

PUBLIC MEETING

ANGURUGU — Tuesday 2 May 1989

PRESENT: -

Committee:

Mr S. Hatton (Chairman)

Mr B. Ede (Deputy Chairman)

Mr C. Firmin

Mr W. Lanhupuy

Mr D. Leo

Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)

Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Bobby NUNGGUMAJBARR

Mr WARD

Mr Selwyn RAINER

Mr Mervin BROWN

Ms Susan GILMOUR

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

ISSUED: 9 August 1989.

Mr HATTON: Thank you for giving us the chance to speak with you today. My name is Steve Hatton and I am the chairman of this committee of the Legislative Assembly which has the job of working towards getting a Northern Territory constitution written. We are travelling around the Northern Territory at the moment explaining what we are doing and how this job will be carried out. In the back of these books, you will see the names and photos of the members of the committee. You will see that there are 3 people from the CLP, the government side, and 3 from the ALP, the opposition side. There are 2 of us here today - myself and the member for Ludmilla, Colin Firmin. Your own local member, Wes Lanhupuy, is also on this committee. He intended to come today but he sends his apologies. He contacted us today and told us that there is a funeral at Galiwinku that he has to attend. However, I know that you will have plenty of opportunities to talk to him about this.

This committee is not like many of the things that you hear about the government and the parliament where it seems that the ALP and the CLP are always fighting about things. If we say one thing, the Labor Party says the opposite. This is one job where both the ALP and the CLP are working together. It is a job that is more important than politics. It is a job where all of us are saying that we must get together as Northern Territory people and work on writing this law. We have come to talk to you about what we are doing, what it means and why it is important for you and your community, along with all the other communities in the Northern Territory, to ensure you become involved in this, think about it, talk about it and, most

importantly, have your say on what should go into this law. I am not coming here today to say that you should do this or that or that you should have this or that in the constitution. I am here to say that the people from here, the people from Darwin and Alice Springs, the people from the VRD and the people from all over the Territory must together write this law. Our job is to start you thinking about it, to help you to do that and to get one group talking to another group so that, eventually, all the Northern Territory people will come together and say: 'This is how we want this Northern Territory to be in the future for the benefit of our children, our grandchildren and their children'. This is not only for ourselves; it is a long term law.

You know that there are governments in Queensland, New South Wales, Victoria, South Australia, Tasmania and Western Australia and there is a federal government in Canberra. Each of those governments has a constitution. It is a law that stands over the top of the government. We do not have such a constitution in the Territory. Whatever the federal government wants to do here, it can do because we do not have a constitution.

You have developed community government here. You sat down and worked out how you wanted that community government to work. You talked about how you would elect the council and what you would let it do and not do. It has to ask the people about some things and, on other things, it can make decisions. Is that right? It took a long time to determine how you would go about the elections and all the rest of it because you wanted to work out how you would manage Angurugu for the future. When you write a constitution, you do the same sort of thing except that you are doing it for the whole of the Territory, not simply for one town. The people have to make the rules for the Territory. You have to make the rules for electing the government. What is the government going to look like? What can the government do? What things should the government not be allowed to touch? What are you going to let the courts do? What will you not allow the courts to do? We write the important things for the Northern Territory in a special law called a constitution. That is the people's law which sits like the boss over the top of the government. It makes the rules for the government and the government cannot break those laws. If the government wants to change those rules, it has to go back and ask the people. If the people say that it cannot change them, then the rules stay. It is a much stronger law.

In many ways, it is like Aboriginal law. It is there all the time and keeps going the same way. It is the closest that the balandas come to having a law like the law of Aboriginal people. That is because that law stays there and goes the same way all the time. It contains the rights of the people, the important things that you do not want to change and that no government can touch. Without that law, the government can do what it likes. The federal government can do what it likes here. It can tell us what we can have and what we cannot have. With this law, the people say: 'This is where the power is. This is the law'.

Do you remember that, last year, you were asked to vote yes or no to 4 questions in a referendum to amend the Australian Constitution? The government wanted to do some things but it had to ask the people. The people said no and therefore the government could not touch it. That is how a constitution works. At the moment, our government is there and we can make laws this way. You change the government and that new government might go across this way. Then, they might go back this way at another time. With a constitution, the laws in it stay above the government. In it you can determine how the parliament is made up, how you elect the parliament, who has the right to vote. In that constitution, you put the rights that are really important to you and that you do not want any government to touch. It could be your right to vote. How can you stop the government from changing the law and taking away your right to vote? At the moment, you cannot do it.

You say that land rights are really important and that this land is your land. You want to keep this land so that no one can take it from you. How are you going to protect that? You say that you want to protect your right to your freedom of speech, your religion and your culture. You want to stop people mucking around with it. How are you going to do that? What is going to stop any government from mucking around with that? The only way that you can do that is through a constitution. It is the only way. At the moment, you have land rights and it is a strong law. You have your land, your say over your land and there is talk that maybe you may have your own land council in this area. You are talking about it now. Maybe you will have a vote on that. I see in the paper on the weekend that he is going to let you have a vote, eh? You make your decisions on your land. However, without a constitutional protection of some sort, what the government gives, the government can take away. Because we are only a territory, if the people in Sydney and Melbourne change their mind and decide that they do not like land rights any longer and it becomes politically popular to go against them or there is a change of government, maybe the government will repeal that act of parliament and land rights will be all gone.

However, if the constitution says that it cannot take the land away from you, it cannot touch it because that is the people's law, not the government law. That is why, for example, you put in a constitution your right to vote. It is the boss law over the government. At the moment, the federal government, if it wanted to, could wipe out all government and all voting in

the Territory simply by repealing an act of parliament. There are no guarantees for that act of parliament. We are not a state and therefore we do not have the constitutional guarantees. Indeed, you do not have any guarantees against what the Northern Territory government might want to do.

I have to make one thing clear: this constitution will determine where we want the Northern Territory to go, the direction in which we want to take the Northern Territory. When you have done that job and know what you want and where you want to go, only then can you start asking whether you want to become a state or not. You cannot decide that now. I cannot decide that now. I am not asking you whether or not you think that we should be a state. I am not asking that question because you cannot even think about that until you have done this first job. When you finish that, perhaps then you can say that we should become a state in 1 or 5 or 10 years. However, until you have done that, you do not know what you want. That job tells you what you want and where you want this Territory to go. That is the job that, as the Northern Territory people, we must start doing now. When we finish that job, then we can ask whether we should become a state and, if so, when.

There are 2 separate questions. The first relates to what we want. Let us make the rules, the people's laws and work out where we want to go and then we can ask whether we want to become a state and talk to the federal government about Senators and all those other things relating to the transfer of powers and the making of a state. That is a separate question. But, if I went to Canberra now and said that we wanted to be a state, the federal government would ask how I wanted it to work. I would have to say that I do not know because I have not asked the people yet. Therefore, the first thing that we have to ask you is what you want and how you want it to work.

I will tell you how we intend to go about this job. At the moment, I am going around saying: 'It is important that we do this job, not just for you and me and not just for the next 2 or 3 years. When we make this law, it will be there for our grandchildren and for their grandchildren'. This law will keep on going. It will give direction. Thus, you will be making decisions now that will affect people in 100 years time. Maybe we can find a way through this by getting all the people talking and working together side by side with a bit of respect for one another. We need to work out how we can have Aboriginal people, white people and other people in the Territory going along the same road with respect for each other's culture. We want to make a future in which our children and grandchildren can look back and say: 'Those people did a good job for us. They made a good place for us to live in'. That would be a lot better than their saying: 'Why did they walk away from that job. Why did they leave this mess behind for us to fix up?'

It is the one or the other; there is no middle ground. Either we will fix this up and do it properly or we will leave a mess behind for our children and our grandchildren to try to fix. If we care for our children and our grandchildren and their children, if we care for the future, we will do this job and we will do it properly. If you do not care about them, we will sit back and have a good time, but they will condemn us for not having done the job. We all have the opportunity and the responsibility to do it now. We must become involved and work hard at it. We cannot say: 'Oh, let someone else worry about that and come and tell us later'.

It is your law. It is important that you make sure that this will be right for you and your people. You must be involved right from the very beginning. That is why I am not saying that you should do this, that or the other. I am asking you to start thinking about it. If you want more information, we will come back and give you more information so that you have a chance to think it through. Talk about it in your community and come to an understanding of what it is all about. Get your ideas together and, later this year or early next year, we will come back and you can tell us what you think should go into this people's law. When we have those ideas from you and from other people around the Territory, we will sit down and have our first go at it. We will put down what we think the people are saying.

However, I say this to everyone: 'Do not trust the politicians to do this job'. Right? The people have to do this job. We will give you the ideas. We will put down what you tell us. That is why these microphones are here. It is like being in parliament here at the moment. Whatever we say will go down in what is called Hansard. That is the public record. That record is there forever for everyone to read what is being said. We will get together what we are saying, what anyone tells us and any submissions that we get and write up a draft, a suggestion.

The second thing that we have to do is to come up with some suggestions for the forming of what is called a constitutional convention. That is a big committee of people from all over the Northern Territory. Representatives of the people will come together and look at what we have done. If they like it, they will say yes. If they do not, they might change it and say that that is what they think the people are saying. They will look at all the material that we have gathered. Representatives of all the people will be there. They might have to meet once, twice or 10 times. It does not matter how many times that

they keep coming and going to their communities and talking. Eventually, they will come up with a recommended constitution, a proposed constitution. That proposed constitution will go back for all the people to vote yes or no. If the people vote yes, that will be the law. If the people vote no, we will have to start work again and keep on working until we get it right and the people say: 'Yes, that is what we want'.

You can see that the job will not happen quickly and it will not be easy because there will be a lot of arguments along the way between different people. What you might want, other people might not want. However, if people talk and try to work out the differences, they will get something that they can both agree on. Okay? That is not new to you. You do that all the time and we have to do the same thing for the whole Northern Territory. People have to think about it for themselves and also for other people. Talk, talk, talk and try to make a law that will reflect where we want the Northern Territory to go. That is how we will make a good place for our children and grandchildren. It is not an easy job and it will not be quick, will it? It will take a lot of time but, as I say, you have to start somewhere. A long march starts with a first step.

All I am doing today is taking the first step and saying: 'Now we start'. I am asking you to start to think about this. Maybe in 3, 5 or 6 years, we will have something that will be good for all the people. It does not matter how long it takes. The important thing is to do this job properly. It is important that you become a part of this and have your say in this job because it is a job for everyone. Everybody has to be able to say: 'Yes, that is where we want to go'. Okay?

I guess that I have said all I need to say. Col, do you want to add anything? I have to say one more thing. This little book gives some ideas. We put some cartoons and other stuff in it to make it a bit straightforward. When you have had a look at that, you will realise that it asks a lot more questions than it answers. We have been working for about 3 years now on getting ideas together from all around the world. We produced this thick book and we will leave copies of it for you. We looked at constitutions all over the world. We looked in the West Indies, Canada, America, Africa and all around Australia to get different ideas. There are things in this discussion book which we think are good and others that we do not like. We put them all in there. There are things in there that you will like and things that you will not like, but they are all ideas for you to think about. They are the sorts of things that can go into a constitution.

There are some things that you have to put in there, but there are different ways of doing it. For example, you have to put in there how the parliament is to be made up. But, what sort of a parliament do you want? How do you want it to be elected? Those are the sorts of things that you can decide in this. This is the first time ever that the people in the Northern Territory have been asked how they want the Northern Territory to work rather than our all being told by some government in Canberra or maybe by a government in Darwin. This is the first time the people are being asked how they want the Northern Territory to work. This book is there. There are 2 others there. One is just on the constitutional convention. Those are only a couple of ideas. There could be heaps of other ways of doing it. That is to start you thinking about it, that is all. That one is about the different ways that you go about making a state. They are just there for information.

As I said, if you have any questions, please ask them now. If you would like to make any comments now, please do so. If I can get you to say that you want to think about this and work at it, then I think that I have done my job today. Our committee and support staff are available if you need more information. Ring us up and we will send it out or someone will come out and explain to you different things that you might want to learn about.

Col has just reminded me the Office of Local Government people are there too. They come around here pretty regularly. If you have any questions, you can also talk to them about it and they can chase up information too. Maybe they can answer some questions too.

Mr NUNGGUMAJBARR: As you know, we are still fighting to have our own separate land council. I just want to know whether that will be affected by this constitution.

Mr HATTON: How that happens is really a matter for the people. First of all, if we write a constitution up, it might be that people put in that constitution a special protection for Aboriginal land rights. How far you go with that is a matter for you to decide: whether you just put that in or you say that the Land Rights Act will be exactly as it is now or whatever. Maybe you will just take the core of the act, the main thing, protection of Aboriginal land ownership, and put that in. That is something that has to be talked through. If you do not trust us to protect your land, that is the way. If you do not trust the government and you want to protect yourself, you do it in the constitution. That is how you protect yourself from the government. That is what constitutions do.

What we have been saying is that the Land Rights Act should become a Northern Territory act when we become a state. However, we are saying that what that act should look like and how it should work is a question that we ought to ask the Aboriginal people. Do you think the act is perfect the way it is now? Do you think it works really well?

Mr NUNGGUMAJBARR: Yes.

Mr HATTON: No changes?

Mr NUNGGUMAJBARR: No Changes.

Mr HATTON: Leave it exactly the same as it is? That is fine if that is what you want. Do you think it would be better, for example, if the minister had no say over what happens with your land and you can make your own decision on that? That would mean changing the act, would it not? Take your right to have your own land council at the moment. You have to go and ask the permission of the minister, don't you? Do you think that you should have to ask the minister for that or do you think you should be able to make that decision for yourself? I do not know the answer to those questions. I am just asking you to tell me. Maybe there are ways in which you can improve the Land Rights Act and make the decision-making better and closer to the traditional owner in relation to saying yes or no about things concerning that land. I do not know.

There is a book here. This is not my committee's book. This is from the Northern Territory government and it is called 'Land Matters on Statehood'. It talks about different ways in which you can deal with the Land Rights Act on statehood and how you can protect the Land Rights Act on statehood in addition to the constitutional way. I will send a copy of that book to you and you will be able to read what it says. However, I can tell you that the first thing it says is that there is a guarantee of Aboriginal land rights from the government. Now, it is simply a question of how you ensure that it is not going to break its word. I know that there is not much trust there.

Mr NUNGGUMAJBARR: Some politicians.

Mr HATTON: Yes, that is right. I understand that. I am not dodging that. I am saying that that is a thing you can talk about in relation to a constitution. Look at this, look at the constitution and work it out. It is not only that. There are other issues that are important to Aboriginal people. There is the protection of sacred sites, Aboriginal law, culture and language. They are all important things. They have to be talked through, they have to be talked about in relation to the constitution. Maybe they are things that you should protect in the constitution.

Mr WARD: Steve, I think what concerns Bobby - and tell me if I am wrong Bobby - is that, already, the people here are working for a separate land council for themselves and there is concern that this constitution business might push that land council business further back.

Mr HATTON: No, it cannot do that in any way.

Mr WARD: Is that what you are thinking Bobby?

Mr NUNGGUMAJBARR: Yes.

Mr HATTON: It cannot affect that. I reckon it will be at least 5 years before we have even have a constitution and, after that 5 years, we then start talking about statehood. You are talking about having a separate land council now. That would all be in place before we have done this job, wouldn't it? It will not affect what you are doing now at all. What I am saying is that, if you got your own land council here in east Arnhem Land - here, Ngukurr, Numbulwar and that area - then maybe you would want to do it differently from the way it has been done in the past. I do not know. If I were a landowner - this is me - I would not want somebody telling me what I can do on my own land. That is my business. I will be honest with you, if it were me, I would be saying that what I do on my land is none of bloody Gerry Hand's business. That is what I would be saying.

I think it is a matter for the traditional owner to say what he wants to do on his land. Okay, you might build protection in there to stop people being exploited and ripped off although I do not think that your community would be. However, some communities have been and you do not want a repeat of what happened in Alaska where the Inuit people ended up mortgaging all their land and losing it all. Or what nearly happened at Yarralin. You do not want that to happen either. You have to build in some protection for the ongoing community rights to the land. But that does not mean that Gerry Hand knows more about what should happen on your land. Are you telling me that it is right that, because Terry Yumbulul

wants to put that tourist venture on his own land at Wigram, he has to get a lease off the Northern Land Council to do it? That is stupid. That is crazy stuff.

Mr NUNGGUMAJBARR: Where is that?

Mr HATTON: Up in Wigram Island. You know Terry Yumbulul?

Mr NUNGGUMAJBARR: I have never heard of him. No.

Mr HATTON: That is happening now. He has had to go and get a lease off the land council for his own land. He pays \$1 a year for the lease and then the land council sends him \$1 a year income on his land. That is going in circles. It making work for a bunch of clerks in the land council.

Mr RAINER: Perhaps by the time this constitution business is settled, the need for the Land Rights Act as far as Aboriginal ownership of land is concerned, will have all been settled.

Mr HATTON: Who owns what will be. Yes, hopefully.

Mr RAINER: Yes. And then, the only thing the constitution needs to enshrine is the individual's right to do what he wishes with his land. That becomes not just the right for an Aboriginal but also for a European or a Chinaman or whoever has the opportunity of having freehold title to land within the Territory. Everybody then should be treated on exactly the same basis. I am not talking about sacred sites problems for Aboriginal people etc. I am talking only about the ownership of the land and how to deal with it.

Mr HATTON: I agree that that is an issue that has to be sorted out. But you do have the other complications of the special type of community title.

Mr RAINER: Yes. That protection has to be written into it because the type of ownership is different.

Mr HATTON: Yes, that is right.

Mr RAINER: And that is the exploitation side of things that you mentioned before. That needs to be protected against. But, so much is moving so fast these days that, hopefully, we are moving to a state where we are all be ...

Mr HATTON: Equal.

Mr RAINER: ... equal in all things.

Mr HATTON: That is right. What we will all find in doing this job is that it will force people to talk to each other about all those really hard questions. It means that you will have to explain to the people in Darwin and Alice Springs why your culture, land and law are important. Those people are not anti. Many of them simply do not understand. They just hear the spokesmen making noises and they do not understand what is going on. And it is the same the other way round too. I go around and talk to people like yourselves and people tell me why certain things are important. I go around Darwin and people tell me things. It seems to me that all the people are really trying to reach the same point. Both groups want to get to where they can stand side by side and stop fighting. That is what people in Darwin and Alice Springs want. They do not know how to get there. I go round the Aboriginal communities and they say the same thing. Maybe, if I get you all together in the one room and you have to talk to each other about it, you will find out that we can get there by travelling down the same road. But, each would be on his own side of that road. The Aboriginal people want to protect their culture, religion and law just as the white people want theirs, but that does not mean that they have to be fighting each other. It will make people come to terms with that and work out how they will live together.

Mr BROWN: If this will recognise Aboriginal law on Aboriginal land, what will happen if there is a conflict between Aboriginal law and European law?

Mr HATTON: I am not going to say what can or cannot be. It is possible for the constitution to deal with that question. Those are the sort of things that people need to talk about and come up with suggestions. I am not going to tell people what they can and cannot do in their own constitution. But, it is possible. Graham, do you want to add to this? You can write into there a provision to protect the ongoing role of Aboriginal law and the extent to which it has an effect. We have had some communities tell us that they want to write into the constitution that every Aboriginal person must be subject to

Aboriginal law - no choice - and, when the Aboriginal law is finished with them, then the white man's law can look after them. That is a pretty hard one, but that is the view of some of the old men in some of the communities. That will have to be talked out. You could write it in if you wanted to but you will have to live with the result. Once it is in there, it will be there always unless you get a vote of all the people to take it out and that is really hard. Whatever you put in there becomes very strong law.

I am trying to honestly answer how we are going about doing it. I will not say that you can do this or you cannot do that except where it is legally impossible. For example, you cannot declare the Northern Territory to be a republic because that would be in conflict with the Australian Constitution. There are things that you cannot do. You have to fit within the national constitution. However, within that, it is up to the people to make their own law. It could be a thin document with only the basics in it or it could be a very thick document like the New Guinea constitution which goes into fine detail. That will come out as people think about it and start talking to each other about it. That is why it will not be a quick job. That is why I will not prepare a draft constitution to put in front of you to argue about. I will issue discussion books and place ideas before you but I am not going to tell you what you should have. This is one time that it has to come from the people.

Mr NUNGGUMAJBARR: How will what our people say be put in the book for discussion?

Mr HATTON: We will come back later this year or early next year as a full committee. We will come here so that you can then tell us what you want. We did not try to do that this time because now is the time to start thinking about it. When you have had a good chance to do that, later this year or early next year we will come back and then you can tell us what you think.

If, between now and then, you want to know more about a particular aspect, you can give us a ring and we will get someone to come out here and talk to you. This man here, Mr Nicholson, is a constitutional lawyer. If you want to know whether you can legally do this or that, we will get him or someone like him to come and talk to you about it. You do not need to have the politicians along.

Mr NUNGGUMAJBARR: It is up to us. I think now we have seen your select committee come to our meeting to discuss this constitution, I think we now need a bit of time for the community to give more thought to this. Maybe, if we need any help or information, we will probably ask you to get someone to get back to us. I think for now we will just have to leave it and give us time to think about it.

Mr HATTON: Good. I would feel happy if you would start to do that. I cannot emphasise sufficiently how important it is for you not turn your back on this job.

Mr BROWN: Is there any idea at this stage how the government will be formed once the constitution is established. Will there be 2 Houses or 1 House?

Mr HATTON: That is one of the questions that we have asked. This discussion booklet raises questions such as that. It is a bit like a reference book.

Mr BROWN: Yes, but is the federal government or state government ...(inaudible).

Mr HATTON: The recommendation from our select committee is that we have a unicameral system, the same as we have now. We have put in there also the option of the 2 Houses or what is called a bicameral parliament. It sets out the arguments for and against both systems. However, it is our recommendation that we stay with a single House. I guess it is a philosophical argument whether you have 2 or 1 Houses.

Mr RAINER: Have you given any thought to changes in the system of parliament that do not exist at present?

Mr HATTON: To what sort of system?

Mr RAINER: Doing away with the 2-party system in the parliament. Instead of the party electing its party leader, we could have a system whereby, as part of the electoral process, the people elect the person to be the Prime Minister and/or a deputy. Then, every other member who is elected into the House is a part of the government so that avoids the inter-party fighting which exists in our parliaments at the moment. It does not matter whether you look at the original Westminster system or our own parliament in Canberra or any of the state parliaments, most of the time of members is taken up with fighting each other instead of working for the benefit of the people. I believe that, with the Territory being of the nature it

is, independent people with independent ideas, it is time perhaps to try another form of parliament whereby the party system exists outside as far as the provision of candidates to stand for election is concerned. However, once the House is elected, every member becomes a member of the governing parliament and works for the benefit of the people in the parliament, not for the benefit of the party. If they do not perform, in the normal electoral process the people have the opportunity to put them aside and try somebody new. But, the basis of the thing is that everybody's best endeavours are used for the benefit of the community as a whole. Everybody must agree that, with our present system, we make do at times with ministers and members of lesser quality than some of those who are sitting on the opposition benches achieving nothing.

Mr HATTON: Could I just pick up a few points there. Broadly, there are 2 sorts of parliament. One is responsible government whereby the government is responsible to the parliament and the parliament is responsible to the people. We call that the Westminster style of parliament. You create that level of responsibility by electing members into the parliament and then somebody, who has the confidence of the parliament, is invited to form a government. Technically, that is how it happens. The reality is that, if I have more supporters in the parliament than you have, I can win the votes in the parliament and therefore I have the confidence of the House and therefore I can form the government.

Mr RAINER: We have seen the effects of that in the Northern Territory government in the last 5 years with a new Chief Minister every year.

Mr HATTON: Not quite every year, but not far off it.

Mr RAINER: It has not been far short of it.

Mr HATTON: That is part of it. That is right.

The person forming the government will select people to form a ministry. In the last century in England, when that system was evolving, the leader sometimes chose people from the opposing party. Actually it was with the creation of the Labor Party in Australia and the labour movement that the concept of party solidarity emerged and that led to the locking in of party strength. In the days when there were conservatives and liberals and no labour party, they used to pick from all over the place.

Mr RAINER: Yes, but in those days the members of parliament only came from one strata of society.

Mr HATTON: Pretty well, yes. Because they were not paid.

Mr RAINER: It was the aristocracy.

Mr HATTON: Because they were not paid. That is right. That is also where the whole concept of party solidarity came from.

Mr RAINER: But, it evolved to a stage where it is not satisfactory now.

Mr HATTON: Let me track on. If you want to pick up the concept of executive government, that is talked about in there. We do raise the issue in that book. That is the system whereby the people elect the leader, as in the United States. It is executive government whereby the people elect the president or the state governor. You could develop a system here where you elected the political leader. Whether that person chooses parliamentarians or people from outside of parliament to form an executive government is a matter you can write into your constitution if you want to. You can do that and you have the balance of powers then between the government and the parliament which is the sort of thing that you are talking about.

Mr RAINER: Not quite.

Mr HATTON: Well, you can adopt the utopian view that you will get the Labor Party and CLP people picking and not having a war within their own parties and being booted out as leaders. I have to be honest about it.

Mr RAINER: I do not say that a change will be an easy thing to achieve.

Mr HATTON: The question is whether it can be practical. It is technically possible to do that. You can form the sort of parliament you want and determine the method of electing the government. You can write the constitution to determine

how this will happen. What you have to argue is whether it will work.

Mr RAINER: I argue that the system at the moment does not work satisfactorily.

Mr HATTON: That is the second point I wanted to talk about because, unfortunately, all people ever see about parliament is what they see in the media. But, I have to tell you that I always reckon that 80% to 90% of the work of the parliament is done by agreement. You only ever hear about the fights.

Mr RAINER: That is what makes news certainly.

Mr HATTON: That is right. But, I believe that, within the system, there is a great deal of cooperation - far more than people realise. I would say that 80% to 90% of the legislation that goes through the parliament is supported by both sides. When we are debating it, the opposition comes up with ideas to improve it and we adopt them. In the debates in the parliament, that happens quite a lot. It is never reported because it is not news. The Labor Party and the CLP working together is not news. The ALP and the CLP fighting is news. But, I would think that 80% to 90% of the day-to-day work of parliament is carried out in a cooperative manner. It really is. You have to sit there and work through it. But, we have our show pony fights and the craziness of question time and the motions of no confidence - all those sort of games that go on in the political process - but, underneath all that, there is a great body of work that goes on. There is the work of this committee and the work of other committees on which we work together and are not fighting.

Mr RAINER: The proof of the pudding is in the eating. The idea is there for discussion.

Mr HATTON: Yes. It is an idea and it is technically possible to pick it up. You could have a system of electing the premier and giving him the right to choose his executive from within the parliament and giving decision-making rights even separate from the parliament, as they do in the United States. It is possible to do that. That is one of the things you can talk about in relation to a constitution. The opportunity is there to form the sort of government structure and parliamentary structure that you want.

Ms GILMOUR: You were saying before, when you were talking about owning land, that, if you owned land, you would not let Gerry Hand tell you what to do.

Mr HATTON: I was speaking personally. Yes.

Ms GILMOUR: And you made it sound like, if there is a new constitution, Gerry Hand cannot tell you what to do. And you made it sound like the NLC might not be able to tell you what to do like what is happening in ...(inaudible).

Mr HATTON: No. I am sorry if I gave that impression.

Ms GILMOUR: Yes. It just sounded like: 'Okay, if you have got a new constitution, Gerry Hand cannot tell you what to do any more'. But, there will always be government and, even though you own land as a private owner or have a community title, or any sort of title, you will always be told what to do by the government in some ways. That is right, isn't it?

Mr HATTON: There is always some ...

Ms GILMOUR: You might be told by Darwin and not Canberra. That is the only difference.

Mr HATTON: No. The difference is that, if I own some land, provided I did not breach any environmental rules or planning regulations, I would be able to take decisions in respect of my own land.

Ms GILMOUR: What about mining law? The government has number one say, isn't that right?

Mr HATTON: Yes it does.

Ms GILMOUR: It does not matter if you own land or not.

Mr HATTON: In the matter of mining tenements, yes. They are usually in respect of who has the rights rather than whether or not you can mine. The Commonwealth government will still retain its export licensing power. Thus, after statehood, we could have control of uranium under our own legislation, for example, and the federal government could refuse to issue an export licence. If you cannot sell overseas, you will not open a mine.

Ms GILMOUR: Even if there is a new constitution?

Mr HATTON: It is not open slather.

Ms GILMOUR: That is right. You made it sound like, if there is a new constitution, no one can tell you what to do. But, that is not right.

Mr HATTON: No. What I was saying was that I would find it obnoxious, if I wanted to sublease a block of land or if I wanted to start a particular business venture that did not breach environmental or planning guidelines, that I should have to ask permission from someone else. That is what I meant.

Ms GILMOUR: You should not have to ask permission from the state either. It is not just Gerry Hand who is the problem. It is also the state.

Mr HATTON: The state, anyone. That is a personal view. If I want to plant trees in my backyard, I will plant trees in my backyard. I will not go and ask someone's permission.

Ms GILMOUR: The constitution does not protect you from that sort of thing anyway because the parliament could still make those acts.

Mr HATTON: Yes. Well, there is an extent to which ...

Ms GILMOUR: Unless you put something in the constitution to say that it could not.

Mr HATTON: What you do not tie down in a constitution governments can act on. But, please understand that, at the moment, the federal government can do anything at all. Section 122 of the Australian Constitution, which is the only section that refers to territories, says basically that the federal government can do what it likes, when it likes and that includes acquiring you property without compensation if it so desires.

Ms GILMOUR: And so can the NT government.

Mr HATTON: No, we cannot.

Ms GILMOUR: Can't you?

Mr HATTON: No. The Self-Government Act now prevents us. You could write into the constitution that property could be acquired only on just terms as is the case now under the Self-Government Act. If we become a state, the federal government could not acquire property here except on just terms. The federal constitution provides that the federal government cannot acquire property except under just terms. In a state, it has to pay for it. There are appeals also in the state system which we do not have here. Does that answer you?

Ms GILMOUR: Yes. It just sounded as if there would be no government at all after the constitution, but there always will be.

Mr HATTON: No. There will be government and there will be arguments and there will be political fights. Those things will occur, but at least you can put the foundations in place and determine the basic direction in which you want to go. Put up the walls. Okay, people have to go down that tunnel and they cannot go out both sides. They keep going down that way.

Mr RAINER: As a point of interest, can this constitution be legally brought into effect with the Territory remaining a territory under existing laws or does there have to be a change under a federal act to allow it to become legal?

Mr NICHOLSON: You cannot have a new state unless the Commonwealth parliament ...

Mr HATTON: No, the constitution, can it come in before statehood?

Mr NICHOLSON: No, you cannot have a new state constitution unless you are a state. Well, you can make the constitution but it does not become operative until you become a state.

Mr RAINER: Without a particular act of federal law?

Mr NICHOLSON: You cannot become a new state without an act of the Commonwealth parliament.

Mr RAINER: But, the question I am asking sort of goes with that. If, for argument's sake, it were to be another 10 or 15 years before statehood was achieved, would it be possible, having drafted a constitution, for it to be brought into effect while the Territory stills remains administered by Canberra?

Mr NICHOLSON: Yes. You could repeal the Self-Government Act and introduce a constitution as the constitution of the Territory whilst it is a territory.

Mr HATTON: The federal parliament would have to do that.

Mr RAINER: That is what I mean.

Mr NICHOLSON: You could have that, but it would not be a new state. It would be a Territory constitution.

Mr RAINER: Yes. I realise that. What I am asking is: if this is brought to a head and completed, can it be put into effect for the benefit of citizens before statehood?

Mr HATTON: Only by federal legislation.

Mr NICHOLSON: It would still require an act of the Commonwealth parliament.

Mr HATTON: It would effectively mean changing the Self-Government Act to make the constitution the core of the Self-Government Act.

Mr RAINER: Right.

Mr NICHOLSON: In fact, there may be some advantages constitutionally in doing it that way.

Mr HATTON: Yes. Very much so. We were debating that this morning. The one problem is that we have to find a way to have the constitution in operation before we become a state because, by doing that, we think that it will prevent the federal government from being able to interfere with it after statehood has been attained. It will remain the property of the Northern Territory people because it will be in existence first.

Mr RAINER: Is that the essence of doing it now?

Mr HATTON: That is right. It will become the Northern Territory people's property and the federal government will not be able to muck around with it. You can let your imagination run pretty wide on this, can't you?

Mr RAINER: You definitely could.

Mr HATTON: You would be amazed how many of the ideas are in that book.

Does anyone wish to raise anything else or are we all talked out? Thank you very much for having us along. I appreciate that. I look forward to coming back here later in the year or early next year when you can tell us what you think should be done. In the meantime, let us know if you want anything. Thank you very much.