

ALICE SPRINGS — Tuesday 5 July 1988

PUBLIC MEETING

PRESENT:—

Committee:

Mr Hatton (Chairman)

Mr Ede

Mr Harris

Mr Lanhupuy

Mr Setter

Absent (overseas):Mr Smith

Appearing before the committee -

Mr Neil BELL

Mr Vince FORRESTER

Mr Ian YUELL

Mayor Leslie OLDFIELD

Mr Bob KENNEDY

Ms Gail PETTY

EDITED TRANSCRIPT.

Issued: 12 August 1988

Mr HATTON: Ladies and gentlemen, I formally open this sitting of the Select Committee on Constitutional Development and I would like to make some opening remarks. The purpose of our visiting the various communities in the Northern Territory is to provide an opportunity, firstly, for the broad community to become aware of a number of the issues associated with the work of the committee and, secondly, to give members of the community the opportunity to express their views on issues of concern to them.

Before proceeding any further, I would like to indicate that we received written submissions from the Tangentyere Council and representatives of the council were to have made some verbal submissions in respect of those written submissions. However, we have been advised this morning that, unfortunately, representatives of the council are unable to attend this hearing. We certainly hope to catch up with the Tangentyere Council at later hearings.

By visiting the various communities in the Territory, the committee provides an opportunity for you, the members of the public, to raise any issues that you may have in relation to the work of the committee. I propose that we now take the opportunity to do that. This parliamentary committee has been part of the overall activity associated with the movement towards statehood in the Northern Territory. Its principal role has been to work towards the development of a Northern Territory constitution. The reality is that the Northern Territory will become a state at some stage, whether that be next year or in 5 or 10 or 15 years time. As a state, we will need to develop our own constitution. A constitution is the foundation document of every society. Such a complex and vitally important task has not been undertaken in Australia for over 100 years.

This committee has been working for 2 years on this task and it has produced some documents which are now publicly available. One is called 'Options For A Grant of Statehood' which is Information Paper No 1. Another is a discussion paper on representation in a Territory constitutional convention. The most significant document, and the one which has taken the longest to prepare, is a discussion paper on a proposed state constitution for the Northern Territory. That document outlines why we need a constitution, the process of making a constitution and the various elements that could be included in such a constitution. Its purpose is not to stipulate what should or should not be included in a constitution. It is simply what it says it is: a discussion paper to get people thinking about issues such as the structure of the legislature, the role of the Administrator or Governor, the role of the judiciary or the court system, issues relating to the nature and frequency of elections and whether we should be concerned with matters such as the entrenchment of specific rights.

Particular issues that have been raised include the possible entrenchment of Aboriginal land rights in some form or another within the constitution. The discussion paper deals with the question of whether there should be, for example, a preamble or some constitutional recognition of the unique place that Aboriginals have in the Northern Territory as the original inhabitants of this country. It deals with issues associated with the subject of human rights and a wide range of other matters. We are not saying that these things should or should not be included in a constitution. What we are saying is that these issues have been raised and we are seeking the views of the community in respect of them. Another issue is the recognition of local government within a Northern Territory constitution.

The importance of consultation such as this lies in the fact that the structure of our constitution will fundamentally shape the sort of society that we will have in the future. The development of a constitution provides a vehicle for the community itself to indicate what sort of a society it wants in the future. It is a unique opportunity for the people to have a direct input into the fundamental shape and direction of the Northern Territory of the future. That ultimate ability for increased self-determination is something that will flow from statehood. I will be asking other members of the committee to comment on that a little later.

We have prepared this discussion paper on the development of a constitution and are now seeking the views of the community in relation to this document. On the basis of such consultation, it will be this committee's role to prepare a draft constitution for submission to the Legislative Assembly. If the draft constitution is approved by the Legislative Assembly, it will be presented, along with discussion documents and all other information that the committee has received, to the Northern Territory people at a constitutional convention. The role of that constitutional convention would be to prepare a recommended constitution that would be referred to a referendum of the Northern Territory people. That is the basic process that will be undertaken.

A question arises as to how a constitutional convention is to be structured. How large is it to be? Should its members be elected or appointed? Should there be some combination of elected and appointed people? How can we ensure that, as far as possible, the widest possible cross-section of the Northern Territory people is involved in the vital task of preparing a document that it believes will be acceptable to the total population? This is not an exercise for politicians alone; it must be a function of the entire Northern Territory community. There can be no task more important than the development of a Northern Territory constitution and we must involve the Northern Territory community as a whole in that process. It must become the people's constitution. The role of this committee, which includes members from both sides of the parliament, is to involve the Northern Territory people in this process.

I recognise the fact that many people here today perhaps will have more questions than answers or comments. Certainly, we are more than happy to receive any questions, comments, views or feelings so that we can take them into account. This is not the last time that the committee will be in Alice Springs. Hopefully, on this occasion, we will begin to stimulate people's thinking about the issues involved in a move to statehood. Firstly, I will ask Brian Ede if he wishes to raise any points.

Mr EDE: The major point that I would like to raise is that there is a difference between the timing of statehood - and most of the discussion in the community seems to revolve around this point - and the actual constitution itself. There are people who believe Australia should have a unitary system and that there should be no states but rather a federal government and some form of regional or local government. However, we have taken the view that, on a practical level, the movement towards that is not strong enough for us to decide that that is the way we should go and have no part in the constitutional development process. Thus, even though there are major differences of view within this committee and the parliament on the timing of statehood, we believe generally that there is more likelihood of our eventually achieving statehood than of achieving a unitary federal/regional system of government for Australia as a whole within the same time frame. Therefore, it would be remiss of us not to become involved in the development of a constitution which will be the basis for statehood

in the Northern Territory whether, as Steve said, it is 5, 15 or 50 years away. Once that decision is taken, it then becomes necessary for everybody, no matter what his belief on the timing of statehood may be, to become involved in the discussion on what form the constitution should take. As Steve said, the constitution will determine in many ways the form of the society in which we will live after statehood.

The possibilities are endless. With the notable exception of that in the United States, the constitutions drawn up in the latter half of last century in areas directly connected to Britain were basically a means of setting a structure in place. However, in more recent times, constitutions have been concerned with human rights and the balancing of various interests and powers in society. How do you deal with issues such as the ability of people to initiate legislation themselves? What are the powers of the community as against those of the parliament? Those are issues which we should take into account in this discussion. We should also examine the special nature of the Northern Territory itself. We need to examine the balances within our current system and determine which of those balances are simply a hangover from federal days and can be changed and which are a natural consequence of the makeup of the Northern Territory society and require special consideration.

Part of the role of this committee is examine what will occur once it has completed its task. I refer to such things as the constitutional convention. As Steve mentioned, there is the question of how that convention is to be constituted. Beyond the convention, there is the question of the referendum. Will a simple majority be sufficient for acceptance? Will it require an absolute majority? Will it require 75% or 80% or whatever for its adoption? How will we ensure that it has that broad acceptance? It is not the function of this committee, I believe, to look specifically at the timing of statehood.

There is also the question of the method of achieving statehood: whether we use section 121 of the Australian Constitution or whether we seek statehood by means of an amendment to the Australian Constitution. There are terms and conditions involved in proceeding under section 121. This is a matter of general interest in the community and people should not feel constrained from talking about whether or not we should accept statehood under section 121 whereby, currently, we have 2 Senators. Do we hold out for the Tasmanian situation? Tasmania was given a minimum number of House of Representative seats and the full number of Senators. On the other hand, should we work towards a formula which would achieve that within a time frame that is not directly related to population growth? Whilst such matters are not covered specifically in our terms of reference, they are matters on which have people have many ideas and we should take those on board as we travel around the Territory.

On this trip, we will be travelling up the Stuart Highway, out to Groote Eylandt and Nhulunbuy and then back to Darwin. Later, we will be visiting Aboriginal communities, starting in the Centre and moving north. Even after the completion of that program, I am quite sure we will not have sufficient information to be able to say that we know what the people of the Northern Territory think. In these early stages, I think we will find that people will tend to stand back, offer a few ideas and wait for more information. At present, we are finalising an information paper which will be distributed to communities. I think that the dissemination of much more information will be necessary. We need to develop people's ideas on the nature of a constitution and the possible approaches. We do not want approach this in a narrow, blinkered way which would result in people adopting the minimum position or the lowest common denominator, if you like, because they do not have sufficient knowledge of what is possible. The process of developing the framework of our society and the laws that will govern it is an exciting one. I think that people should be encouraged to be adventurous and to examine boldly the possibilities of the society in which future generations of Territorians will live.

Mr SETTER: As we have gone down this path over the last couple of years, I have come to realise that the move towards statehood is very complex. I know that some people have become somewhat frustrated by the lack of progress. In fact, I heard Frank Alcorta say recently that the Northern Territory government has dropped statehood as an issue. I subsequently took Mr Alcorta to task on that because there has been an enormous amount of work done on this in the last couple of years. The evidence for this is the various documents that have been produced.

If you cast your mind back to the achievement of self-government in 1978, you would recall that many people in the community were not very happy about the move to self-government. Despite that, I think that everybody would admit that, in that last 10 years, we have made considerable progress on the basis of having a self-governing Northern Territory. However, in recent times, the advantages of the agreement at the time of self-government have been dissipated as circumstances have changed. As a result, the statehood option has now become far more attractive than it was 6 or 8 years ago when we had very generous funding arrangements, for example, under the Memorandum of Understanding with the Commonwealth. However, statehood offers us the opportunity to gain control over all those areas over which we currently do not have control. If we can achieve that, we can become more financially independent. At the moment, the

Commonwealth provides 80% to 82% of our funding. I stand corrected; it provides 76% of our funding. I am very pleased to note that it is improving; that is a good sign. We need to be able to raise more from our local resources. I understand that all states receive the majority of their funding from the Commonwealth and the percentage varies from 55% to 76%. If we could gain control over all of our resources, we could raise much more revenue locally and that would give us a great deal more independence than we have at the moment.

Having said that, I must point out that it has been very necessary to research all of the implications of the move towards statehood. I pay tribute to the officers of this committee who have done the majority of that research over the last couple of years. Having done that, the committee is now undertaking a process of consultation with the community. As was pointed out a moment ago, we intend to visit all the communities in the Northern Territory by the end of this year in order to obtain feedback from the people in relation to this matter. It is one thing for the committee to discuss the matter in isolation and take advice from officers, but it another thing for it to visit the various communities and talk to the people. We are undertaking this exercise because it is very important that, when we approach Canberra with our proposal for statehood, it has the support of the majority of the Northern Territory community. If we do not have that support, it is most unlikely that the Commonwealth would listen to us. In order to gain that support, we need to consult with the people and convince them of the advantages that statehood will offer. That is what we are doing at the moment.

Mr HARRIS: Steve, basically, you and other committee members have outlined the present position and what this committee aims to achieve. Our terms of reference are specific in relation to the development of a constitution. I would like to take up some of the points that Brian Ede made because I think it behoves the committee to carry out its task in the best possible manner and to obtain as much input as possible from the community. We are moving around the Territory seeking the views and concerns of people in respect of the move towards statehood and how a constitution should be developed etc and my dilemma is that I am at a loss to know which is the best method of arousing people's interest.

For example, I have a question that I would like to ask of the people here today and perhaps someone may like to comment on it. How did you know the hearing was on today? Did you learn about it from the media or did someone tell you that there would be a committee hearing today? Did you hear about it from people who wish to appear before the committee or from people who have made submissions to the committee? It is very important that we try to make the people aware of the role of this committee, and that has been touched on this morning. We need to obtain a better method of attracting the interest of the public. The whole question of whether or not we should proceed to statehood is another issue, as Brian Ede has mentioned, and I think there is no question that the government believes firmly that the move to statehood has to come from the people. It is not a matter of ramming statehood down people's throats but rather a matter of informing them about the advantages that statehood can bring to the Northern Territory and of allaying any fears that they may have. For example, it has been claimed that statehood will cost us a fortune. That is a load of nonsense. However, such issues need to be discussed in the community.

I really would like to know how people became aware of today's hearing. Perhaps people might like to suggest methods by which the committee can engender greater public interest in its hearings. If we do not have input from the public, the constitution that is developed may not reflect the real wishes of the people. That is of vital importance to us.

Mr HATTON: Perhaps I could ask if anyone would like to answer Tom's question.

A PERSON: From the newspaper.

A PERSON: From a brochure in my letter box.

A PERSON: Legal Aid.

A PERSON: I saw the brochure and articles in the newspaper. As well as that, I was privileged enough to get a telephone call about it.

Mr HATTON: Do you have any particular questions?

A PERSON: Not at the moment. I think there are some issues in terms of what Tom was saying about getting the message out. There is a lot of confusion that a constitution automatically means statehood and statehood very quickly. I think perhaps that you need to get a bigger message out there.

The other issue is that it does not seem to be of real concern to the people and that it will all be decided by anonymous

people. If you really want the community to become involved, you must ensure that people are made aware that their input is valid.

A PERSON: What is the average percentage of moneys that the states get from the Commonwealth?

Mr HATTON: It is about 60%.

A PERSON: So the Territory is not too far out of kilter.

Mr HATTON: No, particularly when you recognise certain facts. At the time of self-government, the Northern Territory was over 95% funded by the Commonwealth. Over the course of the last 10 years, as we have built up our own industry and population, we have developed our tax base which is now in line with the sort of tax base that exists in the rest of Australia. The level and types of taxes and charges that are being levied are roughly in line with those in the states. The significant exception is electricity charges which are higher than those in the rest of Australia even though those charges are still heavily subsidised. We have a major task to overcome that by finding ways of using much more energy in the form of either gas or electricity. With that single exception, our charges are about in the middle range of the charges applied elsewhere in Australia. Because we now have more people and more industry, we are able to raise about 25% of our total funding.

There are some sources from which states derive revenue that we are unable to obtain funding from directly. An example is the royalties on mining by Nabalco in Gove because an agreement existed before self-government. This year will be the first year that the Groote Eylandt Mining Company pays any royalties to the Northern Territory government. We receive no royalties from uranium because the Commonwealth retained ownership of uranium. In fact, any royalties on minerals extracted from land that the Commonwealth re-acquired in the Kakadu National Park and Alligator Rivers region will flow to the Commonwealth whilst we are a territory. The Commonwealth retains royalties on all off-shore oil and gas whereas, everywhere else in Australia, all such payments are made to the state governments. We recover some of that money as part of a direct grant from the Commonwealth. That is part of the specific payments that are made to the Northern Territory and are part of our 76% funding. There is that confusion.

The critical point is that the Memorandum of Understanding no longer exists. We are now part of the Commonwealth-states tax-sharing pool. Our share of that pool is assessed on exactly the same formula and methodology as the shares of the states are assessed. Our general revenue grants, special purpose payments, capital grants and loans are determined on exactly the same basis as those of the states. What are called the global limits of our semi-government loans are determined by the federal Treasurer. We are not a member of the Loans Council because we are a territory. Thus, there are no areas remaining whereby we are funded differently from the states except that we are denied some of the revenue-raising sources that are available to the states.

It is wrong to assume that that formula will somehow change simply because of the granting of statehood. It is true that that could have been argued 3 years ago when we had the Memorandum of Understanding which provided a guaranteed base with automatic adjustments for population and CPI. It was true even last year to the extent that we were not part of the tax-sharing pool. However, 1987-88 was the last year of operation of the Memorandum of Understanding on financial arrangements. We are now funded on exactly the same basis as we would be if we were a state.

A PERSON: How much does the Territory government receive each year from the federal government for the administration of Aboriginal affairs?

Mr HATTON: The Self-Government Act specifically excludes the Northern Territory government from having any powers in relation to Aboriginal affairs even though Aborigines constitute 22% of our population.

A PERSON: How much money is the Northern Territory government spending on them?

Mr HATTON: Are you talking specifically?. We know that 70% of our hospital patients are Aboriginal people and therefore we could argue that 70% of our health expenses are spent on providing services to the Aboriginal people. We do not differentiate between Aboriginal and non-Aboriginal in our funding.

Mr HARRIS: The expenditure on Aborigines within the education system is quite considerable. One of the problems is that, on occasion, the federal government might provide assistance in relation to Aboriginal health or education and we are not even aware that the money has come in. We have been endeavouring to work in partnership with the federal

government and that 2-way exchange is vital if we are to progress. One of our concerns is that the federal government will establish a school, for example, in a particular community and then will turn around and say that the Northern Territory government is responsible for housing the teachers and paying for the ongoing costs. We have to ensure that we are able to meet those commitments.

Another problem is that the federal government may institute a particular program that runs for, say, 5 years and it then pulls out, leaving the Northern Territory government to pick up the tab if the program is to continue. It is not really fair and it makes things very difficult for us in that we are blamed for pulling out of such exercises. We are talking continually with the Commonwealth in an effort to come to grips with such problems. Unless there is agreement with the Commonwealth on such programs, there will be problems further down the line. An example is what occurred in relation to the rehabilitation centres. You will recall FORWAARD and other programs where Commonwealth funding was withdrawn and the Northern Territory government did not have the resources to fill the gap. We are taking those matters up with the federal government because it is imperative that we ensure that the best use is made of all available funds. I believe that our relationship with the federal government in that respect is very good at the moment.

Mr HATTON: Could I pick up a couple of points and try to explain the budgetary process. We do not have a Department of Aboriginal Affairs. In fact, the Self-Government Act stipulates that we cannot have one. We do have functions in relation to Aboriginals operating through the various departments such as roads in Aboriginal communities. Aboriginal housing programs are undertaken by means of the Commonwealth States Housing Agreement through which there is some specific purpose funding for Aboriginal housing. The provision of health clinics, schools and educational services are also functions. It applies right across the spectrum of government.

Mr FORRESTER: Those are human rights entitlements.

Mr HATTON: I agree with you.

Mr FORRESTER: The Northern Territory government, as it now stands, is looking at constitution in relation to how whites will live in the Northern Territory in years to come. Is the Northern Territory government going to look at the 30% of the population ...

Mr HATTON: 22%.

Mr FORRESTER: ... which is a very permanent population rather than a transient one because the whitefellas go on walkabout more than we do. We are an asset and a human resource for the Northern Territory community. Despite that fact, there is very little investment in Aboriginal communities for industrial development or the development of the tourist, cattle or mining industries. There is very little assistance given. We used to be able to go to some government agency to obtain funding to invest in the cattle industry or the mining industry and things like that.

Mr HATTON: The Aboriginal cattle industry has exactly the same access to funding and assistance as everybody else and the same applies right across all of our industry development incentives and programs. These are equally available to the Aboriginal people as they are to other people in the Northern Territory. They are not isolated from that. One of the great difficulties that we have had - and we are seeking to rectify this - is in making Aboriginal communities aware of what is available to them and that the Department of Industries and Development, the Department of Mines and Energy and the Tourist Commission are not there simply for the white man. The services of those bodies are available to our Aboriginal communities as much as to any other communities. We have been trying to reinforce that by having departmental personnel deal directly with Aboriginal communities rather than working through the former Aboriginal Liaison Unit. We are trying to ensure that Aboriginals recognise that they are entitled to access to those government services and that they are available to them.

We are looking at the provision of additional programs and we will be putting into place this year specific programs for Aboriginal employment and economic development, the AEDP programs. We are linking with the Commonwealth to provide specific employment and economic development training for Aboriginal people through the Department of Labour, Administrative Services and Local Government. We will provide skills so that people will be able to manage their affairs and obtain real jobs.

Mr EDE: There are a couple of points that I would like to pick up. The first relates to the percentage of federal moneys in our budget. To an extent, the argument relating to the mining industry relates to the percentages rather than to the gross amount. Whilst we are unable to levy taxes or royalties on those mines, compensation is made by the federal government

for that. Thus, to an extent, it does not affect the total amount of money that we have available to us but there is a marginal area, if you like, because the federal royalty system relates to a percentage of the gross value of minerals extracted and these vary from one industry to another. In the Northern Territory, a profit-based royalty is used. I have heard people in the uranium industry say that they do not like our profit-based royalty because it will cost them more money and they reckon that they will not be able to afford it. Even if you discount the waffling, it is possible that there would be an increase in the money received if we were to levy our profit-based royalty directly on the mining industry rather than relying on the amounts levied on the industry by the federal government and then transferred back to us.

I would like clarification of the point that you were leading to, Vince. Were you talking about the actual amounts of money which the Territory receives from the federal government for expenditure on Aboriginals or were you referring to the Grants Commission which travels around the Territory, determines the degree of disadvantage in various areas and adjusts the amount in the global sum granted to the Northern Territory? Were you talking about whether the actual amounts spent in Aboriginal communities reflect the degree of disadvantage and the top ups applied by the Grants Commission?

Mr FORRESTER: The Northern Territory receives funding on the basis of the Grants Commission assessment and, in addition, has its powers to tax and royalties and that kind of thing. This brings the budget up to \$1256m. However, I am afraid that, for the people of Alice Springs, Aboriginal and non-Aboriginal, the Berrimah line still applies.

Mr HATTON: I dispute that totally, Vince. I really dispute that totally.

Mr FORRESTER: Then, if we look at the communities - Brian, a lot of your communities can't get water.

Mr HATTON: Could I deal with that, because I would like to come back a debate about statehood rather than a debate about the Northern Territory budget.

Mr FORRESTER: You should ... (inaudible).

Mr HATTON: If you would really like to address that issue, what you should address first is why, after 70 years of total Commonwealth control, virtually none of the communities had any facilities at all. It is only in the last 10 years since self-government that there has been a significant improvement, and there is a long way to go. It must be recognised that there has been improvement in the last 10 years and, in 70 years, virtually nothing had been done out there by the federal government.

Mr FORRESTER: We owned this land 70 years ago.

Mr HATTON: The Commonwealth had control of this for 70 years, Vince. It is all very well to talk about what we have not done yet. We inherited that that situation and there had been a European settlement here for over a century. For all of that time, the government was outside the Territory and it had not done the job. There is a lot of catching up to do. A lot of money has to be spent to provide facilities, water, power, housing, education and health services and economic independence for the people in those communities. You know that there has been considerable improvement in the last 10 years. There is a long way to go but improvements have come since self-government.

Mr BELL: Mr Chairman, can I seek your direction in relation to the appropriateness of my making a contribution.

Mr HATTON: You are quite entitled to, Neil. I am trying to get off the budgetary processes and on to statehood and constitutions actually.

Mr FORRESTER: But it is an important part of it, Steve.

Mr HATTON: I accept that.

Mr BELL: What sort of timetable is the committee working to this morning?

Mr HATTON: I am sorry, Neil, I should explain. Representatives of the Tangentyere Council were unable to make it and therefore we have opened the meeting for anyone present to raise any matters relating to the work of the committee. You are welcome to express your views.

Mr BELL: I would like to put a number of points on the record of the committee's deliberations. First, I would like to say that, as a Territorian and an Australian, I take seriously the move towards statehood and the constitutional development of

the Northern Territory. Having said that, I think there are several points that need to be made in relation to Aboriginal and non-Aboriginal people in central Australia.

Firstly, there is a widespread concern, particularly among the non-Aboriginal community, that living standards may be affected. The only reason why that is not of such great concern in the Aboriginal community is that the economic and budgetary process is not as well understood. The economic forces that are at work in the towns in the Territory are dramatically different from the economic forces at work outside those towns. I have the privilege of working in a town like Alice Springs, which is experiencing dynamic growth and the majority of whose residents are highly integrated into the economic processes of this country, and the privilege also of representing people who are well outside that economic mainstream and who enjoy certain benefits as a result but who also suffer serious disadvantages, high unemployment being not the least of them. I will not catalogue the rest of those at the moment. Thus, my first point is that I am concerned about the possible impact on living standards of altered budgetary processes and altered relationships with other Australians.

The second point that I want to make is my concern about the maturity of the polity in the Northern Territory. If one looks back at the constitutional development of the Northern Territory over the last 200 years, it is clear that it has been marked by dramatic changes. I heard you, Mr Chairman, refer to the dramatic improvements in the last 10 years in Aboriginal communities in my electorate. I suggest that, if you take a longer view, that self-confidence is not quite so merited.

If one looks at the constitutional development since the Second World War, with the partially elected Legislative Council in 1948 and the fully elected Legislative Assembly in 1974, it is interesting to note that both those constitutional developments occurred during the tenure of a federal Labor government which has so frequently been the object of scorn by certain political incumbents since 1974. My second point is that it is a matter for concern that the maturity of the polity in the Northern Territory will only be enhanced by a change of government. It is a matter of concern that there has been a single party incumbent since 1974.

Mr EDE: Hear, hear!

Mr HATTON: Mr Bell, I gave you the right to speak on the constitution, not to make a political speech. We will only end up with a row. If you continue with that nonsense, we will have a row, otherwise come back to the matter of a constitution.

Mr BELL: With respect, Mr Chairman, I suggest that all those sorts of issues, and I certainly do not seek to get into a slanging match with you or with members of the committee ...

Mr HATTON: Well, let us keep party politics out of it then.

Mr BELL: I appreciate that what I have to say may be perceived as political statements, but I think that, if we are genuinely interested in turning over the perception of constitutional development, not only within the Territory community but also within the Australian community as a whole, some issues that may be perceived as partisan need to be addressed.

Mr HATTON: I just do not see changes of government as one of them.

Mr BELL: I think that a mature polity is characterised by changes of government and those sorts of checks and balances. Basically, I believe that the pursuit of constitutional development in the Northern Territory, in the context of the pursuit of equality, justice etc, will be better served by those sorts of changes of government. I would like to think that, if the political situation were reversed, I would feel quite happy to agree that cyclical change is desirable.

There are 2 other - well, actually, there are 3 more ...

Mr HATTON: I will resist the temptation.

Mr BELL: ... thorny aspects that apply particularly to my electorate and that I wanted to raise in the context of these hearings. If I have not done so already, I must say that I welcome these hearings in the Territory centres. The fact that they are being held in the Territory centres suggests that the process is not as easily apprehended in some of the non-English speaking communities that form part of my electorate. In that context, possible changes in respect of national parks and the Aboriginal Land Rights Act need to be given some consideration. I am quite happy to place on record that, with respect to national parks and the Aboriginal Land Rights Act, I think that the current processes that are occurring are desirable. They are not perfect by any means but I think that the processes that are occurring, particularly with Ayers Rock and the ownership arrangements that have been so contentious, will be affected by statehood. I would not be doing my job as a

member of the Legislative Assembly if I did not to bring my concerns to the attention of the committee. I provide as evidence an article that appeared in our local paper on 8 April headed 'Coalition Would Give Parks to the Territory'. It indicated that 'control of Kakadu and Uluru National Parks would go to the Territory upon obtaining statehood under a federal coalition government'. I simply place on record my concern about the possible implications of that.

Mr HATTON: What are those concerns, Mr Bell?

Mr BELL: Having been intimately involved in the process of the recognition of Aboriginal traditional ownership at the Rock and the process of working out what it means to have a national park with such a high visitation rate held under national ownership but, at the same time, open for the increasing number of visitors, I am concerned that it may be jeopardised.

Mr HATTON: Can we deal with the issues. I would like to pick these up and be clear in my mind about what you are saying. I am having some difficulty at the moment. Are you concerned that, if the parks were returned to the management and control of the Northern Territory, there would be some change in the Aboriginal ownership title?

Mr BELL: Yes.

Mr HATTON: If that were not a problem, that would be one concern you would not have?

Mr BELL: I would appreciate your public commitment that that would not happen.

Mr HATTON: It has been a public commitment for 2 years.

Mr BELL: That is a commitment that the ...

Mr HATTON: From our side of government, certainly.

Mr BELL: Right.

Mr HATTON: We have made the point very clearly, and I will repeat it for everybody's benefit. We have made it very clear that we do not intend to revoke or take away title to land that has been granted to Aboriginal people.

What we have said in respect of the Aboriginal Land Rights Act is that the form and structure of a Northern Territory Land Rights Act would be one that would be worked out by the Northern Territory community. We would seek to discuss that with the Aboriginal people and with other people in the Northern Territory in order to obtain an act that is an act of the Northern Territory people, including the Northern Territory Aboriginal community. That is set out in a book called 'Land Options for Statehood'. That has been and is our position.

Mr YUELL: Just a question, Steve. Is this going to be the procedure for this meeting today?

Mr HATTON: I certainly hope not.

Mr YUELL: That we just ask a few questions and ...

Mr HATTON: You are certainly welcome to, yes.

Mr EDE: I think that, for the benefit of Hansard, we should ask people to state their names before making a statement otherwise we will not be able to identify who said what.

Mr HATTON: Certainly. We are trying to keep this hearing as open and free as possible so we can hear what people think or accept any questions.

Mr YUELL: Well, when I rang up, I was concerned to give a formal verbal statement.

Mr HATTON: Certainly. I will allow that as soon as we finish with Mr Bell's comments. I will ask you to come forward and make a formal statement.

The other issue, I guess, is whether there will be adequate funding available to ensure the maintenance and protection of

the park and the form of the park management. I presume that is another issue that you are concerned about. With respect to the fact that a major national park is run by the national government or an authority of the national government, you are aware of the situation in relation to the Great Barrier Reef National Park?

Mr BELL: I am not aware of the management arrangements.

Mr HATTON: It is run by the Queensland National Parks and Wildlife Service. There is also the Kosciusko National Park. In fact, apart from Norfolk Island and Christmas Island, do you know of any other national parks in Australia that are managed by the Australian National Parks and Wildlife Service?

Mr BELL: Apart from those in the Northern Territory?

Mr HATTON: Yes.

Mr BELL: No.

Mr HATTON: There is one in Canberra, but that is all. I wanted to make that point. We are talking about issues of equality and what is appropriate. You would agree that parks such as the Great Barrier Reef National Park would have a higher visitation rate than Uluru National Park.

Mr BELL: Sure.

Mr FORRESTER: Steve, I was quite impressed with your opening remarks about having a preamble to the constitution.

Mr HATTON: I mentioned that as an issue to be discussed.

Mr FORRESTER: Yes, as an issue.

Mr HATTON: Please do not draw any conclusions about my personal attitude on that question.

Mr FORRESTER: I am glad that Australia is now starting to mature and to understand our claims to the ownership of this land. It is an historical fact that the present system is based on a lie because it does not recognise our prior ownership of Australia. Would the Northern Territory constitution fit in with the treaty proposed by Bob Hawke and the Labor government? Would the government support the idea of such a treaty which would entail our representation as Aboriginal people by having seats set aside as occurs in New Zealand, which has the Treaty of Waitangi with the Maori people, or under the Indian Self-Government Act in Canada? The historical facts are there. I notice what is on this crest here. I can dance that song. That is my grandfather's story. That is my grandfather.

Mr HATTON: You come from Kakadu, do you?

Mr FORRESTER: No, that kangaroo there. That kangaroo there; that is my grandfather. I have got that story. That story has been here since the beginning. Our prior ownership of this land, or whatever people want to term it, needs to be recognised in a treaty so that we can have equality. For instance, I see you have the judiciary here. Why does the Northern Territory have the highest rate of imprisonment of Aboriginal people?

Mr HATTON: One can assume that they are committing the most crimes.

Mr FORRESTER: We have some Aboriginal representatives in the Northern Territory, but we do not have any in the federal parliament. These are some of the issues that we will have to come to grips with.

Mr HATTON: The issue of a treaty is a matter that the federal government has taken upon itself to address.

Mr FORRESTER: Fraser took it on himself too.

Mr HATTON: We each have a particular view with respect to any national treaty. I have some personal views on that. It is very difficult to comment because it is not necessarily a statehood issue. Certainly, it is a national issue. I have certain very serious questions in respect of the treaty. The first thing I would like to know, and the federal Minister for Aboriginal Affairs has been unable to tell me, is what the federal government is talking about. I asked him that question specifically and he was unable to tell me, even as a concept, what the federal government is talking about.

Mr FORRESTER: There is plenty of material available.

Mr HATTON: There is a lot of prior material. However, I am talking about the statement that was made at Barunga last month. I met the Minister for Aboriginal Affairs a week later and he was unable to tell me. When he or Mr Hawke or the federal government can tell me what they are talking about, I will be in a position to think about whether I agree or disagree with it. Right now, I do not know what they are talking about. Either they themselves do not know or they have a hidden agenda that they are not telling us about. I am not prepared to debate the issue of a treaty here. We have addressed the issue of whether there should be a preamble and a recognition of Aboriginal prior occupation or the special place of Aboriginal people in the Northern Territory. That issue needs to be addressed because it is a matter of concern to significant sections of the community. We are prepared to address that and we would appreciate receiving submissions in relation to it.

Mr EDE: I would advise that Hansard is having problems in picking up questions and comments from people in the audience. Although it will mean that we become a little more formal, I think it may be necessary to ask people to come forward and speak near the microphone. They should also state their names and the names of any organisations that they represent. It is no good having the answers on the record and then trying to guess the questions. We need to have a record of what people are saying.

Mr FORRESTER: In relation to the discussion paper on a proposed new constitution for the Northern Territory, I believe that, if we are aiming at Aboriginal and non-Aboriginal people sharing their land and society with one another, a treaty must be discussed. A treaty must be addressed in the formulation of a constitution for the proposed new state. The permanent people, the Aboriginal people, constitute a third of the population of the Northern Territory. The historical facts must be addressed because, if they are not, our children and grandchildren will still be living with an historical lie. Wesley and I are practically non-existent in terms of these things here. Aboriginal and white people must become mature enough to look at how we can come together. Some of my best friends are non-Aboriginal people. We have to bring our societies together but not in terms of assimilation. We must look after our own culture, our own land and our own people. At present, this system does not serve our needs in relation to education, legal matters, health matters and parliamentary representation in the federal parliament or whatever. These are some of the issues that have to be addressed.

Mr HATTON: Could you grab a seat for a second? Some people would like to ask you some questions, Vince. Could you take a seat up here. I will ask the gentleman who wanted to make a formal submission to go next.

Mr EDE: Vince, are you here as an individual or are you representing an organisation?

Mr FORRESTER: I am Chairman of the Institute for Aboriginal Development. I am also Treasurer for CAAMA and a board member of Imparja Television. I am also representing Legal Aid because all the lawyers are in the courthouse at the moment helping some of our brothers and sisters.

Mr HATTON: Are you speaking on your own behalf or on behalf of the organisations?

Mr FORRESTER: I am speaking on behalf of the Institute for Aboriginal Development, CAAMA, Imparja and so on.

Mr EDE: Vince, in respect of the treaty, I understand that there is soon to be a meeting of Aboriginal leaders from around Australia to discuss the form, content and principles of a document to be negotiated with the federal government. In that process, those people may decide that they wish to negotiate solely with the federal government and have a treaty with the federal government rather than risk having the principles that they are able to agree with reduced in some way and ending up with the lowest common denominator of what the states will accept. There is also the possibility that the whole concept of a treaty may falter. In the light of those worries, don't you think that it would be ideal for us to talk about the concepts involved in a treaty in relation to our constitution in the Northern Territory rather than deferring the process of talking about those issues until that treaty is negotiated?

Mr FORRESTER: At Barunga, Bob Hawke said that a treaty will be negotiated between Aboriginal and non-Aboriginal Australia and completed by the time of his next government. However, you do not know. He might go for elections shortly; that is politics. If we are to live in a much more friendly environment with one another, we have to address that when we are looking at a constitution for the Northern Territory. The simple fact is that we are a big proportion of this community and we believe that we must participate in anything that has to do with land rights - and not only land rights are involved in a treaty - political rights, economic rights, social rights etc.

Mr HATTON: Is that an equality of rights or special rights?

Mr FORRESTER: That is recognition of our ownership of this land of which we have never ceded sovereignty. We do have a political structure in our society. We do have rules like you have. We have laws about whom we can marry and about who has to look after this and who has to look after that. We have a society that is structured in that way. That is our law.

Mr HATTON: You have a cultural and religious structure?

Mr FORRESTER: We have a cultural and religious structure that is related to the land. It is not like the Christian society with its belief in God. We have our story in relation to the land, our religious attachments to the land. At present, the Australian government has a piece of legislation called the Heritage Act. Gerry Hand can tell us what a sacred site is. That goes right against your constitution that you are living under in Australia - section 116 of Australian Constitution. These are some of the questions that have to be addressed. Who can tell us our religion? Only our grandfathers can tell us our religion.

You are looking at land matters and statehood. In the treaty, I would like to see recognition of sacred objects and of the ownership of sacred sites. These are some of the issues that really have to be addressed. You are Australians. You are non-Aboriginal Australians. If we can get that interaction going between Aboriginals and non-Aboriginals, we will make the Territory a much better and much friendlier place to live in. We have to look at some of the issues. We have blokes like Hugh Morgan standing up there. That bloke is damaging the future of our children, both Aboriginal and non-Aboriginal Australians.

Mr HARRIS: Mr Chairman, I think you have indicated very clearly that you will take on board the comments that have been made. The comment that I made at the start was that this is an opportunity for people to put their views. When you mention people like Hugh Morgan, there are also Michael Mansells on the other side. Of course, you are aware also that there are Aboriginal people who do not agree with the idea of having a treaty? Are you aware of that?

Mr FORRESTER: I travel Australia. I cannot count how many times a year I travel Australia. I see most of the blackfellas in the whole of Australia. My cousin is sitting in those chambers there - Bob Liddle. Bobby does not agree with the treaty. But, he is the only one out of all the blackfellas in Alice Springs who does not agree with the treaty.

Mr HARRIS: As I indicated earlier, I am sure that the committee will take your comments on board. What we hope to do in moving around the communities is to get people to come forward to express their views. I can assure you that people will be expressing views from both sides of the fence. It will be very difficult to assess the comments made in relation to this issue. Referring back to what Neil said, I too take this matter very seriously, as do the other members of the committee. The comments of any member of parliament or any member of the community will be taken on board. The issues raised by Neil Bell will definitely be considered. During the course of this hearing, he will again have the opportunity to emphasise those points.

What I would like to put to you, Vince, is that we are moving around listening to people. This is the opportunity for people to make their comments and we will listen to what they have to say. We have a lot of ground to cover. I began by saying that my concern was to get people to come along to these hearings. It appears that everyone here today received notice by means of the printed media. Might I suggest that television or radio could be used. Would you agree that that would be a way of getting people to these hearings?

Mr FORRESTER: Definitely.

Mr HARRIS: Perhaps that is something the committee can take on board, Mr Chairman.

Mr FORRESTER: Steve, if you are interested in the treaty concept, you will find much material at the Institute for Aboriginal Studies in Canberra. You will find written material on a proposed treaty that was talked about under the Fraser government. All the information is there - the demands, how the Aboriginal people ...

Mr HATTON: That is the 27 point ...

Mr FORRESTER: 24 point.

Mr HATTON: I have a copy of it.

Mr FORRESTER: It is not what we are demanding but it is information available to people on both sides of the fence.

Mr EDE: Vince, you spoke about ownership of land and sacred objects and sites as being 2 specific matters that you feel should be addressed in our constitution. There are things that may be in a treaty but may not be applicable to a constitution. A constitution is a document which lasts forever whereas a treaty may require a commitment from both sides to work towards an equality of opportunity and living standards, for example, within a specific time frame. It may be that it is not appropriate for something like that to be locked into a constitution which will last for hundreds of years. It may be something which is developed in a different form of legislation which ranks higher than ordinary legislation but does not have the status of a constitution.

Would you agree with that? Secondly, are there other specific areas, apart from ownership of land and sacred objects and sites, which you see as being essential for incorporation in the constitution of the Northern Territory?

Mr FORRESTER: The land issue must be addressed in a constitution. We would be stupid if we went for a legislative treaty and we cannot trust anybody. We have been down for quite a few years and we are still down. We really cannot trust the Labor Party or the Liberal Party or the National Party or the Democrats. We really cannot trust them. The only people whom we can trust are our own. Therefore, we must have our own representation in parliament like Wes who has to answer to our community. I have to answer to our community. In respect of sacred objects, there is interference with our religion. At the moment, we have Mrs Kathy Strehlow who thinks she owns a big mob of objects up in the museum in Darwin.

Mr HATTON: I can assure you that she doesn't.

Mr FORRESTER: In our belief, you do not own such things. Your lifetime on this earth is just like a snap of the fingers. That is your lifetime. Those things are much older than the Bible. We have to address that question of ownership. Those things own us; we don't own them. That is the perspective that you have to take when you are dealing with land matters, sacred objects and sacred sites.

Mr LANHUPUY: Vince, correct me if I am wrong. What you would like this committee to consider is something specifically related to Aboriginals within a preamble to the constitution of the Northern Territory because of our occupation of the land?

Mr FORRESTER: It has to be.

Mr LANHUPUY: Health and other matters can be dealt with elsewhere but you want a specific section in relation to Aboriginal people within the preamble of the constitution?

Mr FORRESTER: Within the constitution of the Northern Territory, specific issues must be addressed and they must be addressed also in the preamble. I was very impressed when you referred to a preamble, Steve. It is a pleasure to hear a Chief Minister of the Northern Territory saying things like you are saying lately.

Mr EDE: Just before you go, there are 2 issues that I would like clarified. You were talking about parliamentary representation. Are you thinking in terms of having a second tier of seats in the Northern Territory which would be for Aboriginal people only?

Mr FORRESTER: What do you mean? Upper and lower Houses?

Mr EDE: No, I mean sitting in the same Assembly. I do not think you were talking about upper and lower Houses unless I am quite mistaken. You are talking about people sitting within the one House but that they may be elected in 2 different ways. There may be general electorates within which all people can stand and all people can elect members and other electorates within which only Aboriginal people can stand or elect members. Is that what you are saying? Or are you saying that there should be electorates within which only non-Aboriginal people can stand or elect members and other electorates specifically for Aboriginals? Have you developed your ideas fully on that? Would you like to give us a bit more on that one?

Mr FORRESTER: You would have to address the question of having special seats reserved for Aboriginal people in the

Northern Territory Legislative Assembly or a state parliament. I believe also that the Northern Territory would be foolish to move to statehood without having an equal number of Senators as the states. There must be 12 Senators for the Northern Territory to become a state. That is one issue that I believe the Northern Territory government should not back down on because the Senate is there to protect the states' rights. However, there must be some provision made for representation of Aboriginal people within the Senate.

Mr HATTON: Could I just pick up on this issue of specific Aboriginal seats. Would you see the Aboriginal people voting for those people to sit?

Mr FORRESTER: Of course.

Mr HATTON: Right. Would they also vote for other electorates? Would they have 2 votes or 1?

Mr FORRESTER: They would have 1 vote.

Mr HATTON: Only for the Aboriginal representative, not for the other representative?

Mr FORRESTER: The Aboriginal community in Alice Springs is a large one but our vote is not effective because it is spread among various electorates. That applies right throughout Australia. The 1-vote-1-value system does not suit us because we are in such a minority in our own country. We are distributed right throughout this big land of ours. We do not have any real political involvement in ...

Mr HATTON: Would you argue that the non-Aboriginal people in the Stuart electorate are not being adequately served by the 1-vote-1-value system because the Aboriginal people are in the majority there?

Mr FORRESTER: The percentage of Aboriginal people in Stuart is 75%-80%. Brian?.

Mr EDE: About 75%.

Mr FORRESTER: That only came about through a redistribution of your boundaries.

Mr HATTON: But, there have to be boundaries. You would accept that, wouldn't you?

Mr FORRESTER: Oh, yes. There have to be boundaries.

Mr HATTON: I am challenging your assertion because there are a number of seats in the Northern Territory which have a majority of Aboriginal people.

Mr FORRESTER: Neil's seat, Wesley's seat, Brian's seat. All the Labor Party seats are blackfella seats.

Mr HATTON: Not VRD.

Mr FORRESTER: That is you blokes.

Mr EDE: Just one other point before you go. I would like to clarify what you had to say about general functions such as health, welfare, education, housing etc. Are you saying that there should be a statement of human rights in the constitution which says that everybody, regardless of race, should have equal access to education, housing, employment etc. Are you saying that there should be a statement to that effect?

Mr FORRESTER: Look at the history of how matters relating to Aboriginals have been dealt with. We have been through bloody hell. I can certainly say that on the basis of my growing up and my understanding of what the system is about. We have been taken from our mothers, our fathers and dispossessed of our land and our culture etc. My dream in relation to a treaty is that we blackfellas would look after our own language, our own culture and our own health because I believe that we would do it a lot better.

Mr HATTON: Vince, could I just ask you a couple of other questions? What if the Aboriginal people did not want to be represented by an Aboriginal person? For example, in the Stuart electorate, they have chosen a non-Aboriginal person to represent them. Should they be denied that right?

Mr FORRESTER: I believe that political maturity is coming about in the Aboriginal community in the Northern Territory...

Mr HATTON: But should they be denied the right to vote for a non-Aboriginal person whom they believe would best represent their interests? Should they be forced to vote only for an Aboriginal person?

Mr FORRESTER: I believe that we should be reaching a stage now whereby we have enough education and political nous within our Aboriginal community. The Aboriginal people elected Wesley. He is an Aboriginal person representing Aboriginal people.

Mr HATTON: As they did also in the Arafura electorate. Shouldn't the Aboriginal people have a choice as to whether they will elect an Aboriginal person or a non-Aboriginal person?

Mr FORRESTER: Oh, well, when you blokes go round and talk about your constitutional development, we will talk about the treaty.

Mr HATTON: Let's keep on the subject. I asked you a question which you have not answered yet. You said that the Aboriginal people should have only 1 vote. If they are required to vote for specific Aboriginal representation, they would then be denied the right to vote for a non-Aboriginal representative whom they may well want.

Mr FORRESTER: If we want to be in the system. Why can't we have our own self-government?

Mr HATTON: Do you want to create a society within a society, a nation within a nation?

Mr FORRESTER: A nation within a nation or participating within the nation.

Mr HATTON: Which one?

Mr FORRESTER: At the moment, we are a nation within a nation.

Mr HATTON: Do you want to participate within the 1 nation?

Mr FORRESTER: We are a territory within a territory at present. There are the Aboriginal people there and the non-Aboriginal people there. That is how it comes across in all your stuff in The Australian about the tenth anniversary. If you look at the stuff in the newspaper, it is sort of Aboriginals there and the non-Aboriginal Territorians here. Let's look at bringing people together but also keep our own identity.

Mr SETTER: Vince, could I ask you to clarify that point?

Mr HATTON: I am sorry. I would like to follow the line of questioning if I could. You want a separate political identity?

Mr FORRESTER: We are a separate people. For example, I was not recognised as a white Australian when I wore the Australian Army uniform.

Mr HATTON: I understand what you are saying about that.

On the one hand, you are saying that you want to bring people together with mutual respect for each other's cultural and historical differences and, on the other hand, you want separate political representation.

Mr FORRESTER: And some rights as indigenous peoples.

Mr HATTON: How would you go about that? Would you have specific Aboriginal seats in the parliament of the Northern Territory?

Mr FORRESTER: Possibly, or in the federal government. I believe the Northern Territory government must look at the Treaty of Waitangi. Have a look at the Treaty of Waitangi and you blokes will then have more information.

Mr HATTON: Let me take one step at a time. I presume that those people would be elected by the Aboriginal people themselves, would they? There would be some form of boundaries for that representation?

Mr FORRESTER: Yes.

Mr HATTON: And only an Aboriginal person could stand for those seats?

Mr FORRESTER: Yes.

Mr HATTON: Then, we would have electoral boundaries for the other members of the Northern Territory. The Aboriginal community and the non-Aboriginal communities are living in the same geographic areas.

Mr FORRESTER: Not really.

Mr HATTON: Well, they are. In the electorate of MacDonnell, there are non-Aboriginal people as well as Aboriginal people. There might be an Aboriginal community here and a non-Aboriginal community there but, in the total area, there is a mixture of people. Isn't that so?

Mr FORRESTER: But with certain rules and regulations attached to it. I come from that country. Yulara is a classic example. There is an investment there of some \$250m. The biggest asset that the Northern Territory has for tourism is the Aboriginal people and their lands. Nevertheless, the Aboriginal people were deliberately excluded from participation in Yulara. That is not your fault; it is Mr Everingham's fault.

Mr HATTON: That is not even true.

Mr FORRESTER: Oh, yes. Where do you see Aboriginal people involved in the township of Yulara?

Mr HATTON: The Aboriginal people themselves took the decision to live at the Mutitjulu community in Uluru National Park. There was an Aboriginal community being built there but they chose not to live there. It was built but they chose to live at the Mutitjulu community near Uluru. They were not excluded. They chose to live in a different community.

Mr FORRESTER: Not that I know of. I come from there.

Mr HATTON: Well, I am telling you.

Mr FORRESTER: I come from there and I was involved in the discussions that took place.

Mr HATTON: I know that there were people who actually moved in and then moved back out again.

Mr FORRESTER: They are still moving in and out there. Our permanency. I believe that, in the Northern Territory, there is a problem of cultural misunderstanding.

Mr HATTON: I do not dispute that, but you are dragging me off the question again. In the Stuart electorate, 25% of the people are non-Aboriginal and 75% are Aboriginal. In the electorate of MacDonnell, 30% or 40% of the people would be non-Aboriginal. If you are to have the Aboriginal people in that area voting for a particular Aboriginal candidate, would they also vote for the representative for the total area? Would they have 2 bites of the cherry?

Mr FORRESTER: No, they would have only 1 vote.

Mr HATTON: They do not get to vote for the other representative? Thus, there would be 1 electorate overlaying another - 1 for Aboriginals and the other for non-Aboriginals?

Mr FORRESTER: In the Northern Territory Legislative Assembly, there are 25 seats. Right?

Mr HATTON: I am not talking about numbers. It is either true or it is not true. Obviously, you are saying yes.

Mr FORRESTER: Can I put it in a perspective that I quite clearly understand.

Mr HATTON: I am trying to get one that we understand.

Mr FORRESTER: In the Northern Territory parliament, there are 25 seats and then there is Warren in the House of Representatives and Grant Tambling and Bob Collins in the Senate. There are 28 people involved in the parliamentary

process in the Northern Territory. We are a third of the population in the Northern Territory yet we have only 2 blackfellas representing us - Wesley and his mate from Arafura.

Mr HATTON: But there are a number of seats where there are a majority of Aboriginal people and they have chosen to vote for somebody else. Isn't it their right as citizens of the Northern Territory to have that choice or are you trying to deny them that right?

Mr FORRESTER: No.

Mr EDE: Are you talking about Aboriginal people having the ability to choose to be on an Aboriginal roll or on a non-Aboriginal roll? If the electorates throughout the Northern Territory are to have equal numbers and all the Aboriginal people in Stuart opted to be on the Aboriginal roll, because only 75% of the people there are Aboriginal, the other 25% would have to come from MacDonnell or the Barkly. The other people would be on the general roll or whatever it would be called. Both groups would have 1 vote but an Aboriginal person may have an electorate of Stuart which takes in part of the Barkly and all of Stuart and another person may have the same area but be responsible for the non-Aboriginal people in that area. He will look after non-Aboriginal issues in the area the Aboriginal person would look after Aboriginal issues. Are you talking about something like that?

Mr FORRESTER: Because I live in Alice Springs, I cannot vote for Wesley because he is in the Top End. I would rather give my vote to Wes because he is an Aboriginal person and he understands what I am on about. We should be given a third of the seats involved in the parliamentary process because we make up a third of the population.

Mr EDE: Are you talking about a multi-member constituency? Or are you talking about a multi-member constituency for Aboriginal people where all of the Aboriginal people of the Northern Territory vote for a percentage of members?

Mr FORRESTER: The percentage of members.

Mr EDE: Thus, an Aboriginal person from here would vote for 3 or 4 or whatever number representatives whereas a non-Aboriginal voter would be restricted to a single electorate?

Mr HATTON: I don't think that is in fact what you are putting?

Mr FORRESTER: To cut the discussion short, the Northern Territory government has a lot of bucks. They can get over and look at ...

Mr HATTON: I wish we did.

Mr FORRESTER: You blokes can go over to look at uranium mines. I believe that you should be able to go over to New Zealand - and I think my friend Wesley has been over there - to get an idea of how the Treaty of Waitangi works. The High Court in New Zealand determined recently that it is a legitimate treaty. Wesley can give you some sort of briefing on how that treaty works and how the Maoris vote for their representation over there.

Mr HATTON: Thank you. I ask the other gentleman if he would come forward. Perhaps you could begin by introducing yourself.

Mr YUELL: Thank you. My name is Ian Yuell. Perhaps to establish my bona fides, I should say that I consider myself a Territorian after living here for for 11½ years. I am not a member of any political party and never have been. I am a member of the teaching service. I was Assistant Principal at Sheperdson College at Galiwinku for 4 years and then coordinator with Yiparinya School for 3 years. For the last 5 years, I have been Assistant principal at Yirara College. Thus, my concerns relate mainly to education and to the Aboriginal people. My experience as a Territorian has been one of working with and for Aboriginal people and I have made a conscious effort to listen to what Aboriginal people have been saying during that time.

I would like to go through some of the points in these documents which I received last night. I had a late night last night. I would like to take Rick up on the point that he made: that the whole point of this is to give the Northern Territory government more power. He spoke about getting more control over different things. I would like to draw your attention to page 13 of information paper No 1 where you have listed the possible changes to Commonwealth legislation. I noted that this is not in chronological order and therefore it must be in order of importance. The third piece of legislation in your long

list of legislation that requires some change is the Aboriginal Land Rights (Northern Territory) Act 1976. The proposal is that this act would be patriated to the new state as part of its law. For the last 11½ years, I have been listening to Aboriginal people and, since this act was passed in 1976, it has been of concern to them, and it is of concern to me, that the Northern Territory government has opposed every single land claim that has been made under this act by traditional owners. I am not concerned about the reasons for that. All I am concerned about is that, if this committee and if our government of the Northern Territory is to have credibility in this whole question of statehood, it must be seen to be not opposing the legitimate aspirations of the Aboriginal people.

Mr HATTON: You are saying that the Northern Territory government has opposed every land claim?

Mr YUELL: Yes, it has.

Mr HATTON: Are you arguing that the Northern Territory government opposed the Lake Amadeus land claim?

Mr YUELL: To the best of my knowledge, it has opposed in principle every single land claim that has been lodged under that act.

Mr HATTON: Do you understand the operations of the Northern Territory Lands Rights Act?

Mr YUELL: Yes, I do.

Mr HATTON: You know then that the role of the act is to provide an opportunity for the granting of Aboriginal Land title to traditional Aboriginal owners of unalienated Crown Land. Is that correct?

Mr YUELL: Yes, that is correct.

Mr HATTON: In that process, do you accept that it is appropriate that the first job is to determine whether the people who are claiming to be traditional owners are in fact the traditional owners?

Mr YUELL: Yes.

Mr HATTON: Who have rights or responsibilities for that land?

Mr YUELL: Certainly.

Mr HATTON: How would you go about that process?

Mr YUELL: Not by formally opposing it as a matter of principle.

Mr HATTON: You would need to test it, wouldn't you?

Mr YUELL: Yes, but not by formally opposing it.

Mr HATTON: You said you understood the operations of the Land Rights Act. You realise it is an adversary system?

Mr YUELL: That is correct.

Mr HATTON: Remember it is not our act.

Mr YUELL: No. But I would put it to you that I have seen Aboriginal people establish who the traditional owners are in a non-adversary way. I am saying to you ...

Mr HATTON: This happens to be a federal act that sets up a procedure and that procedure is determined by the federal parliament. What is the process that they adopt in determining whether a person is in fact a traditional owner?

Mr YUELL: All I am saying to you is ...

Mr HATTON: No, I will ask you to answer that question.

Mr EDE: I would like to come in here if I could. By talking about it as an 'adversary system', you are getting away from

the true nature of it. It is an inquiry. To call it an 'adversary system' would be the same as calling the Fitzgerald Royal Commission an 'adversary system'. It is an inquiry. People are able to come forward and give testimony as to what they believe is the reality of the situation.

Mr HATTON: I will pick up another line on that and say that, if one is to test the validity of someone's claim to have title to land, one must challenge him to demonstrate that he has title.

Mr YUELL: All I would like to say ...

Mr HATTON: Is that not true?

Mr YUELL: All I would like to say on this point ...

Mr HATTON: There is a perception of opposing every land claim.

Mr YUELL: Yes, that is right. And that is the point that I am putting to you.

Mr HATTON: There is also a perception that the Northern Territory government takes everything to appeal whereas the majority of appeals have been lodged by the land councils. Are you aware of that?

Mr YUELL: Look, all ...

Mr HATTON: You made an assertion to this committee and I am simply challenging your assertion.

Mr YUELL: All I am putting to you is that there is a perception that I have and it is a perception, I think, that is shared by a good number of Aboriginal people ...

Mr HATTON: I accept that.

Mr YUELL: There is a perception that the Northern Territory government is opposed to land rights.

Mr HATTON: I accept that there is a perception.

Mr YUELL: What I am saying to you is that, if you want Aboriginal people and people who support Aboriginal people to be on side in this whole statehood business which will give your government more power, you must be seen to be listening to them and giving them more power over their own affairs.

Mr HATTON: I understand what you are saying.

Mr YUELL: That is my first point. The second point concerns the legislation that is the sixth on the list: the National Parks and Wildlife Conservation Act. Again, there is a perception that the Northern Territory government is opposed to Aboriginal people, traditional owners, having control of national parks, having title to national parks. This was brought home to me at Yirara College and I must say that I am speaking as a private individual.

Mr HATTON: I recognise that.

Mr YUELL: At the time of the handover of the title for Uluru, we received a verbal instruction at Yirara College that no government vehicle was to be used to transport Yirara students to that ceremony.

Mr HATTON: Yes.

Mr YUELL: Are you aware of that verbal instruction?

Mr HATTON: Yes.

Mr YUELL: All right. Some of our students were in fact related to that land and, by traditional law, they should have been at that ceremony. Are you aware of that?

Mr HATTON: I can accept that, yes. I wasn't aware of it.

Mr YUELL: Here is a case where we were given an instruction not to assist those students to get to that ceremony.

Mr HATTON: Yes.

Mr YUELL: In the end, the only way that we could get those students to that ceremony was to use the Yirara College Council vehicle which was a non-government vehicle. What I am putting to you is that there is a perception in the Aboriginal community that the Northern Territory government is not supporting the legitimate aspirations of Aboriginal people to have control over such things as national parks if that land is their traditional land.

Mr HATTON: You are making the assumption that it is their legitimate aspirations to control national parks as distinct from exercising their traditional rights and responsibilities in respect of that land. There is a difference. I appreciate that these are important issues and that is why I am taking some time to address them. Are you aware that, through the Northern Territory Conservation Commission, we are establishing joint management agreements with the traditional Aboriginal owners in most parks in the Northern Territory.

Mr YUELL: Yes.

Mr HATTON: That is totally outside the Land Rights Act. I refer to Kings Canyon, Litchfield ...

Mr YUELL: Yes, I have heard of that. That is really good.

Mr HATTON: That process has been occurring irrespective of the land rights exercise. In most of those cases, there has been an agreement from a majority of Aboriginal people on the local management committees of those parks.

Mr YUELL: That is really good but what I am putting to you is that ...

Mr HATTON: The perception out there is not that.

Mr YUELL: There is a very clear perception as instanced by this case. It was 1985, wasn't it?

Mr HATTON: Yes.

Mr YUELL: All the Yirara students knew that your government was consciously trying to stop some of their number from attending that ceremony that they knew that they should attend.

Mr HARRIS: Steve, that could be disputed of course. It needs to be made clear that no one was being held back from going there. That is the problem when you talk about perceptions. It is perceived that the government tried to stop people from being present on that occasion and that is not the case at all. They were not prevented from going; that was not the direction. I think we are getting back to perceptions again.

Mr HATTON: I might say that, in respect of Uluru Katatjuta National Park, the matter of Aboriginal title was not the issue in so far as our government was concerned. The issue was the Commonwealth takeover of the park. During 1985, and I was the Minister for Conservation at the time, we made a specific offer of a Territory title over that park. It had been made in 1982 or 1983, I believe, and it was reiterated in 1985 and rejected in favour of a Commonwealth title and a Commonwealth takeover. The dispute was about the Australian National Parks and Wildlife Service taking over the park, not the Aboriginal ownership of the park.

Mr YUELL: Yes, but all I am saying to you is that the perception ...

Mr HATTON: I know the perception

Mr YUELL: ... that Aboriginal people have is that you tried to stop those kids from going.

Mr HATTON: I accept that their perception is different. But, as a person who is listening to and talking with Aboriginal people and raising these matters, you should at least know what the real issue were. That is all I am seeking to point out, nothing more than that.

Mr YUELL: Right.

Mr HATTON: I accept and I recognise the significant point that you are making: that in relation to issues such as land rights and control and management of national parks, there is a perception that the government of the day is anti-Aboriginal. I think that is the point that you are making. Whether the facts support that or not is not the point that you are making.

Mr YUELL: Yes, that is correct. If you want this statehood proposal to get off the ground with the support of one third of the population, who are permanent Territorians, somehow you will have to overcome that perception. You will have to be seen to be supporting legitimate Aboriginal aspirations to control their own affairs.

Mr HATTON: That is a valid point and I support that.

Mr YUELL: Good. Referring to page 17, number 25, there is a slightly different issue - the Public Service Act and the Commonwealth Teaching Service Act. I raise this out of personal self-interest. As I am one of the employees who was compulsorily transferred from the Commonwealth Teaching Service to the Northern Territory Teaching Service, I am wondering what sort of amendments may be required there.

Mr HATTON: I may defer to our legal adviser on this particular matter. I think they are technical and administrative.

Mr NICHOLSON: (Totally inaudible).

Mr HATTON: There are certain issues that need to be addressed. It does not indicate that they need to be changed.

Mr YUELL: Talk of severance sounds rather painful to me.

Mr EDE: Ian, the point that you are making is that, in the context of those acts, there may be a very painful industrial issue that may need to be undertaken. This may have a particular impact on people in your situation. There may need to be some form of permanent secondment from the Commonwealth Public Service to the Northern Territory Public Service which will need to be included in the new act or whatever. That is an industrial issue that needs to be taken on board prior to statehood in order to convince people in your situation that they will not lose rights as a consequence of statehood.

Mr YUELL: Yes.

Mr HATTON: That is valid. One of the reasons why we produced these booklets was to identify those things and provide an opportunity for people to express their views. I do not need to be a great scholar to guess what the response would be and it would be a logical and rational response. You may be interested to know that it took some 30 years to change the entrenched rights of the original Commonwealth employees who were transferred to the new Commonwealth government on federation. There were High Court decisions entrenching those rights. They continued until those employees were retired out of the system. Thus, it is not a new process for Australia.

Mr YUELL: Yes, I have been in a school where teachers have been employed under half a dozen different terms.

Mr HATTON: At least, it needs to be recognised. It may be an issue that the commonwealth will raise. It may not be an issue that is raised by us but the Commonwealth may address it in relation to the rights in respect of Commonwealth service as distinct from the rights under Northern Territory service - rights of return, the seeking of promotion etc.

Mr YUELL: Okay. I turn now to page xx of the discussion paper on the proposed new state, Aboriginal rights. I will go through this as the items come up. It refers to appropriate guarantees of Aboriginal ownership of land and I am pleased to see that. There is certainly a need for that. But, in your introductory remarks this morning, you did not say that.

Mr HATTON: I did later on, though.

Mr YUELL: In your introductory remarks, you talked about guarantees of Aboriginal rights generally.

Mr HATTON: That was the matter of the preamble. That there should be specific recognition of the Aboriginal people and their prior occupation in some form of a preamble or otherwise in the constitution is a matter that has been raised to this committee. That is separate from the issue of Aboriginal land rights. The heading should say Aboriginal land rights.

Mr YUELL: I am pleased to hear that.

Page 5 refers to that again. On page 97, paragraph 8 refers to 'an enforceable statement of human rights entrenched in the new state constitution'. I would put it to the committee that there is a need to take on board, as part of the constitution, the Universal Declaration of Human Rights to which governments in Australia always seem to pay lip service but which some governments do in fact infringe. I would like to see in the Universal Declaration of Human Rights as part of a Northern Territory constitution that could be enforced in law through the courts.

Mr HATTON: In the Northern Territory constitution as distinct from the Australian Constitution?

Mr YUELL: We are supposed to be leading the way in constitutional development, aren't we?

Mr HATTON: I raise the question because there are some issues which some people believe would be better dealt with at a national level rather than at a state level. It is a question that needs to be addressed. I am simply giving you the opportunity to address that.

Mr EDE: Are you saying that it should be in both?

Mr YUELL: Yes. Ideally, the federal government would take it on board too and incorporate it in the Australian Constitution. However, perhaps the Northern Territory could lead the way and indicate that this is a blueprint that the states and the Commonwealth should follow.

Mr EDE: Possibly we could word it 'to the extent that the Northern Territory government has the power under the Universal Declaration of Human Rights, it has that function'.

Mr YUELL: For example, everybody would agree that education is a state function. If you look up education under the Universal Declaration of Human Rights ...

Mr HATTON: Would you mind passing those comments on to Mr Dawkins?

Mr YUELL: I refer to page 126 of this copy of the declaration. It is article 26(3). I would like to demonstrate the need for this. When I was working for the Yipirinya School Council, that council tried for 5 years to have the school registered as a non-government school under the Education Act. For 5 years, it tried in vain and that was actually a contravention of article 26(3) in the Universal Declaration of Human Rights. It says that parents have a prior right to choose the kind of education that shall be given to their children.

Mr HATTON: Does that include the right for their children to have no education?

Mr YUELL: No. There are other rights which say that children have a right to an education. What I am putting to this committee is that parents have a prior right to choose the kind of education that their children will receive.

Mr HATTON: What if the parents chose to educate their children at home by themselves?

Mr YUELL: Yes, that can be done.

Mr HATTON: Provided there are certain conditions.

Mr YUELL: My parents educated me for a year or two.

Mr HATTON: But they had to meet certain conditions, is that right?

Mr YUELL: Yes, I believe so.

Mr HATTON: And there should be some standards set.

Mr YUELL: There should be some standards. As an educator, I would agree with that.

Mr HATTON: Therefore, there is a limitation on that right to the extent that you are determining certain minimum standards?

Mr YUELL: At that time, I was a band 3 officer with the teaching service on leave without pay working for the Yipirinya

School Council. Thus, it was ironical to the extent to which I was involved in the education that those children were receiving ...

Mr HATTON: They were receiving the education?

Mr YUELL: They were receiving the education.

Mr HATTON: What they were not receiving was the funding?

Mr YUELL: Correct. They were not receiving the funding.

Mr HATTON: Thus, the right to choose this sort of education became a financial issue?

Mr YUELL: No. What I am saying to you is ...

Mr HATTON: Because they did not get registration, they did not get funding for classrooms and schools.

Mr YUELL: That is right.

Mr HATTON: Thus, it is a funding issue as distinct from ...

Mr YUELL: Therefore, the federal government at that time and the Northern Territory government at that time were in fact breaching article 26(3) by refusing the funding.

Mr HATTON: Did they close the school down?

Mr YUELL: No. They were trying to starve it out of existence by denying the funding.

Mr EDE: I think that that they were also in contravention of article 26(1) which says that everyone has the right to education and that elementary education shall be free and compulsory. Within certain principles, the parents shall decide on the kind of education. It is clear then that they breached one or other of those articles.

Mr HATTON: I am going to challenge this because I think you are wrong. Are you saying, for example, that the Northern Territory and federal government should fund 100% of the costs of the Darwin International Grammar School?

Mr YUELL: I am saying that, if parents choose that education for their children, yes maybe it ...

Mr HATTON: It should be free?

Mr YUELL: It should be free for them, yes.

Mr HATTON: Thus, you are saying that Melbourne Grammar, Shaw, Darwin International Grammar School, Marrara Christian College, every school in Australia, no matter how it is structured or whatever it is teaching and of whatever standard, should be 100% funded by the government as a matter of right?

Mr YUELL: What I am saying to you is ...

Mr HATTON: It is yes or no.

Mr YUELL: What I am saying to you is that there are mechanisms for ensuring that this declaration is in fact not breached and these mechanisms have been suggested in the past. One is that government should work out the average cost of educating a primary school child and say: 'Right, those parents now have a credit of \$3000 or whatever it is'. It would provide them with a credit slip and the parents could then present that at the school of their choice. I would support that.

Mr HATTON: Thus, whatever funding would result from what they get by way of credits?

Mr YUELL: That is right. Yes.

Mr HATTON: And the number of students that they are able to attract.

Mr YUELL: Yes. I would support that as a matter of principle. I may not get much support from the Northern Territory Teachers Federation of which I am a member. However, as a point of principle, I support it.

Mr HATTON: Following from that, presumably each of those schools would operate independently.

Mr YUELL: Each school would then get its funding via the number of parents who presented their credit slips.

Mr HATTON: The open market.

Mr YUELL: Yes.

Mr HATTON: Thus, you would give each student a credit slip of \$x.

Mr YUELL: Each parent for each student.

Mr HATTON: For each student that they have going to school and that voucher can be cashed by whatever school they choose to go to.

Mr YUELL: Yes, that is right.

Mr HATTON: If they want to go above that, they can pay the extra money themselves or whatever.

Mr YUELL: That is correct.

Mr HATTON: Okay. Suppose they choose to attend school X which decides that it does not believe in teaching reading, writing and mathematics. It will only teach the Quaker religion.

Mr YUELL: I also have sympathies with the Quakers.

Mr HATTON: Or whatever. The Hare Krishna religion and will teach nothing else.

Mr YUELL: I share your prejudice against them.

Mr HATTON: I am trying to say that the particular school will not teach those things that society needs. The child has a right to an education which will enable it to participate fully in society.

Mr YUELL: Yes that is right. It is up to government to register schools.

Mr HATTON: Right. On what basis do you register schools? Minimum standards?

Mr YUELL: Yes. Minimum standards, but not ethnocentric standards. What seems to have happened in the case of Yipirinya is that ethnocentric standards were used to try to judge the worth of the education that those children were receiving.

Mr HARRIS: Steve, I must come in because I was the minister involved when Yipirinya was registered.

Mr HATTON: You registered the school.

Mr HARRIS: Yes. If you talk about government constitutional responsibilities for providing adequate education, it is important that there are standards.

Mr YUELL: Yes, I agree with that.

Mr HARRIS: You must have standards and they must be adhered to. I met with the Yipirinya council at that time. One of my concerns was that, when I wanted to see a class or something happening, they could not take me out there and show me what was happening. All the department wanted to be assured of was that the children were being taught adequately. The issue dragged on. I believe that the difficulty could have been resolved very quickly if we had been shown what was being done. This comes back to perceptions. I acknowledge the whole exercise was not one that will go down in my memory as a success. However, there was a bit of history prior to that in relation to the school being established. There has to be standards.

You have been involved with Aboriginal education and it is something that I am particularly interested in myself. When you Aboriginalise schools, there is a problem resulting from the various groupings in the particular community. We would be aware of this in respect of Milingimbi. There are some Aboriginal people who are saying that there are too many of a particular group teaching in a particular school. Therefore, they move their kids out and take them to the bush. It is very difficult to provide education under those circumstances. This is the problem that governments have. They are trying to make the whole Aboriginal education system work. There are enormous amounts of money being poured into Aboriginal education and, again, I do not think people are aware of the enormous costs. In many instances, the money is wasted. We need to examine these issues. How do you see Aboriginal education in the context of the state having the responsibility of providing education to those kids?

Mr HATTON: Educational opportunity.

Mr YUELL: The end point must be that Aboriginal people have control of the education of their children, just as I have control of the education of my children.

Mr HARRIS: But there are problems in reaching that goal. We set up a school and provide the opportunities for Aboriginal people to take their children to school to be educated and, unfortunately, because of their cultural traditions, some are unable to make use of that particular facility. Those are the sort of difficulties that we have.

Mr YUELL: Obviously, that is a matter for local people, whether they are Aboriginal or non-Aboriginal, to work out for themselves. In the past, we have been quite happy for non-Aboriginal people in an isolated community to work out those issues via their school council, haven't we? When there has been friction between ethnic groups for example. What I am suggesting is that, in relation to Aboriginal education, we should let Aboriginal people work out those problems themselves instead of trying to solve them for them.

Mr HARRIS: Can I indicate that that is exactly what the government is trying to do. In fact, we are pursuing that with great vigour. However, in Hermannsburg, for example, there are 10 groups or homeland centres and there are another 18 within 30 km. The problem is that all those people want to set up their own little groups and teach the children in their communities. It is a very difficult task. If the Commonwealth wishes to be a partner in providing schools to all those isolated communities, fine. However, there are real problems and we can only move slowly in trying to address them. I take on board what you are saying and indicate that the government is moving in that direction. We have a responsibility under the constitution to provide education to the people in the Territory and we are trying to do that. We are listening to what the Aboriginal people are saying in that regard.

Mr YUELL: Certainly, it is a difficult task but it is the way to go. If you say to those people, 'Sorry, we cannot give you education out bush, you have to come back into school', you are really denying them the right that is stated in the Universal Declaration of Human Rights.

Mr HATTON: You do accept that the government has certain budgetary restrictions on its ability to do things.

Mr YUELL: Yes, and that is why I suggest that this voucher system might work rather well.

Mr HATTON: But, do you realise it costs about 3 or 4 times as much per student to educate a person even in a large Aboriginal community to what it does in, say, Darwin or Alice Springs.

Mr YUELL: Maybe the Territory government, if it could see its way clear, or the federal government could top up the voucher for a disadvantaged child. This is being done already through a system of grants to disadvantaged schools by the Commonwealth Grants Commission.

Mr HARRIS: That is another program which has severe problems because the efforts that have been made by people are destroyed when funding is withdrawn after 5 years. These are matters that have to be addressed and the government is addressing them. That is another issue and I think really that the point has been taken

Mr EDE: I would like to come back to the constitution if I could. You were talking about the need to have the Universal Declaration of Human Rights acknowledged in the constitution. You referred specifically to article 26(3) which says that parents have the prior right to choose the kind of education that is given to their children. You stated also that you believe that the government had the obligation to set various minimum standards of education.

Mr YUELL: Not ethnocentric standards.

Mr EDE: On a non-ethnocentric basis. I would like to take further your agreement that that would imply an obligation under article 1 for people to obtain free education at, say, Darwin International Grammar School. Wouldn't you agree that the kind of education relates more to the ethnicity of people or their religious beliefs rather than the levels that people may aspire to above the minimum level? In other words, if people believe their children can obtain a higher level of education than that provided by schools which provide the minimum standards laid down by the government by sending their children to schools which have a smaller pupil teacher ratio or whatever, there is no obligation, under the Universal Declaration of Human Rights, for the government to pay for people's desires in that regard. The obligation on the government is to provide that minimum standard.

Mr YUELL: That is right. The minimum standard may be upheld through the voucher system. It can then be seen to be fair and to be upholding these principles.

Mr EDE: I do not want to get into the ways and means that we do this. I wanted merely to establish the point that the rights under that declaration are for the minimum standard of education and they do not relate to people's desire for something way above that standard.

Mr YUELL: No, if parents want to chuck in \$10 000 to send their kids to Scotch College or Geelong College, where I went, that is up to them.

Mr EDE: Fair enough. I wanted to establish that.

Mr HATTON: I have not been making these points in order to be pedantic. I simply wish to indicate the potential legal quagmire that you could be leading the community into by inserting a broad statement of principle such as this into a constitution. We have heard a number of conflicting views or interpretations in the course of this discussion. When you insert broad statements in a constitution, which is a very powerful legal document, you then open up a marvellous field of work for the legal profession. The aspect of the Australian Constitution that has given rise to the most litigation is the very simple section that says that trade and commerce between the states shall be absolutely free. That is a very simple, clear statement. It is the most litigated section of the Australian constitution.

You have drawn 2 elements out of this particular declaration and interpreted them on the basis of a situation that you were in. Other people may draw other conclusions from them. Can you see the potential legal quagmire that may be created by writing that into the constitution as distinct from adopting a convention and using the mechanism of the protection of the common law which exists in Australian society? I believe this convention has been adopted by Australia and therefore that has a legal implication for the states and the Northern Territory.

Mr YUELL: My concern is that the Commonwealth government has agreed to the convention but everybody merely pays lip service to it. Yipirinya was an example of parents trying to choose the kind of education that they wanted for their children under article 26(3).

Mr HATTON: But they were not denied that.

Mr YUELL: They were denied that in so far as they were denied the funding for it.

Mr HARRIS: But that was a result of their not providing the information that was required.

Mr YUELL: That may well be, but I was teaching oral English. Every morning, I went around 3 fringe camps and taught oral English for an hour.

Mr HATTON: I wanted to draw that issue out because I think that it is worth noting the potential implications of broad declarations.

Mr YUELL: I suggest to you that, in time, the court rulings would be made and precedents established. The problem would work itself out.

Mr SETTER: Ian, you indicated that you have the right to choose the form of education for your children.

Mr YUELL: Yes, I do.

Mr SETTER: I assume that you mean in the existing education system.

Mr YUELL: Yes. I have taken my children out of a government school and I have put them into another government school. I could also take them out of that government school and send them off to Melbourne Grammar School.

Mr SETTER: But you said that Aboriginal people do not have that right. I wonder if you could clarify that point for me.

Mr YUELL: No. They do have that right. What I am saying is that they should have that right to choose. If they choose to send their children to Traeger Park, I would support that 100%.

Mr SETTER: But surely they have that right now.

Mr YUELL: Yes, they have that right now. However, before 1983, they did not have the right to send their children to Yipirinya school because Yipirinya was not registered and did not have the wherewithal to deliver the full education that the parents wanted for their children. That is the kind of education that those parents wanted for their children.

Mr SETTER: I am not familiar with Yipirinya but, quite obviously, at that stage, it was not within the Northern Territory education system.

Mr YUELL: The parents wanted to set up that school within the government school system.

Mr SETTER: If I could just interrupt there, we have really discussed Yipirinya at some length this morning. I was interested in your comment about Aboriginals not having the right to decide on the education for their children within the existing Northern Territory education system.

Mr YUELL: If that education system is too ethnocentric and if it does not allow for genuine Aboriginal choice, what sort of a choice is there?

Mr SETTER: That is a matter for the Department of Education

There is something else I would like to raise with you. You commented in your introductory remarks that you gathered from my remarks that the Northern Territory government was trying to grab as much power as it could with statehood.

Mr YUELL: Yes, that is right. Grab for power: that seemed to be what you were saying.

Mr SETTER: Well I did not use the word 'power' at all. I was talking about control.

Mr YUELL: Yes, you used the word 'control'.

Mr SETTER: I did indeed. But the reality, of course, is that with statehood you gain control ...

Mr YUELL: And you get the power.

Mr SETTER: ... over a number of state-type functions. It is my opinion that, when we opt for statehood, we should accept nothing less than equal rights, powers and controls as all the other states currently have.

Mr HATTON: There is no dispute about that, but one should recognise that control by the parliament is control by the people through their parliament. I think that is the point that is really being made.

Mr YUELL: I would like to raise a couple more points. Page 101 relates to the question of the number of Senators. I would like to follow on from what Vince Forrester was saying earlier about obtaining Aboriginal representation or a way of demonstrating that real power is being passed to Aboriginal people. The question was raised as to how the electorates could be drawn to achieve that. What I would put to you is that nearly half the land in the Northern Territory is now officially Aboriginal freehold title as opposed to ordinary freehold title.

Mr HATTON: Or under claim.

Mr YUELL: Or under claim. Maybe about half of the 12 Senators should be elected from that land. Before you dismiss that idea out of hand, I would put it to you that the Senate is there to represent a state, regardless of the number of people

in it. Tasmania has the same Senate representation as Victoria, hasn't it?

Mr HATTON: Yes.

Mr YUELL: And Victoria has probably 7 or 8 times as many people. If the committee wants to show Aboriginal people that it is genuine about giving Aboriginal people a real say in the future of the Northern Territory, then the electoral boundaries would be redrawn according to Aboriginal land and non-Aboriginal land and half the Senators from the Northern Territory would be elected from electorates from the Aboriginal land ...

Mr HATTON: The Australian Constitution does not allow for that.

Mr YUELL: ... and the other half would be drawn from electorates on non-Aboriginal land.

Mr HATTON: It is an Australian Constitution matter; it is not a Northern Territory constitution matter.

Mr YUELL: No, I am putting it to you that this is an idea whereby you can demonstrate that you are genuine about giving real power to Aboriginal people.

Mr HATTON: We do not have a say over it. It is a federal electorate process; it is a federal government matter. The Senate is elected through federal legislation, under the Australian Constitution, not a Northern Territory constitution.

Mr YUELL: I am proposing that this committee support that recommendation.

Mr HATTON: That 50% of the Senators be elected from 22% of the population.

Mr YUELL: Look, you have already agreed that the whole point of Senate representation is not according to the number of people in the land mass. I am asking you to translate that over to the Northern Territory. When statehood comes, the Northern Territory should have 12 Senators sitting in the Senate to represent the people of the Northern Territory. Since approximately half of the land mass of the Northern Territory has a legally different form of land title over it - Aboriginal freehold title - half of those Senators should come from that land area.

Mr EDE: Would you extend that to the pastoralists?

Mr HARRIS: Mr Chairman, it is a view that I do not think relates to what the Senate is about. The Senate is there to look after the states in terms of equality. It is an interesting proposal that is being put forward but it is one that would be hotly debated. We take on board what you are saying.

Mr HATTON: You are aware that the Senate representatives are elected from a unitary area - the state boundaries. There are no subdivisions within the states. I know you are putting forward a concept but, under that same argument, 80% of the Senators in Australia would come from the pastoral industry. They have a special form of land tenure also. With 12 Senators, under the proportional representation system for the Senate vote, you could almost certainly ensure that there would be at least 2 Aboriginal Senators if they were popular among Aboriginal people.

Mr YUELL: This committee is concerned with statehood for the Northern Territory, not other constitutions in other states and what other states do.

Mr HATTON: The method of electing the Senate is very much a matter for the federal parliament.

Mr YUELL: But I am saying that the principle applies. Vince Forrester was talking about the Northern Territory being unique because it is a nation within a nation, as it were, or a state within a state. There is some truth in that.

Mr SETTER: Are you advocating the establishment of a separate Aboriginal state?

Mr YUELL: No, I am just saying to this committee that it should face reality and the reality is that nearly half the Territory is Aboriginal freehold title which is a legally different kind of freehold title from the other half of the Northern Territory.

Mr HATTON: That is not particularly relevant.

Mr YUELL: All I am saying is that that is ...

Mr HATTON: There are a multitude of different land tenure systems operating in the Northern Territory.

Mr YUELL: Yes, but there is only one Aboriginal freehold title.

Mr HATTON: That is right, but there are a multitude of other, legally recognised forms of land tenure.

Mr YUELL: All I am suggesting to this committee is that, if it is looking for a mechanism for getting genuine Aboriginal representation in the Senate - because Aboriginal people are real Territorians and they deserve proper representation ...

Mr HATTON: As Territorians.

Mr YUELL: As Territorians. But the reality is that the Northern Territory has the highest proportion of traditional Aboriginal people of any state in Australia.

Mr HATTON: Yes.

Mr YUELL: That is the reality and you cannot get away from that. You cannot say that they are 33% of the population but really they are just the same as us. They are not the same as us. That is the reality. They have completely different value systems and completely different ways of thinking.

Mr HARRIS: No one is questioning the reality of that, but I have made it clear during the course of the hearing today that the government looks at all those issues. We have heard the point that you are making. There are very real problems in relation to your suggestions. They are suggestions and they will be taken on board but I think that there are many issues that must be considered in relation to that concept. There should be no attempt to split the Aboriginal people away from the Territory people. It is acknowledged that they have their cultural differences and there is no question about that. Those aspects have to be taken on board by the government and they are being taken on board whether they relate to health, education or whatever. You are putting forward a proposal and I am saying that it will be considered. However, there are other issues arising from that which will create very real problems. It could split the Territory on a whole range of things and make it very difficult for us in the future.

Mr YUELL: Talking about a state within a state is highly emotive but I would say to the committee that we have a culture within a culture.

Mr HATTON: We have a multitude of cultures within a culture.

Mr YUELL: But, as Vince Forrester was saying, the Aboriginal culture really has to be recognised as being the indigenous culture and one that has prior special claim over other cultures.

Mr HATTON: No one has really disputed that particular point.

Mr SETTER: But Aboriginal people, of course, have the right to form political parties and to select their candidates and stand in elections. At this time, they have chosen not to do that and they have that right, the same as anybody else has. As I said, at this time, they have chosen not to do that but, in many instances, to throw their lot in with a particular political party. That political party has chosen, particularly in electorates in the south here, not to preselect Aboriginal candidates. It has that right. That is up to the Aboriginal people.

Mr YUELL: As I said, I have never belonged to any political party. I am not a party man at all

Mr HATTON: I think we are straying from the subject. I am conscious that it is getting very close to adjournment for lunch.

Mr YUELL: I have one final issue to raise and I refer the committee to pages 137 and 139 of the discussion paper. There is mention of the official languages of Canada. This follows on from what I was saying earlier about not only acknowledging the place of Aborigines in the Territory but actually doing something concrete when drawing up a constitution for the new state. Perhaps Aboriginal languages should have the same status as English, for example, in courts of law and in schools.

Mr HATTON: How many Aboriginal languages are there in the Northern Territory?

Mr YUELL: There would be about 100, wouldn't there?

Mr LANHUPUY: That would be in Milingimbi alone.

Mr YUELL: Yes, there are a lot. But all I am saying is that, if it were acknowledged that it was permissible for an Aboriginal language to be spoken in the parliament, and at the moment I believe it is not ...

Mr HATTON: Yes, it is. In fact, we have had a number of interesting speeches presented by a member in Pitjantjatjara.

Mr YUELL: Yes, but I believe that that was actually an infringement of standing orders, wasn't it?

Mr HATTON: Yes.

Mr YUELL: Yes, it was an infringement of standing orders.

Mr HATTON: There was straight tolerance expressed by the members of the Assembly.

Mr SETTER: That is right, except nobody understood what he was saying.

Mr YUELL: What I am saying to you is that, when you draw up this new constitution, if you want to be seen to be paying more than mere lip service to Aboriginal culture, one way to do that is to enshrine that an Aboriginal language, whichever one of the 90 it happens to be ...

Mr HATTON: I think it is more than that actually.

Mr YUELL: ... has the same status and is accorded the same acceptance in courts of law, in parliament and in schools as English is, in the same way that official languages are enshrined in the Canadian Constitution.

Mr HATTON: We actually have to be able to communicate with each other as citizens. I will tell you now that I do not intend to have the entire Northern Territory community learning 301 languages. In Indonesia, there is protection for the continuation of some 900 different ethnic and language groupings in the Indonesian community yet Indonesia still has a common national language. There are ways of dealing with this without destroying the ability of Northern Territorians to communicate with each other.

Mr YUELL: I guess you simply need to find more money for translators.

Mr HATTON: There arises a question of practicality and approach.

Mr EDE: There are possibilities between the 2 extremes. We seem to be talking about absolutes. There is the possibility, for example, of people having the right to speak their own language in court and have adequate translation facilities available so that all persons in the court understand each other. A similar process could be instituted for schools. For example, x% of the school curriculum could be taught in a certain language and at certain levels or whatever. A parliamentarian could opt at his first sittings to speak in a certain language. There would be problems with translation, of course, but I am mindful of the fact that the Papua New Guinea parliament is conducted in 3 languages which are simultaneously translated. Many other parliaments are conducted in more than 1 language. Thus, there are ways that this matter can be dealt with between the 2 extremes which perhaps we should look at in the context of the language policy.

Mr HATTON: I think there are points there that are worth addressing. Are there any further points?

Mr YUELL: No. Thanks very much for your time.

Mr HATTON: Thank you. You have certainly raised some interesting and stimulating issues for us to consider and I mean that quite seriously.

Mr YUELL: I am sorry that I did not have time to prepare a written submission, which I should have.

Mr HATTON: You are certainly welcome still to do so. The committee will be meeting for some time. It is probable that there will be further hearings in Alice Springs at a later date. We recognise that we are really introducing the subject. The opportunity is still available for people to present written submissions or to seek an opportunity to speak later. There are still some 9 months before we are required to report to parliament. There is plenty of time for people to express their views.

Mr YUELL: Good. Thanks very much for your attention.

Mr HATTON: I now adjourn this committee hearing until 3 pm.

Hearing resumed at 3 pm

Mr HATTON: I call the meeting to order and welcome the representatives of the Alice Springs Council to present submissions. I extend a particular welcome to Mayor Oldfield, Alderman Bob Kennedy and Acting Town Clerk, Gail Petty. We have received a written submission from the Alice Springs Town Council. I understand you wish to speak to that.

Mayor OLDFIELD: Mr Chairman, in November 1987, the council was invited by the select committee to make a submission on the issues of constitutional development either in general terms or with reference to specific issues. The council resolved to respond to this invitation by forwarding a submission promoting the entrenchment of the local government concept within the new state constitution. I now formally wish to present the council's submission to the committee.

This submission proposes a method of providing for local government in a way which will encourage more positive regard for that sphere of government which is closest to the community. Existing state constitutions exhibit certain uniform features, having been established by similar acts of the British parliament during the period 1850 to 1891. In broad summary, there are a collection of measures which delineate the powers of the states in very general terms as power to legislate for the peace, order and good government of each particular state. The Australian Council for Intergovernmental Relations has suggested that the generality of state constitutions perhaps provides one reason why it is rare for them to be relied on in litigation and why, therefore, the possibility of unfavourable judicial interpretation constitutes less of a deterrent to the inclusion of new provisions. It is likely that a more convincing reason for not relying on existing state constitutions is that they exhibit a degree of flexibility which is not always entirely advantageous. Thus, provisions relating to local government or, for that matter, to any institution or process whatever could be removed, as a matter of law, from a state constitution as easily as it was included unless the provisions are entrenched.

The council is gratified to note the views of the select committee that it favours some degree of entrenchment for the whole of the constitution and agrees that the form of entrenchment should underline the accountability of parliament to the electors rather than to the federal parliament. The council would urge that among the other matters which may be included for entrenchment should be the recognition of local government as an autonomous delegate of governmental powers. Further, the council urges that the entrenching provision should itself be entrenched, a process which, as the select committee will be aware, constitutes double entrenchment. As to the manner and form to be prescribed in the entrenching provision, the council suggests that, once local government has its existence guaranteed by entrenchment, there should be a requirement for a referendum to be held in order to change the provision. A two-thirds majority would be an appropriate gauge of support for change.

The council submits as reasons for constitutional recognition, those which have previously been identified by the ACIR in its Discussion Paper No 3 of 1980 and these are: safeguards against arbitrary dismissal; guaranteed autonomy to a degree which is fitting for an elective representative sphere of government; guaranteed powers and consequent removal of the threat of challenge under the doctrine of ultra vires; guarantee of democracy even to the extent of entrenching a local government franchise in the constitution itself; and status and recognition which, although not an automatic consequence of constitutional recognition, would be a more likely result.

Appendix A, which was attached to our written submission, contains an extract from ACIR Discussion Paper No 3. The council places reliance on the contents of this extract as support for its submission and believes that it underlines the validity of the reasons previously advanced by the Northern Territory Local Government Association and referred to in the select committee's discussion paper.

The council believes that, in order to meet the criteria previously referred to for meaningful recognition, the entrenched provision relating to local government should go further than just formal recognition but perhaps not quite as far as the 1979 amendment to the Victorian constitution in relation to the details of the franchise. With this in mind, the provision should state that there will be a system of local government by bodies constituted of elected members who hold office from election to election but who may be dismissed by the parliament only after due inquiry and only on the ground of gross misconduct. It should state that the council of an area has all of the powers necessary for the peace, order and good

government of the area subject to the normal precedence of state legislation. It should state also that, in respect of the fiscal powers which councils are accorded, these may be exercised without unreasonable limitation being imposed by the state.

Mr Chairman, unfortunately, the Town Clerk who prepared this submission is away at present. He will be very sorry to have missed the hearing today. However, we hope our submission covers those aspects pertinent to local government and we thank you for the opportunity of presenting it formally to you.

Mr HATTON: Thank you very much, Mayor. It is quite a considered submission, I might say, on the issues involved. Inevitably, it leaves a number of questions unanswered, as I suppose many submissions do. Perhaps you may like to make further submissions on some of those issues.

Mayor OLDFIELD: Perhaps the committee could ask questions and, if we are unable to answer, we could make further submissions on those matters. As I indicated, the submission was prepared by the Town Clerk who is very much across the subject. Unfortunately, he cannot be here to support us today.

Mr HATTON: I appreciate that. You talk about constitutional recognition of local government. Would it be reasonable to assume that that would not encompass the view that there should be a constitutional guarantee of the existence of local government across the entire area of the Northern Territory? As you would be aware, there are significant tracts of the Territory that are not covered by any form of local government at the moment. Should we cover the entire Northern Territory by some third tier of government structure or merely provide the capacity for that to happen?

Mayor OLDFIELD: My personal opinion on the matter, and probably Bob can say what he thinks too, is that provision should be made for it. However, I can see the problems in the Northern Territory. There could be difficulties in the early stages but the provision should be there for local government to be implemented at a later stage as required.

Mr HATTON: Thus, you are talking about a right to move towards local government rather than a requirement to have it.

Mayor OLDFIELD: Yes. I believe that.

Mr KENNEDY: The only other comment I can offer, Mr Chairman, is that there might be some benefit for the Territory in terms of attracting funding if it covers the whole of the Territory. However, the extent to which it could create problems needs to be recognised.

Mr HATTON: It doesn't have any financial implications. Fundamentally, we have now broken the barrier in respect of population within local government areas. The Local Government Grants Commission is looking at areas outside statutory local government areas as well because PITS funding now extends beyond the populations within local government areas.

Mayor OLDFIELD: I am not sure that we actually discussed that in council.

Mr HATTON: It may be a matter that you would wish to address anyway.

Mr KENNEDY: Are you thinking of the position of shires etc in the outlying areas?

Mr HATTON: The Northern Territory has significant areas that are not within shire or community government or local government areas. The question is whether we should provide the right for such areas to enter that third tier of government or whether there should be an obligation placed on them to do so.

Mr KENNEDY: To the extent that I recall discussion on this issue at the Northern Territory Local Government Association, I have a feeling that the option is to provide for the existence of shires in the outlying areas. You would need to check that with Charles Gurd and Noel Lynagh but that is my recollection of the discussion at the time.

Mr HATTON: I suspect it is. I was really trying to clarify that.

The expression 'for the peace, order and good government' is all-encompassing terminology. As you know, between the Commonwealth and the states, there is a division of powers. Do you envisage that there should be some powers for local government that are constitutionally provided.

Ms PETTY: I think that there should be some recognition of powers and that they should be defined in some way. I think that the governmental responsibility between the state and local government has become blurred as a result of the way

things have evolved. The constitution needs to recognise local government, perhaps not specifically, but to some extent, if I make myself clear.

Mr HATTON: I really am not trying to be trite but, using as an extreme example, should the constitution provide, for example, some of the specified powers that currently exist in the Local Government Act as being powers of the local government with perhaps a concurrent or exclusive powers breakup between the state government and the local governments in a new state? That is one option. The other option is to provide for the existence of local government which will have powers that may be determined by legislation, as they are now. I was seeking to clarify that particular point.

Ms PETTY: There are 2 ways.

Mr HATTON: I know it is not a matter you can discuss off the top of your head but it may be an issue you would want to address. The general practice in the states is provision for a general power of local government with definitions occurring through local government legislation.

Mr KENNEDY: The ACIR appears to opt for ...(inaudible) ... then give it the necessary powers in general areas and then have these things applied to whatever local government takes up as issues further down the track.

Mr HATTON: Provides a competence area which is determined through a legislative process. That may be an appropriate way.

Mr EDE: On the form of recognition, you say: '... but who may be dismissed by the parliament only after due inquiry and only on the ground of gross misconduct'. Thus, you are stating that the dismissal has to be not by the minister but by the parliament itself and that, prior to that, there must be an inquiry and that the only ground for dismissal is gross misconduct.

Mayor OLDFIELD: Yes. That is what we said.

Mr EDE: Right. Given that the parliament may then dismiss the council, are you saying that an election for a new council must be held within a specified time? You could have a situation where an administrator is installed and you could have a Sydney City Council setup and there is no council.

Mayor OLDFIELD: I believe that is in the Local Government Act as it stands now and that should be picked up and followed through. Yes.

Mr EDE: Do you believe that should actually be in the constitution or are you happy with its being in the Local Government Act?

Mayor OLDFIELD: As long as the act is not changed by the new constitution. Maybe it would be worth while to have it in the constitution.

Mr KENNEDY: I think it is something that needs to be in the constitution.

Mr EDE: You believe it should be in the constitution rather than the act?

Mr KENNEDY: I think that matters relating to existence, dismissal and general competence powers etc need to be in the constitution. None of us is interested in having too much detail in the constitution. As you stated in your paper, the constitution should deal only with those matters considered to be of vital importance to the functioning of the state. The sorts of things that we are talking about are of vital importance to the functioning of the state and the existence of local government.

Mr HATTON: What we are looking for is some form of words which may be part of the select committee's recommendations in relation to a draft constitution that we would put before the Legislative Assembly.

Mr KENNEDY: Are you looking for those from council or ...

Mr HATTON: That is what this process is about. The discussion document raises the issues. We are now seeking a feedback from the community to start to identify and refine the views of the community so that eventually we can prepare a draft constitution for recommendation to the Assembly and which the Assembly would refer to a constitutional convention.

In item 2 of your submission, you mentioned 'guaranteed autonomy to a degree which is fitting for an elected representative sphere of government'. Are you able to expand on that aspect? Item 3 refers to the inability to be removed for example.

Ms PETTY: I think that we are referring to autonomy in the sense of decisions of the local government not being subject to the approval of the state government as is the case today.

Mr HATTON: I understand that.

Mr EDE: Therefore, you are saying that you should have autonomy in respect of powers and functions laid down in a constitution or delegated under a constitution which you hold concurrently with the government or in your own right? You are saying that your decisions with respect to these should not be subject to ministerial approval or veto?

Ms PETTY: Yes.

Mr HATTON: That is the same thing we are asking of the federal government.

Mayor OLDFIELD: You can understand why we are asking for it.

Mr HARRIS: I happened to be on the council of the ACIR at the time that those hearings were taking place. It was interesting to note that some local governments were trying to hand back hard-won powers - in Victoria for example. Thus, there needs to be some flexibility there. I also noted that many councils were starting to become involved in other areas such as welfare and that frightened the living daylights out of me and many other people as well. They said that the council was looking after the interests not only of people in a particular area but also looking after the interests of people who came into the community, transient people. There is some concern there. Those are a couple of the points that were raised at the ACIR hearings.

Mayor OLDFIELD: There is a push to have local government in what may be termed human services areas. It is a bit of a problem when you try to keep a certain distance from it but I agree that there is a problem there.

Mr HATTON: That was one of the areas I anticipated would need to be addressed when discussing the matter of division of powers.

Mr KENNEDY: Could I suggest that that is one of the reasons why general competence powers and subsequent negotiations outside of the constitution seems to me to be the way to go. I think we have learnt a lot from the Victorian situation where local government achieved certain powers and functions and then found them to be too expensive or inappropriate for local government. As you say, they are now trying to divest themselves of them.

We commented in our submission that we would like to see local government as an autonomous delegate of local governmental powers. I have a feeling that there is a current climate within the Territory government, both at senior officer level and senior political level, that the Territory government could well get out of some of the things it is involved in. I refer to such things as legislation relating to dogs and caravan parks etc. In respect of those sorts of things, local government, within its own area, could be an autonomous delegate to a minister. We are suggesting that those sorts of things need not be handled at a Territory government level. I would not like to see that in the constitution but I would like the constitution to provide for that autonomy.

Mr HATTON: Yes. You are accurately describing views.

Mr HARRIS: Thin end of the wedge.

Mr HATTON: I would like to make it crystal clear that the Alice Springs Town Council has responsibility for stray cats in Alice Springs.

Mayor OLDFIELD: We do not want that one.

Mr EDE: Are you talking about putting in the constitution an overall power to delegate and, once a power is delegated, the local government would become autonomous in relation to it? The person who delegates the power would not have the power to remove that delegation once it has been made?

Mr KENNEDY: I think there would be safeguards. However, if a power of removal is there, it should not be simply at ministerial discretion.

Mr EDE: It would be a provision to the effect that a minister may delegate but only parliament may remove it ?

Mr KENNEDY: Why couldn't both be done by parliament?

Mr HATTON: What you are saying is that, having delegated a power to local government, the local government will can make its own decisions which are not subject to ministerial approval or veto.

Mr EDE: Yes, but if the government disagrees with how the local government is using that power, how can it get that power back or can it never get the power back? Is it done by agreement or by parliament?

Mr HATTON: You refer to the guaranteeing of democracy even to the extent of entrenching the local government franchise in the constitution itself. Could you explain that more clearly?

Ms PETTY: The traditional view is that local government is the level of government closest to the people. This should be recognised in the constitution but only in so far as guaranteed through including the franchise provisions in the constitution, not the concept of democracy. I am becoming mixed up.

Mr HATTON: It is the electoral process.

Ms PETTY: It is the franchise provisions that we would like to have entrenched in the constitution rather than any great detail. Can you see what I getting at?

Mr HATTON: It is the right to be elected.

Mr EDE: How would that apply in a small community government area where, in forming their community government, the people may wish to set up a system which reflects not one person, one vote but traditional authority lines?

Mr KENNEDY: You would have to ask them.

Ms PETTY: We do not have that problem.

Mr HATTON: But, if you write it into the constitution, it would not allow the flexibility to deal with that.

Mr KENNEDY: I would have thought that you could still guarantee some sort of franchise situation and make that flexible enough to cater for all the diverse needs across the Territory. I still believe that it has to be within the constitution but I take the point that it will need to be carefully worded.

Mr HATTON: The franchise provisions relate to things like 1 vote, 1 value etc or the right of people in a community to determine the way they will go about voting.

Mr KENNEDY: I think that is what you are coming to. Somehow or another it has to be worded that way.

Mr HARRIS: Again, there was concern that people who had properties in the main city areas yet lived outside the local government boundaries did not have the right to vote even though they could be directly affected by decisions of the council. Such matters have been raised from time to time.

Mr KENNEDY: Yes, obviously that non-resident franchise is a very prominent issue in Alice Springs where, particularly in the CBD, much of the property is owned by non-residents.

Mr HATTON: That is another interesting matter for your council to turn its mind to in respect of further submissions.

Mr EDE: A delegation of power may matter little in reality if the local government does not have the funding capacity to carry it out. Do you envisage that the constitution should address anything in that regard?

Mr KENNEDY: I suggest that the delegation involves an acceptance and that acceptance will involve the issues you have raised. The mistake made by many of the Victorian councils was that they became involved in these human services areas

without determining who would pay. I think you would find that local government in the Territory is unlikely to go down that track. Indeed, we have been fortunate, when we have taken on such things as services for youth, that the Territory government has provided the funding or at least a substantial subsidy. Irrespective of whether or not it is included in the constitution, I think the attitude of local government to any form of delegation would be the same. I do not see that you could put that into the constitution.

Mr EDE: What about the question of discrimination in terms of funding for councils? What if the government does not have enough evidence to abolish a council on the ground of gross misconduct, but starves it of funding? Do you feel that there should be a provision to the effect that, within whatever formulae are adopted regarding population, CPI, need etc, funding should be equal across the Territory?

Mr KENNEDY: We have confronting us already a difficulty that is totally outside of what we are discussing today. I refer to what will happen in respect of federal funding in the next year or 2 and how it will be distributed among disparate local governments across the Territory. I do not have an answer to your question except to say that, again, it will require some very careful working to cover this Territory situation. If you looked at the 4 or 5 municipal councils only, it would be fairly easy to come up with some sort of basis that you could put in the constitution but you cannot do that because the constitution has a broader application than that. I do not know whether that answers your question, but I recognise the problem.

Mr SETTER: ... (inaudible) ... within the constitution.

Mr EDE: No, it would have to be relate to the Grants Commission such as the Grants Commission defining various factors which are applied across the board. Do you think the constitution should have a provision which removes any possibility of political patronage towards a council or group of councils or whatever right across the Territory?

Mr KENNEDY: Dare I say that I feel that there is less risk of that in the Territory than there is federally. Having said that, I do not know whether you could provide for that in the constitution.

Mr HATTON: My view is that you could not.

Mr EDE: You can put in anything that you like.

Mr HATTON: You can write it in but it just will not work. I think the constitutional document sets out basic rights and duties. It does not come down to saying that you shall not discriminate against a council in respect of financing. It is a beautiful thought.

Mr KENNEDY: Yes, it is a nice idealistic thought.

Mr HATTON: The reality is that, in our budgetary and financial processes, we must recognise that there is a role for the constitution, a role for the legislature and a role for government administration. The mechanisms for assessing funding allocations are determined through legislation. For example, there are the taxation rights and the right to choose methods of rating. The structures of taxing powers are probably best dealt with by way of legislation.

Mr KENNEDY: Oh yes. Otherwise it would be too difficult to change.

Mr EDE: The Tangentyere Council operates local government-type functions totally within the municipality whereas previously it was partly within and partly without the municipality.

Mr KENNEDY: It is probably wholly within.

Mr EDE: Do you see the powers you were talking about being devolved in such a way that different people had different powers and functions in relation to certain geographic areas or, if that was to exist as a local government body, those parts would have to be excised from the council area? Have you addressed that problem at all? Have you any ideas on that?

Mr HATTON: Perhaps I should advise that Tangentyere Council has made a submission to this committee seeking that the constitution ensure that an Aboriginal local governing body is recognised and can exist within another local governing body's boundaries. Thus, you would have a council within a council.

Mayor OLDFIELD: It has been talked about previously. I have spoken to the Town Clerk about this and with somebody

from Tangentyere some time ago. I understand that there would be some big problems associated with it.

Ms PETTY: I think that it would pose quite a few problems and I do not think that the constitution would get to that level of detail. As far as the Alice Springs Town Council is concerned, the Tangentyere Council is resident within our area. It pays rates like any other occupants of property, but that is as far as it goes. It would be extremely difficult to define if you were to have 2 levels of local government within the one area.

Mayor OLDFIELD: Particularly with one providing many services in the town and the other using them. The people outside the Gap, for example, were not paying rates but they were using all the facilities of the town. If the Tangentyere Council did not pay rates, that would cause a big problem. It would still have to pay towards the upkeep of the town and the facilities existing within it.

Mr HATTON: But the Tangentyere Council is arguing that it is in fact providing a range of local government-type services such as garbage collection etc. I do not want to get into a debate about the pros and cons but it was arguing that it should constitute a separate form of local government. Your view appears to be that it would be inappropriate to have a council within a council. If the constitution set up structured rights of local government, and with those go responsibilities, it could well be that the Alice Springs Town Council may find, for example, that it would have the responsibility of providing funding to organisations such as Tangentyere which are carrying out local government-type functions.

Mr KENNEDY: It would have an option to do that or ...

Mr HATTON: One would surely not expect the state government to fund those local government services.

Mr KENNEDY: What I am suggesting is that it would have an option to fund them or provide the services direct. It is my turn to be a little ideological but it seems to me that any division such as that is perhaps against the philosophy of a community of interest and against the philosophy of developing a community of interest. If you promote divisions as distinct as that, I think that you will erect barriers that will be very difficult to overcome. I think that you can overcome the problems that we have at present without that sort of thing.

Mr HATTON: In item 3, under reasons for recognition, it refers to 'guaranteed powers and consequent removal of the threat of challenge under the doctrine of ultra vires'. Ultra vires, of course, means acting beyond power. How would local government be protected against any action taken against it for acting beyond its powers? You would have to give it the powers of a sovereign, national government.

Mr KENNEDY: There is a possibility that you are taking that out of context.

Mr HATTON: I am asking the question because that is how I would interpret it when I read it.

Mr KENNEDY: These sorts of documents are almost Roy Mitchell's hobby and they are my difficulty. I have a feeling that what he is saying here is that, unless we have some form of constitutional recognition, we could be open to challenge under the doctrine of ultra vires. Further, I think he is saying that, unless this recognition is entrenched, because there is the possibility of the constitution being changed easily as compared with perhaps the federal constitution, local government could find itself in a situation of ultra vires as a result of changes to the constitution. I think the argument there is that we believe that it needs to be in the constitution and it needs to be entrenched in the constitution.

Mr HATTON: I would be curious to hear your Town Clerk's expansion and explanation of that particular view. It could be very significant or it could be illogical and I am not sure which. I for one would like to see it clarified. If it means that it will remove the potential to challenge anything a council does, that is important.

Mr KENNEDY: The interpretation that you expounded would not have been the sort of thing that was on my mind.

That leads me to a question I would like to ask if I may. I note in the comments that appear in your discussion paper towards the end of the local government segment that the select committee favours some constitutional provisions.

Mr HATTON: Which page are you referring to?.

Mr KENNEDY: Page 92, section 6. The committee 'favours constitutional provisions for the recognition of local government in the new state and invites public comment ...'. What the committee does not say is whether its members have

views one way or the other about entrenchment of the recognition of local government.

Mr HATTON: That is what we were referring to there.

Mr KENNEDY: So you favour an entrenchment?

Mr HATTON: This is dealing only with any matters that would be dealt with by way of the constitution. There are other provisions in respect of entrenchment of any constitutional amendment. It suggest that any amendment to our Northern Territory constitution would have to be done by way of a referendum of the Northern Territory people.

Mr KENNEDY: Good. That is the clarification that I was looking for.

Mr HATTON: I do not know of any member in this committee or any former member of this committee who has ever been of the view that we should give the parliament itself the right to amend constitutions as exists in some of the states.

Mr KENNEDY: That was what I was aiming at. Thank you for that clarification. I have one other point.

Mr HATTON: Besides I do not believe I would get it past the community even if I wanted to put it forward.

Mr KENNEDY: Could I ask another question? I refer you to page 21 of this discussion document. It is a little bit wide of what we have been talking about but I note a statement is made in the second paragraph that the 'select committee supports the exclusion from nomination of a candidate who is already a member of the Commonwealth or another state legislature ...'. Later, it says that 'views differ on the committee as to whether this should extend to the membership of a local government body'. The education that I have been given gives me a pretty one-eyed view of that situation. I am just wondering what the other side of the story is. Why would you want to preclude a member of local government from nominating?

Mr EDE: Well may you ask.

Mr HATTON: This paper was written last year, I believe. Nevertheless, there is an argument in principle that has been advanced. If a person is elected to government, he should serve that term of office and not merely use it as a stepping stone to something else. If you were in a state legislature, it would be equally inappropriate to stand for local government or for the federal government. I know that the mayor has expressed a view on this publicly recently: that the community elected somebody to do a job and it expects that person to be committed to that job and carry it out. That is an argument of principle. The arguments against it have generally been arguments of financial convenience to local government because of the cost and inconvenience of by-elections.

Mr EDE: But also because of the size of the Territory population in relation to the number of its political bodies. A person in the Territory could possibly be an alderman and also a member of parliament and do both those jobs better than a person who was an alderman of the Brisbane City Council and also member of the Queensland parliament.

Mr KENNEDY: You would get a good salary for both over there, Brian.

Mr HATTON: Where a person holds local and state government seats, there is potential for conflict of interest.

Mr KENNEDY: I do not think anybody that I can think of in local government would disagree with the scenario you have painted as a result of an election. The comment in this paper is that the office should terminate automatically with that person's election. That is fair comment. I take the point that you are making as regards responsibility etc. It seems to me, however, that the responsibility needs to be in a person's conscience more than it needs to be in legislation. The other risk that the person runs is that, if he drops out of a position to which he has been elected recently, that must have some effect on his electoral chances with whatever else he is aiming at. I have a difficulty in accepting that legislation is necessary in regard to this.

Mr HATTON: This document was not designed to express a particular viewpoint but to indicate where there may be conflicting views and draw public comment. It is what it says it is: a discussion document.

Mr KENNEDY: Thanks for answering the question. I was merely curious to learn who could possibly think the other way.

Mr HATTON: I understand that there is a legislative amendment going through at the moment that will enable local

government members to stand for the Territory office. They will lose their local government position only if they are elected. There is a similar provision in relation to public servants.

Mr HARRIS: I hold the distinction of being the last person who was an alderman and a MLA at the same time. In 1977.

Mr SETTER: That exists interstate, in New South Wales.

Mr KENNEDY: I think that there would be a difficulty there, as Brian was saying.

Mr HATTON: It is really a matter of resolving that matter of principle. It is open now for the community to debate whether it should be included in the constitution or dealt with through electoral legislation. The whole process is dealt with normally by means of electoral legislation rather than in constitutions.

Mr KENNEDY: That is fair comment.

Mr HATTON: That gives everybody a degree of flexibility to reflect the views of the community is moving. Do you have any further questions?

Mr KENNEDY: No, thanks very much, Mr Chairman.

Mr HATTON: Do other committee members have any questions?

As I mentioned, if the council wishes to expand on any matters, it is certainly welcome to do so. We are seeking a broad cross-section of community views and comments. The more specific you can make particular points, the better that will assist us in our task, which will be a very large and onerous one.

Mayor OLDFIELD: What time limit do we have to provide any further submissions.

Mr HATTON: We aim to report to the parliament in April or May next year.

Mayor OLDFIELD: You would want them in by what date?

Mr HATTON: Obviously, we would like them as soon as possible.

Mayor OLDFIELD: Within 3 months.

Mr HATTON: Each year, we have had 12 months and we have extended it by 12 months. It is not a job that can be dictated purely by time but rather by the necessity of doing the job properly.

Mayor OLDFIELD: Thank you very much for listening to us today.

Mr HATTON: I would like to thank the members of the public who have come along today to listen, the press and also those people who participated in the discussion this morning.

Hearing concluded at 4:05 pm.