

WALLACE ROCK HOLE — Thursday 13 April 1989

PUBLIC MEETING

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 Ken PORTER

Mr Chris MARSHALL

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

ISSUED: 21 July 1989.

Mr HATTON: My name is Steve Hatton. I am the chairman of this committee from the Legislative Assembly which has the job of working with the Northern Territory people to make a Northern Territory constitution. At the back of these books, you will see the pictures of the 6 members of the committee. There are 3 from the CLP, the government side, and 3 from the ALP, the opposition side. Brian Ede, the member for Stuart, is the deputy chairman. Col Firmin, the member for Ludmilla, also is on the committee. The other 3 members are not with us today. Because we are going to all the different parts of the Northern Territory, we are doing it in shifts.

We are here today to talk about a constitution, to explain to people what it means and how we are going about it. Over the last couple of years, you have probably heard a lot of talk about the Northern Territory becoming a state. But, we are not here today to ask you whether you think the Territory should be a state or whether you think it should not be a state. That is not the question. We would ask you to understand that, one day, whether it is next year, in 5 years time or in 20 years time, the Northern Territory will become a state. Before we can even think about that, we need to know what sort of a place we want the Northern Territory to be. Like everywhere else in the world, like everywhere else in Australia, the people have got to set the rules.

Governments make laws all the time and they change laws. You elect a government and it changes the laws from time to time. If you do not have something which says what the government and politicians can do and cannot do, if you do not have some way of controlling them, they can really do what they like. To make sure that they do not do whatever they like, that they do only what the people want them to do, you make a special law. It is a law that comes from the people and it is

the boss over the government and the boss over the courts. It is a law of the people that says what the government can do and what it cannot do. It is a law that contains the things that are really important to people such as their rights - the things that they want to really protect, that they do not want governments to muck around with. They put them in here so the government cannot touch them.

This sort of law can only be made by the people voting for it and the only way it can ever be changed is if the people vote to say that it can be changed. Governments cannot touch it. It is the boss over the top of the government and it cannot touch it. It is the people saying to the government: 'Yes, we will let you do that. But, we won't let you touch that. That is too important. Leave it alone'. Do you remember that, last year, you were asked to vote in a referendum for the constitution? At that time, the government wanted to do some things and it had to ask the people. The people said no and therefore the government could not touch it. That is the Constitution and only the people can touch it. It becomes very strong.

That is the way that you protect your rights. You sit down and you think about that and you say: 'I live in the Northern Territory. My children live in the Northern Territory and my grandchildren will live in the Northern Territory. What sort of a place do I want this to be for them? How do I want it to work? What sort of rights are we going to protect for me and for my children and my grandchildren? What are the important things? How do I want the government to work? How do I want the courts to work?' You put those sorts of things in there to indicate that is what you want this Territory to be like. When you write that, then you know what you will want one day when you become a state. However, until you know that, you cannot even think about statehood because you do not know what you want, you do not know how it is going to work and you do not know how you will protect the things that are important.

You have to do all that first, and it will not happen quickly. It is not something the politicians or the lawyers can do. We can't simply sit up there and write out a constitution and say: 'Here it is. It's all yours'. It has to come from you. It has to be your constitution, your law, something you want and what you say the Northern Territory should be like. We have come out now and we are going around all around the Territory explaining this to people and telling them that they should be thinking about what should be in there. Should there be a protection of the right to vote, so that you have the right to vote for governments and no one can take that away from you? Do you want to put in there things such as protection for your land rights so that people can't take those away from you? Do you want to insert protection for sacred sites or culture or language or things that you want to go on and on in the future? I am talking about the really important things, not the detailed laws - the really important things that must not change. That is what we have to put in here and we are asking you to think about those sort of things because, one day, when this law is going to come up, it will be there and it will stay there. It will be there for our children, our grandchildren and their children. It is our job to make a law that is going to be good, that is going to make the Northern Territory a good place for our children and our grandchildren and not just leave the job for someone else to do, not just sit here like children having somebody else make all the decisions for us. We are going to work towards growing up to become like adults where we make decisions for our own life and the way we want to live.

This is the first stage of doing that. If you don't do this, you will always be like a child with the parent there telling you how to run your life. It is good to grow up and become an adult. Sometimes it hurts, but it is good. When you do, you make decisions for yourself within the laws. You make your own decisions and the people make those laws. It is the same thing for a state and the same thing for the Territory. It has got to be. Every government has one of these rules to control it. Queensland, Western Australia, South Australia, New South Wales, Victoria, Tasmania have all got a constitution that says what they can do and what they can't do. The federal government has one that you voted on last year.

Only the Northern Territory does not have one and that is why the Canberra government can do whatever it likes with us - because we do not have our own law that came from the people. Now you know that is not an easy job, is it? What are you going to put in this thing? How are we going to go about thinking about this? How are we going to work out how to put things in here that are important for Aboriginal people - people from the desert, people from the Top End, people from the Gulf - and also for the white people in Alice Springs and Darwin, the pastoralists, the miners, the Chinese people living in the Northern Territory? We are going to start thinking about everyone and how we want everyone to live together with respect for their culture in the future. That is what we are going to work on.

We have been doing a fair bit of work. This book here gives you a few ideas. It starts you thinking about what a constitution is, what a government is, what the courts are and how they work. We did a lot more work than that. We will leave this big book with you. It took us 3 years to write that. We looked all over the world - America, the West Indies, Canada, Africa, New Zealand and New Guinea - for different ideas. We looked in Australia and we looked at our own

self-government act for different ideas. We liked some of the things that we saw but there were other things that we did not like. But, whether we liked them or not, we put them in there so that you can think about whether or not you should put them in your constitution. That will help you think about some of these things.

We are going around talking about it and we will come back if you want us to come back and talk about bits and pieces of it. We want you as a community to talk among yourselves about it, think about it and talk to the other communities. If you are not sure about something, ring us up and get information and start thinking about it. When we come back maybe later this year or early next year, you can tell us what you think should go into there and we can tell you also what other people are saying.

We must start talking among ourselves all over the Territory and gradually build up some ideas about what people want. When we get all that in, it will be our job to sit down and try to write out what we think the people are saying. We will write out what we call a first draft which will be our ideas of what we think the people are saying. We hope that we get it right but, to make sure, because this is too important for us alone, we will want to form another group which is called a constitutional convention. It is like a big committee of people which will have representatives from different people from all over the Territory. Their job will be to look at what we have done and think about it and say whether they think it is good or bad or whether it should be changed again to get more of what the people are saying. They will go through that and determine what they reckon is the right way. When they have done that job, it will go back for the people to vote yes or no - the same as you did last year. If the people say that that is what they want, then the people's law will be in place. If they say no, we have to go back and start again and keep working until we get it right.

It is not going to be quick. It is not going to be like when Gerry Hand came out to talk about ATSIC. We do not have any ideas yet. We are asking you for the ideas. We are going to sit here and talk and think about how to build this law so that, when it is finished, we can all say that it is our law, that it is the people's law. That is the law that will tell the government how to work. That is the law that will tell the government what it cannot do. That will be the law that will protect our rights so that the government cannot muck around with them. That is the most important thing you can do for yourselves, for your children and for your grandchildren. That is how you build this good future. But, it will be good only if everybody works on it and everybody has their say and can say: 'That is mine. I own that, not the government. That is mine'. That is what a constitution is.

I reckon that, if we can do it really quickly, it might take 3 to 5 years. I do not reckon that it will be much quicker than that. There is plenty of time to think it through but, with every long journey, you have to start somewhere. We are saying that today is the day to start that journey because, the sooner we start, the more time we will have to get there and get there properly without having to try to rush things. I do not want you to tell me today what you think should go in there. I want you to say to yourself: 'I want to be part of this. I want to make sure that, when they are doing this, they get it right from my point of view'. You can do that by getting involved, by thinking about it, by talking about it, by talking to us about it and telling us what you think. If you are not sure, ask us about it so that we can try to bring this Territory together and make it a place where everybody can look forward and say: 'This is a great place. We got it right because the Territory people determined the way they wanted it to be, not the way somebody else told them how to do it'. That is what you do with this constitution.

I am not going to talk any more now, but I am going to ask Brian Ede to say a few words. We are here to talk to you about it and to explain things. If you have any questions, feel free to ask them as we go along. Tell us about it so that you can feel comfortable about becoming involved in this. It is a big job. It is a job we have got. If we do it well, our grandchildren will be proud of us. If we back off and do not do it, we will be letting them down and they will ask why we did not do this job for them. We have got to do it.

Mr EDE: Last night, I was talking to a bloke who came round home. He is a good Labor man, and he said to me: 'Look, what are you doing on this committee? You are the Deputy Leader of the Labor Party. What are you doing on that committee with all those CLP mob? When it comes down to it, at the end of it, there are 15 of them in the parliament and there are only 6 of you. They will have the numbers and they will do what they like'. I said: 'Well, if I believed that I would not be on it'. Maybe I am a bit of a fool, maybe I am wrong, but I do not think it will be that way. The fact that we are working on this one does not mean that we suddenly agree with everything. I still disagree with these blokes about a whole heap of things, about Aboriginal affairs, about how we can build a cattle industry, how we develop the education and health and all those sort of things, but there has to be somewhere where we all say that we are Territorians first and we are going to work together to try to get something that we can start from.

If this was going to be a thing whereby the biggest mob could do what they want and anybody else would be pushed aside, I will tell what, there would not be much hope for Aboriginal people in the Northern Territory because, as we all know, there are a lot more whitefellers in those towns than there are Aboriginal people out bush. But, I think that this is a chance. It might be our last chance, but it is our best chance of trying to determine what the things are the things that make us Territorians and what are the things that we really believe in. It is the best chance that we have for Aboriginal people to explain to those whitefellers the things about Aboriginal culture, land rights and sacred sites that are really important, that are the things that have come down from thousands and thousands of years and that have to be taken forward into the future. What are the things in that that need to be put into something whereby we can say, 'We respect that culture. That culture respects ours and we can work together'?

Somewhere we have to start that working together because we are all going to be here for the rest of our lives. Our kids are going to be here, our grandkids are going to be here. We have got to find some things we agree on. I believe that this is where we should be doing it because there is no way in the world that we will be able to go into the next century and be able to feel that we are proud of the Territory unless we get something down that indicates the common things that we believe in and the things that we want to hold on to. I am not going to stand here now and say that I want this and I want that because that would only be me saying it. What I want to say is: 'Let's open it up now. Let's start talking to each other. Let's start thinking about the things that can be in the constitution and let's start working with different groups around the Territory to see if we can find those things'. When we think we have found them, as Steve Hatton said, we can put them to that committee of people from all around the Territory and let them take it over and see if they reckon we have got it right. They can change it or do whatever they like with it. But, finally, it has to come back to a vote of all the people. They will call a referendum. Whether half the people or two-thirds of the people have to agree for it to go ahead is one of the questions that people will have to discuss over the next year or two. Those are the things that will determine how hard it will be to change these things after we have them in there.

Those are all decisions that we all have to talk about. You will find that some people will be right over this side and some people will be right over that side and there will be times when we are going to ask how we are all going to agree on this, because everybody is all over the place. But, if we keep talking and if we keep explaining to each other what we are on about, and what we are trying to achieve, I believe that we can do it. Everywhere I go around my electorate, and I am sure it is the same down here in Neil Bell's electorate, people say to me: 'Look, we are not out to screw that other mob. We are not out to wipe them out. We just want to have a fair and equal chance. We do not want one lot up here and one down here. We do not want to go turning it around like that. We just want to be equal. We want to have a good chance for us to have a reasonable standard for our kids, a decent education for them and a decent chance for them to get jobs and to be able to have a decent life here in the Territory'. Everybody is after the same thing. And if we are all after that same things in the end, surely there must be a way that we can agree on how we can come together to try and achieve those things.

The only other thing that I want to say is that, if you do not reckon we have got it right, when you first start hearing things coming back, do not be shy about saying: 'You are wrong. Cut it out. Start again'. This referendum might be in 2 or 3 or 5 years. It does not matter; we have plenty of time. People have been wandering around this country for 20 000 or 30 000 years. We are going to be around for a few thousand years more. We have time to get it right. After all the committees and the convention have had their talks and it comes back, if you feel that most of it is okay but there are a couple of bits you do not like, you would be better off saying no. If you said no, we would have to start again and work it through until we got it right. It is too important to have only a little bit right. It has to be properly done.

Thus, the only other thing that I want to say to you is that it is important to be involved. We will be trying to send out tapes about different ideas that are being raised in different places. We want people to listen to them, to talk about them among themselves and with other people to try to come up with ideas on how we can do it. We will be coming back later on ourselves, but we will be travelling all around. In the meantime, do not forget that there are addresses there. You can send in a tape of talking in language or write to us. It does not matter. We will get the message. We will get interpreters or whatever we need to find out what people are saying because we really want this to be something of which everybody is a part, that comes from the people, not something that Labor Party or CLP or National Party say that the people should have. It has to be the people's law and the people have to take control.

Mr HATTON: Thank you, Brian. Are there any questions?

Mr PORTER: Just to give the people a bit more of an idea - I think maybe I might be right - if they do not like the way the titles of land and all that sort of stuff are now under the land rights act and everything, that would be the sort of thing they could be talking about too, wouldn't it? To make sure that it is written in this thing that it can be changed if they do not like

it the way it is or whatever?

Mr HATTON: Yes, that is right. You can talk about anything. Land rights is a thing that most Aboriginal people we have been talking to want to make sure about. They do not trust the Northern Territory government. Let's be honest about it. They say that, if one day we become a state, and this land rights act becomes a Northern Territory act, firstly they do not want to give the government the right to be able to take it away. Thus, you might have to put some words in the constitution to the effect that you have the right to retain your land rights. However, the details of it, how it works, what sort of title, who has the right to say what you can do or cannot do on that land are things that you put in the act itself. That is when the people can talk to their government about what they want. I think that, after we get past this constitution stage and people say that they want to become a state, the next question will be how to work this land rights. And that is when they are going to ask us. They will say: 'We own our land and no one can take it off us, but how is it going to work?' We would then sit down and start talking about that and have it written down in the move to statehood how the land rights act would operate.

We can send you copies of a book dealing with those matters. That comes from the government, not from our committee. It says that there are different ways of doing it. We are not going to say that the Land Rights Act has to go this way or that way. We want to talk to the Aboriginal people in the Northern Territory and ask them whether they think the Land Rights Act is perfect. Is it working the perfect way for you now or is there a way of making it better for you? We should talk about that. It has been 10 or 12 years since land rights have been going. Did they get it right first time or are there better ways of doing it? You are living with it and you should be telling us that sort of thing. You can still protect land rights and work out how you want to do it in that other stage. It can be done.

Mr EDE: Just one thing about that. The Queensland constitution, for example, is one page. It says there is to be a state called Queensland and, to change that, such and such has to be done. However, the Papua New Guinea constitution, for example, is about that thick and it goes into a great deal of detail. It talks about organic laws and all sorts of things. How much detail goes into the Northern Territory constitution is something that the people will have to decide. You could have a straight principle of land rights, that everybody retains control of their own land. You could either not mention it at all or you could go into a great deal of detail. Those are the sorts of things that we have to negotiate. We have to find the things that enough people agree with.

Mr PORTER: People like the community government councils have to make sure that they are recognised in this constitution.

Mr FIRMIN: That is right.

Mr PORTER: The same as associations. If an association wants to be recognised, that is the sort of stuff that has to be there.

Mr HATTON: You could constitutionally entrench different forms of local government so that you would have an absolute right to it and the Northern Territory government could not take away your ability to do that. You are making the rules this time, not the government.

Mr PORTER: So if community government was overlooked - it would not be, but just say it was - it could be quashed altogether and we would lose our rights as a community government?

Mr HATTON: If you haven't got it protected by a constitution. It is not likely however.

Mr EDE: By legislation, you could still have community government even if it was not in the constitution. As I was saying the other day, it is a bit like having cheeky dog that goes around biting people. You might put him on a length of rope and, depending on how he is, you might decide the length of that rope. This is a bit like putting the government on a length of rope. You are saying how far you can trust it. If you do not trust it much at all, you write it all into the constitution. If you have a bit of trust for it, you can give it a bit longer rope. It is a balance between the two.

Mr PORTER: I reckon you can give people out here a better idea of the constitution thing if you refer back to when Hugh Richardson came out here to set up our own. Ours is just for Wallace Rock Hole. You are talking about one for everybody throughout the Northern Territory. It is the same sort of thing. We had 18 months or nearly 2 years of a drawn out process and it is the same thing that you are going through now.

Mr HATTON: Exactly the same sort of thing.

Mr FIRMIN: It is a bit bigger job. That is all.

Mr PORTER: Yeah, that is what I am saying. It is on a bigger scale.

Mr HATTON: Yeah, you had to set the rules and the elections and all that sort of stuff.

Mr PORTER: And all that sort of thing will be set in this constitution.

Mr HATTON: Exactly. As you can see with the community government, you had to get all the rules worked out before you even said that you would go ahead. It is the same thing with statehood. We have got to get all the rules worked out first.

Mr MARSHALL: Is it fair to ask just what are the main questions that people are raising around the Territory to give everyone here an idea of what the issues are that are being raised?

Mr HATTON: There have been no issues raised that are not in those books. There are 11 pages of questions for people in there. Should you have a unicameral or a bicameral system? Should you have an upper and lower house or just the one Assembly like we have now? Should you have fixed term parliaments? How long should the term of a parliament be? Should you put into the constitution the right to vote and who is eligible to vote?

Mr MARSHALL: You recognise, of course, that many of those questions are not of great relevance to people.

Mr HATTON: Sure. We do not expect that there would be much dispute over that. At least, if there is, it will come out. We are putting those things in front of people. There are more complicated ones. Should there be a bill of rights or not? If there should be, what sort of bill of rights? Should there be some recognition of the unique position of Aboriginal people in the Northern Territory through some sort of preamble or other mechanism in the constitution? If so, how can that be done without walking into the sort of preamble problems that Gerry Hand walked into? What do you do about land rights and protection of different cultures and languages and so on? Should there be guaranteed Aboriginal representation in the parliament like they do in New Zealand with the Maoris?

One fellow reckons that special environmental provisions should be written into the constitution that require the government to act within certain environmental guidelines. I think that, tonight in Alice Springs, the Alice Springs Peace group will be telling us that we should put in the constitution that the Northern Territory will be a nuclear free zone. I mean there are going to be really significant things and really extreme views. Only if everyone is involved can we sort out the wheat from the chaff. People are going to hear some things and say: 'I don't want to know about that'. However, we can't say that people cannot talk about it. Does that give you some ideas?

Mr MARSHALL: Yeah.

Mr HATTON: There is plenty more in there, I can tell you. You have just got to take them one at a time and talk them through.

Mr MARSHALL: I have been through these questions that are listed in your book.

Mr HATTON: If you look in that book, you will find a lot more.

Mr MARSHALL: Yeah.

Mr HATTON: They were just the major ones in that book.

Mr MARSHALL: I think the things you just mentioned seem to be the main issues that arise in my view in relation to the bush out here.

Mr EDE: Most people around the bush have been talking about the fact that the whitefellow law keeps changing all the time as against Aboriginal law that remains the same. People keep being told that some law which impacts on traditional law looks as though it is going to change. People become really worried about it and talk about how they want to have something tied down so they will not get into those types of arguments. That goes through that whole gamut of that area.

After that, people say: 'Thanks very much, but we want time to think about it'.

Mr HATTON: One community said that it should be put in the constitution that a person must be dealt with in terms of Aboriginal law first and then can be looked after by white man's law. He doesn't get a choice.

Mr FIRMIN: That view may not be universal of course, but they made it very strongly.

Mr HATTON: Yeah, you are going to have all those sorts of things coming forward. It will make the Northern Territory come to terms with itself.

Perhaps I can ask if you can pick up some of these things and start talking about them yourselves until you can see that this job has to be done. It has to be done and finished one day and we really ought to start talking. The sooner we start talking, the more time we will have to do it properly. What we do not want is somebody coming to us later and saying: 'Here, this is what you have got' This is the big chance for the Northern Territory people to determine the rules for how the Territory is going to be. Let's make the rules ourselves and then we can only blame ourselves if it goes wrong. Then again, we have the right to change it if we get it wrong. That is like being an adult, as opposed to being a kid with somebody holding our hand all the time. That is what this move is all about. It is moving towards growing up.

Thank you very much for having us along. If you want us to talk informally, we can do that. However, I close the formal part of this meeting and thank you very much for coming along and listening to me.