

PUBLIC MEETING

JABIRU — Tuesday 9 May 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)

Mr B. Ede (Deputy Chairman)

Mr C. Firmin

Mr W. Lanhupuy

Mr D. Leo

Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)

Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Stan Tipiloura

Mr Don DITCHBURN

Mr Warren LOFTHOUSE

Mr Mick MARTIN

Ms Lesley EAST

Ms Helen LUGLIETTI

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

ISSUED: 4 October 1989.

Mr HATTON: Thank you very much for the opportunity to speak with you today. Although it is probably not necessary, I might take the opportunity to formally introduce ourselves. My name is Steve Hatton. I am the member for Nightcliff and the chairman of this committee. I have with me Brian Ede, the member for Stuart and deputy chairman of the committee, and Rick Setter, member for Jingili and a member of the committee. Mr Stan Tipiloura, who is not a member of the committee, is also present as your local member. We are seeking to involve members of parliament in the activities of the committee within their electorates.

This committee is called the Select Committee on Constitutional Development. It is a unique committee of the Northern Territory Legislative Assembly. It is unique in that it has equal representation from both the government side and the opposition side of parliament. Most committees of the parliament have 5 members, 3 from the government and 2 from the opposition. The equal representation in this case springs from the fact that we are taking a very positive bipartisan approach. This is one area in which the CLP and the ALP are working together on something which we believe to be of vital importance to the future of the Northern Territory. We are not playing party politics in the process. In fact, we have all assiduously avoided the opportunities to do that which arise from time to time. I think it is to the credit of both sides of

the House that people have recognised that this issue should be above the day to day political processes of our system as we work together as Territorians towards a single objective.

Our objective is to write a constitution for the Northern Territory or, more particularly, to work with the community and to assist the community, the people of the Northern Territory, to write a constitution for the Northern Territory. Neither this committee nor the parliament intends to write this constitution. The committee's job is to stimulate people, encourage them to think about the issues, provide them with background research and information and encourage them to bring forward their ideas. The role of the committee is to act as a catalyst and then as a coordinator in the process of bringing together the views of Territorians and bringing together representatives of Territorians to undertake the task of preparing a proposed constitution which will be put to the people in a referendum.

We will not be writing this constitution ourselves. You will appreciate that, having worked at this task for some time, we are probably quite capable of sitting down and preparing a draft constitution and, as a group, going out and selling that constitution to the community. Such an approach, however, would not address some of the underlying concerns and needs of the Northern Territory. It would not address the need for Territorians to come to terms with the reality of the environment they live in and to work out how they want to run this place we call the Northern Territory in the future, not just for themselves but for the generations to come.

The task is one of putting down a set of rules, guidelines, rights and responsibilities for people, to provide the basic framework of society and democracy for the future of the Northern Territory. We do not believe that this is a job which should be entrusted to politicians, lawyers or academics, and we do not believe that it is wise to leave it in the hands of a series of special interest groups. We are working towards involving a broad cross-section of ordinary citizens of the Northern Territory, the so-called silent majority, and to come up with something that has broad community support, something which we can all support and be proud of, something in which we can all have a sense of ownership. That is what we are working towards.

We are not here today to ask you what you think should be included in a constitution, although we are quite happy to receive any views which you may have. What we are here to do, as we have done in some 60 communities around the Northern Territory, is to let you know that this task is now beginning. We are encouraging people in the Northern Territory community to start thinking about this issue and to get some ideas together and ensure that people have their say so that the issues which are of concern to people can properly be addressed in developing this most fundamental document for the future of the Northern Territory. We have to pull together a whole range of very different communities and to create a broad common direction for the future. That is the challenge which faces all of us.

This is a unique moment in Australia's history. It will never happen again. It has not happened before. It is a chance to make history for Australia and to do something unique. Most people do not have the opportunity in their lifetimes to set the framework for the structure of society and for the structure of their own democracy and rights. That is what this task is about.

Because constitutions have a habit of being very enduring, we must do the job properly. We have to take it very seriously and not get carried away with our own short-term political games, envies or egos. We need to genuinely think in terms of future generations and what are we going to leave for them. If we do this task well, future generations will look back on their predecessors with pride. If we walk away from the job, I suspect that they will look back with some disappointment, if not disgust, at our failure as a generation to take up the opportunity, the challenge and the responsibility that happens to have come our way. I cannot walk away from that and I do not believe that most people can or will. I do not believe people will treat this frivolously. It is too important.

I would like now to deal with some of the issues that can arise in a constitution. We might start by asking: 'What is a constitution and why is it important?'

The first point that needs to be made is that, if there is no constitution in place, the government is all-powerful. There are no restraints upon it. In a democracy which has no written constitution, such as Great Britain, there are no limits on the power of parliament. That power is limitless.

Through a constitution, the people place limits on parliament, the courts and the government. It sets the structure of government by stating how governments are elected and how frequently elections are held, by determining electoral provisions and the shape of the government in terms of Upper and Lower Houses, by defining the relationship between the

parliament and the courts and the Governor or Administrator.

Developing a constitution means that you have to address fundamental issues which relate to the functioning of a democracy. Do you believe, for example, that the Governor should be able to sack the government as occurred in the dismissal of Whitlam? If so, under what circumstances? How do you believe that heads of government should be elected? Should they be elected directly or should they be elected by members of the party elected to govern? Should such leaders have the right to select ministers only from within the parliament or should they be able to choose people from outside the parliament? These are the sorts of questions you can ask. Do we have what is called executive government or do we have what we have now, which is known as responsible government and in which the parliament is responsible to the people and the government is responsible to the parliament. In an executive government, on the other hand, the head of government is elected by the people and then appoints ministers. The parliament is elected separately and there are checks and balances between those 2 independent units. That system operates in the United States.

You can wrestle with such ideas and put together a structure which you feel is best suited to the Northern Territory. You can consider the electoral provisions and whether single-member or multi-member electorates are preferable. You can discuss such issues as whether there should be guaranteed representation of Aboriginal people. All of these issues have been raised and can be debated.

Having developed a structure, you come to the next and in some ways the most significant element in putting together a constitution, which is that of entrenching individual and community rights. This relates to the things in your life which are so fundamentally important that you believe no government should be able to touch them. These are the rights which you believe should not be able to be interfered with. Core rights might include freedom of religion, the right to speak freely, the right to vote, the right to stand for parliament.

The only way of properly protecting such rights from government is by entrenching them in a constitution. A constitution stands above the government. It provides the framework and the rules within which the government must work. Provided that appropriate amendment clauses are included in the constitution, governments or parliaments cannot amend or change that law. You can write the constitution so that any proposed change must be put to the people. In that way, it stands above the government and cannot be interfered with by the government.

You know that, when governments want to fiddle around and change the federal constitution, they have to go back and ask the people. If the people are not satisfied with what is proposed and vote no, that is bad luck for the government and the constitution stays as it is. It does not change unless the people want it to change. That is why the constitution has to reflect the views, attitudes, and direction which the people want. It is the cornerstone of democracy. It enables the power to flow from the people. Without it, the power flows directly from the parliament and that is what happens in the Northern Territory.

We do not have a constitution. Being a territory, we do not have any of the constitutional rights that flow to the states from the federal Constitution. The federal Constitution sets up a federation of states and we are not part of that. The Commonwealth government has the power to acquire your property without compensation, and without any good reason. Its power to do that is upheld by the High Court. That cannot happen in the states because the Constitution protects the people from acquisition, except for Commonwealth purposes. Even then, just terms must be paid. However, that is not the case in the Territory.

The very existence of government in the Northern Territory depends on an act of the federal parliament. Although I do not believe that this would happen, it is possible for the federal government, simply by repealing an act of parliament, to wipe out your right to vote and your right to have any form of government at all, including local government. By amending a regulation of an act of parliament, the Commonwealth could wipe out the entire Northern Territory education system. That would not even have to be debated on the floor of parliament because that power flows from a regulation. The states, however, are constitutionally protected from such intrusion.

Land Rights are a very significant issue in the Northern Territory. By repealing an act of parliament - and I again stress that I do not really believe this would happen - a federal government could wipe out Aboriginal land rights in the Northern Territory. It could make that land revert to vacant Crown land. It has the power. There would be no requirement that permission be asked or compensation given. Legally, nobody could do anything about it and we have only 1 seat out of 154 in the federal parliament.

Please understand that that is the situation you are in now as a Territorian. The process of preparing a constitution starts the process of entrenching your rights. The ultimate achievement of those rights will occur at some time in the future when statehood is fully attained. Ultimately, this is what statehood is about. It is not about mining or development; it is about your constitutional rights as a citizen.

Statehood, however, is a separate question. I have been very careful in relation to that, as all members of the committee will be. You cannot even consider the question of statehood until you know what you want and you do not know what you want as a community until you set the framework in place. That is why our first job is to write a constitution, to set in place what the Northern Territory people want for the Northern Territory. Having done that job, you can then begin to talk about statehood, when you want it and what conditions you want it under. However, until you do this job, the shape such a state would take is undefined. This is the first job. It does not threaten you and there is nothing it can take from you. It can only give you rights.

We are here to give you a say in preparing this constitution. We are saying: 'Please be part of this process from the beginning. Let it grow with you'. We want to ensure that you and your community are part of the process and that your views are properly taken into account in the development of the constitution. That is why we have come here today, to talk to you and to ask you to be part of this exciting, frightening, but absolutely vital task for the future of the Northern Territory and, most importantly, for the future of our grandchildren and their grandchildren.

To assist in this process, we have widely circulated this book, which I call a starter kit. It sets out some of the basic questions and ideas and, when you have read it and are looking for more information, this green book, which is called a Discussion Paper on the Proposed Northern Territory Constitution, presents a whole range of ideas and options in some detail.

For example, there is the question of whether you want an Upper and Lower House, which is known as a bicameral system. The Northern Territory has only 1 House at present, which is known as a unicameral system. The arguments for and against these systems are set out in the discussion paper, among many other things. The book contains some ideas which I like and some which I do not like. There are some which I like and which some of my colleagues do not like, and vice versa. You will find that there are things in here which you like and things you do not like. There may be things that we have forgotten about. Already, in our visits to various communities around the Territory, people have raised issues which are not addressed in the book. That is fine. That is why we want you to have a think about these things and to work out what you think is important to be included in a constitution.

The discussion paper is set out like a reference book. You can pick a subject from the index and read up on it, get your ideas together and then move on to the next point. Step by step, you can develop your ideas on a range of issues. Do you want a unicameral or bicameral parliament? Do you think it should be a fixed term parliament, should the government be able to call an election whenever it likes, or should it be something in between? That is discussed in the discussion paper. Who should have the right to vote? Do you think that, if somebody turned up in the Territory last week, that person should be able to vote at a Legislative Assembly election next week or should there be a residential qualification? Should non-Australians be allowed to vote? You have the chance to actually talk about those sorts of things in this context.

Equally importantly, have a think about how we should put together the constitutional convention, that drafting committee of representative Territorians which is to take the submissions that we receive and the draft that we prepare and work through it. It is vitally important that we get the structure of that convention right so that it properly represents the diversity of the Northern Territory and so that people can be confident that the members of that convention will genuinely speak on their behalf. That convention needs to bring forth a wide range of ideas. Its members will have to have the tenacity to continue talking through the inevitable fights, and to listen to the viewpoints of other people in an effort to find a solution together.

This is a great challenge. Territorians will be forced to come to terms with important issues. Aboriginal people have already said that they do not trust us with land rights. They say that they want some constitutional guarantee of Aboriginal land rights so that governments cannot take them away. They want constitutional guarantees for the protection of Aboriginal law, sacred sites, language and culture - things which are fundamentally important to Aboriginal people. How do we blend that with the concerns of the non-Aboriginal population in its quest for what it sees as equality with Aboriginal people. There is a perception among the non-Aboriginal population that Aborigines have more than equal rights in respect of land rights and so on. On the other hand, when I talk to Aboriginal people, I find that they believe that they are severely disadvantaged in areas such as education, health, housing, access to water, and jobs. We both reckon that

the other has an advantage. Both want equality but both are looking at it from a difference perspective.

The Northern Territory as a community needs to resolve those sorts of issues and debating them in the process of writing a constitution may well be a vehicle for achieving that without the interference of the politicians and various interest groups. I think we would all like to see that happen and, through that process, to leave behind us a place that we can be proud of and our grandchildren can be proud of. That is the task before us. We are here to say: 'Hey, this is important. Please be part of it and please ensure that you have your say'. Thank you.

Mr EDE: There is very little I can add to that, Steve. You covered the ground fairly thoroughly although I would like to reinforce your remarks on one point. A number of people have said to me: 'This is pretty strange, seeing you as the deputy leader of the opposition working alongside Steve Hatton in a committee of this nature'. Unfortunately or fortunately, the fact that we are both on this committee does not mean that we have been able to reconcile all of our differing views in relation to the development of the Northern Territory and are now ready to form a coalition, as has happened in the ACT as a result of its strange election system.

It does mean that we have been able to see that statehood and the constitution are 2 different things. As Steve said, what does statehood mean when you really try to pin it down? It is not trees and rocks and the land. Those things were there well before statehood was thought of and they will be there for a long time afterwards. In fact, statehood is a parcel of things which come together in the constitution. The grant of statehood is the grant of those things which are embodied in the constitution: the various rights, freedoms and constraints, the system of government and so on. It is like the incorporation of a company. Statehood incorporates a body politic in a particular form with a particular range of powers and functions. The constitution is what limits those powers and functions. What we are saying is that there is no point talking about statehood at this stage because, until you have a constitution, its parameters are not really defined. If you have a constitution, you can then start to ask whether or not you want to move to statehood.

I do not think that many people in the Territory would believe that we should not be attempting to work out some basic principles that all Territorians agree on, the things which we as Territorians hold to be fundamental. These are the things which we would agree upon as governing our lives and those of our children and grandchildren and which make us Territorians. To the extent that we can work together and find agreement on those principles from the Labor side and the CLP side, we are going down that track. We will go as far as we possibly can. It does not mean that either side will sell its principles. We will find out what we can agree on and, when we have all that recorded, we will start to look at the areas in which we do not agree and ask how we can explain our position to the other. How do we do that without walking away from the whole process and without standing outside throwing rocks on the roof? We intend to get in there and keep talking and explaining our points of view so that we can arrive at positions which we agree on as being fundamental. Those fundamental agreed matters will be incorporated in the constitution.

Maybe we will succeed and maybe we will not. My own belief is that, some day, we will succeed. If we do not succeed the first time, we will start again. That is why the power has to remain with the people. The people have to have the power to say: 'Nearly, but not good enough. Go back and have another go'. A constitution is not something that you have for only 10 or 15 years. You cannot just say: 'Well, the Territory is pretty new to this sort of stuff so we can do with a second-hand one or something bodgied up overnight'. The constitution will be around for a long time and we should take the time to get it right. If we do that, we will all benefit.

We cannot get it right by having a couple of academics sit down with a couple of lawyers and politicians in a back room of the Chan Building knocking up a set of ideas, saying: 'Oh well, I think we can sell that one but we will not tell them about this one'. The only way that we can get it right is if we take it out bush and if we get people in the various communities, people from all walks of life, to sit down and discuss their ideas, and to keep throwing those ideas back and forth in a process of working out what they want.

Mr SETTER: It is 15 years since the Northern Territory achieved its first fully elected Legislative Assembly. Prior to that, we had various Legislative Councils and appointed groups which looked after the interests of the Northern Territory under Commonwealth control. For 10 of those 15 years, we have been a self-governing Territory with its own Cabinet - which met here today - and with control over most of the normal state-type functions. You have probably heard that the Chief Minister has made application to the Prime Minister for the transfer of the remaining powers.

I think we are all agreed that now is the time to take this whole thing a step further. The next logical step appears to be the development of a constitution. In spite of the fact that the states and the Commonwealth have constitutions, we in the

Northern Territory do not have one. It is important that we take that step. It is not an easy step because it is the best part of 100 years since a constitution was developed in this country. That was the Australian Constitution, which came into place in 1901 and which took 13 years to put together. Of course, things have changed since then. The Northern Territory today is nothing like the states were when they developed their constitutions. We have a larger population than Queensland had at the time it developed its constitution.

We face a whole range of issues. Steve and Brian mentioned Aboriginal land rights and Aboriginal issues generally. Those issues were not considered when the state constitutions were developed. They have only come to the fore during the last couple of decades, along with things like the environment, human rights, and a whole range of other matters. We are in a changing world and developing a constitution is not an easy task. We cannot just sit down, look at the state constitutions and select from them to create a Territory constitution. We do not believe that would be appropriate.

This committee has spent 3 years on this task and in that time we have produced a number of documents, which are all available to you. I think that the most important of those is the Discussion Paper on a Proposed New State Constitution for the Northern Territory. In compiling that, we went through all the matters that we felt were appropriate. As Brian indicated, we have not agreed on everything and nor will we. Where we were not in agreement, we included options. These matters are very complex. We have put a lot of time into the process already and we are now consulting with communities.

During this round of discussions, we are visiting about 60 communities and giving out information. We will be returning to the communities within the next 9 to 12 months and talking with people again, after they have had time to fully consider all the issues. There is no point in us coming here today and asking for your views if you really do not understand the implications.

Interjection: We may not.

Mr SETTER: The majority of people certainly would not. Most of the issues are set out in the discussion paper, if you would like to study it. It gives you a starting point for your discussions.

Following the second round of our discussions with the community, at some time in the future, probably within the next 2 to 3 years, a constitutional convention will be convened. There is a discussion paper on representation in a Territory constitution convention. It is anticipated that the delegates will number between 50 and 60, although we do not have any firm position other than that set down in the discussion paper. We are asking ourselves and we will be asking you how people should be selected for that convention. Should they all be elected? Should they be all appointed? Should they be partly appointed and partly elected? Should they be elected or appointed on a regional basis? There are many questions and the matter is very complex but the fact is that, at the end of the day, we will have to convene a constitutional convention. That convention will consider all of the material that we have gathered, or at least the main points arising from it, and put together a draft constitution which will then go back to the Northern Territory parliament and, eventually, to the people of the Northern Territory by way of a referendum. So you can see it is a long process. We have only scratched the surface. There is still an awfully long way to go. We would like you to participate and assist us to do the job.

Mr TIPILOURA: I think members of the committee have covered most of what I would like to say. I do not want to add anything at this stage.

Mr HATTON: If we can now move on to perhaps the most important part of the evening, I would ask people present whether they have any questions or would like to make any points.

We are really here to inform you as much as possible, to answer any queries or concerns, to resolve any misunderstandings or, for that matter, if you want to, to take down any points you want to make. You will notice that there are microphones located in various places. We are taking a Hansard recording of this discussion, so it is a bit like being in parliament. We want to ensure that we have a record of every point which is made to us so that all that material can be analysed, including the discussions we have had out in the bush communities. It is not meant to be intimidating. We just want to make sure that all the material is available for the constitutional convention in the future. So, are there any matters that people would like to raise?

Mr DITCHBURN: I like the way you are going about this. I certainly would not like to see you doing what Rick talked about - picking ideas out of various other constitutions.

You mentioned that this is the first constitution that has been developed in Australia for almost 100 years. I think it would be a good idea if you limited the application of the proposed constitution to 100 years. Obviously, the present Commonwealth constitution does not reflect what this modern community is about now and I am sure that the situation which will apply in 100 years time will be dramatically different from that which applies now. I think it would be good to have a review of the constitution every 100 years.

Mr HATTON: That is a valid point. Again, I am not prepared to say yes or no. Please do not think a non-response from us is anything other than an indication of the fact that we are being very cautious in our efforts not to guide discussions along our own lines of thought. It is certainly a valid point which should perhaps be taken up by the convention.

Mr DITCHBURN: I accept what you are saying. Another thing which I have noticed concerns language. It seems to me that the language used in the Constitution and in today's laws is suitable firstly for bureaucrats, secondly for judges and lawyers and thirdly for politicians. The people get left a long way behind.

Mr HATTON: Do not blame us.

Mr SETTER: They are written by lawyers.

Mr DITCHBURN: I think the only place where you can really change that is in the constitution. The parliament makes these laws and I think it should have some means of controlling the way in which they are written. I would like to see them written in such a way that they could be understood by a 15 or 16 year-old kid of average intelligence. At the moment, people have to go running to solicitors and lawyers to do simple things like making their wills. I think we lose a lot of time and go to great expense in trying to find out what is or is not applicable under the law and I think that a way should be found around that.

Mr HATTON: I feel exactly the same as you do in respect of the writing of laws. We hear frequent complaints from people in the community who ask: 'Why can't you write the laws in plain English so that people can understand them?' The trouble is that, when laws are written so that you and I can understand them, lawyers seem to be able to drive trucks through them. I am reminded of section 92 of the Australian Constitution, which simply says: 'Trade and commerce between the states shall be absolutely free'. You cannot get much clearer than that, can you? The intention was to stop tariffs. There used to be customs duties and tariffs between the states, or colonies as they were then.

Mr EDE: They used to have navies.

Mr HATTON: Yes, they even had their own armies and navies. This provision was inserted in the Constitution to stop them imposing tariffs and customs.

'Trade and commerce between the States shall be absolutely free'. That section has made more lawyers into millionaires than any other provision. You know the story of the truckie working on the border between New South Wales and Victoria? He goes across the border and comes back in order to avoid paying road tax. He does that on the basis that, if he crosses the border, he is transporting goods interstate, and such trade has to be absolutely free under the terms of the federal Constitution.

That illustrates the problem. Laws often end up being complicated in order to prevent smart lawyers driving trucks through the intention. I hope we can find a solution but the reasons for the problem are worth noting.

Mr SETTER: Steve, if I could just make a comment, I believe that the wording of the Australian Constitution - and we are talking about constitutions rather than legislation - is relatively easy to understand. Would you say so, Graham? I might mention here that Graham Nicholson is our legal advisor.

Mr NICHOLSON: Well we seem to spend a lot of time in the High Court trying to work out what it means.

Mr SETTER: Certainly, but the clause which Steve quoted is quite understandable in layman's terms. The language is fairly simple, but its interpretation by the courts is another matter. If we compare it with the language used in the legislation which politicians debate in parliament, it is quite simple.

Mr HATTON: I really do not want to continue the debate. The point has been well made and I certainly have a lot of sympathy for it. In all fairness, however, I must make the point that, rightly or wrongly, when a person wants to stretch his

rights to the ultimate limit, he will run to a lawyer and pay big dollars to find a way of manipulating the words.

Mr DITCHBURN: Can we write our constitution in such a way that it has the effect of controlling the lawyers?

Mr HATTON: You may be able to but I do not know whether you could restrict the rights of a lawyer to actually carry out his job.

Mr DITCHBURN: I do not mean that. I am trying to find a way of avoiding the entanglement between what is meant in the written constitution and how the lawyers want to interpret it.

Mr HATTON: It may be possible. I know that Mr Nicholson has some thoughts on common language and usage which may assist in overcoming some of these variable interpretations by judges in terms of the meanings of words. There needs to be a lot of work by the legal profession and the judiciary to develop what I think is known as a common terminology of jurisprudence.

Mr NICHOLSON: I was thinking of it more in relation to human rights

Mr HATTON: Yes, but it could be applied to other elements.

Mr NICHOLSON: If we followed the international ruling more closely, we would be able to use global precedents rather than trying to work out our own specific wording in relation to human rights.

Mr EDE: I have said at various times that developing a constitution is a bit like dealing with a cheeky dog that races all over the place and barks and bites people. You might decide to put a rope around its neck and tie it up and, depending on how bad its behaviour is, you make your decision about how long the rope should be. A constitution is a bit like a rope around the neck of the government. In effect, it says: 'You are quite free to wander around within this area but you are not allowed to go any further'. I think the function of lawyers is to try to turn that rope into an elastic band.

Mr LOFTHOUSE: The crux of the matter seems to be that the constitution can be written in simple language which the people can understand but that legislation tends to be written in complicated language. That is where the lawyers have a field day as they try to manipulate their cases in order to get the best mileage for their clients. I think the constitution should be written in very simple language.

I support the development of a constitution even if we do not proceed to statehood in the near future. It is quite appropriate, even under the system of self-government which we have now. Statehood can come when it is most appropriate and the constitution will provide a good basis. I do not have much to add except that the material in the discussion papers should be presented to the public in the simplest possible language so that people have the best possible chance to digest it and make comment. The more simply it is written, the easier it will be for people to understand.

Mr MARTIN: While we are talking about constitutions, we have to remember that, when our founding fathers drew up the Commonwealth Constitution in 1901, they were subject to the colonial thumb on the forehead. Although I do not think we should try to imitate the American constitution, we should go in that direction rather than to try to imitate the British model because we have moved on from being a colony into being a nation. The constitution will not stand the test of time unless it gets away from the old thumb on the forehead style. That is in line with what you said, Steve, about it not being a good idea to take bits and pieces from other constitutions. Times are changing. The Territory is developing a more cosmopolitan outlook and our constitution should reflect that. We have people from many nations living here, far from the other states.

Mr HATTON: I think that is right Mick, provided that we recognise the need to stay within the framework provided by the Australian Constitution. We cannot declare the Northern Territory a republic, for example. We have to maintain a monarchical system of government. I do not know whether you believe in the monarchy or are a republican but the reality is that that is a national issue and, under the Australian Constitution, we have to create a monarchical system of government. So, just as the Administrator is the Governor-General's representative now, with the Governor-General being the Queen's representative, a Governor would represent the Queen in the Northern Territory under the Northern Territory constitution. That element of the framework would have to apply, but within the general framework there is great scope for formulating the rules and determining their operation.

Mr EDE: I believe that it is possible that the Governor could be elected. It would be possible to have what is basically the US system, with an elected president appointing a ministry, as well as an elected parliament. Whilst it would not be a

republican system, I suppose it could be called a monarchical presidency.

Mr HATTON: I do not think you could actually elect the Governor. The Governor would be the head of state. It would be possible to elect the head of government as distinct from the head of state.

Mr MARTIN: Maybe you misunderstood me. I do not mean this in the light of a hierarchy with a president, vice-president and so on.

Mr HATTON: I think I know what you mean.

Mr MARTIN: I am talking about a major enlightenment when we compare today with 1901, which was in an age of semi-darkness. We are in a period of evolution and we have to create an enlightened constitution which is better than the federal Constitution created in 1901. Although we have to stay within the framework of that Constitution, we could create a constitution which is more open and enlightened than those which the other states suffer under today.

Mr DITCHBURN: I would not like to see something which is more or less a copy of the American constitution. Most Australians do not know much about the various forms which government takes in other democratic countries. I do not know most of them although I know that Switzerland has a system which seems very peculiar when compared with ours. I would like more information about the way democratic governments are set up in other countries and I think it would be a good idea to give some publicity to those other forms.

Mr HATTON: You know the 2 systems which are discussed in the book, executive government and responsible government. If needs be, we could get our experts to put together some other ideas about the various forms of democratic government and issue them in the form of a discussion paper.

Mr DITCHBURN: I would certainly like that sort of information and I do not know where to obtain it.

Mr HATTON: That is what this committee is here for. We want you to ask us those sorts of questions and, if it is possible to get the information to you, we will do so. We will take a note of your question and see what we can find, so that we can send it to you. If you can state your name and address for the record, we will have the information we need.

Mr DITCHBURN: Don Ditchburn, 4 Fisher Place, Jabiru.

Mr HATTON: Thank you.

Ms EAST: Apart from Don, the remainder of us are councillors and it will obviously be the Jabiru Town Council which pulls people together here. Steve, how do you suggest we go about getting some community interest in this? We have advertised in The Rag and we have had information available at the front counter but we have not received many responses. What are other communities doing?

Mr HATTON: The opportunities are there. We are coming around to open the subject up and I can promise you that it will be an ongoing process from now on. We would welcome opportunities to speak at community gatherings such as Rotary meetings, school council meetings, or meetings of senior students in schools, so that we can discuss things with them. It is fairly obvious that, in the Territory's larger towns, people are not particularly enthralled about the prospect of going to special meetings to discuss the constitution. However, when they are already gathering for some purpose, it could well be appropriate for a member of this committee to go along as a guest speaker. We are trying to find avenues which will enable us to make contact with the broad community so that we can get the message across. It does not matter whether it is a meeting of a trade union, the local chamber of commerce, the local branch of the Confederation of Industry, a meeting of a Rotary or Lions club, or a meeting of a school community. It can be any kind of meeting.

Mr EDE: I have recently been invited to address a branch of the CLP in Alice Springs.

Mr HATTON: Yes, see.

Mr MARTIN: Did they run out of speakers?

Mr HATTON: I am waiting for an invitation from the ALP.

Mr SETTER: The council could set up a subcommittee and charge it with the responsibility of going through these

documents virtually clause by clause, determining its views and adding anything which it considered appropriate.

Mr HATTON: Like Nhulunbuy, which we visited last night, there are some particular interests which apply in Jabiru because of the nature of the town. One issue that has been raised is the constitutional right to local government. If there is a constitutional right to take local government if you want it, what are the implications for a mining town? Those sorts of issues have to be addressed. They are of concern to the citizens of the Northern Territory and they cannot be ignored, just as we cannot ignore the realities of Aboriginal law and culture.

Mr MARTIN: I was going to mention that. I believe that putting the right to local government in the constitution would be a backdoor way of weakening land rights.

Mr HATTON: I do not believe that is true and I do not believe that Stanley Tipiloura, who is a former Chairman of the Tiwi Land Council, would support that view. Local government and the Tiwi Land Council operate very effectively together. However, because people in the community have those sorts of concerns, it would be very worthwhile for them to sit down together and talk seriously about their competing interests so that the aspirations of people can be met. That is why it is essential to develop the process through the constitutional convention, so that the issues can be raised and so that people can talk about them rather than walking away from them. It is very easy for people to stand on the far side of the river and throw stones. It is much harder for people to sit down in the same room and find answers. That is the challenge before you now. We are all saying that it is time for everybody to get into the same room to try to find answers to those questions.

The mining company has interests in Jabiru. The town is on Aboriginal land which is subleased to a national park under Commonwealth control. It has all the elements and the people are saying that they want a right to their own local government. That is the reality of the concerns which need to be addressed. Nhulunbuy is effectively a company town on a mining lease of Aboriginal land where the Northern Territory government has virtually no say. All the public assets are owned by the mining company, not even by a town authority. People there are also asking how they can get local government and how their interests can be looked after in this context. Other towns in the Territory are in similar situations. I think that people at Yulara would have a similar viewpoint. These issues are just as real as the issues of protection of Aboriginal culture.

Mr MARTIN: I think they go hand in glove in terms of community councils.

Mr HATTON: That is right. Somehow, we will have to bring all that together and say: 'This is the road we are going to walk down. This is how we are going to sort out this confusion as a community, and set a direction for the Territory'. This process involves some issues which really affect your lives here.

Ms EAST: They are all raised in the discussion paper, are they Steve?

Mr HATTON: I do not think that the mining town issue is raised there although the issue of local government is certainly raised and you can follow through its implications in terms of your community.

Mr LOFTHOUSE: One of the frustrations of the Jabiru Town Council is its effort to become a bit more normalised in terms of municipal government. It is moving in that direction slowly. Things do not happen overnight. It is exactly the same as putting together a constitution and eventually reaching statehood. You have to learn about the process and develop it in a logical and systematic manner. We have had some frustration in doing that but we will get there in time.

I believe that most of the issues have been addressed in the discussion paper and that people have to really have a good look at them and start talking about them.

Mr HATTON: Think about them from your perspective and bring your perspective forward but, please, be prepared also to listen to other people who are looking at the issues from a different perspective. We have to start to think as an entire community. We have to look after our own interests and ensure that they are understood by other people but we also have to be prepared to look at views that are coming from very different communities with very different needs. That is the secret of this process. It will take a lot of persistence and patience.

Mr DITCHBURN: Perhaps you get a few ideas from the community by using a series of referendums on particular issues. Last year, the referendum put a series of questions which required a yes or no answer. I remember saying: 'I would have voted yes for that but it is not quite what I want'. I wanted something slightly different. I think you could use that sort of

process, although it would not be compulsory. You could ask a series of questions on an issue and the people could give their answers which you could then assess. Those questions might get the information about what people do and do not want.

Mr HATTON: You are talking about a series of sub-referenda on particular issues rather than an all or nothing thing at the end of the day.

Mr DITCHBURN: Yes.

Mr SETTER: It could perhaps be done by means of a questionnaire sent to each household or each voter rather than asking people to come out and vote formally on a series of questions.

Mr DITCHBURN: That is right, but without trying to make it too comprehensive. It would be best to have each series of questions relating to a particular subject.

Mr HATTON: One issue could be the structure of the parliament.

Mr DITCHBURN: Yes. You could give multiple choices as well as leaving space for people to put forward their own ideas.

Mr HATTON: That would be a good approach either for this committee or the constitutional convention. This committee has to be very cautious about not taking over the task and dominating it and your suggestion might provide a way of taking the issues to the community and it would provide good background information for the convention.

Mr EDE: It could be a way of developing ideas, putting up options and so forth.

Mr LOFTHOUSE: What are you thinking of in terms of the convention?

Mr HATTON: First of all, we have to get through this round of community consultation. We then have to sit down and sift through what we hope will be an avalanche of submissions, to try to assess the broad feeling of the community. Theoretically, we are supposed to present a report to parliament in April next year but we are unlikely to make that deadline. I think that we will probably make a report to parliament some time during next year.

Mr EDE: That would be prior to the constitutional convention.

The multiple response questions could be an interim step between the time we receive the first lot of submissions and our next round of community visits. It would enable us to see how people are beginning to focus their ideas and, once the results had been collected, we could visit the communities with some information. We could start to identify areas of common ground and see where there was a fair way to go in terms of finding common ground. After that round of visits, I think it would be time to hand over to the constitutional convention. There is a temptation for us to solve all the easy problems and to hand all the difficult ones to the constitutional convention. We have to leave some areas in which the convention can solve problems and have some success because that will be an important part of its group dynamics.

Mr MARTIN: Perhaps the question and answer format could be useful. At some stage it would have to deal with the the question of the separation of powers, which is probably the most important thing in any constitution. You could have to break it down into various questions because you could not have a carte blanche situation.

Mr HATTON: I think that the really emotive issues will be those relating to human rights, individual rights and entrenchment. That is where I think most of the emotional debate will occur. I think that the mechanical clauses will shake themselves out relatively readily and that the human rights provisions will be the focus of most debate.

Mr DITCHBURN: In terms of the enshrinement of rights, I often wonder why their reverse does not apply. We have freedom of religion and freedom of speech but what about having the opposite written into the new constitution? I am talking about freedom from religion and freedom from someone rapping in your ear when you do not want them to.

Mr HATTON: A privacy factor.

Mr DITCHBURN: Or freedom from association. Most of these rights exist through other legislation but they could be written into the constitution.

Mr HATTON: Yes. Perhaps I could deal briefly with the various issues relating to freedoms. There are 2 competing viewpoints which come from what I describe as the British psyche and the North American psyche. The psyche of the North American system is such that people believe that, if something is not written down and locked into statute, it does not exist. In early April I was at a conference where an American said: 'You Australians have no rights because you do not have a bill of rights'. People who have that perception believe that rights do not exist unless they are written down. The view from the British psyche, on the other hand, is that rights have evolved and been refined over the centuries through the common law process. Most people are absolutely convinced that they have a right to practice their religion freely, a right to freedom of speech, a right to a freedom of assembly and rights to freedom of association, aren't they? We all believe that we have those rights.

Mr DITCHBURN: Unless you live in Queensland.

Mr EDE: Yes, they can be legislated away.

Mr HATTON: They can be legislated away.

Mr EDE: The argument for writing them down is that they cannot be legislated away because they are entrenched in the constitution. You have to go through a constitutional process to limit those freedoms.

Mr HATTON: That has been the focus of debate in Australia. A bill of rights would cut across centuries of common law and the whole process would have to start again. That can lead to some extraordinary situations. The discussion paper makes reference to the Canadian experience. The courts have made some extraordinary interpretations of the Canadian document, which is known as the Charter of Rights and Freedoms. Gradually, over a period of 5 or 10 years, the courts eventually arrive at practical interpretations but many disruptions occur in the process. Whilst there is a right to privacy in the Canadian charter, there was incredible debate at the conference about a situation in which a policeman walking past a car flashed his torch inside it. In so doing, he found stolen goods and proceeded to search the car. It was argued that, when he made an arrest, the evidence of the stolen goods in the car would not be admissible in court because the act of shining the torch into the car would constitute an invasion of the right to privacy. Members of the legal profession debated that issue quite seriously.

That is the sort of problem which can arise when rights are enshrined in statute rather than in the common law. I am not arguing the case one way or the other. I am merely trying to bring forward the competing arguments which have led to emotional debates in Australia and, I am sure, will lead to the same sort of debates in the Northern Territory.

Mr NICHOLSON: It has only just become apparent because the federal Labor government tried to introduce a bill of rights.

Mr HATTON: It was voted out by the people. But the issue will have to be addressed in this context too. There is plenty to think about, isn't there? That is why the best approach is to deal with the questions one at a time. We have developed a list of questions. For example, 'A new state must have a parliament. Do you agree that that parliament should have the same powers, including legislative powers, privileges and rights, as existing state parliaments?' You can look at the information in relation to that question and consider it, and arrive at your viewpoint. If your answer is no, how should that parliament be different?

Just take one thing at a time. 'A new state must have a Governor as head of state. Do you agree that the Governor should have to assent to any legislation passed by the new state parliament before it becomes law?' Look at the material in the reference book which relates to that question. If you want more information, contact us. Just look at the various questions step by step and come to your conclusions. At the end of that process, you will have arrived at a structure which you can see and feel. You will be able to say: 'Yes, that is how I would like to see this come together'. That approach makes it less frightening.

Ms LUGLIETTI: It is frightening. It is very deep, very broad and very frightening. I think you need to look at it every day.

Mr HATTON: That is why you need to take it in little bite-sized chunks.

Ms LUGLIETTI: I think you will have a heap of questions and many more questions during the year.

Mr HATTON: That is right. That is why it is not going to be quick.

Mr SETTER: If you through this book, you will find that a lot of them are explained. It covers most of the questions that you would ask and gives explanations or options.

Mr HATTON: It gives you some good starting points.

Mr MARTIN: Eventually, right down the track when you are all well and truly finished, this will go to a referendum of the people to accept or reject.

Mr HATTON: Yes.

Mr MARTIN: It might take up to 10 years to reach the referendum stage, and I think it is possible that the early inputs received now and during the last 3 years might not be the flavour of day politically. Depending upon who is at the helm, people might be confused about how to vote at a referendum. Whilst you are working together in a non-political way now, the political flavour of the day will have a big influence over whether or not the constitution is passed at a referendum. The information you are collecting now might not be relevant if we have a change of government.

Mr HATTON: Mick, we are talking about a dynamic process. The convention will be representative of the people and the feeling of the people will come through as the debate goes on. I have enough faith to believe that the people will recognise that this is more serious than party politics. That has always been the case when we get down to the real fundamentals, such as amendments to the Australian constitution. Time and again, it is clear that party politics has nothing to do with it. When you walk into that ballot box, your mind changes.

If you are voting in an election or a by-election, party politics and the events of the day are in the forefront of your mind. But when it comes down to amending a constitution or debating a constitution, those really fundamental issues, I have faith in people's ability to take a very serious view of matters. They will really want to get it right and they will be very conservative in their approach. When I say conservative, I do not mean it in the sense of being radically right or left. People will look not just at today but at the long-term future. I have that faith in people.

Mr MARTIN: As long as our society is affluent when it goes to the polls.

Mr DITCHBURN: I do not really share your faith. I think that the attitude of most people when voting on constitutional matters is: 'This has been right for the last 50 or 60 years so why bother mucking around with it?' They take the easy option and vote no.

Mr EDE: I think you are right. I am a bit more cynical about what happens when people go to those polls. I also think that Mick had a point. If people are fairly affluent at the time when the constitution is put to the vote and feel relatively comfortable with the kind of society they are living in and see that society reflected in the constitution, there is more chance that they will vote yes. On the other hand, if it is a time of controversy and argument between different sections of society, people will tend to be less trusting of claims that the constitution will make things change. They will be more likely to say: 'No, it needs more work'.

We may have to live with this constitution under self-government for a time. That is a possibility. It may also be useful to take up the suggestion about having what is essentially a sunset clause, so that the constitution has to be reviewed after 100 years. Under the constitution, the body politic will continue. But the way that it operates can be reviewed periodically. That may make it easier for people to accept degrees of entrenchment. If they can see that things will not be entrenched for 1000 years but will have to be looked at in 100 years, they may be prepared to look at them differently.

Mr LOFTHOUSE: I think the evolution of this new constitution is different from efforts to change established constitutions. We are putting in the preliminary work, canvassing people from all sections of the community in a totally non-political exercise. Everybody is represented, no matter what their colour, creed or way of life. The homework is being done properly and I do not think there will be a problem with acceptance. The problem with change to established constitutions is that the people who want to make the changes try to rush things through without doing their homework properly. It then becomes political because one party wants change and the other does not. The homework is not done and, as a consequence, the electorate says: 'Forget about it. We are not interested until you do your homework properly'. Doing the homework is what makes the difference.

To get things up and running, you have to go out and collect everybody's opinion and formulate the information so that you get a feel for what society's attitudes are. When you are able to match the document with those attitudes, it will be passed. People will accept it if it is properly put together and if they are convinced that there are no shonkies going on. The big problem comes when people want to make changes to it. They come across as representing pecuniary interests or the interests of one political party. I share Steve's belief that this constitution will go through fairly easily ...

Mr HATTON: If the process is followed through.

Mr LOFTHOUSE: It has to be done thoroughly and properly.

Mr HATTON: People will be part of it all the way through. They will understand it because they have been part of it.

Mr DITCHBURN: I think it would help the Australian Constitution if it was set out so that people could contribute to it rather than just saying to them: 'Here is a proposed amendment. You can say yes or no'.

Mr HATTON: If they went through a process like this one, they might have a better chance of getting some real amendments through.

Mr LOFTHOUSE: I agree with Don that there is probably a need to provide for a review period. One of the major areas of change is language. Things that were written 100 years ago can take on a different meaning now simply because of changes in the use of language. In the same way, things that we write now will have different meanings in 100 years. It is a process of evolution.

Mr HATTON: We were talking about how we might involve the community. Perhaps it would be possible for the council to let us know about any functions which you have where it might be possible for us to come along and meet with people without the Hansard recordings, formally or informally, just to get them talking about particular subjects. A couple of communities are forming small discussion groups. People have told us that they want to talk to their friends about some of these things and discuss the various bits and pieces one at a time. Of course, starting this process is the difficult thing.

I have said as much as I need to say. Would anybody else like to add something?

Ms LUGLIETTI: As I said, you need to go through it very thoroughly. You need to read a lot. It is very broad and complicated.

Mr HATTON: But it is fairly exciting when you think about it, isn't it?

Ms LUGLIETTI: It is in a way. It seems easy in some respects but it is also complicated. Psychologically, you think: 'This is for my own benefit. I really should get involved and do something'. On the other hand, you worry about whether you know enough about it and whether you will do the right thing. There are a lot of questions to be dealt with.

Mr HATTON: What you should know is that, if you do not get involved and do something, you are doing the wrong thing. That is the key, isn't it?

We have discussed the issues fairly thoroughly. I would just urge you to encourage other people to get involved. If we can work up from the 5 people who have attended this time and aim for 10 people next time and 20 the time after that, we will be on the right track. Please do not hesitate to contact us if you would like us to come back and talk with you individually or if you would like us to send somebody out to talk about particular issues. We are looking for opportunities to meet with and involve the community. Thank you very much for coming along tonight.