totally restructure the package.

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

Mr HATTON: Under your award.

Mr ORTMANN: Sorry.

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

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

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

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

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

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

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

Mr ORTMANN: That is right.

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

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

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

Mr HATTON: Yes, that is right.

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

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

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

Mr Leo: The Mines Safety Control Act.

Mr Firmin: Come on, keep this conversation tidy.

Mr Leo: I will start on my socialist bag.

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

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

Mr ORTMANN: No, that is fine.

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

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

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

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

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

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

Mr HATTON: Right, I hear you.

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

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

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

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

Mr HATTON: A balance sheet on ...?

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

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

Mr ORTMANN: Yes, I know.

Mr HATTON: There are no financial differences.

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

Mr HATTON: Yes, I know.

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

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

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

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

Mr ORTMANN: No.

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

Mr ORTMANN: Yes.

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

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

Mr HATTON: Yes. Thank you very much.

Mr ORTMANN: Thank you.

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

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

The session resumed at 1.58 pm.

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

To explain the proceedings briefly, we try to keep this as informal as we can. Please do not feel constrained by the atmosphere or apparent formality of the structures. Our objective is to try to

find out what is in people's minds, what they think, and to answer any questions that you may have about this process of writing a constitution. The floor is yours.

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

Mr FIRMIN: Yes, I remember that.

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

Mr TREMETHICK: Yes, that is correct. I was aware, and you made it quite clear at the Palmerston meeting, that you had already put in the constitution for change by referendum but ...

Mr HATTON: That is our recommendation.

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

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

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

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

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

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

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

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

Mr HATTON: Have you any questions?

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

Mr HATTON: Mr Firmin?

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

Mr HATTON: Well, that is great.

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

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

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

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

Mr TREMETHICK: I have actually read the 2 books.

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

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

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

Mr TREMETHICK: Okay.

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

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

Mr TREMETHICK: I looked at my information on last year's referendums to try and use it as an example. I considered that the difference was that there were 4 separate referendums, and I am agreeable to that, within one referendum - or 4 major questions were put to the people. But I

felt that within a topic, or a question, which I had to vote 'yes' or 'no' on, too many issues were covered which were unrelated. One issue and another unrelated issue were addressed in that question. That has led me to feel that we need to ensure that we address only one issue in any one question.

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

Mr TREMETHICK: Yes.

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

Mr TREMETHICK: Yes, I think ...

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

Mr TREMETHICK: Yes.

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

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

Mr FIRMIN: Recognition of local government.

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

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

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

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

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

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

Mr TREMETHICK: 'Yes'-'no'.

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

Mr NICHOLSON: Trial by jury was one.

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

Mr TREMETHICK: Yes.

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

Mr TREMETHICK: That is correct.

Mr NICHOLSON: Thank you.

Mr HATTON: Thank you very much.

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

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

Mr CRESWICK: Thanks very much.

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

Mr HATTON: Yes.

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

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

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

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

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

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

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

Mr HATTON: Would members like to ask any questions?

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

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

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

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

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

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

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

Mr CRESWICK: Yes, indeed.

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

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

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

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

Mr HATTON: In detail.

Mr CRESWICK: Yes, in detail. Exactly.

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

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

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

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

Mr HATTON: The Northern Territory community will have to make a decision about the extent to which it wants to prescribe things and lock them up in the constitution and the extent to which it will seek to direct and guide by means of the second tier of law, which is legislation, or through the third tier of regulations or the fourth tier of administrative procedures. There are stages of entrenchment and the question society has to wrestle with is the extent to which it wishes to have

the right to move and adjust as time passes. Society will have to deal with such questions in the process of writing a constitution.

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

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

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

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

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

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

Mr HATTON: Per se.

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

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

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

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

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

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

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

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

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

Mr HATTON: It may not. I just raised the question because I want to stress the sorts of issues which the Northern Territory community will have to wrestle with in the writing of the constitution. This committee is really just a catalytic force in that process. We are aware of instances in which specific freedoms are written into constitutions and then superimpose themselves across the common law and a whole range of legislation. They are subject to interpretation by the courts of the day and those interpretations can vary significantly from the intentions behind their original inclusion. I am just alerting the community about the need to be very conscious of the words which are used. You have to look at these things in light of the fact that they may be dealt with at some stage by an antagonistic lawyer.

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

Mr HATTON: Absolute freedom?

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

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

Mr CRESWICK: I do not mean that.

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

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

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

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

Mr HATTON: I suspect the parent would get away with it. I realise that that is not what you are intending. All I am suggesting is that there are difficulties which you need to be aware of. Basically, your organisation is putting forward the concept that nobody should be charged for the

privilege of going to a classroom, learning from teachers and having an education in government schools. Is that correct?

Mr CRESWICK: Yes.

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

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

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

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

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

Mr HATTON: No, they cannot.

Mr LEO: Why can't they?

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

Mr FIRMIN: It provides the foundation.

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

Mr CRESWICK: Yes.

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

Mr CRESWICK: I accept all of that.

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

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

Mr HATTON: You are welcome to raise those with the committee as an individual. I appreciate that you are constrained in what you can say because you are here representing an organisation. As far as the educational matter is concerned, perhaps your organisation may want to

look at further suggestions. I note that your submission states that your organisation represents an important group, those parents who are involved in the education of their children, and that you are seeking representation on the constitutional convention.

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

Mr HATTON: If I could just finish first.

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

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

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

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

Mr HATTON: Great.

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

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

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

Mr CRESWICK: Of course. I understand that.

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

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

Mr FIRMIN: There is no interference.

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

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

Mr HATTON: This is a body of the people.

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

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

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

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

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

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

Mr HATTON: Great. Thank you very much.

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

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

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

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

DARWIN — Friday 1 November 1991

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr J Bailey
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Ms John Reeves
representing The NT Bar Association

NOTE: Edited Transcript.
ISSUED: 20 February 1992.

Mr HATTON: I formally declare this meeting of the Constitutional Development Committee subcommittee open and welcome Mr John Reeves as a representative of the Bar Association. We received correspondence which indicated that, in addition to your written submission, you wished to have the opportunity to speak to us. We have called this meeting to enable you to do that. We are in your hands. This is an informal meeting. We are merely providing the opportunity for you to express your views to us and to discuss any ideas that you may wish to emphasise. Please do not feel that there is any structured procedure.

Mr REEVES: As you will see from the correspondence, Alistair Wyvill has been making most of the running from the Northern Territory Bar Association's point of view, but he is presently on leave for about a year. Forgive me if I am not aware of any informal discussions that have taken place to date between him and the committee.

Our main concern relates to the process or the way in which the matter is proceeding and has proceeded thus far. We expressed that originally in our first submission about 3 years ago. To summarise it, we are concerned about the process and about the pace at which the matters are proceeding. We have some concerns of substance related to each of those. We believe that the process is open to criticism - indeed, we made the criticism in our first submission - that this committee should not be developing the constitution itself. This committee should be handing that over to the constitutional convention as soon as possible so that the obvious bias - and I do not say that in any pejorative sense - that a legislative committee has in the process will not permeate that process.

From the original motion - and I presume it is recorded accurately - as set out in the discussion paper on the constitution, dated October 1987, I note that the 3 stages are: the preparation of a draft constitution by this committee; the development and adoption of a proposed constitution by the convention and a referendum. We are concerned that what is happening is that this committee is undertaking the developmental stage - and that the convention should be doing that, not this committee. That is our major concern about the process.

In relation to the pace, probably because the committee has taken upon itself the development of the constitution rather than simply preparing a draft, submitting that to the convention and then allowing the convention to do the development - in other words, because you have undertaken the development thus far - the process has continued over 5 years. Frankly, we do not think much has been done in that time towards having a constitution prepared. We find it hard to believe that a constitution could not have been drafted and submitted to the Assembly for submission eventually to the convention within a period of a year or 2. In the ultimate stages, it took less time than that to have the Australian Constitution prepared, albeit the convention took some time after that. However, the basic document was put together reasonably quickly, and certainly much more quickly than has occurred in this case thus far.

In relation to the substance, we believe that this committee, which obviously is a legislative committee and represents only 1 part of the overall government structure, the body politic in the Territory, will show a bias - and I do not say that critically - toward the legislative role in the process. Indeed, on the basis of discussion papers already released, we believe that it has shown such a bias. Of course, there is much more than simply the legislative role involved in making a constitution, apart from the executive and the judiciary. Obviously, the executive is represented to

some extent by ministers such as yourself, Mr Chairman. However, there is the public as well and the interests of various minority and majority groups, not to mention Aborigines etc. We believe that the most recent discussion paper that you have issued demonstrates a bias towards the legislative role. For example, in section F, you set out the committee's tentative views and, in paragraph 2, you are clearly protective of - and naturally so, because of what you are - the parliamentary status in the overall process and the need to give it precedence over the proposals being put forward by the general public. That is in relation to referendums and whether or not they will interfere with the parliamentary process.

The second aspect is that, in our original submission, we set out 5 areas in which we believed research should be undertaken. It is at page 5: 'citizen-initiated referenda; the system of reviewing public expenditure; express and enforce a set of parliamentary ethics; an entrenched right of review of administrative decisions; and entrenched right of freedom of information and an entrenched right to due process' Thus far, you have got to the first one which does not affect the legislative or executive wings of the process. None of the others, which might be more difficult to handle from the legislative or parliamentary point of view, has been addressed. In our view, that compounds the slow pace at which it is all happening. The natural bias - I keep using that word but I do not like it or use it in a critical sense ...

Mr HATTON: Can I clarify something? There are a number of issues. We have discussed a few of things and we are still trying to work through the process of encouraging public debate on the development of a draft constitution. We are not trying to go beyond that point. Our first attempt at trying to obtain a draft constitution produced a discussion paper of a series of options because there were very clearly defined and different views and there was a wide divergence in the community. One of the matters on which we are seeking public consultation at the moment - and having great difficulty in attracting - is the community view on the structure of a constitutional convention. We have had virtually no submissions on how a constitutional convention should be constituted. We are somewhat loath to make that kind of decision unilaterally. We would very much welcome some definitive submissions on how to put together an appropriate constitutional convention. There is a series of models. In fact, there was a discussion document issued on that.

Mr REEVES: Yes, I have read that.

Mr HATTON: There are some issues about which a decision must be taken as to whether they need to be dealt with in the Territory parliament to give people confidence in terms of moving to statehood or whether they should be entrenched within our Northern Territory constitution.

Mr REEVES: Yes.

Mr HATTON: Are you talking about these issues as being matters that you would consider entrenching in a constitution?

Mr REEVES: Yes. Certainly, we believe that the referendums should be. The parliamentary ethics should be, apropos the New Guinea model. The review of administrative decisions should be. Freedom of information should be. The right to due process probably is basic to all of those. Whether the review of public expenditure should or should not be is probably open to debate. I

suppose the freedom of information may be open to debate if the right to due process is entrenched. That might be secondary to number 6.

Can I say in relation to the convention that I am surprised that we have not responded to that discussion paper. I thought Alistair had.

Mr HATTON: We have travelled the Northern Territory community by community. One of the key matters that we have raised specifically is that we would like feedback about the structure of, and representation on, the constitutional convention. It is of major concern that we are unable to obtain any feedback on that. It gives rise to concerns about whether the Northern Territory community is ready to participate in that process. We have been devoting our attention to examining some of the more complex issues such as entrenchment of traditional Aboriginal law and a number of issues relating to Aboriginal custom and law. The recognition of prior occupation by Aboriginal people and those kind of issues have been raised and we are trying to put together some fairly complicated discussion papers. Mr Nicholson is in the process of researching approaches to such issues throughout the world. At the moment, he has 13 discussion papers which, like the citizen-initiated referendum proposal, we would like to get into the community. In an effort to encourage more debate in the urban communities, we are moving towards drafting some mechanical clauses - legislative, executive and judicial. We hope that this might stimulate some debate in the urban community.

Mr REEVES: What we would say in reply is that perhaps the lack of response is indicative of the ineffectiveness of the process. If you are not obtaining any response with the current process, perhaps it is time to consider a different approach. A different approach could be to submit to the Assembly a draft constitution as you think it should be. I cannot image that one is not already prepared ...

Mr HATTON: You can imagine it, because it is not.

Mr REEVES: Well, it should be. I am not making light of the complexity of the issue, but it should be possible to make a choice and at least set out a draft even if it means having clauses that have been excluded for various reasons. These could be available in draft form so that a choice can be made as to whether they should be inserted. It could then be referred to the convention rather than trying to develop discussion and the constitution before you have a concrete basis for such debate.

Mr HATTON: In fact, we are waiting for the time to be available for the legislative draftsmen to frame such clauses.

Mr REEVES: Yes.

Mr HATTON: It must be 6 or 8 months since we have passed

Mr SETTER: Mr Chairman, with respect, it would have been possible for this committee or its predecessor to have drafted a constitution 5 years ago. Quite deliberately, we did not do that at the time. We chose to undertake a consultative process. We visited every community of any significance in the Northern Territory virtually twice during that period. This included a multitude of Aboriginal communities where we sat down with the people, presented the issues and listened to

their views. If we have been at all lax in that area, it is in communicating with urban communities. We really have not put as much emphasis on doing that as we have on consulting with remote communities. It was a deliberate decision to undertake that consultative process before we came up with a final draft. We are in that process now.

Mr REEVES: I am not being critical of consultation. However, as we said at the outset, we believe that the convention should go through that process and, undoubtedly, it will have to do that again in order to obtain the final result.

Mr HATTON: Would you trust this committee to choose the structure of the convention?

Mr REEVES: My personal view is that the third model proposed is probably the best balance between the 2 - partly elected and partly appointed.

Mr HATTON: I do too. However, the question was whether you would trust us to make that kind of decision or arrive at a firm recommendation in advance of obtaining any feedback from the community.

Mr REEVES: It has to come from somewhere. Like the draft constitution, it has to come from somewhere. What we are really saying is: 'Do it and let us move on to the next step'

Mr HATTON: And then have the war about whether or not we got it right?

Mr REEVES: Yes.

Mr SETTER: When you say 'us' all we can do is recommend to the parliament because it is the parliament which ultimately decides.

Mr REEVES: Yes, I assumed that. In short, we are saying that we should get something done. Let us have the draft constitution submitted. In a real sense, it does not matter whether you exclude or include all the things that have been talked about as long as we have something on which we can base discussion. If the convention believes that something you have excluded should be included, it can do that. Even if it does that, that is not final because, on the recommended process, it has to go to a referendum ultimately. We believe that the process has bogged down at this stage. A draft should be prepared and put to a convention as soon as possible. That is it in a nutshell.

Mr HATTON: Do you wish to outline why you believe that the matters raised on page 5 of your submission should be included in the constitution.

Mr REEVES: Yes. You will have to forgive me because I did not actually prepare the submissions. However, I am aware of them.

Mr HATTON: I am quite certain that you have fairly clear views on the subject.

Mr REEVES: Yes. In respect of the citizen-initiated referendums, we proposed that in relation to constitutional change only. We did not propose it broadly. I think that is made clear elsewhere in our paper.

Mr NICHOLSON: (Indecipherable).

Mr REEVES: Yes. I know that that is what was intended.

Mr HATTON: What percentage of voters would you recommend?

Mr REEVES: In relation to a constitutional amendment, didn't we propose 20%?

Mr NICHOLSON: I do not remember.

Mr HATTON: The letter refers to 'a certain percentage'

Mr REEVES: I note that the range is from as low as 1% up to as high as 20%. I believe that the percentage has to reflect the importance of the step to force a change to the constitution or at least a consideration of a change to the constitution. We would suggest that it cannot be as low as 1% or 5%. It must be somewhere approaching the higher level.

Mr HATTON: Of registered voters?

Mr REEVES: Yes. Of course, the expense and other elements involved also make it important that it be a significant number of people. On the other hand, it should not be so high a percentage that significant minority groups may be excluded.

Mr HATTON: Or significant interest groups.

Mr REEVES: Yes. That is where the balance lies.

Mr BAILEY: Would there need to be a way of preventing a significant interest group continuing to push an issue? If the percentage were set at 5% or 10% and a referendum were held and lost, could that group be prevented from calling another referendum by getting the same 5% or 10%?

Mr REEVES: Graham probably knows better than I do, but I believe there are repeat limitations in the United States.

Mr NICHOLSON: Yes. Some of them prohibit it within a certain number of years - 5 years is the norm.

Mr BAILEY: Would that be seen as reasonable?

Mr REEVES: I think so. If you go through the process and incur the expense, it would ...

Mr HATTON: Turn it into a farce?

Mr REEVES: Yes.

Mr HATTON: You may get a significant vote to exclude that provision from the constitution if it became abused.

Mr REEVES: Yes.

The system of reviewing public expenditure - Nos 2, 4, 5 and 6 are all aimed at controlling the executive. Perhaps a better way of putting it is that it is aimed at making the executive more responsible and accountable. I am not saying that specifically in relation to the Northern Territory. In general, in parliamentary democracies around the world ...

Mr HATTON: Let us not worry about whether you will be offending us or not. You will not be. The members of this committee understand the process of debating matters in principle rather than in practice.

Mr REEVES: We believe that the problem with parliamentary democracies around the world is that the executive has become too powerful and not answerable to the parliament. The parliament is becoming more and more irrelevant and the executive is becoming more and more powerful even to the extent of not being controlled by the judiciary in many areas. Unless you entrench a right of administrative review, it is very difficult to obtain a review of administrative decisions. At present in the Northern Territory, the areas in which you can obtain a review by the court are limited. Certainly, there are a number of situations where you can, but it is still much more limited than it is, for example, in the Commonwealth area where there is a statutory right of administrative review.

Likewise the review of public expenditure. There is no public right or there is no entrenched - 'entrenched' is not the best word - but there is no provision that makes the executive's expenditure accountable in a public sense. The only system that operates is the Auditor-General system.

Mr HATTON: And the Public Accounts Committee.

Mr REEVES: Well, yes. I am smiling more at Queensland's Public Accounts Committee situation because it does not seem to work when you have people who are either in the executive or associated with the executive reviewing the executive's functions.

Mr HATTON: It is impossible to legislate, even constitutionally, against somebody who will attempt deliberately to break the law.

Mr REEVES: I know that.

Mr HATTON: You will not solve that problem.

Mr REEVES: I am well aware of that.

Mr BAILEY: But there are still limitations on the review of expenditure.

Mr HATTON: There are 2 issues. Firstly, there is the principle of whether there should be a process of public accountability of, say, expenditure and, if so, to what extent. Secondly, there is the matter of the extent to which it should be entrenched - by statute or in the constitution. This is the kind of in-principle debate that we need to have. My personal view is that, if you entrench something in a constitution, you are entrenching something that has the potential to be abused and is theoretically immutable. It is a foundation stone on which you will build statutes and administrative procedures. The extent to which you entrench matters in a constitution is the extent to which you remove the capacity to adjust to changing times and circumstances.

I do not necessarily expect you to respond at the moment. However, to what extent would you entrench in a constitution, say, the review of public expenditure as distinct from arguing the cause of some legislative or statutory expenditure review process? Even during the short time that I have been in parliament, government accounting and expenditure processes have changed very dramatically.

Mr REEVES: You have expressed one side of the problem. The other side of the problem is a government that simply dismantles all those things because they are not entrenched. Such governments do that because they do not want to be controlled. Normally, they end up becoming corrupt because there are no controls. We have had plenty of recent examples of that in Australia.

Mr HATTON: To what extent can you entrench something in a constitution and still leave room to move statutorily?

Mr REEVES: What you mean is a statement of principle rather an express process.

Mr HATTON: Personally, I would welcome the views of the legal fraternity on those kinds of issues. That is really where it starts. We could decide, in principle, whether it should be entrenched in a constitution or even whether there should be public accountability at all. However, if that is what the community wants, we need to think through those issues and come up with some concrete proposals to put to a constitutional convention.

Mr REEVES: One way of doing it is perhaps what you might have been suggesting. Rather than expressly saying that there is to be a review of public expenditure or not, you could set out principles in something like a bill of rights.

Mr HATTON: Public accountability.

Mr REEVES: Or due process.

Mr HATTON: That may well be an appropriate and practical response.

Mr REEVES: You leave it to the legislature to set up the legislative framework within that and or the courts to interpret that, as occurs with the Bill of Rights in the United States.

Mr HATTON: That is another issue that I would like to discuss with you when we get through these - the relationship between the courts and parliament.

Mr REEVES: Right, but I have to go to a court at about 9.30.

Public expenditure, administrative decisions, freedom of information and due process are all different facets of the control of administrative action or the executive. In respect of entrenchment in the constitution, my personal view is that you are right in saying that it is too narrow to entrench a statement such as public expenditure review. It is likely to be too difficult to change and, therefore, will result in a constitution that will get out of date. Broader principles probably is a better way to do it in the constitution with the backing of a legislative framework.

However, there is one that falls outside of that. We believe that parliamentary ethics should be entrenched. The aim of a set of parliamentary ethics is to impose some controls on the legislature. It is the legislature that otherwise would have control over the legislation if the constitution did not have that particular area entrenched in it.

Mr HATTON: Is there a precedent for those kinds of provisions?

Mr REEVES: The one that we discussed when we made our submission was New Guinea. The recent example with New Guinea was interesting. If there had not been that code of ethics, it is interesting to speculate what would have happened. In a sense, it could be argued that the code of ethics brought about a resolution of that stand-off. They could well have become involved in a deep constitutional crisis.

Mr HATTON: In his letter, Alistair goes beyond parliamentary ethics. He mentions senior public servants, judicial officers etc. In relation to the matter of ethics in public office, may I suggest that your organisation perhaps reflect on the fact that many of the concerns relating to public impropriety - and the most difficult to deal with - do not occur at the most senior levels of government or public administration. Sometimes these occur at the most junior levels. If public ethics are to be entrenched constitutionally or by statute, perhaps it should be extended to public officers across the board.

Mr NICHOLSON: That may be different for different officers.

Mr HATTON: That may be true.

Mr REEVES: I did not have any discussion with Alistair before he submitted this.

Mr HATTON: I am not asking you for an answer now, but it might be something worth considering.

Mr REEVES: I will give you my personal view on it. I would not necessarily agree with what Alistair is saying to the extent that he is saying it - that is, that it should extend through the public service. Certainly, it should include members of parliament and, questionably, judicial officers. Public servants are controlled by the law in the normal sense. If there is corruption in breach of the criminal law, they are liable. That applies also to parliamentarians and judicial officers but, because they are makers of the law, they are in a different category and, in our view, should be subject to some additional control by way of the constitution. That is why we raised it.

Mr HATTON: I would be interested in seeing that developed further. My personal view, on the basis of my experience of dealings in government, and not specifically in the Northern Territory, is that the greatest incidence of impropriety and abuse of citizens' rights occurs within the public administration area. It occurs in a secretive and destructive way and it is something for which there should be a high level of accountability. The Westminster parliamentary system places them outside of the direct control of political masters.

Mr REEVES: If you have the review of administrative action and an entrenched right of due process and that is interpreted broadly - and that really depends on the judiciary doing it properly - that will control the public servants. However, along with it, you must have freedom of information.

You are quite right that, if they can do it behind closed doors, you cannot break the ice to get at them.

Mr HATTON: I will raise the 2 concerns expressed in relation to freedom of information.

Mr REEVES: I can imagine that the first one is expense.

Mr HATTON: No, expense relates to neither of them.

Mr REEVES: It is certainly is the one that the Commonwealth keeps trotting out.

Mr HATTON: The first is that, with freedom of information, it is difficult for a member of government to obtain frank and honest advice in a clear and written form if it may become public in the future. You end up receiving advice that is bland nonsense because the advisers will not commit what they really think to paper.

Mr REEVES: The way to get around that is to obtain it orally.

Mr HATTON: Having a record of where you are going makes life very difficult too. That is one of the concerns. The second concern is the balance between public accountability, freedom of information and privacy.

Mr REEVES: The Commonwealth legislation endeavours to address that and there are other models all around Australia. We have the advantage of seeing how those have worked and being able to adapt them.

Mr HATTON: Again, there is the issue of whether you entrench those by way of the constitution or by statute and the power that you may give to the judiciary to determine what constitutes an appropriate level of freedom of information. Of course, the courts are a non-elected arm of government and are not accountable to the populace.

Mr REEVES: They are not an arm of government, but they are part of the body politic. In your administrative review legislation, unless you give the courts the right to make a decision on the facts, on the issues, all they can do is control the process and ensure that the process is right. The Commonwealth legislation gives the courts the right to make their own decisions in relation to some areas. Whether that is the best process or not is a matter which could be debated for hours. Certainly, from our point of view, I do not think there is any doubt that you should have the process subject to review - that is, balancing the need for privacy against the need to ensure that people can obtain access to information and prevent secret, corrupt deals.

Mr HATTON: And also recognise the need to protect commercial confidentiality or individual privacy.

Mr REEVES: You balance that within the legislation. There are models to do that.

Mr BAILEY: There is another area that seems to be moving in the same direction as freedom of information. I refer to the so-called whistle-blowers legislation. It seems to be a fairly new concept and I believe that it is mushrooming in the United States. Has that been discussed by

the Bar Association? Is it likely to be something that you might like to add to freedom of information provisions? In other words, should we be protecting the rights of individuals to disclose what they consider to be inappropriate administrative or organisational actions?

Mr REEVES: We have not discussed it. The expression 'whistle-blower' originated in England. It arose from a court decision which protected a particular public servant who had disclosed confidential information. I am uncertain whether England has introduced legislation to deal with this - I do not think it has. Certainly, as you said, the United States has. raise that simply to indicate that, in certain areas, the courts have introduced these things themselves as a development of the common law and as a mechanism for controlling the executive to ensure that, if people rightly and reasonably disclose information about a corrupt practice within the executive, they will be protected by the law, as they should be.

Mr BAILEY: But, there is no legislation on this in Australia at the moment.

Mr REEVES: As far as I am aware, there is none in Australia.

Mr BAILEY: There is a draft bill that has been introduced only until they can get something better.

Mr HATTON: Is that in the Commonwealth?

Mr BAILEY: No. Queensland has introduced a bill which they acknowledge only as an interim bill.

Mr REEVES: We have not discussed it, but it is an interesting idea. Going back to what we were talking about earlier, if you entrench certain things and exclude others which may arise, such as this, you will end up with a constitution which does not reflect current attitudes. There is a good argument for setting out a broad statement of principles and allow the courts or the legislature to develop the process as they go.

Mr HATTON: That has been one of the things that we have been wrestling. If I can just come back to your earlier comments, in defence of our committee ...

Mr REEVES: I am not trying to attack the committee.

Mr HATTON: This committee is comprised of individuals who have individual viewpoints. However, as openly as we can, we have been trying to put before the community, by means of a series of discussion papers, the most complex issues relating to the framing of any constitution - issues relating to rights and relationships between people. What could be called the mechanical clauses of the constitution - the legislature, the judiciary, the executive and their inter-relationships - are relatively straightforward to bring together and there is a great deal of understanding in respect of those areas. However, in addressing modern society, we are conscious of the necessity to deal with the issues that you have raised and a number of other issues that people have raised with us. I refer to matters such as whether there should be specific Aboriginal representation in parliament along the lines of the New Zealand model relating to Maoris. There is the issue of entrenchment of Aboriginal custom and law and the protection of Aboriginal culture. There is the issue of whether there should be some recognition in the constitution of the prior occupation of the Northern Territory by

Aboriginal people and the legal consequences of such recognition. We are trying to wrestle with such issues and produce some papers for consideration by the community so that, when a constitutional convention is established, people will have the information necessary to debate the issues. Around this table, we would have as many views on such issues as there would be in the community.

Mr REEVES:

But something needs to ...

Mr HATTON: It does need to come together.

Mr REEVES: Yes.

Mr HATTON: In essence, we need to determine how we should go about bringing together a constitutional convention. If we can prepare those discussion papers, together with the 3 mechanical clauses of a draft constitution and other background papers and submissions, we will have sufficient information to put before a constitutional convention.

Mr REEVES: I do not know what the time frame is. However, if we proceed at the present pace - and I suppose that I am being critical here - we will not have this done within our lifetime.

Mr HATTON: I think we will.

Mr BAILEY: Some of us are still fairly young.

Mr HATTON: There are also certain budgetary limitations on the speed at which we can progress.

Mr REEVES: Yes, I am sure that . . .

Mr HATTON: That is not an apology. I would like to make a specific request. I would like you to ask your organisation to put some specific and formal views on the structure of a constitutional convention. We would be thrilled if your organisation took up the challenge of stimulating public debate on the subject.

Mr REEVES: Yes. You would be aware that the Law Society was instrumental in kicking one off about 4 or 5 years ago.

Mr HATTON: In 1987. I addressed it actually.

Mr REEVES: I certainly shall take that back.

Mr HATTON: Particularly on those questions.

Mr REEVES: Yes.

Mr HATTON: We must remember that we are dealing with - and I should not need to tell your organisation this - relationships between the Northern Territory government and the Northern

Territory people. This process of the constitution is not dealing with the relationship between the Northern Territory government and the federal government.

Mr REEVES: No.

Mr HATTON: It is a separate process.

Mr REEVES: Yes.

Mr NICHOLSON: I think that the earlier exercise was more directed to the ...

Mr HATTON: Yes, the relationship with Canberra. We have stepped back from that and are now dealing with putting the internal framework together. It is true to say that we have gone through a significant learning curve and, the more we learn, the more we realise how much we need to learn and how difficult and complicated the task is. It is such a fundamentally important step for the Northern Territory people that we are trying to put all the options in front of them. It has not been a matter of our being lax at all. It is a matter of our trying to be particularly lucid.

Mr REEVES: No, I am not saying that.

I will certainly take that back. You can definitely take it that we will make a submission on the form of a constitution convention. In relation to the public debate, if the discussion papers are to be issued soon and I take it from what you are saying ...

Mr HATTON: This one has just been issued. They will be issued separately as soon as they are ready rather than all at the same time. It takes time to have them prepared.

Mr REEVES: Yes.

Mr HATTON: Unless you fellows want to donate some time to help us out.

Mr REEVES: We might ...

Mr BAILEY: Pass on that one.

Mr REEVES: We might get the debate going next year then. There might be 4 or 5 of them issued by early next year?

Mr GRAY: I would say 2 or 3.

Mr REEVES: Okay.

Mr HATTON: The next one is on Aboriginal customary law. As you can appreciate, that has been fairly complicated to prepare.

Mr GRAY: It will be a 200-page document.

Mr REEVES: Certainly, I will take the matter back. I imagine that the Bar Association and or the Law Society would be quite happy to continue where we left off a few years ago and promote a public debate on the issues.

Mr HATTON: And this set of issues that we have been talking about this morning. Developing that concept a stage further would be a very useful exercise.

Mr NICHOLSON: World-wide research suggests a new era of constitutional reform ... (Indecipherable) ...

Mr HATTON: We have covered a fair bit of ground and I am conscious of the time.

Mr REEVES: Thank you, Mr Chairman. I do need to get away. I am sorry to cut it short. Thanks for the opportunity to make a submission on behalf of the Bar Association.

Mr HATTON: Certainly, if your association wants to come back to discuss any further matters with us, we would be most thrilled to work with you.

Mr REEVES: Thank you.

Mr HATTON: Thank you for your attendance. I formally declare this meeting closed.

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC HEARING

DARWIN — Wednesday 26 July 1995

PRESENT:—

Committee:

Mr S. Hatton
Mrs M. Hickey
Mr T. Baldwin
Mr P. Mitchell
Mr W. Lanhupuy
Mr J. Bailey

Officers assisting the Committee:

Mr R. Gray (Executive Officer)
Mr. G. Nicholson (Legal Adviser)

Appearing before the Committee:

Mr Alistair Wyvill
Mr Michael Spargo
Mr Trevor Riley
Mr John Reeves
representing the NT Bar Association
Mr Peter Carroll
Ms Sandra Rew
Mr David Shannon
Mr Jeff Hoare
Mr Allan Whyte
Ms Joanne Lee

NOTE: This is an edited transcript.

Issued: 29 August 1995

Final Edited Version

Mr HATTON: I call this meeting of the Sessional Committee on Constitutional Development together, and welcome the representatives of the Bar Association.

The purpose of today is to answer any questions from members of the public in respect of the work that is currently taking place in relation to our role in the constitutional development of the Northern Territory. Our secretary has received submissions from members of the public and organisations. These have covered the work that we have done to date and views about where we should be heading.

In opening, I should note that our committee has been operating in various forms since 1986. To define it in simple layman's terms, our role has been to research and investigate issues associated with the development of a Northern Territory constitution, including consultation with the people and development of a draft constitution to be submitted to the parliament. The committee's role also includes putting recommendations to the parliament on the processes to be followed, firstly in creating a Northern Territory constitution, and secondly for the achievement of statehood for the Northern Territory. The ultimate goal of the committee's work is that the Northern Territory will become a state in the Commonwealth of Australia.

The committee is in the process of developing a draft constitution for the Northern Territory. In parliament, we have already tabled a recommendation on the formation of a constitutional convention of Territorians. We are recommending that this convention be charged with the responsibility of taking our work - including all submissions, discussion documents and our draft constitution - and working through it to develop a proposed constitution which would eventually be put to the Northern Territory people at a referendum.

Our target date for the referendum is 1998, which would then enable a period of 2-3 years during which negotiations would be held with the federal government of the day, to clarify conditions and circumstances for a transition to constitutional statehood in 2001, the centenary of federation. That is our broad timetable.

Towards that end, we aim to complete the preparation of a draft constitution by the end of this year, so that it can be tabled and debated in parliament early next year. In addition, during the first half of 1996 we aim to submit proposed legislation for the establishment of a constitutional convention with the objective of having that convention in operation by the middle of 1996. That is the framework for what we are doing.

During the June sittings of parliament, we produced what we call an exposure draft for the new constitution. This is not a complete document in any way. It reflects our work to date on the first 7 parts of our proposed constitution. As you can see, we have put forward a number of options in relation to specific clauses. For example, there is a choice in relation to the constitutional entrenchment of single-member or multi-member electorates, or whether it should be left to be determined by legislation at any given time. Three options are presented in terms of how the constitution could be constructed to achieve those results.

Most of this document deals with what will probably be described as the mechanical clauses of the constitution. It has not yet dealt in detail with specific issues. These matters, such as bills of rights and entrenchment of individual or group rights, are covered in discussion papers. Some of

those issues are yet to be fully worked through. We are keen to receive views and submissions on all of those areas.

Please understand that this is an exposure draft. The committee has called public meetings to find out the views of the community. We want to know whether we are heading in the right direction or whether people feel that we should be making adjustments. We want the document which we produce for the parliament to reflect the views of Northern Territory people as closely as possible. Maggie, would you like to add to those initial points?

Mrs HICKEY: Steve covered the basis of what we are about in this round of consultations. People will be aware that during the past few years we have been moving around the Northern Territory, both in urban areas and some Aboriginal communities. We have also tried other means of accessing Aboriginal people, such as through ATSIC regional councils.

For the next 6 months or so, there is a real opportunity for the public to have input before the constitutional convention is established. By December of this year, we would hope to have gathered as much written and verbal material as possible prior to the election of that constitutional convention.

As Steve said, we are very keen to receive submissions from associations such as yours and from individuals. We are also very ready to meet with specific groups at their behest, if they feel that that would be useful, to extend the information exchange between our committee and the community.

This really is a draft. It is something that we will provide to the constitution convention to deal with however they wish. It is a guide to the way in which we feel things should be moving along. We feel that the matter should ultimately be in the hands of Territorians, although as parliamentarians we have particular views. We certainly have a view on things like citizen-initiated referenda, which is not necessarily in accord with the views of the general public, who will take this and run with it to formulate a constitution for the Northern Territory.

I think that is probably all that I really want to say, except that I think that this will not be the last opportunity for individuals or groups to have input. We welcome input at any stage.

Mr HATTON: Having said that, does anybody want to ask questions?

Mr RILEY: Perhaps I should introduce us first. I think most of you know John Reeves. Michael Spargo and Alistair Wyvill are also in attendance. I am Trevor Riley, President of the Bar Association. As you probably know, we represent all barristers in the Northern Territory. We are affiliated with the Australian Bar Association and, through it, the Law Councils of Australia. So we have access to very significant resources. We also have our own learning in law school and subsequently, which has given us expertise in some of the areas you are dealing with. In our professional capacity, we do not pretend to be able to offer much comment on the social issues. We have our personal views on those. We can, however, offer considerable comment on the legal issues.

Firstly, we would offer our congratulations to the committee on the exposure draft. I am pleased to hear you say, Mr Hatton, that the document is not as wide as we perhaps thought it was.

I do not know whether you all have it yet, but we have provided a written outline of a submission for this point in time. Some of that may reflect the perception we had, which was that this was basically the document which would go up, and that it would not be expanded to cover other areas. You have answered one of our questions in relation to that, and I was very pleased to hear it.

We are here for 3 purposes today. The first is to inform you that we will be making written submissions in relation to some of the issues that arise and are not yet addressed in the draft. We will hopefully be doing that within the time limits you have set. Secondly, we want to offer our assistance, given that we do have access to fairly wide resources and some expertise within our ranks.

We do not claim to be expert in fields other than our own - that is, as barristers and people who have the capacity to assist with drafting and with legal concepts, and also in promoting debate within the community. One of our concerns, which I am sure is also one of your concerns, is that the debate in the community be as wide as possible. Debate on the issues needs to be broad as well.

You have already answered some of our concerns in relation to the third area in which we would like to contribute. Between now and the forming of the convention, and more importantly before the convention, we believe the debate needs to be as wide as possible.

For example, our written submission makes comment on the preamble to the exposure draft, which is a sort of legal history of the Northern Territory. It is appropriate that such a history be contained in the document but, without expressing a view either way except to say that it is an issue which should be raised for debate, we wonder whether it should not express the aspirations of the people, given that this is a document designed to last not for a decade or but perhaps for one or two hundred years.

If we have a single criticism of the document at the moment, it is probably that it is too legalistic. It may be that the community would wish that some of their aspirations be recorded in the preamble, to give colour to the document. There are many examples of that. The American Constitution is one of the most obvious. We would invite the committee to consider the prospect of putting forward a number of different preambles. You have the current one, and I suspect that there may not be a great deal of dissent from what you have done there.

Perhaps, for the purposes of debate, you might include an alternative preamble or a number of alternatives, including things that might be seen as the aspirations of the people of the Territory. These might include freedom of political activity and the freedom to have a multicultural community living in harmony together. Those sorts of things should perhaps be put up for debate. The people may say that such things are not appropriate for inclusion, and the committee may form a view on that, but the matters should at least be debated in public and at the convention.

Of course, you ultimately need a document such as this. However, if this is the only preamble which goes to the convention, people will not be able to fully ventilate the alternatives. It is like an agenda. It sets the framework for debate. We would invite you to broaden the discussion. There is no reason why you as a committee, or as individuals, should not say what you think is right. You should, however, provide some alternatives.

Mr HATTON: In respect of that, is the paragraph at the bottom of page 15 heading towards the sort of view that you are talking about?

Mr RILEY: Yes. It may be much broader than that. People may want a whole list of things.

Mr HATTON: It is a question of what you put into it. There is a philosophical statement in the preamble, and what you may consider in the context of what might be referred to as the bill of rights type of issues.

Mr RILEY: They are interrelated. If there is no bill of rights, you might like to see more put in the constitution. If there is a bill of rights, you may not need a preamble along the lines we are discussing.

Mr HATTON: Integrated within the document, we have sought to cover rights that, in the committee's view, should be entrenched irrespective of any bill of rights or other statement of rights - for example, a person's right to vote by way of secret ballot. Such matters are integrated within elements of the draft. I am not suggesting that it picks up all the pieces. There are other things like freedom of speech.

Mr RILEY: What you are saying is that they may be addressed within a bill of rights.

Mr HATTON: One of the debates is whether we should have a bill of rights, whether such matters should be dealt with under the constitution, or whether they should be covered under the concept of organic law,

Mr RILEY: That is an interesting concept.

Mr HATTON: It could also be entrenched by way of legislation. There are options. Do we deal with the evolution of our democratic right through the processes of conventional common law history? It may be sufficient. There has been a lot of debate around those particular questions. I would be very interested, whether today or at some future stage, to hear the views of the Bar Association on such matters.

Mr RILEY: Save for the separation of powers, we have deliberately refrained from forming a view on significant aspects. Rather, we have said that we would like such matters to be promoted as open for debate, so that people ultimately have a choice as opposed to being steered in one direction.

Mr HATTON: Actually, in 1987 we produced a document towards that objective. It set out all the different options for a constitution. It went nowhere. That is why we decided that we really have to do something which has the terminology of a constitution. We have included options so that people such as yourselves can say: 'You should change this and you should add that'. It starts to focus the debate much more.

Mr RILEY: I started off by congratulating you on this document. One of the reasons for doing that was that you have put forward a proposal and you have given some alternatives. I suppose all we are saying is: 'Do not limit it to that. Make that applicable to areas such as the

preamble and put forward some alternatives there'. Given the experience it now has, this committee will obviously be quite influential if it says that it thinks something is the way to go. People should have the alternatives so that they can participate.

Mr HATTON: If the association is interested in bringing some ideas forward in respect of the preamble, I am sure that the committee would be very interested. This is going to be a people's document. It is not up to us and our legal advisers to sit here and do all the writing. We are trying to get to the stage where people say: 'We think this should be included and here is a suggestion on how you can adjust the words to express those aspirations'. I think the Bar Association would be one of the more competent organisations in the Northern Territory to be able to address some of those issues. It is the nature of your profession.

Mr RILEY: Yes. We could produce alternatives and people can tell us which is right. The convention will tell us.

Mr HATTON: At the end of the day, the convention will be the people who finalise the document.

Mr RILEY: The other matters we have raised are along similar lines, although the separation of powers is one issue that will be probably a major debate at another time.

On page 2 of our written submission, we talk about fundamental principles and whether they should be incorporated. We list some of them on page 3. These should at least be covered as options for people to discuss and vote on. Given what you have said, they may be incorporated at a later time. However, at the moment they are not necessarily clearly set out in the exposure draft. We have talked about some of them already - freedom of communication, freedom of religion and so forth. But accountable government, for example, does not appear there. It is there as a concept but it does not appear specifically. You do not have a public auditor or a ...

Mr HATTON: It is not entrenched constitutionally. This is one of the debates that we are trying to work through. How much goes inside the constitution and how much do you deal with through the legislative framework? What should be in the constitution and what should be in some other legislative form? What provides the framework for that legislation? We were not planning to have a constitution that is 500 or 1000 pages long.

Mr RILEY: And, of course, what is appropriate today may be entirely inappropriate in 50 years' time. I agree that you should keep it as broad as possible but I expect that the concept of accountable government will be the same 50 years from now.

Mr HATTON: One would hope so.

Mr RILEY: Otherwise we would not be here.

Mr HATTON: We can dream.

Mr REEVES: Much depends on the amendment provisions for the constitution. If the constitution can be changed fairly easily, you can treat it in the same way as general legislation.

Mr HATTON: We have not drafted that yet, as you are obviously aware. I know that it is the unanimous view of our committee that we would be recommending that the constitution must be amended by way of referendum of the people.

One of the issues that we are debating is whether or not we would incorporate in amendment provisions of the legislation, mechanisms enabling such processes as citizen-initiated referenda. This would involve a power, if a certain number of signatures were collected on a petition, to force the parliament to put a question by way of referendum. This empowers the people to have more control over their own document. This has arisen because, no matter what people may think, under our federal constitution a question is not put to a referendum unless the federal parliament decides that it will be put. We are debating and discussing amongst ourselves the question of putting such authority into the hands of the people of the Northern Territory through such a mechanism.

Mr WYVILL: There is an additional point here. You mentioned the dichotomy between putting it in a constitution and putting it in legislation. I am sure you are aware that, during the last 3 years, the High Court has been busily implying fundamental freedoms in the Commonwealth Constitution. There has been criticism of that role of the High Court. It has been seen to be undemocratic that 7 people in the High Court can to decide that suddenly we have an entrenched right which you cannot find in the constitution.

Mr HATTON: They are 7 unelected and unaccountable people.

Mr WYVILL: That is right. One of the points we are making is that, if you do not discuss what these fundamental issues are now, somebody will do so later on. They may be the unelected and unaccountable judges, as you say. We are saying that, with this constitution implication trend, it may be prudent to bring it out in the open now and state it clearly. If you do that, no one can come back later and say: 'Hey, you forgot to mention this'.

Mr HATTON: It is true.

Mr REEVES: That is largely a result of the Australian constitution being ironclad. You cannot change it easily.

Mr HATTON: It is like the process of the evolution of common law. It moves as broad community attitudes shift. As social attitudes shift, there is a gradual reinterpretation of the common law. If you tie it down too tightly, you may limit that capacity for the expression of the basic direction of society. If you require an amendment to the constitution to get interpretations, you may well be doing the community a disservice by freezing it in a sociological time warp. That is the balance we have to wrestle with.

Mr WYVILL: The problem is that the Australian constitution is just bereft of anything. If you read it, it is a most unenlightening document. It is more important for what it does not say than what it does say. Obviously, you are heading in a different direction here, which may solve the problem.

Mr HATTON: The concept of expressing people's desires about the sort of society they want is interesting. It may be useful to consider it in the context of expanding paragraph 15, which states:

The people of the Northern Territory voting at the referendum have freely chosen to associate in accordance with this constitution as free, diverse yet equal citizens and to be governed in accordance with democratic principles.

I think we are heading towards the concept that you were referring to.

Mr REEVES: That is very broad. It could be in any constitution in the world.

Mr HATTON: It could be in the Russian communist constitution.

Mr REEVES: The Territory is in a unique position, say in relation to the proportion of our population who are Aboriginal people. There is no expression of that uniqueness in the general preamble but it is something that Trevor mentioned. For example, in clause 15 you might express, on behalf of the people of the Territory, an aspiration to have harmony between the races. A simple proposition like that might sound like a motherhood statement. However, those are the sorts of aspirations we think you should be expressing in this sort of document.

Mr WYVILL: This is a document that will be read by a lot of school children. It is important that it be understood, not only by lawyers and people who argue about it in court, but by our children. They should be able to see what we were thinking about when it was drafted.

Mr SPARGO: The school children will not read it if it is like the Australian Constitution. At least the preamble should be considered at that level. It might not go beyond that.

Mr RILEY: This point may have been made earlier. If a High Court looks at the document and is going to imply rights, it will have to do so in that context. Everything we are saying at the moment seems to be pushing towards a more open and wider preamble. But I say again, just to make sure that it is clear, that we do not have a view as an association. All we are saying is that these things need to be discussed.

Mr HATTON: It is a good point and something that we can address as a committee. I repeat my earlier offer. Perhaps you could suggest a form or forms of words that we could look at and consider. We understand the principles that you are referring to. You might be able to assist us in our processes.

Mr RILEY: We do have some views on page 4 paragraph 4, relating to separation of judicial power. We will provide you with a more detailed submission on this. We are concerned that the separation of powers really does need to be built into the constitution. I was going to say 'especially in this community' but I think it is essential in every community.

The difficulty is that, at least on our reading of it, the exposure draft would effectively permit a parliament to remove the jurisdiction of the Supreme Court. We have all had to deal with the basics of the separation of powers. Effectively, under this constitution, it seems to me that the parliament could remove the power of the judiciary, the legal arm, simply by taking away the

jurisdiction of the court or, alternatively, giving it to someone else along with the court in such a way that the court becomes just a useless arm of government.

Mr HATTON: I am certain that it was not our intention to take away the authority of the judiciary or its important function as part of the democratic governmental structure. Rather, we were seeking to ensure that we did not end up with some sort of arbitration process to sort out the constitution. We did not want to restrict the future Northern Territory with those sorts of constraints.

Mr WYVILL: You have the recent decision of the Human Rights Commission. The approach we suggest in terms of drafting is this. Rather than giving a blanket power to judicial authority through other bodies, you should draft an alternative which defines quite specifically the circumstances under which you think it appropriate that judicial power be given elsewhere and state expressly that reserve areas cannot be touched.

Mr HATTON: Perhaps our legal adviser, Mr Nicholson, might want to join this debate.

Mr NICHOLSON: I was going to comment on the first point Trevor made. I do not think that we have given a capacity to exclude the jurisdiction of the Supreme Court. In fact, we have really entrenched it in 6.13. So I do not really agree.

Mr WYVILL: I must say that I have not come prepared to have a long argument about this. What concerns me is that it be entrenched.

Mr NICHOLSON: I think in fact that we have gone further than the states.

Mr WYVILL: But under 6.3 ...

Mr NICHOLSON: 6.13.

Mr WYVILL: No, under 6.3 on page 53 ...

Mr NICHOLSON: I am talking about page 51.

Mr RILEY: Yes, I have seen what you are talking about, but it has to be read in the light of 6.3, which means that you can effectively take away the jurisdiction. You do not have to say: 'Supreme Court, you have no jurisdiction'. But you can effectively take the jurisdiction away by using the power that is contained in 6.3.

Mr NICHOLSON: Well, you can create a concurrent jurisdiction.

Mr RILEY: Concurrent and ... [inaudible]. I mean, we are not talking about what is going to happen tomorrow. We are talking about what might happen in 50 years' time.

Mr NICHOLSON: I am accepting the second leg of your argument, not the first.

Mr HATTON: If I can summarise, the lawyers are suggesting that, whilst this exposure does entrench the rights of the judicial function and the concept of its powers and responsibilities, it

creates an additional right that could duplicate and eventually supersede the judicial processes established under the constitution. That is essentially the point you are making.

Mr WYVILL: I am not sure that Graham and I are that far apart in the sense that we know what we want to achieve.

Mr HATTON: Yes. We all want to achieve the same thing.

Mr RILEY: Yes. It is just a question of whether this does it or not. Then it becomes a drafting problem and we should be able to deal with it.

Mr HATTON: Perhaps you could put your minds to it and we will certainly address it. There is certainly no desire on our part to leave a loophole like that in the document.

Mr BAILEY: One of the things that may end up covering some of those legal interpretations is the discussion surrounding the legal status of comments in discussions leading up to the final framing.

In other words, you may state in a rambling speech in the Assembly that you are trying to make sure you achieve the ongoing role of the Supreme Court and the capacity to set up the Human Rights Commission and things like that. But you are definitely not saying that you intend to set up something that basically takes over the role of the Supreme Court. If you basically entrench that commentary as well, even if a smart lawyer or perhaps a government minister believes they have found a loophole in the constitution that allows them to get around the Supreme Court, the commentary will make the original intention clear. People will be able to look at it and say: 'This is what they were trying to do'. Any challenge using the constitution as a basis would have to take that intent into account, as well as the potential legal interpretation.

Mr RILEY: What you are saying is quite right. However, in 50 years' time, you might not want to be relying on somebody finding speeches and interpreting them in the way that you want them to be interpreted. If it can be effectively done in the document, that is where it should be done. You are quite right, however. We rely on second-reading speeches. If the minister makes a speech setting out the intentions, that can be relied upon.

Mr BAILEY: But it cannot be legally used at the moment. That is the problem.

[Brief inaudible discussion.]

Mr WYVILL: Most importantly, unless it is mentioned in the constitution ...

Mr BAILEY: That is what we are saying. It would be within the constitution. It almost seems that, as you move along, it is easier to reinterpret a single sentence within an act or something like that and change its intent, than it is to actually look at the statements being made about the intent. It keeps the focus much better than going back to the original discussions. That sort of information is much more difficult than to just argue on a technicality that some earlier legal description said that if you have this before that and that after that, you would change the meaning of it.

Mr HATTON: This is ahead of where we come to with our drafting process. We are currently discussing the constitutional entrenchment of a clause which covers the principles of interpretation of the constitution. This would perhaps require reliance, in terms of determining what is meant by certain words in the constitution, on all of this committee's discussions, the work of the constitutional convention and second-reading debates in parliament. A number of us are more than a little concerned about the ability of certain members of the judiciary, from time to time, to find opposite meanings in the same words. That can lead to a constitution created by the judiciary rather than the people.

Mr SPARGO: Perhaps that is where a broader preamble would come in. That is where those philosophical matters could be addressed.

Mr HATTON: Perhaps. Perhaps it could also be done through some other process in terms of reference to interpretation of the constitution.

Mr WYVILL: I think that is particularly important, Steve, not only for the reasons given but also for historical reasons. One of the problems with the Australian Constitution is that we cannot go and look at the debates to understand what was intended by the things they talked about in the 1890s. The same problem will occur here. There will be significant issues that we cannot anticipate at the moment because of technology changes. We do not want provisions innocently drafted now to be given whole new meanings because of changes in historical circumstances.

Mrs HICKEY: One of the issues of concern to the committee is that we have to be careful about inclusions so that we do not, by definition, exclude other factors that might impinge contemporaneously or at a later time.

Mr HATTON: The concern relates to whether the entrenchment of specifically stated rights may create an interpretation that is not written down, and whether bills of rights should be dealt with at a national rather than a state level. We are talking about a state constitution which will fit within the framework of the Australian constitutional federation. This is not a separate nation where things occur in isolation from the rest of the country. Whilst many issues are debated in constitutional terms, we need to be focused on the context in which the drafting is taking place. It does not mean that we cannot do it but we at least need to think it through.

Mr REEVES: Can we just go back to the separation of powers? I want to make it clear that we quibble with the statement in 6.3, in the section headed 'Purpose of the Clause', that the strict separation of powers doctrine is not applicable to the states. We do not believe that that is necessarily a correct expression of the law as it is, or as it will be if it gets to the High Court. It may be a question of whether or not state legislatures have the power to erode the jurisdiction of a superior court by granting that jurisdiction to some administrative or quasi-judicial body.

Mr HATTON: There is a case on at the moment, is there?

Mr REEVES: There may be.

Mr RILEY: It really is a matter that you could debate and ...

Mr HATTON: It is an issue that we would want to put beyond question anyway. I think we can all understand what we want to get to. With the greatest of respect to your profession, what we do not want is lawyers making millions of dollars and driving people crazy while they try to work out what we were trying to say.

Mr NICHOLSON: Mr Chairman, if we are to have a qualified clause 6.3, we would need some guidance as to how it could be qualified. At the moment, I am not sure how you would draft it in terms of the submission, or what sort of parameters you would put around it.

Mr WYVILL: Perhaps we can give it our hardest and best thought and send something over to you.

Mr NICHOLSON: It would be very hard to draft satisfactorily. It is easy to draft something that is either in or out.

Mr HATTON: Something that is half in.

Mr RILEY: We are not pretending that it will be easy. We were going to rely on you, and with justification. But we will have a go. Those are the issues I wanted to raise. Does anyone have other issues?

Mr SPARGO: I would like to invite the committee to indicate any ways in which we can be of further assistance. Trevor has indicated that we are strongly supportive of the process and we are happy to bring to bear any skills that might be considered relevant.

Mr HATTON: Because we are a bipartisan parliamentary committee, of necessity we need to work through this process. We would be more than happy for you to liaise with Mr Nicholson. I would ask you to never feel constrained about coming and talking to the committee. We are meeting fairly regularly, particularly at the moment. Do not feel constrained about writing to us or asking for a meeting with the committee to raise issues. We are really trying to develop a very inclusive process.

I would say for the public record that that applies to any people or groups in the Northern Territory. We are actively trying to adopt an inclusive process. Equally, members of the committee would be more than happy to go out to discuss this process with groups or associations. Invite us to come along to one of your meetings, for example, to throw ideas around. We are trying to get a feeling for where the Northern Territory community would like to go on these questions.

Mr REEVES: Is the timetable 6 months of further sittings of this committee before it reports in the appropriate process?

Mr HATTON: Some time in 1996. We would hope to have finalised a lot of our ideas by Christmas. That will be refined in the first half of next year. We would need to get the document debated in parliament in the first half of 1996. Otherwise, we will be lagging behind. We believe that 11 years is long enough. 10 years is long enough to have produced something.

Mr REEVES: For the next 6 months at least, you are open to accept any written submissions that we would have to make on particular areas that we flag, or any others.

Mr HATTON: Yes. Or verbal submissions.

Mr BAILEY: Also, bear in mind that, while we have developed a timeline for our work, we will not be setting the timeline of the constitutional convention. The committee does not initiate the convention. The government does that, through legislation in the Assembly. We have to wait to hear from the government as to what timeline it is working on. What we have put up as an outline for the constitutional convention may or may not be reflected in what the government decides. While we have a role, the actual establishment will be debated in the parliament as part of the debate on the legislation. We are assuming that they will largely do what we have suggested but it is up to them to decide.

Mr MITCHELL: Then again, when it gets to the convention it may all be changed anyway.

Mr HATTON: Your association may be interested in Interim Report No 1 on a Northern Territory Constitutional Convention. It contains our recommendations on the establishment of a convention. We recommend that it comprise 50 elected members from 10 electorates across the Northern Territory, each returning 5 members. In addition, we propose that about 16 members be nominated by particular interest groups for appointment to the convention. The reason is that we are trying to ensure that the very diverse nature of the Northern Territory is reflected inside the convention. That is also why we are recommending 5-member electorates. We are trying to enable smaller interest groups to have a chance of getting a large enough percentage vote to elect somebody to the convention. We are trying to achieve a balance, to get the right mix. If people think that is a reasonable approach, the question is: which particular groups should have the right to nominate?

Mr BALDWIN: Without making it too big. That is why we have limited it to about 60 people.

Mr HATTON: If it gets much larger than that, it will be unwieldy and unworkable.

Mr RILEY: Is that why you have left out women's groups?

Mr BALDWIN: We have just put forward some ideas. We have not left anybody out.

Mr HATTON: We said: 'such as'.

Mr RILEY: We had a concern arising out of that process. We have been discussing it amongst ourselves but we have not resolved it yet. It relates to whether you would be encouraging candidates to debate the issues before any election, with a view to finding out where everybody stands. I think there is a problem if people go in expressing set views and positions. On the other hand, if you are voting for people, you want to have some idea of what they are thinking before you put them in.

Mr HATTON: I cannot control what people are going to say when they are campaigning for election to a constitutional convention. However, by having 10 electorates, each of 5 members, there will obviously be a very good chance of significant Aboriginal representation. That relates to the nature of the demography of the Northern Territory. Inevitably, electoral processes tend to pick up people in the prime of life, although I hate to use that term. Those are people in their 30s and

40s, perhaps their 50s. Such processes tend not to catch the young or the elderly. The young will be the inheritors of this and the elderly can probably bring a lot of wisdom and experience.

Significant interest groups exist in the ethnic community. There is a possibility of specific representation of Aboriginal organisations. We would like to receive comment on such matters. There is no clear-cut view about which groups should be represented. Rather, we are interested in ways of ensuring that as broad a cross-section of Territory society be represented as is possible, within the constraints of 60 or 70 people.

I think our recommendations are fairly comprehensive.

[Inaudible discussion.]

Mr REEVES: From a personal point of view, if you have a two-thirds or three-fourths voting requirement, if you do not express it as a simple majority, it would probably result in a constitution that is the lowest common denominator coming out of the convention.

Mr HATTON: Are you actually opposing that?

[Inaudible discussion.]

Mr REEVES: My view is that, if you have two-thirds, only the clearest issues will get through. The more dynamic or controversial issues will not.

Mr HATTON: In order to get agreement, people will end up saying: 'We will all agree not to have this in there'.

Mr REEVES: It will be a minimalist position.

[Inaudible discussion.]

Mr HATTON: In terms of the convention itself, it is our view that we would not want to impose too many constraints on its process or how it carries out its functions. We would prefer to see it creating its own procedures and rules. Once we get it through the parliament, we want to take it out of the hands of politicians and put it in the hands of the people. We are just doing the homework and preparation for that. The people can take over the next phase.

Mr WYVILL: In terms of encouraging the debate, we have indicated in our submission that there may be some people who could contribute something solid and valuable to the process. Tony Fitzgerald comes to mind, for example. He made a very close examination of the parliament in Queensland and the state system and made certain recommendations. You might not agree with what he said; it is 5 years on. I would be very interested to hear what he had to say about what should be put into a state constitution. I am just wondering whether the committee has any plans to seek the involvement of such people ... [inaudible].

Mr HATTON: Most of the documentation has been distributed to an extensive mailing list. It not only covers the whole of Australia but also in some cases extends to overseas. Over the

years, people from a number of areas and professions have been placed on the mailing list. We are doing that.

One of the issues in respect of the convention is the need to find a balance between the people who are debating and voting, and the advisory and support system that is available to them. What sort of legal, academic or other support needs to be provided? That certainly is an issue that the government will need to address, not least because of the need to provide for it in the budget.

Mr NICHOLSON: It is in recommendation 12.

Mr HATTON: Thank you very much everyone. It has been a positive contribution which has stimulated a lot of thought. Please do not hesitate to get involved. We would say to you, and to any other individuals or groups in the Territory, that the time is at hand. We are down to the crunch time. We cannot engage in academic debate for much longer. We are into the hard graft and we would really like people to be involved in the process. There will be further opportunities for input into the committee's processes this year.

Mr RILEY: I expect that we will be coming back to you when we have some concrete suggestions and proposals.

Mrs HICKEY: Although we have some time constraints, we are not rigid in ...[inaudible].

Mr HATTON: Thank you very much. We hope to be in regular contact with you.

Mr HATTON: In reconvening the meeting of the sessional committee, I welcome Mr Peter Carroll to make a submission. Peter, it is good to see you along. We have a copy of your original submission.

Mr CARROLL: Would you like me to read it?

Mr HATTON: No. Could you just speak to it?

Mr CARROLL: Thank you, Mr Chairman. I come before you in my personal capacity, having spent 28 years in the Northern Territory working primarily with Aboriginal people with a focus on Aboriginal language. My concern is to put before you the reality that, in rural parts of the Northern Territory, Aboriginal languages are strong, powerful and very influential. While, through the education process of past years, significant numbers of Aboriginal people have acquired a good command of English, many Aboriginal people in rural areas do not have good command of English.

In earlier stages of the committee's work, that reality was recognised. A range of consultations were conducted in Aboriginal communities where Aboriginal languages were used and interpreters and translators engaged to enable Aboriginal people to participate in the committee process through their languages. Also, I am told by Mr Gray that this parliament is one of the few parliaments in Australia where Aboriginal languages are used in the Hansard record. I assume that is correct and it is a very significant achievement for the Northern Territory. It highlights the reality that Aboriginal people comprise approximately 25% of our population.

In my submission, I refer to the fact that the last 2 censuses show that, in over 70% of Aboriginal homes in the Northern Territory, a language other than English is used. That is a very telling statistic. In some communities, an outcome of the whole self-determination and development process, is the employment of Aboriginal people in local organisations. In many cases, those Aboriginal people will be bilingual. This means that when ordinary members of the community visit the community council, the office or the shop, they will be helped by an Aboriginal person from their own community who knows their own language. This means that, in some communities, the need for the ordinary Aboriginal person to use English is fairly restricted. This reinforces the importance of Aboriginal language. I am really endorsing past actions of the committee which recognised the crucial importance of Aboriginal language.

The second aspect, which flows from that, relates to some of the material you have produced which indicates that you are working towards a constitutional convention, possibly starting next year. A range of documentation, including the NT News which quoted your tabling statement earlier this week, indicates that the constitutional development process will be fairly limited without the support and recognition of the basic rights of Aboriginal people and their involvement.

I believe that, if the constitutional development process is to be the success it needs to be, the committee really needs to engage in another process of consultation with Aboriginal communities between now and the convention. I understand you have begun the process of consultation with the land councils and the ATSIC regional councils. Both those levels of consultation are crucial. Over and above that, although you may not have the time or resources to go to every community, there is certainly potential to go to the major communities. In such a consultation exercise, I suggest that you should engage someone to advise you on the major language groups of the Northern Territory, and which languages are spoken by which communities, and that you should seek to have regional consultations with Aboriginal people in different parts of the Territory. This would complement what you are doing with ATSIC and the land councils.

There are a number of other issues that flow from my submission. However, I think I have said sufficient in terms of introductory remarks. I am happy to respond to any questions from members of the committee.

Mr HATTON: I think it is actually the desire of our committee. In our last significant round of community consultations between 1989 and 1990, we visited 70 or 80 communities. We took interpreters with us. As you mentioned, many people spoke to us in their own language and a Hansard record was kept. We anticipated that the interpretations that we were receiving would be contextually accurate. As you are aware, there is always a danger in those situations that that may not be the case. Nonetheless, we found it very valuable. When the Hansard records were finally produced, both in the traditional language and in English, our reading of the commentary gave us a much better insight into the core issues that were concerning Aboriginal people at the time and, I believe, still are.

I am certain that I speak on behalf of the committee in saying that we are currently trying to organise a program of visits, not as an entire committee but through subcommittees,

which will again do the rounds again during the remainder of this year. We have a visiting program to ...

Mr CARROLL: From talking to the committee secretary, I can appreciate the demands on you.

One principle comes to mind. I do not know whether it would be possible for the committee to seek the assistance of local members in some situations. For example, the member for MacDonnell has a long record of experience in his region, and possesses skills in Aboriginal language. When you are consulting in that region, there may be potential for him to contribute to the work of the committee. I mention that as an example of the principle because I think it is crucial, if the process is to succeed, that the views of traditional Aboriginal people in rural communities are taken into account. That is an area of the Territory that Wesley represents.

I am not in any way criticising Aboriginal organisations that you are meeting or which are appearing before you but I think there is a silent majority out there. I have interacted with a number of leaders of communities over the years. For the last 4 or 5 years, they have been repeating their wish to work with the Northern Territory government in a cooperative way. That has emerged in the programs of several government departments. That is a very strongly held view in many communities. If you can tap that view, and if my perception is right, it can only add to the strength of your committee's work and enhance our progress towards constitutional development.

Mr HATTON: We are also very lucky in having the member for Arnhem on the committee. In moving around Arnhem Land, we have somebody who can communicate quite fluently and crisply. Mr Lanhupuy has been on this committee since 1986. He has been involved continuously in the process.

Mrs HICKEY: I have a question, Mr Carroll. In terms of your submission, I take it that you are really talking about the process that this committee is going through, rather than inclusion of any of those sorts of recommendations or issues within the constitution. You are talking about information dissemination and exchange in the process leading up to the constitutional convention, rather than actually building into the constitution some of the principles that you talk about, such as the importance of Aboriginal languages. Your submission does not suggest anything that differs from what we have in the exposure draft.

Mr CARROLL: No, you are right in saying that my submission focuses on the process. However, there are things that flow from it. For example, I make a point about Aboriginal leaders describing their own groups as nations. Whilst there is a common Aboriginal tradition shared by Aboriginal people throughout the Northern Territory, there are very significant differences between clan and family groups in various regions. A leader of the Oenpelli people, who died a few years ago, said adamantly: 'Do not call us tribes. Call us nations'. I think he used that word very advisedly.

One of the things which Aboriginal groups seek to do at a local level is control access and entry to their land. They have their own ceremonial process. They are linked with one

another through family and kinship. They have links to land and the protection of sites. From their perspective, that is very important. I am aware of agreements made with some of the Inuit people in the United States and Canada. Such agreements have been made with regional groups. There may be potential, within the context of constitutional development, to emphasise the importance of Aboriginal languages in local regions.

I have drifted from your question a little but your assumption is correct. I did not seek to address the question of the place of language in the constitution. However, do not take my silence to mean that I am saying there is no place for language in the constitution. Most white Australians who have never been exposed to other languages do not really appreciate the power that a language has or the difficulties which people have in communicating in a language other than their own. In my own work in western Arnhem Land, I have found that the knowledge of the people's language has given me considerable insight into their thinking and their approach to issues.

Mrs HICKEY: Further to that, I am thinking about the processes within the constitutional convention. Clearly, Aboriginal people will be elected to that convention. and we ...

Section of proceedings inaudible due to equipment malfunction.

Mr BAILEY: ... rather than just getting the partisan party view which you always get when you have a single member.

Mr CARROLL: As an example, is it possible that an area such as Arnhem Land might become one of those electorates with 5 representatives?

Mr BAILEY: If population were the criterion, you would need to look at about 2.5 existing electorates becoming a single electorate returning 5 representatives. Arnhem and Arafura, for example, might become a single area returning 5 people.

Mr HATTON: Perhaps part of Nhulunbuy as well.

Mr BAILEY: Would that bring in sufficient variety of people to represent the number of language groups?

Mr CARROLL: Probably not. It is possible that, if you set up a situation in which there are 5 people, you may well get some of the figureheads and leaders within a range of organisations. It is appropriate that they be participants but, again, my feeling is that most major Aboriginal organisations conduct a lot of their business in English. I think that, in many cases, they have not understood the traditional Aboriginal viewpoint enough.

That is the reaction with some of the ATSIC regional councils. The chairman of one Regional Council said: 'We do everything in English'. That is fine. I can understand why they need to do that. However, if that excludes the viewpoint of Aboriginal people throughout the communities and homeland centres in the electorate, it is a significant gap. ATSIC people are aware of that and have a whole range of strategies to overcome it but if it were to exist in our convention, it would be a very significant gap. I appreciate your problems with the numbers

and everything else but to answer your question, I do not think that 5 people, say from Arnhem and Arafura, would be an adequate representation of the Aboriginal communities in those electorates. That is an example.

Mr HATTON: The probability is that it would give a chance of better representation than a series of single-member electorates.

Mr CARROLL: Undoubtedly, yes. There is no question of that.

Mrs HICKEY: I guess the other aspect is the importance of the 5 representatives ensuring that they represent the views of the people within that electorate. Again, the process is important. I noticed this with some dismay at the information stand at the Tennant Creek Show and I have heard it from people who have been staffing the display at the various shows. In many cases, although they are not expressing disinterest as such, the concept is not grabbing the attention of Aboriginal people. One apparently said: 'I leave that sort of thing to my local member'.

We obviously have to get beyond that if we are going to get a true reflection of views, especially of traditional Aboriginal people. Perhaps this will need to be addressed in the processes of the constitutional convention. When people have met together and then return to their constituencies, there may be a need for linguistic assistance to ensure that the messages get across.

Mr CARROLL: That raises the whole question of how you determine the membership of the convention and the representation of groups throughout the Territory. From our perspective, being part of a Westminster system, we are used to electing a member who puts views in various forums. However, from my observation of the reaction of some Aboriginal people, I suspect that their notion of committee participation does not really include the representative concept.

In a community, some clans and family groups will be represented on the community council. In many cases, the loyalties and obligations of the individuals concerned are to their own groups. The principle of representing people or interests other than your own is not one with which many Aboriginal people are familiar. This highlights the different approaches within the 2 societies.

Your documents and papers make it very clear that Aboriginal people have a crucial role in making the constitutional development process a success. You are looking at recognition in terms of the constitutional process and the preservation of rights in the constitution. I really think that, if we are going to achieve that, the process during the next 6 to 9 months is fundamentally important. It may require you to make additional provision for representation of Aboriginal people, whether as a subsidiary process or through regional workshops of the constitutional convention.

In your consultations with ATSIC regional councils and the land councils, you might invite them to identify the major languages in regions of the Territory, and their own focus in relation to them. For nearly 20 years, the Northern Land Council has been consulting with

Aboriginal people across the Top End of the Territory. It may have very clear views that 5 or 6 languages are quite adequate. I have not seen it express that view in any terms but it would be an interesting question to explore with both the land councils and the ATSIC regional councils. Much emphasis is placed on the ATSIC regional councils at a local level and they have to come to grips with that reality in some way.

Mr BAILEY: I have couple of points, Peter.

You pointed out that about 25% of the population is Aboriginal. When we start looking at constitutional issues relating to Aboriginal law, ceremony, land and so forth, do you have any views on whether or not any of those issues should be largely determined by Aboriginal people for inclusion in the constitution? Or, because they are part of the Territory, should they therefore be decided by all Territorians?

Mr CARROLL: I would favour an integrated approach with a prime role or priority being given to Aboriginal people first. Let them determine what part of their law would appropriately be included in the process. I see that you have prepared a discussion paper addressing the question of customary law. During the last 10 or 15 years there is a whole history in the legal studies area of inquiries and consultations in relation to customary law. However, I would suspect that from an Aboriginal perspective, it is very difficult to look at the whole of society and to say that a particular little bit is customary law.

Most papers on customary law focus on where Aboriginal tradition interacts with criminal law and other legal jurisdictions. I tend to think that Aboriginal people might find it hard to segment part of their society and say that it is somehow different from all the rest. On the other hand, I would acknowledge that when you talk with Aboriginal leaders, the traditional initiation ceremonies of men are seen as a very important part of law. In the Gunwinggu language, the word for law is 'djamun', and it is applied to that whole area. It is interesting that they use that word to describe the policeman and that they see the policeman as the law man.

In other areas of Aboriginal life, including the control of land and family inheritance, it links back to the ceremonies. Then you look at the question of important sites that are within the families' land and require protection. You might start with a definable area that is customary law but it will soon have threads and influence in the whole of Aboriginal life. I find that question rather difficult to deal with in terms of what customary law should be in the constitution, other than saying that you are on the right track in saying that it has to be part of the process.

Certainly, Aboriginal people need to have a prime role in determining what they think is appropriate in the process. However, at some stage it needs to be an integrated discussion with the whole of the Territory. Again, I hear comments by Aboriginal leaders in some of the Arnhem Land communities that they want to be part of the processes on an equal basis with other Territorians, whilst keeping recognition for their own important and distinctive traditions.

Mr HATTON: Would you like to make any other points, Peter?

Mr CARROLL: I have had an adequate opportunity to summarise the submission. The questions have been good and I have appreciated the opportunity to put my thoughts before you.

Mr MITCHELL: Just a comment in relation to your mention of Kriol. It is very relevant. It is a big communication setup out there. I am glad that you brought it up.

Mr CARROLL: In terms of the details of your constitutional convention, while you will attract criticism from Aboriginal people in the southern parts of the Territory and elsewhere in Australia, you could well consider making Kriol a language in which interpretation could be provided at the convention or in some of your consultations. A group of Aboriginal people are currently undertaking interpreter training through the Katherine Language Centre and they are progressing reasonably well.

Mr HATTON: Thank you very much, Peter.

Before we break, I notice that a number of people who are present have not necessarily asked to make submissions. We would certainly welcome any contribution from any person present who feels that they would like to say something or ask questions. We are trying to make our proceedings as informal as possible. If anyone has any questions, queries or views, we would invite you to put them forward.

Ms REW: My question relates to the separation of powers. In your discussion paper on the proposed new state constitution, you did go through separation of powers and checks and balances. The politicising of judges and tribunals was mentioned. That is what I am querying.

Mr HATTON: What page are you referring to?

Ms REW: It is on page 76 of the discussion paper. It refers to 6.3, which relates to the separation of powers. Just on the basis of omission, I took it to mean that judges of the Supreme Court can chair tribunals. I was just concerned that, in a society with the low population of the Territory, it may not be appropriate in political matters. I would query that. Obviously, the committee has considered it and I would like to know why ...

Mr HATTON: Actually 6.3 was not aimed at judges heading committees but rather was saying that you do not have to have a judge.

Ms REW: It is by omission, by not including that in there. Page 76 of the discussion paper states: (inaudible)

The Bar Association queried that too. It says that the options for a new state are to adopt the doctrine, to leave the matter to be worked out by the court, or by implication from the new state constitution. I am saying that, since you have not addressed this, by implication that means that Supreme Court judges can be appointed to tribunals under this constitution. Is that allowable?

Mr HATTON: You referred to page 76. It is in fact page 51 in my document.

Ms REW: Is it? I am sorry.

Mr HATTON: You must have a different edition. You threw me for 6. I was looking at a blank page.

Ms REW: Graham, can you help me out on that one?

Mr NICHOLSON: Mr Chairman, my view would be that under the current proposals in our exposure draft, a judge could sit on a tribunal or a non-judicial body, and if that body had judicial power it could exercise judicial power.

Ms REW: Yes, but has the committee considered the ramifications of that? In the discussion paper, you mentioned that the involvement of judges in political controversy had been increasingly discussed.

Mr NICHOLSON: We raised it in the discussion paper but in the end we decided not to make any provision in the draft constitution.

Ms REW: What was the essential reason for that?

Mr NICHOLSON: Basically, I think the committee felt that it would make the constitution too rigid. It would not give us the flexibility to deal with ...

Mr HATTON: You are suggesting that the doctrine of the separation of powers be enforced, which would ban judges from doing non-judicial things.

Ms REW: I am talking about Supreme Court judges in the Northern Territory. I would be suggesting that you may bring in Federal Court judges if it is a matter of political controversy.

Mr HATTON: It is an interesting point. If we are looking at the separation of powers and saying that only judges can judge, the contrary argument is that judges can only judge. Essentially, that is what you are putting.

Ms REW: I am saying that Supreme Court judges have a role to uphold justice in our community and to hold a certain amount of respect. It is a very small community. If they are heading tribunals which involve political controversy, they will become involved in that process and their stature will be affected. I would suggest that Federal Court judges or some equivalent should be looked at for that role.

Mr NICHOLSON: Mr Chairman, we have a specific provision in our exposure draft that at least one Supreme Court judge will be on this new body to determine whether Aboriginal freehold land can be disposed of.

Mr HATTON: Yes, that is an example. In developing proposals in the exposure draft to address issues such as the Aboriginal Land Rights Act, the basic premise was that, in a new state of the Northern Territory, the act should in fact be an act of the parliament of the Northern

Territory rather than a federal act that only applies to the Northern Territory. That breaches a whole pile of principles.

To provide security and support for Aboriginal people, it is suggested that it be what is known as an organic law. In its form in the federal parliament at the time of statehood, it would transfer as an act of parliament of the Northern Territory and could only be amended by a two-thirds or three-quarters majority of the parliament through a fairly tortuous process. This would make it more deeply entrenched than the current federal legislation.

It is also proposed that certain provisions of the Aboriginal Land Rights Act would be built into the Northern Territory constitution, as well as some different concepts. These could include, for example, the ability for government to compulsorily acquire something less than a freehold title for public purposes and pay in just terms for it. For instance, if the government needs to build a school, it would actually be required to have title for the land on which the school was built, rather than the current inadequate situation in which schools, police stations, health centres and other essential government infrastructure is being built on land over which there is no tenure. It is quite messy at the moment. It is a process to be able to be able to address those sorts of issues and deal with them.

The exposure draft also proposes a mechanism whereby Aboriginal people would have the ability, if they chose, to sell their freehold title voluntarily. That would require a high level of consultation. That is where oversighting by a Supreme Court judge would be necessary to ensure that a series of steps were followed. It would not deny the right of Aboriginal people to do so but it would ensure that all relevant interests were properly taken into account in any such decisions. It would need to be for the benefit of the Aboriginal people.

Few people realise that the Commonwealth parliament still has the power of compulsory acquisition of Aboriginal land. The so-called inalienability only applies to compulsory acquisition by the Northern Territory government. The federal parliament has the right to compulsorily acquire Aboriginal land as it sees fit. It has chosen not to do so to date but there is no protection against compulsory acquisition by the Commonwealth under the Aboriginal Land Rights Act. It is amazing that very few people have taken much notice of that. The only restriction is actually on the Northern Territory government.

Mr BAILEY: Can I just try to get clarification from you? I think I understand what you are saying.

Ms REW: I would like to keep the judiciary separate and not heading tribunals which may or may not change over time.

Mr HATTON: Such as the Penny Easton tribunal or commission of inquiry which is hearing the matters involving Carmen Lawrence.

Ms REW: I would like to keep them totally separate so there is no taint of political corruption or anything at all. It should be totally separate. Why do we have to have Supreme Court judges heading such tribunals if there are alternatives? That is my only point. It all depends on what you think about the separation of powers. People might say that there is

corruption in the states and then you look at the Commonwealth, where they have the separation of powers.

Mr MITCHELL: Perhaps the impartiality of a judge may be an advantage on a tribunal.

Mr HATTON: Federal Court judges do serve on these organisations.

Ms REW: Yes, I am saying that Federal Court judges are acceptable. I see them differently from Supreme Court judges.

Mr HATTON: Why?

Ms REW: From the point of view of our situation?

Mr HATTON: As a matter of principle.

Ms REW: I think they have the same status. It is because the taint of political interference cannot be inferred if a judge comes from the outside.

Mr HATTON: Why? What if the federal government calls in inquiry with a Federal Court judge?

Ms REW: As a resident of the Northern Territory, and looking at our whole history, I would just like to keep it separate. I would just like to get your opinions on what you have discussed.

Mr HATTON: It is an interesting point of principle. You are arguing that under the separation of powers, an independent judiciary is created to carry out a judicial function, and that it should be confined to just doing that, not getting involved with public policy development. I think that is the point you are making.

Ms REW: Yes, it is. That is what they are qualified to do.

Mr BAILEY: I am having a little bit of difficulty with the rationale. Let us take a tribunal such as the Penny Easton inquiry, where no one will deny the political implications. It is a straight up and down political issue. You involve a judge. It is obvious that the terms of reference are political. In a way, you are saying that the judge is then somehow corrupted by doing that. However, if you take it a step further, legislation is often purely political. Whether they agree with it or not, judges have to work within the legislative framework that they have been given to work in.

Ms REW: They are interpreting but they are not judging, are they?

Mr BAILEY: But they have to work within the government's political agenda which determines how that legislation was written.

Ms REW: Yes.

Mr BAILEY: If the government's political agenda says that anyone who walks on the wrong side of the road should be locked away, they have to go along with it. I cannot see how it is any different with a tribunal. Judges are the pillars of doing what the law says. Whether they agree with it or not, they have to apply the law. The government may set boundaries for what the tribunal is established to do, but the judge retains independence in terms of making an assessment within the constraints of what the tribunal is set up to do. I cannot see how you would change ...

Mr HATTON: Perhaps I could give an example. Many commissions of inquiry are headed by judges, who are appointed to that role for whatever reason. The role may involve receiving evidence. It may also involve preparing recommendations on public policy. There was a commission of inquiry into the Australian economy in the 1960s. That is one that springs to mind. It had nothing to do with the political process. It was making a series of recommendations on what we should do with our economy. Would you regard that as a reasonable judicial function?

Ms REW: That is basically what I am getting at.

Mr HATTON: Yes, that is the point you are making.

Mr BAILEY: Was that a tribunal?

Mr HATTON: It was a royal commission.

Ms REW: I have another point. It relates to the convention. I know that it has 50 members, including 25 elected and 16 nominated. Everyone else is elected or nominated, but then the committee comes in. All right, they do not come in as a committee once they are members of the convention. I expect that the convention then elects its own chairperson. However, I query the role of individual members of the committee. I know that the committee has valuable experience but I am wondering why they have a vote.

Mr HATTON: We are also elected representatives of the people.

Ms REW: But the constitution is to limit the powers of government. Looking at it from the outside, I see a conflict of interest.

Mr HATTON: We are also citizens. We are actually elected to represent the people.

Ms REW: Yes, but in this instance everyone else is elected separately.

Mr HATTON: We would have more legitimacy than someone from a nominated organisation.

Ms REW: In this instance, everyone else is elected from the 10 electorates, or is from a nominated community group. I am wondering, in this particular instance, what the 8 politicians are going to do. Who are they representing? On what basis do they have a vote in that convention? That was just my query. I can see the benefit of having them there but I just query their power to have a vote. It means that 10% of the convention is comprised of

politicians. These are not politicians elected separately. That is fine if they stand in the 10 electorates. These 8 politicians would be there through no reason other than being politicians. Given that the constitution is to limit the powers of the government, I see that as a conflict of interest.

Mr HATTON: It also creates a form of government. It is not just to limit the powers. It is also to create the form of government.

Ms REW: Yes, but it sets the limitations on the powers of government. The government cannot act outside the constitution.

Mr HATTON: Don't you think it would assist the convention if there were people who had worked within the system and understood the practicalities of it?

Ms REW: I am all for assistance. I think it should be on a non-voting basis.

Mr HATTON: Let me just say that there is a view that politicians are probably the most representative people. If anyone is entitled to be in there, it should be an elected representative of the electorate.

Ms REW: You are not there as that in this instance. You are there as a member of the committee. That is how you would have got there.

Mr HATTON: You only get on the committee because you are an elected representative.

Ms REW: But in this instance, the election is over 10 electorates. It is a separate electoral process. In this instance, you are not there as a representative of your electorate.

Mr MITCHELL: It is part of the same electoral process.

Ms REW: I query that.

Mr HATTON: I understand your point and I will express a very clear view. I am not having a shot at you. It is a broadly expressed view. However, it is personally offensive to me in the sense that members of parliament anywhere in Australia, no matter which side of the fence they happen to be on, stand up publicly and cop abuse publicly, having been chosen through a fair electoral process to represent the people. Yet they are continually derided as being unrepresentative. The people who make those allegations have never faced elections or stood up or been given endorsement by the broad populace. I do not accept, in any shape or form, the concept that any elected member of parliament does not speak from a democratically authorised position to represent the people, far more than interest groups which, by their very nature, represent small sectional interests. The role of the politician is to try and balance those competing interests in the interests of the entire community. That is why we have electorates. I will get that off my chest now.

Ms REW: Now that I know your view, I will address something formally in writing so that you will be able to understand my reasoning.

Mr HATTON: I understand what you are saying but ...

Ms REW: I am not criticising the elected politician. I am talking about consistency of election to a convention. It has an entirely different electoral system with different electoral boundaries.

Mr HATTON: But should you exclude parliamentary representatives?

Ms REW: I am not saying that they should be excluded. I think they should be thoroughly included in the process, where they have an important role as advisers. However, I do not think they should have a vote.

Mr BAILEY: Would that be the same for the other non-elected members?

Ms REW: No. They would be nominated as representatives of particular groups which would otherwise be unrepresented.

Mr HATTON: Why should they get a vote?

Mr BAILEY: Can I suggest that the committee is equally split between the 2 major parties.

Ms REW: Yes, it is bipartisan.

Mr BAILEY: In fact, it may be argued that when you are nominating people to be on the constitutional convention, representatives of parliament and political groups would probably be some of the best people to be on the convention. The 10 electorates give regional representation and there is specific group representation. The parliament is one of those specific groups. It has already been through an extensive election and selection process.

You could put it in 2 ways. You could say that a number of positions are open for the parliament to nominate. The committee is suggesting that these be the leaders of the 2 major parties, the government and the opposition, together with the committee which not only has a lot of experience but is representative of the 2 major parties as well as the parliament. It is a group which represents a significant proportion of the electorate through being elected in the first place.

Ms REW: Yes. I suppose I would rather see ordinary people elected to undertake this function and to have a more unrestricted say.

Mr HATTON: Could I just say that we might actually be ordinary people too, who happen to stand up and get elected?

Ms REW: Yes, but you would not be nominated as ordinary people.

Mr HATTON: If you get elected to a convention, do you stop being a normal person?

Ms REW: No, but the committee gets disbanded, doesn't it? Once you hit the convention, you are there as ordinary people. You are not there representing ...

Mr HATTON: No, you are there representing your electorate.

Ms REW: But the 10 electorates will have voted for their own representatives.

Mr MITCHELL: This whole process will be going through parliament. We are only talking about recommendations at this stage. Anything you put in will be looked at and probably debated. Do not write to your local member.

Ms REW: Now that I know your responses, I will be able to structure my arguments more effectively.

Mrs HICKEY: Sandra, I think there is another argument which may be useful. In the same way that elected representatives or nominated representatives of other groups will presumably liaise with their constituents and provide information to them, I would see the parliamentary members as doing the same in parliament. Parliament has a vital role in this. Parliament drove it in the first place and parliament will have to put the arguments to the federal government. Somebody recently suggested to me that we should also be involving our federal members in this process because they would be a conduit between the constitutional convention and the federal government.

If you look at it from the point of view of representation and liaison between those particular interest groups, we are the liaison between the convention and parliament.

Ms REW: I would like that type of thing spelt out rather than just saying: 'The committee goes in'. Do you know what I mean? I am interested in the reasoning behind it.

Ms HICKEY: Yes, I certainly see your point. We have argued the merits of a 10-electorate system. We have argued the merits of nominated representatives. You could argue, I suppose, that we have assumed the right of the committee to be there. I understand where you are coming from.

Ms REW: I looked for the reasons and I could not find them. All right, thank you very much.

Mr MITCHELL: I was only joking. Please do write to your local member.

Ms REW: You are my local member.

Mr SHANNON: I was going to comment that you were elected to be members of parliament. You were not elected specifically to be members of that convention, I gather.

Mr HATTON: No, that is true and it is a valid point. The question is whether the parliament has a role to play as part of the convention. We would see ourselves, I guess, as a unique committee. The committee has equal representation from both sides of the House and we would see ourselves, in that process, as representing the parliament.

Mr SHANNON: I would think that we would expect that, if it came to a vote, you would be nominated in your own right using all your parliamentary and constituent experience as qualifications.

Ms HICKEY: Who would you recommend that we be nominated by?

Mr SHANNON: By parliament - you already are.

Ms HICKEY: By the parliament presumably?

Mr SHANNON: [inaudible]

Mr BAILEY: Sorry. What we are saying is that the convention will be made up of a mixture of elected and nominated members. The Territory will be divided into 10 electorates, each of which will elect 5 people. That makes up 50. Then there will be a number of nominated people. There seems to be no dispute that at least some of them should be nominated to represent certain interest groups. These might include Aboriginal groups, whether through the land councils or ATSIC or whatever, ethnic groups, unions, employers and so on.

There does not seem to be any problem with saying that it is okay for someone from each of those groups to be included among the nominated people. We are saying that a number of nominated people should also comprise representatives of the parliament because at the moment we are suggesting how the convention should be structured. We have suggested that the parliamentary view would be represented by the Chief Minister, the Leader of the Opposition and the members of the committee.

Mr HATTON: Those would be the members at that time. The committee might change its membership.

Mr SHANNON: My preference is that the convention be all nominees.

Mr BAILEY: All elected or all nominees?

Mr SHANNON: All nominated, not just the final process. Instead of being part selected by the committee of government and part nominees of whatever portion, I prefer all nominees and not ...

Mr HATTON: So you would say: 'Let us get a series of interest groups and take nominations from each of the groups'.

Mr SHANNON: I would have the interest groups provide the nominations.

Mr HATTON: Yes.

Mr BAILEY: Including the parliament?

Mr SHANNON: Yes.

Mr BAILEY: In other words, you could say that there will be a number of positions to be filled by the parliament as nominated by the parliament.

Mr HATTON: You think that the process of electing people on to the convention is not the best way to go?

Mr SHANNON: Something like that. I think there is a better way.

Mr HATTON: Maybe I am not explaining myself.

Mr MITCHELL: We are talking about nominations and elections. We are talking about so many nominated positions and so many elected people, who would come in representing ...

Mr SHANNON: I am proposing all nominated ... [inaudible]

Mr HATTON: And no elected people.

Mr SHANNON: And no elected people but not disqualifying parliamentarians. Is that clear?

Mr HATTON: Yes. So you do not think we should have the 10 5-member electorates for the purpose of creating a convention.

Mr SHANNON: Total nominations.

Mr HATTON: Total nominations.

Mr SHANNON: That is my preference.

Mr HATTON: Could we have your names for the record?

Mr SHANNON: David Shannon. I submitted before, but I had forgotten.

Mr MITCHELL: You are down here to talk at 3pm.

Mr HATTON: Did you wish to make a specific ...?

Mr SHANNON: No, I am not prepared. I will put it in the mail.

Mr HATTON: Okay. Would any other people like to raise any points or ask any questions? We will adjourn the committee and resume at 2 pm.

Mr HATTON: I call the meeting to order. I welcome Mr Hoare, who Territory is here to present a submission on behalf of the Local Government Association of the Northern. It is good to see the Local Government Association here. We are fairly informal so do not feel intimidated or anything like that. I would just invite you raise any issues and talk to whatever points you would like to make.

Mr HOARE: Thank you very much, Mr Chairman, and thank you for the opportunity of appearing before the committee today. We wish to discuss generally with the committee and put a

submission on the Discussion Paper No 9, which relates to the constitutional recognition of local government in a constitution here.

As the Chairman said, I am appearing of behalf of the Local Government Association of the Northern Territory, which is the peak body representing local government in the Northern Territory. We have 60 councils as our members, both municipal and community government, and incorporated associations, both under the Commonwealth legislation and the Northern Territory legislation. We have 60 members throughout the Territory, who voluntarily join the association. There is no compulsion. We have a voluntary membership of 60 of about 68 at the moment. The numbers are increasing slightly at the moment. I think the last figure I have seen is 68.

Mr HATTON: You speak for the majority under the Local Government Act now too.

Mr HOARE: Yes, that is right. There is a higher proportion under the act than under incorporated forms.

Discussion Paper No 9 contains the view of 2 separate bodies that existed some years ago, both of whom have now ceased to function. So in reading the paper, you have the views of 2 bodies that are no longer in operation. They existed until the early 1990s - the Northern Territory Local Government Association and the Community Government Association of the Northern Territory.

When a lot of this material was prepared, the Northern Territory Local Government Association, or NTLGA, represented 6 municipal councils only. They represented the municipal councils. The Community Government Association, at that time in the early 1990s represented some 15 community government councils. The 2 associations made submissions that are recorded on pages 4 and 24. What I found interesting was that both submissions were exactly the same. At that time, there was no difference between the submission of the NTLGA and the CGA. They had a common position in relation to the recognition of local government.

On page 4, in the small type under No 4, the position is put there that: 'The Northern Territory Local Government Association has previously indicated that any provision for constitutional recognition should be in accordance with 5 principles'. They were supportive of the inclusion of local government in the constitution and they set out 5 principles that they thought should be included. On page 24, the Community Government Association did exactly the same thing. They put in the same submission.

As I said, both of those bodies have gone out of existence. One association has now been formed to cover all of the local governing bodies in the Northern Territory. That is the group I represent. I just found it interesting that, at that time, both groups put the same policy position.

Mr HATTON: Do you think they might have swapped notes?

Mr HOARE: I think so. They used to have an office next door to each other, so I suggest that that might have had something to do with it. So, they put a position that supported constitutional recognition, and they outlined 5 principles.

I now want to move to the new association's policy position on this issue. What I can say is that it is fully supportive of the constitutional recognition of local government in the proposed constitution of the Territory. That is drawn from several different beliefs held by the association, which apply at the international level, the Australian level and at a very practical level in operation within communities throughout Australia. I would just like to outline a couple of those beliefs.

The basic belief is that it is the fundamental right of every citizen to exercise democracy at the local level. I mean, all the states of Australia have established a local government system under each state's jurisdiction. The system aims to enable the community's representatives to express their views at the local level and to have the opportunity of becoming involved in decision making at the local level. We believe that it is a fundamental right of all citizens to be able to exercise that democracy at the local level, if they so choose.

Such feelings are very well expressed in 2 documents that I would like to table. I will keep one for myself so that I can refer to it. I often give out things and then I end up not having one kept for myself. I go to refer to it and I cannot find it.

Mr HATTON: I know the feeling.

Mr HOARE: There are about 4 copies there, I think.

Firstly, let us look at the international scene. The blue page is the Worldwide Declaration on Local Self-Government. It was agreed upon in 1985 by a body called IULA, the International Union of Local Authorities. This is local government's international body. I am certainly not going to quote all of it but if we look at the international scene, this is what people from around the world view as the importance of local government. It just gives an insight into some of the things that are regarded as common.

I particularly want to refer to article 1, the constitutional foundation for local self-government. The principle there is that local self-government 'shall be recognised in the constitution or in the basic legislation concerning the governmental structures of the country'.

Mr BALDWIN: Which one do they want?

Mr HOARE: Sorry?

Mr BALDWIN: There are 2 different parts to that. It is either in the constitution or it is part of basic legislation.

Mr HOARE: As you would appreciate, around the world there is a range of different ways of tackling it.

Mr HATTON: It is clear, and I do not know anyone who is actually disputing the view that there should be some recognition of local government in our Northern Territory constitution. The issue that is really engaging our minds is this. If people have a constitutional right to local government, does that mean that local government is an enforced tier of government? A community which says that it wants to have its own local government has a right to that. On the one hand, there is a due process to go through to achieve that. On the other hand, if it was drafted a different way, it

would almost create a constitutional obligation to create a local government structure across the Northern Territory. It is that a difference of ...?

Mr BALDWIN: Either on a needs basis, or enforced.

Mr HATTON: Do you have the right to have it if you want it, or you have to have it? That is the question.

Mr HOARE: We would take the view that it should not be forced. Ideally, it should be as it is here in the Territory, where communities put forward their wish to have local government and there is no compulsion. The views of the Royal Commission into Aboriginal Deaths in Custody, which spoke about the rights of Aboriginal people to choose their own structures, would be relevant to that argument as well.

Mr HATTON: Yes, I understand. That is true. Interestingly, the Royal Commission said that they had the right to construct their own local government the way they want to. That did not address the issue of the constitutional foundation of it, the legislative foundation of it. It did not even recommend that they have a right to choose under which legislation they do it.

Mr HOARE: In Australia at present, I think South Australia has recognition in its constitution. There are large unincorporated areas in South Australia. New South Wales is the same. It is there, but there is still not local government across the whole of the state.

Mr HATTON: It would be reasonable to say that your association would support the right of people to a process of self-determination and to choose to have local government, rather than a compulsion to have it.

Mr HOARE: Yes, I think that certainly would be the view of the association. Not compulsion, but a right of choice.

Mr HATTON: The right to choose. Are you going to work through these other points, or can we pick up a lot of things out of them?

Mr HOARE: No. I understand that you are supportive of the inclusion of local government in the constitution

Mr HATTON: I do not think you have to convince this committee.

Mr BALDWIN: Except that we should talk about the extent.

Mr HATTON: That is what we were working towards.

Mr HOARE: I was going to go on to that afterwards.

Very quickly, although we have more or less covered it, the white pages provide the Australian policy of local government towards constitutional recognition. Point 2.2 on page 2 just supports the Australian position that constitutions recognise local government both at the Commonwealth level and in each of the state constitution acts. I brought that along just to build up the case for constitutional recognition. I will not go any further into that, Mr Chairman.

Mr HATTON: I have a couple of points just for the purpose of the record. I suspect I know what your response will be but will raise them for the purposes of the record.

Article 2 of this worldwide Declaration of Local Self-Government refers to ‘elected on a periodic basis by equal universal suffrage’ and ‘their chief executive shall be so elected or shall be appointed with participation of the elected body’. My question relates to the particular circumstances of the Northern Territory, especially in respect of the Aboriginal communities where cultural and other important factors come into play. In fact, in some cases elections are not held. Rather, a process of ...

Mr BALDWIN: Appointment.

Mr HATTON: In our system, we would see it as appointment. It may be within their own democratic processes, and it would not conform with that. Under the Report of the Royal Commission on Aboriginal Deaths in Custody, Aboriginal communities should have the right to choose the appropriate level of self-determination.

Mr HOARE: I think any clause that attempts to cover a worldwide situation is bound to ...

Mr HATTON: Is great.

Mr HOARE: That is right.

We fully support the present community government system, where there is flexibility in the way things like that can be handled. I personally believe that it is the ultimate in local self-government. In a way, the municipal councils of the Territory are not in as favourable a position. The ultimate self-government is for the local community to choose the way they wish to handle those issues themselves rather than have a system imposed upon them, as is the case with most municipal councils across Australia.

We fully support the ability of the community to determine those things. I would see that as the ultimate in local government. I think the community government model here is an exceptionally good model in local government terms, in that it gives a lot of choice to the community to work out what they wish to do.

Mr HATTON: And how they wish to do it.

Mr HOARE: How they wish to do it and to what extent they wish to undertake services and so forth.

Mr HATTON: Yes, we have clarified that. You will notice in the discussion paper a series of levels which indicate what is occurring elsewhere in Australia. At the most basic level, it says that people shall have the right to have their own system of local government subject to rules and limitations.

Mr HOARE: To be quite honest, that is where our current policy starts to need a bit of attention. I would like to put a proposition as to how we can come to a more precise definition of that. As I understand it, the committee supports the inclusion of local government. The question is

then: what form should it take? Should it include some of the 5 principles that the previous bodies put up, or should it be something different?

As the new association at the present time, we do not have a firm policy on that. I would like to put it to you that it be included - and I already have this process in hand - in the agenda for our September meeting at Yulara, with a view to putting words together, rather than just principles, to encompass what we are seeking to achieve. In doing that, we will look at the other states.

I suspect that some of the things that were put up some years ago may not reflect the current position. I think we may be less specific than that at present. For example, the secure financial base and proper recognition of the elected members' role may be able to be covered in words that do not have the same emphasis as in the 5 principles.

Mr HATTON: It is very hard to write into a constitution, isn't it?

Mr HOARE: My feeling is that it is probably difficult to cover all those things. I am confident that, now that we have looked at the interstate situation, we can develop some words. I would rather see words developed in relation to the actual clauses that we are suggesting, rather than just 5 principles. I would like to see that done at our Yulara meeting in September.

There is no question that we support the inclusion of local government. The old associations had the same view some years ago. I would like to see us revisit that and come back with some words, perhaps a couple of paragraphs, which cover what we are seeking from our perspective. We can then put that forward for consideration.

Mr HATTON: That certainly would be okay within our time frame.

Mr HOARE: We have our meeting in mid-September, so I could get that back to you in late September. Every community has one vote in that process and whatever came out of that would be the collective view of the municipal councils, the community governments and the incorporated associations in the Territory.

That was what I wished to put forward as the process for us to revisit those 5 principles. To me, some of those things are very difficult to achieve through a constitution, such as the guarantee of a secure financial base.

Mr HATTON: How long is a piece of string?

Mr HOARE: That is right. In terms of the proper recognition of the elected members' role, that is crucial to all of local government. Without the elected members' participation, it is doubtful whether you have a local government system. Things like that, I think, can be worked around and some words developed to encompass them.

Mr HATTON: This is the tricky part in respect of local government. You are working in terms of the context of local government, which is also then created within a legislative framework.

Mr HOARE: That is right.

Mr HATTON: ...It is a matter of identifying what goes into the constitution and what goes into the local government legislation. What minimum circumstances should be reflected in local government legislation?

Mr HOARE: That is right. The constitution needs to be flexible so that people are not hamstrung by it at some future time. I think it is just interesting to note that major changes are occurring in local government in Victoria and in South Australia. In Victoria they have occurred. In South Australia, they were announced yesterday. They involve a major reduction in councils. That is done within the context of their constitutional recognition of local government. So you do not want to tie things down so that you do not have the ability to change.

I think people want the recognition that local government continues, together with flexibility so that it can change and vary in shape from time to time without having to go through referenda and so forth. I find it interesting that change can still occur in quite a major way in states where there is recognition, without such change being hindered by the constitution. In the Northern Territory, there will be significant change over time.

Mr BAILEY: What you are saying is that, while there should be constitutional recognition that there be some form of local government, the details of that form and I guess its manipulation, would remain in the hands of the state government.

Mr HOARE: I think it has to. That is what practically occurs right around Australia. In an ideal world, it may not be the appropriate thing to do. However, it is the practicality of what happens around Australia and is accepted in the other states as being reasonable. Of course, the people have to account for that in the longer term. Yesterday, in South Australia, a decision was made to move from 118 councils to 30 councils. The state government has put that forward and will ultimately have to account for that at the ballot box. I do not think you can entrench numbers and things like that in the constitution.

Mr BAILEY: I am not suggesting that. I guess there is a difference, however, between the ability to change the number of councils by consultation and agreement with councils, and with change only by the decision of the state. As an outside observer of the situation in Victoria, it seemed to me that many people involved in local government did not say: 'Thank you very much for changing the way the councils are organised here. That is what we wanted'. In fact, it was exactly the opposite. It was the state government imposing its power.

Mr HOARE: It was certainly by imposition.

Mr BAILEY: If you are using that rationale, is it reasonable that the federal government should have the same power over the states, allowing it to rearrange the number of states when it feels like it or thinks it is politically popular. I guess that is the analogy. I would have thought that none of the states would want to hand over that level of power.

Mr HOARE: Ideally, local government would reserve the right to do it voluntarily. But I think voluntary change like that occurs exceptionally slowly. To be quite honest, it just does not work sometimes. Many small bodies do not want put themselves out of existence. It is like

combining football clubs. No football club ever wants to vote for its own destruction. It is the same with councils.

Mr BAILEY: ...The same argument applies in relation to changes in boundaries or anything.

Mr HOARE: I can see the analogy you are making but I am just expressing, in a practical sense, the view that changes do occur and that the system needs to be flexible to allow that to happen. Ultimately, the Premier of Victoria will have to account for what has happened in that state.

Mr BAILEY: Like the Prime Minister of Australia.

Ms HICKEY: Jeff, in addition to the principles that you wish the committee to be informed of and any changes, will your September meeting also consider the issue of the degree of formal entrenchment of local government? I do not know whether you have had an opportunity to have a look at the exposure draft.

Mr HOARE: No, I have not.

Ms HICKEY: I am sure that its contents will inform local government bodies about what we are suggesting in terms of entrenchment in the constitution. The options include: a form of entrenchment which could only be overturned by referendum; a form of organic law, which provides for change only with a significant majority of parliament; and ordinary legislation. We will be very interested in the views of local government on the degree of entrenchment it sees as acceptable within a constitution.

Mr HOARE: I will certainly place that on the agenda for consideration. I am intrigued by what is happening in Victoria and other states, including Tasmania, which have constitutional recognition of local government and have been making reforms. From local government's point of view, recognition does not stop these things from happening and in an ideal situation that may not be what is required. But in a practical sense, that is what is happening elsewhere.

Mr HATTON: I guess a lot will depend on you talking and going through that process in September. Would it be of any assistance to your association if a representative of this committee or perhaps one of our advisers were available to discuss some of the technicalities?

Mr HOARE: That would certainly be of assistance.

Mr HATTON: Would the committee be agreeable to that?

Ms HICKEY: Yes.

Mr HATTON: I certainly will not be available in September. I have a prior engagement.

Mr HOARE: That would be welcome. It is our annual general meeting then. The Chief Minister will be addressing the conference on the issue of statehood so this will tie in quite nicely. I will undertake to put that on the agenda and ...

Mr HATTON: If you could be in contact with our executive officer Mr Gray, we could arrange to have advisers present. Perhaps some members of the committee may also be available to attend also.

Mr HOARE: You are very welcome to attend.

Mr HATTON: I am sure Mr Baldwin will be more than happy to attend, having recently been a vice-chairman of your association.

Mr HOARE: That is right.

Mr HATTON: As you can see, the people sitting at this table have more than a passing interest in local government.

Mr HOARE: I think Cabinet is meeting down there today. So there will be other people present at that time.

Mr HATTON: Unfortunately, September is just an impossible month for me.

Mr HOARE: I have already written to our members about that discussion at Yulara, inviting people to contribute their views. Several people have indicated their interest in coming together in a small group to see what words we can come up with.

Mr HATTON: You may be able to work with our people to get some ideas together too, some options and some new things you can discuss.

Mr HOARE: That is right. I think it is very important to get down to the words, rather than us just saying ...

Mr HATTON: It most certainly is for us. We want to have our drafting task completed by the end of this year, so we are running out of time to discuss issues.

Mr HOARE: I take the view that we should put something to you. It is then your decision as to whether you cross or tick it or whatever.

Mr BALDWIN: We have purposely not provided any recommendations. We have left this as a discussion paper awaiting the views of local governments. We want to come to some ...

Mr HOARE: It is time now to develop the words involved.

That is all I had to put forward. I would be happy to respond to any other questions. Whilst we have a general policy of fully supporting constitutional recognition, the rest is not there at the moment. I am operating from the views of the 20ld associations but I am not completely confident that what I say will be the outcome of the meeting at Yulara. Certainly, I think the general feeling is that we would want to have something that is flexible and does not tie people down.

The one issue that people do talk about a lot in this context is the ability of the minister to dismiss a council. That is an issue that focuses people on this very much. At the present time, as in

the other states, it is handled under the Local Government Act. Often, local government wants to see that ability ...

Mr HATTON: Some due process entrenched.

Mr HOARE: Yes, that is right.

Mr HATTON: That may well be reasonable. It would cover the right to have local government, the right to have some security over the agreed functions it carries out, and the right to due process in the event of circumstances that may lead to dismissal.

Mr HOARE: Again, there are circumstances that can occur and do occur on rare occasions, which require some sort of action like that. If you entrench things like that in the constitution, you can end up with an impossible situation.

Mr HATTON: There have to be some words to ensure that justice is done and it is not the capricious act of a minister.

Mr HOARE: That is right. Again, if the minister does that - and as you have said, a minister is unlikely to earn any points by doing it - the ...

Mr HATTON: Well, it has never been done in the Northern Territory.

Mr HOARE: No. It has not been done here and it is only ever done rarely.

Mr HATTON: There has been the odd circumstance which might have justified it.

Mr HOARE: Interstate, the general feeling is that if it is done, something should be put in place very quickly to ensure that a better situation is reached as quickly as possible, with elected members resuming. In Victoria now, where commissioners are in place, although the process had not been particularly quick, they will be reverting to elected people very shortly. The Premier may find that a lot of the people who were there before will end up being elected again. They are the things that happen in practical terms when those sorts of actions are taken.

Mr HATTON: Do any members have questions or comments?

Ms HICKEY: Jeff, apart from the submission to follow the NTLGA meeting in late September, we would be interested in views concerning the representation of people on the constitutional convention. Members of your association may also be interested in debating and discussing that issue at your meeting. It is obviously important that we have involvement from grassroots level at the next stage, which will occur next year. I would encourage your members to look at that too.

Mr HOARE: I have not looked at a lot of those other issues. I could bring that forward.

Ms HICKEY: What I am saying is that your association's involvement does not need to stop at the submission stage. It has not been determined whether local government would be represented through election or a nominated member. Certainly, I can see that as being a role for some elected members and it would be useful for people to be starting to think about that.

Mr HOARE: Right. Thank you very much for the opportunity of appearing.

Mr HATTON: Thank you for coming along. We look forward to receiving the details after September.

Mr HOARE: Thank you.

Mr HATTON: Are there any questions or comments that anyone in attendance would like to make on anything to do with the process of establishing a constitution, or the moves towards statehood? It is as much our role to answer queries or questions as it is to take submissions and views from people, as we are trying to get the community actively involved and informed on these important issues. We are also keen to find out whether we are going in the right direction in terms of our work on the drafting of a constitution.

Ms REW: I was just thinking about making the Local Government Act an organic law. That is all.

Ms HICKEY: That is why I raised it for Jeff's concern.

Mr HATTON: That is one of the issues that may well be looked at, as is the question of sufficient flexibility. At this stage, we will suspend the proceedings.

Mr HATTON: I will formally recommence the proceedings of the sessional committee and welcome the representatives of FORWAARD who are in attendance. Please do not feel shy about speaking up if you have any questions to ask or any views you would like to express. That is what this meeting is about. It is an opportunity to ask anything or to raise any points that you think we should think about in putting together a Northern Territory constitution. Whenever you feel like you would like to have a talk, just let us know. In the meantime, perhaps Mr Whyte would like to discuss some things.

Mr WHYTE: My name is Allan Whyte. I am appearing as a private citizen. I am also the serving secretary of the Islamic Society of the Northern Territory. Although I have not been mandated by that organisation to speak on their behalf at this hearing, it is possible that my views may be fairly representative of the Islamic community in general.

Having digested the documents which have been kindly distributed by Mr Gray, I would like to argue that the Northern Territory's proposed constitution should have an entrenched bill of rights. It is my personal opinion that, by having an explicit statement of rights entrenched in the constitution, with those rights being interpreted from time to time by the judiciary, there will be a desirable spread of power concerning the rights of citizens in our society.

I also believe that a bill of rights in that form would be very useful as an educative tool in my work, which is usually as an interpreter. I often come across migrants and people who are new settlers in the Northern Territory. Often, I have the impression that, before they arrive in Australia, they have some understanding of what kind of country Australia is physically but not socially and politically. I think that a bill of rights would go a long way towards embodying some of the concepts that our society holds to be very high in importance. As far as that goes, it could be a very important tool with which to instruct new citizens to the Northern Territory.

I am not sure whether this is legally valid or not but I believe that it should have perhaps some clarifying statement that explains the way in which international treaties, to which Australia is a party, imply obligations upon the Commonwealth which then filter down to certain notions of rights and freedoms which are applicable at the Territory level. We have seen some cases in previous years in the High Court, and acts of the federal parliament, which have been based upon notions of rights and freedoms, that have come from treaties and documents to which Australia is a signatory as a nation and a Commonwealth. I think that there could perhaps be some explanatory paragraph within the bill of rights to explain that there are also national obligations which may work in conjunction with the rights explicitly described in the Northern Territory bill of rights.

Mr HATTON: Just to clarify that, what you are suggesting is that there be something in this constitution which notes the fact that some rights derive from the Australian constitution and the Australian constitutional structure, and that nothing in this constitution will derogate or detract from those rights.

Mr WHYTE: It would also say that what is set out in the Northern Territory bill of rights is possibly not the sum total of what you might get. There is more, and it comes from areas beyond the Northern Territory, either from the federal government or perhaps from beyond.

In relation to the specific content of the bill of rights, as a member of a minority religious group, I have a keen interest in the notion of freedom of religion. I have spent some time studying the references to freedom of religion in the Australian Commonwealth Constitution. It does not take very long because there are not many of them.

The single most explicit reference is in section 116, which is discussed briefly in the Discussion Paper on a Northern Territory Bill of Rights. It is notable that, although that section appears in the chapter regarding states, the wording of section 116 explicitly refers only to the Commonwealth. The establishment clause, which it says that ‘the Commonwealth shall not establish any religion of the state’ refers only to the Commonwealth of Australia. According to legal interpretation, it is technically possible that a state or territory could declare itself to have an official religion or, if you go to the second part of that section, could impose a religious test for people wanting to serve in a public office.

Although, in the current climate in the Northern Territory, it seems politically unlikely that such a possibility would ever come to pass, it might not have sounded so ludicrous about 10 years ago in Queensland. Under the very right wing Christian fundamentalist approach of the Bjelke-Petersen government, there may at some stage have been a proposal to make Queensland a Christian state, or a state based upon a particular form of religious interpretation.

So I think it is desirable that a bill of rights proposed in the Northern Territory should contain a clause explicitly guaranteeing freedom of religion. In the tradition of the Australian Constitution, that would have a broad definition of religion. Although the term ‘religion’ is not defined in the constitution, it has been interpreted by the High Court fairly widely as meaning any structured set of beliefs that has a religion-like manner. Very importantly for the Northern Territory, such a sense may be held to apply to sets of Aboriginal beliefs which, perhaps in a conventional or western sense, do not have the forms of religion that most people might recognise. By virtue of the

fact that they are a comprehensive and dedicated system of beliefs, they would be described as a religion and therefore accorded protection and freedom of expression under such a clause.

In one sense, however, the High Court has narrowly interpreted the establishment of religion clause. Saying that the state shall not establish religion is not the same as saying that the state shall not provide any assistance to religious groups, or for religious purposes. That is not the case in America, where a similar clause in the American constitution has been used by secular groups to prevent the government providing aid to religious schools. In Australia, that is obviously not the case. We do have religious schools run by churches. In other states, schools are run by Islamic groups, Jewish groups and so on. Those groups are eligible to apply for state funding.

That clause was tested in a case referred to as the Defence of Government Schools or DOGS case in the High Court. It was argued along the American lines that, by funding church or religious schools, the state was in a de facto sense establishing religion. The High Court of Australia took a more liberal point of view, finding that the simple provision of funds to facilitate education was not the same as establishing a religion.

The question is raised in part 12, paragraph (e) of the discussion paper on a bill of rights. I will just read it: 'A new guarantee in wider terms in a Northern Territory constitution would need to consider whether the position as to state aid is to be expressly maintained'. It is on page 40, sorry. If the judicial minds of the Northern Territory continued to interpret a similar type of establishment clause in the same way as the High Court has done, I do not see that there would be any need to expressly state that aid can be maintained.

In fact, I should admit that the Islamic Society has recently received a grant of \$3000 under the Ethnic Affairs program, specifically designed to service the ethnic side of our community, a large number of whom were born outside Australia. It would be unfortunate if one of the effects of putting in a freedom of religion clause would be to disallow funding of that sort, solely on the grounds that it was going to a religious body, and not looking at the specific purposes to which the funding was to be applied.

Mr HATTON: I think the issue that addresses people's minds in terms of inserting something as a freedom of religion was the apparent abuse of that right in the United States. People were able to establish what seemed like scams, to all intents and purposes, to extract money from people and avoid taxation. That Mob from Waco, the Branch Davidians, was an example. One would not want to create a constitutional loophole that would allow endorsement by way of constitutional right to practices that would be regarded as contrary to the interests of society. That is probably the one question that is really exercising our minds. I think I can speak on behalf of the committee as far as this is concerned.

Mr WHYTE: I have a feeling that there is a reference to freedom of religion in the International Convention on Civil and Political Rights. A further clause says that freedom of religion is only subject to the limitations of the civil and criminal law that applies in the land. Therefore, I would say that a government could legislate a particular practice to be against the law. It would not be able to defend that practice on the basis of freedom of religion.

Mr NICHOLSON: It is page 66, Mr Chairman, article 18.3.

Mr BAILEY: Allan, I think one of the points is that there are levels of religious freedom. This is where you start looking at groups such as the Branch Davidians. In reality, there are many such groups that would pass a test of what a religion is. There are difficulties when you become more definitive in terms of a test of religion. For example, Aboriginals would start to get cut out and many other groups may get cut out along with, I guess, undesirable groups. If we classified the Branch Davidians as an undesirable group, the criteria they used to argue that they are a religion would be the same as those used by many other religions. However, different tests can be used in relation to the issues such as taxation, which Steve mentioned, and the rights of a religion.

In other words, a group such as the Branch Davidians could choose to be a religion and you cannot actually persecute them for saying that. However, if they then try to get extra benefits from the community, you can argue that they do not fulfil certain rights for taxation purposes or something like that. In the case of funding, it could relate to their structure. Just because you are a religion does not mean that you then get a whole series of other community benefits.

I think you have to be very careful when you are trying to define appropriate and inappropriate groups that call themselves religions. Many religions which are now accepted as standard religions and have been around for years, or even some more recent ones, were persecuted at the time of their initial establishment. Now, however, they claim to be mainstream religions.

I have actually read articles which suggest that Amway and Tupperware would actually fulfil the requirements of being a religion because of the sort of meetings they have, their organisational structures and so forth. If you move from religion to cults, and things like that ...

Mr HATTON: I suspect they have more to do with Mammon than God.

Mr BAILEY: But using the same sorts of criteria, you can end up with some very interesting groups which could define themselves as religions. If they chose to do so, I would find it hard to argue that it should be made illegal for them to call themselves religions. However, I think there is a point where you can say that, for other community benefits such as in relation to taxation, a different test might be applied.

Mr WHYTE: I do not think the Australian Taxation Office is noted for its rampant generosity. I have spent a bit of time looking at taxation law. Taxation concessions apply largely to charitable acts rather than the organisations themselves. There is a very minor sales tax exemption for items that are used specifically in the process of worship. I do not think it would apply to the mortar grenades or anything that the Branch Davidians might wish to buy.

Mr BAILEY: In respect of government grants, any group could be classified as a religious group. But they have to fulfil the requirements of getting a grant to do it. As I said, if it was a group that was not seen as providing a general benefit to the community with that grant, or even a benefit for its own community, it would not get the support. You do not have to actually have to say: 'Well they are not a religion'. They are simply not meeting the criteria for getting a grant.

Mr WHYTE: I do not think we have a practical problem there in terms of the way the situation has developed in Australia's history.

In terms of freedom of religion, the non-establishment clause not applying to states and territories has only been enacted a couple of times. In the late 1960s and early 1970s, Victoria, South Australia and Western Australia banned the Church of Scientology on the grounds that it was an undesirable organisation. They were unable to bring a defence on the grounds of freedom of religion because that clause did not specifically relate to the states. I think they changed their minds in the end, because of public pressure and so on.

Mr HATTON: I think what we are talking about here is how we want to frame the terminology to achieve the views you expressed. That is, we want to ensure that genuine legitimate religious faiths are not persecuted or discriminated against, whilst at the same time not creating a circumstance in which people can exploit society.

Mr WHYTE: We should probably finish up on this because we have just about done it to death. If the constitutional development process takes up the discussion in the report on the proposed bill of rights and if there is religious representation either intentionally or through the elected representatives on the constitutional convention, I am sure that they will be able to come up with some entrenched or legislated arrangement which is satisfactory to the needs of the Northern Territory. Given that the issue has been identified in the discussion paper, there is probably enough momentum to keep things going. I do not think it is likely to be a major problem area. However, coming from my background, I would like to see it given continued attention throughout the constitutional development process.

Mr HATTON: The question we are wrestling with in relation to a bill of rights, is whether it is advantageous or necessary to entrench it in the constitution rather than relying on a body of laws and practices resolved over several centuries. I understand the point that you are making: You would like it entrenched so that it cannot be disenfranchised through some process in the courts, even at a later date.

Mr WHYTE: That is what I came here to do.

Another comment I would like to make relates to the Westminster system. I am not a person who holds that the Westminster system is necessarily holy writ. I would argue that the Northern Territory needs a parliamentary system that synthesises democratic principles and concepts of decision-making, regardless of where they may come from. The political system should also be easy to understand and participate in.

I think that is important because an argument presented in favour of the Westminster system in one of these documents is that it is the system that is best understood by Australians. My interaction with Australians in the streets, shops, meeting halls and various other places around the country tells me that most of them have absolutely no idea of how, in theory and perhaps in the detail of practice, the Westminster system actually works or is supposed to work. I do not think that is a very good argument to defend the Westminster system.

Understanding the parliamentary process, simply from reading something like the draft constitution or even from sitting in the Legislative Assembly on a quiet Wednesday afternoon, can be very difficult. Even if you are directly involved with the tools and with the physical reality, it is hard to understand what is going on. It takes a lot of practice. It takes a lot of understanding.

Mr HATTON: It does for us too.

Mr WHYTE: It probably does not help when some of the things do not appear to be all that helpful in the way they are explained. For instance, section 2.3 of the exposure draft on page 20, talks about ‘organic laws’. I was interested in it because I had not come across the term ‘organic law’ before. I do not have a legal background and I was interested to find out what these new beasts might be. The definition of an organic law is ‘a law that is declared by this constitution to be an organic law’. I find that rather circular. Although I gained a better understanding of the concept as I continued to read, I still think that in practice it is a very difficult concept for the average person to understand.

Mr HATTON: It is a new concept in Australia.

Mr WHYTE: That is right.

Mr HATTON: We are bringing forward a concept that is not applied in Australia at the moment. In fact, to my knowledge, the only place where it operates is Papua New Guinea. As we searched constitutions around the world, the concept arose. I am sure you understand that the clause which says ‘words declared by the constitution to be an organic law’ is there because it is recommended elsewhere that the Aboriginal Land Rights Act will be an organic law. That would have to be constitutionally an organic law. On the other hand, the parliament itself may want to say, in respect of some other legislation that comes forward: ‘This is so important that we want to entrench it further than just a basic act of parliament’. It provides the parliament with a capacity to create organic laws beyond what the constitution requires. That is really all that is saying.

Mr WHYTE: I guess I am arguing that, while the parliamentary system may indeed be complex, that is not to say that it should be difficult to understand or to participate in. I mean, your average modern Commodore is a very complex piece of machinery. They are very easy to drive. You jump in, turn the key and slam your foot on the accelerator. It is fairly straightforward to use and operate. However, the inner workings can be very complex. Given the quality of media reporting that we have or do not have in this country and particularly in this territory, it is important that the operations of the parliament and the executive be easily understood by the average person.

With no offence to present company, I think the public in general probably has a fairly low opinion of the quality of people who stand as candidates for election to parliament, and who serve as members of the Legislative Assembly, and of the overall quality of parliamentary debate and process. I am not saying that that is an absolute, but there is a perception that that is so. I have seen various opinion polls that rank politicians lower than used car salesmen and so on. I do not completely believe such things but I know that out in the community there is concern that what passes for parliamentary debate in this country can sometimes be overly theatrical and confrontative.

Last night I saw a news item concerning the role of women in parliament and their perceptions of what happens to them and what it is like to be a member of parliament. I think it reflected some of the community’s concerns about the sorts of parliament that we have and the activities that take place within them. They are not necessarily the only way that we could manage good government in a place like the Northern Territory.

There may be other ways, other systems, and different concepts that we can incorporate, which will make parliament a better place for everybody. Perhaps it could be less confrontational, more enlightening, more inspirational, providing better leadership and a better quality of decision-making. Perhaps it could be a better forum to channel the aspirations of the citizens of the Northern Territory. We should therefore be open to ways of adjusting the sorts of parliamentary systems that we consider.

As I see it, the Westminster system essentially has not evolved much over the last 200 or 300 years. For example, the practice of queuing up to write on a bit of paper and stuff it in a box once every 4 years originated in the days when it was not physically possible for people to gather in large numbers in a certain place in order to have their say. They therefore chose someone to represent them over an extended period of time. That is certainly not the case with modern communications.

There may be some way that we can incorporate an up-to-date community voice and pressure and concern in parliamentary decision-making. I think this was touched on in the discussion paper on citizens' initiated referenda, which was produced a couple of years ago. I seem to have lost my copy so I will not comment in detail upon the proposals put forward. However, I certainly hope that the issues brought forward in that paper will be kept under consideration during the process of constitutional development.

In respect of the proposed parliamentary system, I think a case can be made that a Westminster government does not operate as ideally under a unicameral system as under a bicameral system. Given that we only have the single House in the Northern Territory, it is important to extend as large amount of power as possible to the general body of the legislature. Otherwise, the executive can become far too powerful. If there is only a single House, it is important to ensure that the executive is fully accountable on the floor of the parliament and that any proposed formation, right down to the standing orders of the parliament, should keep that in mind. The operation of the Westminster government as a unicameral system has a different dynamic to one that operates with 2 houses of parliament, where you have opportunities for review and extra consultation.

That is about the extent of what I would like to convey to you today, so I would like to thank you very much for bearing with me.

Mr HATTON: Thank you.

Mr BAILEY: In relation to the last point you raised concerning accountability, I gather you are not actually suggesting that we change from a unicameral to a bicameral system. In other words, you are not suggesting that we have an upper house.

Mr WHYTE: Unless we get invaded by Indonesia tomorrow and the population increases enormously, I cannot see that there will be public support for an increase in either the number of politicians or the number of houses of parliament. I just do not think that the practical side of it can be accommodated at this stage.

Mr BAILEY: Within the constitutional framework - which is what we are talking about in relation to this committee - how do you make a government executive accountable to a parliament?

There is an executive, but at the moment the rest of the government members have an absolute majority. When a matter comes to a vote at the moment, the government basically always has the numbers. How do you make them more accountable?

Mr WHYTE: That is interesting. Perhaps as a member of the opposition you are better able to make suggestions than I am. But I think there are probably some simple things. It is suggested that the quorum for a session of parliament is 8 members, which to me ...

Mr HATTON: It is 10.

Mr WHYTE: I thought I read 8. I think the public would like to ensure that when a debate is going on in parliament, the majority of their representatives are at least there. Again, I do not know enough about the actual practicality of operating a session of parliament. However, I would have thought, from the public's point of view, that it would be desirable to have at least a majority of the members of the House present for all of the session.

Mr HATTON: Perhaps a couple of points would be worth noting.

Mr WHYTE: Speak from experience!

Mr HATTON: From experience, it seems to me that the best way to make the executive accountable is to have a majority of backbenchers in the party room. They can turn you over tomorrow.

In respect of parliamentary debates, and frankly we see this in parliaments all around the world, the public often does not realise that debates are broadcast and shown on television monitors throughout this building, so you can actually be in your office while you are watching the debate. If you have already spoken in a debate which may continue for another 3 or 4 hours, you can sit there without legally being allowed to say anything. You can interject but you are not really supposed to do that under the standing orders. It does happen from time to time though. Often, without actually being in the Chamber, you are still following the debate. Even in advance of speaking in the debate, you may well be outside with advisers or others, preparing yourself to speak. You are actually watching and listening to the debate, even though you are not physically inside the Chamber. I know it does not give the right perception to the public, but it is a practicality of working.

Also during a sitting of parliament, all of us have groups who come to lobby and talk to us. We often leave the Chamber to meet such groups. Sometimes these groups are anticipating a particular debate and at other times they may just want to push a cause. Those democratic processes are occurring whilst the parliament proceeds.. All members here would probably agree that it is a process that you go through. Although someone looking down from the public gallery may think that nobody is there or nobody is taking any notice, processes are continuing outside the Chamber itself. That is a practical explanation, although I know you would never convince the public of that.

Mr WHYTE: That is right. Maybe it is the iceberg principle, where most of what happens in the parliamentary system is fairly well hidden. However, I think the public would like it to be as open and as visible as possible. If the member for Barkly is ranting away from the cheap seats and there are only a couple of government ministers lounging around on the hard wooden benches, it

gives the impression that nobody is concerned and she is not being listened to. Regardless of the concrete position of the opposition in terms of not being in government, they are people's representatives. They are representing a point of view of the public and ...

Mr HATTON: If you read through the debates, however, you will find that a member will often come in and respond to the points made by the member for Barkly. You might initially think that no one was listening, but a couple of speakers later someone will come back and address those issues.

Mr BAILEY: I think the issue, as you said, is one of perception. In fact, in terms of maintaining numbers on the floor of the Chamber, the quorum is one of these 300-year-old things that you were talking about before. With modern technology, it is not as relevant as it once was. 300 years ago, there were no communication systems. If you walked out of the room, you had no idea of what was going on.

Theoretically, we could almost run a virtual parliament, where members just stayed in their electorate offices in Alice Springs and other places, and we could all be connected through the Internet or with interactive video. In many ways, there is no longer a physical need to have a Chamber. However, we still have antiquated rules that say that we must all sit in the Chamber and that is where it all goes on.

The truth about parliamentary debate is that it is not interactive. You get up and speak for 20 minutes and then you sit down. Someone else gets up and speaks for 20 minutes, and then they sit down. Debate on a single topic can go on for 10 hours, and you have one opportunity to speak. For all intents and purposes, if you speak early in a debate, you have no chance to respond to other comments. Most members of the public would think that a debate allows people to exchange ideas back and forth. That is not the way parliament operates.

I take your point. I think there needs to be greater public awareness of how parliament operates. Rather than leaving people to think that nobody is interested because the Chamber is fairly empty, we could let them know that members are sitting in their offices listening and watching. That would give a better impression. Possibly, turning the television cameras to the wider public would also change the way parliament operates. There are arguments for and against that.

Getting back to the issue I raised, I was interested to see if you had any specific ideas about executive accountability in a unicameral parliament. The Westminster system has an upper and lower house. Although the idea was that parliamentary members would be representatives of their constituents, the reality now is that we largely have a party system within Australia in a unicameral House. Whoever forms government usually has an absolute majority, although in cases like the ACT that is not necessarily so.

I would suggest that accountability for executive government, especially when it has absolute numbers, is through committees and offices such as the Auditor-General, who have a role in scrutinising what is done by the executive. The truth is that government backbenchers do not publicly scrutinise what the executive does. Decisions are mainly made behind closed doors. I think the only way of guaranteeing full accountability under a unicameral parliamentary system is by utilising committees and procedures which ensure that all decisions of government are not just

accountable within the parliament but within the state. That may have to be a constitutionally entrenched position, because it does not normally occur when you have a government that has absolute control.

Mr WHYTE: Yes. It is fairly daunting for someone like me to take upon the pretence of trying to revamp 300 years of Pommy heritage overnight. So, I think the ideas will come. The important thing is that this committee and people who consider the format of a parliament should be open to ways in which the system can be revised. After all, it is only a man-made machine. It theoretically can be made better and we should apply ourselves collectively to thinking about ways in which it can be made better.

I personally do not have an overflowing basket of really good ideas just at the moment. However, I am just pointing out that members of the constitutional convention, and the parliament when it deliberates upon the report of that convention, should have fairly open minds about reforming the parliament to make it as productive and representative as possible.

Ms HICKEY: From an opposition perspective, the sentiments you have expressed would be dear to our hearts. We would be keen to see things like a Public Accounts Committee with true independence or autonomy, and legislation committees and the like that other parliaments enjoy. It is a question of how you build that into a constitution. For example, under our current system, our standing orders change almost constantly. They are the rules by which we conduct business in parliament. Through the Standing Orders Committee, we review those rules constantly. I guess those things evolve over time and are a product of what happens.

At the moment, we operate largely on a 2-party system in the Territory. It may well be that, over time, there will be Democrats who stand for election and win seats. That would change the balance considerably in our parliament. So we have to have flexibility in terms of how we conduct ourselves. Although it pains me to say so as an opposition member, I think a lot of that would have to be left within the framework of legislation rather than being entrenched in the constitution. But I know what you mean.

A lot of people who have made submissions, spoken to the committee or spoken informally have raised issues that are of interest to people. For instance, somebody in Katherine said: 'Is the committee able to consider other questions such as the issue of regional governments?' Of course, we cannot do that because it is not in our terms of reference.

Mr HATTON: I think we can.

Mrs HICKEY: Can we?

Mr HATTON: If we are preparing a draft for the constitution, it can be structured in any way. Do you mean doing away with the Territory government?

Mrs HICKEY: Yes, or even outside the Territory's borders. I think the person was envisaging something for the whole of Northern Australia.

Mr HATTON: That is a national issue.

Mrs HICKEY: That is right and obviously we cannot look into that, although it does raise interesting issues. Another issue which has been raised with me is the question of equal gender representation in Parliament. We are not charged with investigating such issues.

The exposure draft does raise the issue of whether parliamentary terms should be fixed or flexible and whether single-member or multi-member electorates are appropriate.

Mr HATTON: Could I make a couple of observations?

The issues you are talking about relate to accountability and public perceptions. I do not think any of us here are not painfully aware of those public perceptions and views. My observation would be that things are working well in terms of democracy and keeping the processes of government and parliament much closer to the people than occurs elsewhere in the nation. For example, the fact that the electorates are very small creates greater contact between local members and their constituencies. There is an expectation amongst almost any of the citizenry in the Northern Territory that they have a right not only to see their local member but also their local minister or the Chief Minister. I can assure you from personal experience that there are many people who have no hesitation in phoning the Chief Minister at 3am to raise a complaint. On one occasion, a Chief Minister was asked to resolve a bet at a Saturday night party, concerning who was the prime minister during a certain year. That very high level of contact is a function, I believe, of our very small electorates. It supports some of the accountability issues that you are referring to.

Secondly, I believe that a structure which has an executive responsible to the parliament and a parliament responsible to the people is not necessarily a bad structure. That is distinct from an executive structure system, where a head of state is elected to form a government as occurs in the United States where ministers need not be elected officials. The head of state chooses people to form the government.

There is also the question of the public following what happens in parliament. I am not sure how 10 or 12 hours of good, bad or indifferent parliamentary debate - as inevitably occurs - can be successfully and fully communicated to the public in a 60-second grab on radio or television and a few scribbled lines in a newspaper, which inevitably reflect the view of the media reporter.

Where there is no comprehensive explanation which enables the vast majority of the public to understand what is occurring inside the parliament, I am often perplexed as to how people can become informed in an easily accessible way. Not many people spend time sitting in the parliament following through from one sittings to the next or reading the record of debates. Some do but most do not. The only thing they know is what they read in the newspaper, hear on radio or see on television. That is their total perception of what occurs.

My observation is that the media desire for sensationalism almost inevitably focuses on bread and circuses and gladiatorial combat as parties vie to get their messages across. I do not know what you think but it is an observation that I make personally. Even the most sensible debate in parliament is likely to be described as boring. I do not know whether that is achieving the objective either.

Mr WHYTE: You could also discuss how the parliament is required to report its activities to the people. For instance, the Hansard is obviously a very good record of what goes on in parliament but it is not of particular ...

Mr HATTON: It is not riveting reading, is it?

Mr WHYTE: No, it is not a particularly attractive magazine. It is not the sort of thing you would reef off a newsagent's stand. There is obviously some reluctance among the public. In a way, even a forum such as this is not particularly accessible. Obviously you do not want to set up in the mall where just anybody might wander in and give you a piece of their mind. But in a sense it is not as accessible as it might be. For instance, if you were not literate enough to be able to read the notice in the newspaper or to follow the notices publicising this event, it would have been very difficult to have known about it.

There is a whole range of communication structures which the overall parliamentary and governmental system perhaps needs to look at. I find that the government has a very good publicity machine because its livelihood depends on it. But the parliament, as an institution, does not have anywhere near as good methods of communication to convey its activities to the people.

Mrs HICKEY: That is a good point.

Mr WHYTE: In that respect, it is probably a shame that the position of parliamentary education officer disappeared a few years ago. If there was any way of reinstating it, I think it would be very beneficial ...

Mr HATTON: We are still waiting for the report ...

Mr WHYTE: ... especially at a time such as this when we have not just the usual run of parliament but a very crucial stage of Northern Territory constitutional development and history. It is a shame that there is not a full-time educator available to the parliament to liaise with the people of the Northern Territory, especially the school children.

Mr HATTON: I can assure you, in my new role as Minister for Education, that the matter is being seriously addressed at the moment. I happen to have a particular interest in the matter and, as the new minister, I know that the department is currently reviewing approaches to better informing students. Under the new federal government assistance fund for civics education, we may be able to bring together a few issues to bring about better political and parliamentary education in the education system.

Mr WHYTE: Thank you for your time and the opportunity to appear.

Mr HATTON: Thank you. It was very enjoyable and informative.

Ms LEE: As you know, I have been doing the show circuit for this committee during the last few weeks. It has been an excellent experience in terms of enlightening people about what is going on. However, I do have a concern that, before we start talking, people do not seem to have any idea of what we are talking about. In light of the convention possibly going ahead in 12 months time, I am interested to hear about your plans for publicising what is going on. It is not much time to

start getting the community to the level of understanding that they need in order to get good representation.

Mr HATTON: Perhaps speaking on behalf of the committee, I would point out that the show circuit, including yourselves and the video, was the first stage of a marketing campaign. Quite apart from the literature that is going out, you are in fact the first stage of that process. We will be going back to our marketing consultants to build the continuing program.

We will also be engaging in extensive meetings in communities around the Northern Territory, particularly Aboriginal communities and smaller communities, as we did in 1989-90. We will be working through the same sort of process as we have done here. I can assure you at that, out in those communities, the environment tends not to be in as daunting as this. In fact, the formal hearing process usually involves sitting on the ground under a tree. That will be occurring.

A number of us are also seeking opportunities to speak to community groups, clubs and other organisations. Both political parties are now organising to start publicity campaigns within their own networks of membership and from there out into the community. There are a number of avenues. It depends how many advertisements you want to put on television as distinct from community processes. It is a very difficult issue to convey in a toothpaste advertisement sort of environment.

Ms LEE: It follows on from the earlier discussion about the lack of knowledge generally about how parliament works.

Mr BALDWIN: The other aspect that will generate more public awareness will be the debate in parliament on the draft constitution and the establishment of the convention. I should imagine that that will be widely publicised. It seems to me, since I have become a member of this committee, that the media is slowly but surely coming to grips with what we are doing and the stage we have reached. I think they can now see that we are coming to crunch time. It is interesting to see that they are turning up more and more whenever we have a meeting and trying to find out where we are at and how it is coming together. I think that Steve is right. It is the start of the whole marketing campaign and it is slowly building.

Wes also made a useful suggestion. I hope you don't mind me pinching it, Wes. It would be a good idea to copy the video used for the show display and to distribute it around communities. It is a good tool that does not involve sitting down and reading all of this. People can visualise what is going on. The committee needs to discuss these matters but approaches like that are useful in terms of generating interest in the wider community. So we are starting but we are open to ideas of course.

Mrs HICKEY: In that context too, Joanne, I was thinking about the sorts of questions and feedback you have given us through this process and informally. Although we have not discussed it as a committee, I think it would be useful if the people who have been working on the stand were to give us a report, either severally or as a group, about the sorts of issues that came up for them.

The response that you get from the public is probably different from the one we get. Often, people do not like to expose their ignorance of a particular issue to their parliamentary

representative. Alternatively, they might want to engage you in political debate. Presumably, they do not do that with people staffing the stand. It would be interesting to hear from you about the sorts of issues that are coming up so that we can better focus our information packages from here on.

Ms LEE: I think people were a lot more willing to express their opinions to us because they did not think that we knew very much. They did not realise that we were law students.

Mr BALDWIN: We expect a 10 000 word report from all of you.

Ms LEE: Thank you. I just wanted to bring it to your attention.

Mr HATTON: I certainly think that it is worth noting. On behalf of the committee, I would like to thank all of the people who have been working and assisting us on the show circuit. Although you have another weekend of hard grind and are not yet finished, your work really has been extraordinarily helpful. On behalf of the committee and on the public record, I would like to formally thank you.

I can well remember the initial meetings in Alice Springs, through to the heavier, hard-hitting views that you are now prepared to bring forward. It is really good. I think that it is very positive. I would personally like to thank you for the way you have assisted us in the process. I hope that you keep involved in the process as individuals. It is something that is worth being involved in. I think I am speaking on behalf of all the committee when I thank you very much.

Mrs HICKEY: Certainly.

Mr HATTON: Are there any other people who would like to ask questions or bring forward submissions? It is open to the media to ask questions too. We will get you on the public record if you do.

Thank you very much for your attendance. It has been a very good day and I formally declare this meeting of the sessional committee closed.