PUBLIC HEARING

DARWIN — Wednesday 26 July 1995

PRESENT:—

Committee:

Mr S. Hatton

Mrs M. Hickey

Mr T. Baldwin

Mr P. Mitchell

Mr W. Lanhupuy

Mr J. Bailey

Officers assisting the Committee:

Mr R. Gray (Executive Officer)

Mr. G. Nicholson (Legal Adviser)

Appearing before the Committee:

Mr Alistair Wyvill

Mr Michael Spargo

Mr Trevor Riley

Mr John Reeves

representing the NT Bar Association

Mr Peter Carroll

Ms Sandra Rew

Mr David Shannon

Mr Jeff Hoare

Mr Allan Whyte

Ms Joanne Lee

NOTE: This is an edited transcript.

Issued: 29 August 1995

Final Edited Version

Mr HATTON: I call this meeting of the Sessional Committee on Constitutional Development together, and welcome the representatives of the Bar Association.

The purpose of today is to answer any questions from members of the public in respect of the work that is currently taking place in relation to our role in the constitutional development of the Northern Territory. Our secretary has received submissions from members of the public and organisations. These have covered the work that we have done to date and views about where we should be heading.

In opening, I should note that our committee has been operating in various forms since 1986. To define it in simple layman's terms, our role has been to research and investigate issues associated with the development of a Northern Territory constitution, including consultation with the people and development of a draft constitution to be submitted to the parliament. The committee's role also includes putting recommendations to the parliament on the processes to be followed, firstly in creating a Northern Territory constitution, and secondly for the achievement of statehood for the Northern Territory. The ultimate goal of the committee's work is that the Northern Territory will become a state in the Commonwealth of Australia.

The committee is in the process of developing a draft constitution for the Northern Territory. In parliament, we have already tabled a recommendation on the formation of a constitutional convention of Territorians. We are recommending that this convention be charged with the responsibility of taking our work - including all submissions, discussion documents and our draft constitution - and working through it to develop a proposed constitution which would eventually be put to the Northern Territory people at a referendum.

Our target date for the referendum is 1998, which would then enable a period of 2-3 years during which negotiations would be held with the federal government of the day, to clarify conditions and circumstances for a transition to constitutional statehood in 2001, the centenary of federation. That is our broad timetable.

Towards that end, we aim to complete the preparation of a draft constitution by the end of this year, so that it can be tabled and debated in parliament early next year. In addition, during the first half of 1996 we aim to submit proposed legislation for the establishment of a constitutional convention with the objective of having that convention in operation by the middle of 1996. That is the framework for what we are doing.

During the June sittings of parliament, we produced what we call an exposure draft for the new constitution. This is not a complete document in any way. It reflects our work to date on the first 7 parts of our proposed constitution. As you can see, we have put forward a number of options in relation to specific clauses. For example, there is a choice in relation to the constitutional entrenchment of single-member or multi-member electorates, or whether it should be left to be determined by legislation at any given time. Three options are presented in terms of how the constitution could be constructed to achieve those results.

Most of this document deals with what will probably be described as the mechanical clauses of the constitution. It has not yet dealt in detail with specific issues. These matters, such as bills of rights and entrenchment of individual or group rights, are covered in discussion papers. Some of those issues are yet to be fully worked through. We are keen to receive views and submissions on all of those areas.

Please understand that this is an exposure draft. The committee has called public meetings to find out the views of the community. We want to know whether we are heading in the right direction or whether people feel that we should be making adjustments. We want the document which we produce for the parliament to reflect the views of Northern Territory people as closely as possible. Maggie, would you like to add to those initial points?

Mrs HICKEY: Steve covered the basis of what we are about in this round of consultations. People will be aware that during the past few years we have been moving around the Northern Territory, both in urban areas and some Aboriginal communities. We have also tried other means of accessing Aboriginal people, such as through ATSIC regional councils.

For the next 6 months or so, there is a real opportunity for the public to have input before the constitutional convention is established. By December of this year, we would hope to have gathered as much written and verbal material as possible prior to the election of that constitutional convention.

As Steve said, we are very keen to receive submissions from associations such as yours and from individuals. We are also very ready to meet with specific groups at their behest, if they feel that that would be useful, to extend the information exchange between our committee and the community.

This really is a draft. It is something that we will provide to the constitution convention to deal with however they wish. It

is a guide to the way in which we feel things should be moving along. We feel that the matter should ultimately be in the hands of Territorians, although as parliamentarians we have particular views. We certainly have a view on things like citizen-initiated referenda, which is not necessarily in accord with the views of the general public, who will take this and run with it to formulate a constitution for the Northern Territory.

I think that is probably all that I really want to say, except that I think that this will not be the last opportunity for individuals or groups to have input. We welcome input at any stage.

Mr HATTON: Having said that, does anybody want to ask questions?

Mr RILEY: Perhaps I should introduce us first. I think most of you know John Reeves. Michael Spargo and Alistair Wyvill are also in attendance. I am Trevor Riley, President of the Bar Association. As you probably know, we represent all barristers in the Northern Territory. We are affiliated with the Australian Bar Association and, through it, the Law Councils of Australia. So we have access to very significant resources. We also have our own learning in law school and subsequently, which has given us expertise in some of the areas you are dealing with. In our professional capacity, we do not pretend to be able to offer much comment on the social issues. We have our personal views on those. We can, however, offer considerable comment on the legal issues.

Firstly, we would offer our congratulations to the committee on the exposure draft. I am pleased to hear you say, Mr Hatton, that the document is not as wide as we perhaps thought it was. I do not know whether you all have it yet, but we have provided a written outline of a submission for this point in time. Some of that may reflect the perception we had, which was that this was basically the document which would go up, and that it would not be expanded to cover other areas. You have answered one of our questions in relation to that, and I was very pleased to hear it.

We are here for 3 purposes today. The first is to inform you that we will be making written submissions in relation to some of the issues that arise and are not yet addressed in the draft. We will hopefully be doing that within the time limits you have set. Secondly, we want to offer our assistance, given that we do have access to fairly wide resources and some expertise within our ranks.

We do not claim to be expert in fields other than our own - that is, as barristers and people who have the capacity to assist with drafting and with legal concepts, and also in promoting debate within the community. One of our concerns, which I am sure is also one of your concerns, is that the debate in the community be as wide as possible. Debate on the issues needs to be broad as well.

You have already answered some of our concerns in relation to the third area in which we would like to contribute. Between now and the forming of the convention, and more importantly before the convention, we believe the debate needs to be as wide as possible.

For example, our written submission makes comment on the preamble to the exposure draft, which is a sort of legal history of the Northern Territory. It is appropriate that such a history be contained in the document but, without expressing a view either way except to say that it is an issue which should be raised for debate, we wonder whether it should not express the aspirations of the people, given that this is a document designed to last not for a decade or but perhaps for one or two hundred years.

If we have a single criticism of the document at the moment, it is probably that it is too legalistic. It may be that the community would wish that some of their aspirations be recorded in the preamble, to give colour to the document. There are many examples of that. The American Constitution is one of the most obvious. We would invite the committee to consider the prospect of putting forward a number of different preambles. You have the current one, and I suspect that there may not be a great deal of dissent from what you have done there.

Perhaps, for the purposes of debate, you might include an alternative preamble or a number of alternatives, including things that might be seen as the aspirations of the people of the Territory. These might include freedom of political activity and the freedom to have a multicultural community living in harmony together. Those sorts of things should perhaps be put up for debate. The people may say that such things are not appropriate for inclusion, and the committee may form a view on that, but the matters should at least be debated in public and at the convention.

Of course, you ultimately need a document such as this. However, if this is the only preamble which goes to the convention, people will not be able to fully ventilate the alternatives. It is like an agenda. It sets the framework for debate.

We would invite you to broaden the discussion. There is no reason why you as a committee, or as individuals, should not say what you think is right. You should, however, provide some alternatives.

Mr HATTON: In respect of that, is the paragraph at the bottom of page 15 heading towards the sort of view that you are talking about?

Mr RILEY: Yes. It may be much broader than that. People may want a whole list of things.

Mr HATTON: It is a question of what you put into it. There is a philosophical statement in the preamble, and what you may consider in the context of what might be referred to as the bill of rights type of issues.

Mr RILEY: They are interrelated. If there is no bill of rights, you might like to see more put in the constitution. If there is a bill of rights, you may not need a preamble along the lines we are discussing.

Mr HATTON: Integrated within the document, we have sought to cover rights that, in the committee's view, should be entrenched irrespective of any bill of rights or other statement of rights - for example, a person's right to vote by way of secret ballot. Such matters are integrated within elements of the draft. I am not suggesting that it picks up all the pieces. There are other things like freedom of speech.

Mr RILEY: What you are saying is that they may be addressed within a bill of rights.

Mr HATTON: One of the debates is whether we should have a bill of rights, whether such matters should be dealt with under the constitution, or whether they should be covered under the concept of organic law,

Mr RILEY: That is an interesting concept.

Mr HATTON: It could also be entrenched by way of legislation. There are options. Do we deal with the evolution of our democratic right through the processes of conventional common law history? It may be sufficient. There has been a lot of debate around those particular questions. I would be very interested, whether today or at some future stage, to hear the views of the Bar Association on such matters.

Mr RILEY: Save for the separation of powers, we have deliberately refrained from forming a view on significant aspects. Rather, we have said that we would like such matters to be promoted as open for debate, so that people ultimately have a choice as opposed to being steered in one direction.

Mr HATTON: Actually, in 1987 we produced a document towards that objective. It set out all the different options for a constitution. It went nowhere. That is why we decided that we really have to do something which has the terminology of a constitution. We have included options so that people such as yourselves can say: 'You should change this and you should add that'. It starts to focus the debate much more.

Mr RILEY: I started off by congratulating you on this document. One of the reasons for doing that was that you have put forward a proposal and you have given some alternatives. I suppose all we are saying is: 'Do not limit it to that. Make that applicable to areas such as the preamble and put forward some alternatives there'. Given the experience it now has, this committee will obviously be quite influential if it says that it thinks something is the way to go. People should have the alternatives so that they can participate.

Mr HATTON: If the association is interested in bringing some ideas forward in respect of the preamble, I am sure that the committee would be very interested. This is going to be a people's document. It is not up to us and our legal advisers to sit here and do all the writing. We are trying to get to the stage where people say: 'We think this should be included and here is a suggestion on how you can adjust the words to express those aspirations'. I think the Bar Association would be one of the more competent organisations in the Northern Territory to be able to address some of those issues. It is the nature of your profession.

Mr RILEY: Yes. We could produce alternatives and people can tell us which is right. The convention will tell us.

Mr HATTON: At the end of the day, the convention will be the people who finalise the document.

Mr RILEY: The other matters we have raised are along similar lines, although the separation of powers is one issue that will be probably a major debate at another time.

On page 2 of our written submission, we talk about fundamental principles and whether they should be incorporated. We list some of them on page 3. These should at least be covered as options for people to discuss and vote on. Given what you have said, they may be incorporated at a later time. However, at the moment they are not necessarily clearly set out in the exposure draft. We have talked about some of them already - freedom of communication, freedom of religion and so forth. But accountable government, for example, does not appear there. It is there as a concept but it does not appear specifically. You do not have a public auditor or a ...

Mr HATTON: It is not entrenched constitutionally. This is one of the debates that we are trying to work through. How much goes inside the constitution and how much do you deal with through the legislative framework? What should be in the constitution and what should be in some other legislative form? What provides the framework for that legislation? We were not planning to have a constitution that is 500 or 1000 pages long.

Mr RILEY: And, of course, what is appropriate today may be entirely inappropriate in 50 years' time. I agree that you should keep it as broad as possible but I expect that the concept of accountable government will be the same 50 years from now.

Mr HATTON: One would hope so.

Mr RILEY: Otherwise we would not be here.

Mr HATTON: We can dream.

Mr REEVES: Much depends on the amendment provisions for the constitution. If the constitution can be changed fairly easily, you can treat it in the same way as general legislation.

Mr HATTON: We have not drafted that yet, as you are obviously aware. I know that it is the unanimous view of our committee that we would be recommending that the constitution must be amended by way of referendum of the people.

One of the issues that we are debating is whether or not we would incorporate in amendment provisions of the legislation, mechanisms enabling such processes as citizen-initiated referenda. This would involve a power, if a certain number of signatures were collected on a petition, to force the parliament to put a question by way of referendum. This empowers the people to have more control over their own document. This has arisen because, no matter what people may think, under our federal constitution a question is not put to a referendum unless the federal parliament decides that it will be put. We are debating and discussing amongst ourselves the question of putting such authority into the hands of the people of the Northern Territory through such a mechanism.

Mr WYVILL: There is an additional point here. You mentioned the dichotomy between putting it in a constitution and putting it in legislation. I am sure you are aware that, during the last 3 years, the High Court has been busily implying fundamental freedoms in the Commonwealth Constitution. There has been criticism of that role of the High Court. It has been seen to be undemocratic that 7 people in the High Court can to decide that suddenly we have an entrenched right which you cannot find in the constitution.

Mr HATTON: They are 7 unelected and unaccountable people.

Mr WYVILL: That is right. One of the points we are making is that, if you do not discuss what these fundamental issues are now, somebody will do so later on. They may be the unelected and unaccountable judges, as you say. We are saying that, with this constitution implication trend, it may be prudent to bring it out in the open now and state it clearly. If you do that, no one can come back later and say: 'Hey, you forgot to mention this'.

Mr HATTON: It is true.

Mr REEVES: That is largely a result of the Australian constitution being ironclad. You cannot change it easily.

Mr HATTON: It is like the process of the evolution of common law. It moves as broad community attitudes shift. As social attitudes shift, there is a gradual reinterpretation of the common law. If you tie it down too tightly, you may limit that capacity for the expression of the basic direction of society. If you require an amendment to the constitution to get interpretations, you may well be doing the community a disservice by freezing it in a sociological time warp. That is the balance we have to wrestle with.

Mr WYVILL: The problem is that the Australian constitution is just bereft of anything. If you read it, it is a most unenlightening document. It is more important for what it does not say than what it does say. Obviously, you are heading in a different direction here, which may solve the problem.

Mr HATTON: The concept of expressing people's desires about the sort of society they want is interesting. It may be useful to consider it in the context of expanding paragraph 15, which states:

The people of the Northern Territory voting at the referendum have freely chosen to associate in accordance with this constitution as free, diverse yet equal citizens and to be governed in accordance with democratic principles.

I think we are heading towards the concept that you were referring to.

Mr REEVES: That is very broad. It could be in any constitution in the world.

Mr HATTON: It could be in the Russian communist constitution.

Mr REEVES: The Territory is in a unique position, say in relation to the proportion of our population who are Aboriginal people. There is no expression of that uniqueness in the general preamble but it is something that Trevor mentioned. For example, in clause 15 you might express, on behalf of the people of the Territory, an aspiration to have harmony between the races. A simple proposition like that might sound like a motherhood statement. However, those are the sorts of aspirations we think you should be expressing in this sort of document.

Mr WYVILL: This is a document that will be read by a lot of school children. It is important that it be understood, not only by lawyers and people who argue about it in court, but by our children. They should be able to see what we were thinking about when it was drafted.

Mr SPARGO: The school children will not read it if it is like the Australian Constitution. At least the preamble should be considered at that level. It might not go beyond that.

Mr RILEY: This point may have been made earlier. If a High Court looks at the document and is going to imply rights, it will have to do so in that context. Everything we are saying at the moment seems to be pushing towards a more open and wider preamble. But I say again, just to make sure that it is clear, that we do not have a view as an association. All we are saying is that these things need to be discussed.

Mr HATTON: It is a good point and something that we can address as a committee. I repeat my earlier offer. Perhaps you could suggest a form or forms of words that we could look at and consider. We understand the principles that you are referring to. You might be able to assist us in our processes.

Mr RILEY: We do have some views on page 4 paragraph 4, relating to separation of judicial power. We will provide you with a more detailed submission on this. We are concerned that the separation of powers really does need to be built into the constitution. I was going to say 'especially in this community' but I think it is essential in every community.

The difficulty is that, at least on our reading of it, the exposure draft would effectively permit a parliament to remove the jurisdiction of the Supreme Court. We have all had to deal with the basics of the separation of powers. Effectively, under this constitution, it seems to me that the parliament could remove the power of the judiciary, the legal arm, simply by taking away the jurisdiction of the court or, alternatively, giving it to someone else along with the court in such a way that the court becomes just a useless arm of government.

Mr HATTON: I am certain that it was not our intention to take away the authority of the judiciary or its important function as part of the democratic governmental structure. Rather, we were seeking to ensure that we did not end up with some sort of arbitration process to sort out the constitution. We did not want to restrict the future Northern Territory with those sorts of constraints.

Mr WYVILL: You have the recent decision of the Human Rights Commission. The approach we suggest in terms of drafting is this. Rather than giving a blanket power to judicial authority through other bodies, you should draft an alternative which defines quite specifically the circumstances under which you think it appropriate that judicial power be given elsewhere and state expressly that reserve areas cannot be touched.

Mr HATTON: Perhaps our legal adviser, Mr Nicholson, might want to join this debate.

Mr NICHOLSON: I was going to comment on the first point Trevor made. I do not think that we have given a capacity to exclude the jurisdiction of the Supreme Court. In fact, we have really entrenched it in 6.13. So I do not really agree.

Mr WYVILL: I must say that I have not come prepared to have a long argument about this. What concerns me is that it be entrenched.

Mr NICHOLSON: I think in fact that we have gone further than the states.

Mr WYVILL: But under 6.3 ...

Mr NICHOLSON: 6.13.

Mr WYVILL: No, under 6.3 on page 53 ...

Mr NICHOLSON: I am talking about page 51.

Mr RILEY: Yes, I have seen what you are talking about, but it has to be read in the light of 6.3, which means that you can effectively take away the jurisdiction. You do not have to say: 'Supreme Court, you have no jurisdiction'. But you can effectively take the jurisdiction away by using the power that is contained in 6.3.

Mr NICHOLSON: Well, you can create a concurrent jurisdiction.

Mr RILEY: Concurrent and ... [inaudible]. I mean, we are not talking about what is going to happen tomorrow. We are talking about what might happen in 50 years' time.

Mr NICHOLSON: I am accepting the second leg of your argument, not the first.

Mr HATTON: If I can summarise, the lawyers are suggesting that, whilst this exposure does entrench the rights of the judicial function and the concept of its powers and responsibilities, it creates an additional right that could duplicate and eventually supersede the judicial processes established under the constitution. That is essentially the point you are making.

Mr WYVILL: I am not sure that Graham and I are that far apart in the sense that we know what we want to achieve.

Mr HATTON: Yes. We all want to achieve the same thing.

Mr RILEY: Yes. It is just a question of whether this does it or not. Then it becomes a drafting problem and we should be able to deal with it.

Mr HATTON: Perhaps you could put your minds to it and we will certainly address it. There is certainly no desire on our part to leave a loophole like that in the document.

Mr BAILEY: One of the things that may end up covering some of those legal interpretations is the discussion surrounding the legal status of comments in discussions leading up to the final framing.

In other words, you may state in a rambling speech in the Assembly that you are trying to make sure you achieve the ongoing role of the Supreme Court and the capacity to set up the Human Rights Commission and things like that. But you are definitely not saying that you intend to set up something that basically takes over the role of the Supreme Court. If you basically entrench that commentary as well, even if a smart lawyer or perhaps a government minister believes they have found a loophole in the constitution that allows them to get around the Supreme Court, the commentary will make the original intention clear. People will be able to look at it and say: 'This is what they were trying to do'. Any challenge using the constitution as a basis would have to take that intent into account, as well as the potential legal interpretation.

Mr RILEY: What you are saying is quite right. However, in 50 years' time, you might not want to be relying on somebody finding speeches and interpreting them in the way that you want them to be interpreted. If it can be effectively done in the document, that is where it should be done. You are quite right, however. We rely on second-reading speeches. If the minister makes a speech setting out the intentions, that can be relied upon.

Mr BAILEY: But it cannot be legally used at the moment. That is the problem.

[Brief inaudible discussion.]

Mr WYVILL: Most importantly, unless it is mentioned in the constitution ...

Mr BAILEY: That is what we are saying. It would be within the constitution. It almost seems that, as you move along, it is easier to reinterpret a single sentence within an act or something like that and change its intent, than it is to actually look at the statements being made about the intent. It keeps the focus much better than going back to the original discussions. That sort of information is much more difficult than to just argue on a technicality that some earlier legal description said that if you have this before that and that after that, you would change the meaning of it.

Mr HATTON: This is ahead of where we come to with our drafting process. We are currently discussing the constitutional entrenchment of a clause which covers the principles of interpretation of the constitution. This would perhaps require reliance, in terms of determining what is meant by certain words in the constitution, on all of this committee's discussions, the work of the constitutional convention and second-reading debates in parliament. A number of us are more than a little concerned about the ability of certain members of the judiciary, from time to time, to find opposite meanings in the same words. That can lead to a constitution created by the judiciary rather than the people.

Mr SPARGO: Perhaps that is where a broader preamble would come in. That is where those philosophical matters could be addressed.

Mr HATTON: Perhaps. Perhaps it could also be done through some other process in terms of reference to interpretation of the constitution.

Mr WYVILL: I think that is particularly important, Steve, not only for the reasons given but also for historical reasons. One of the problems with the Australian Constitution is that we cannot go and look at the debates to understand what was intended by the things they talked about in the 1890s. The same problem will occur here. There will be significant issues that we cannot anticipate at the moment because of technology changes. We do not want provisions innocently drafted now to be given whole new meanings because of changes in historical circumstances.

Mrs HICKEY: One of the issues of concern to the committee is that we have to be careful about inclusions so that we do not, by definition, exclude other factors that might impinge contemporaneously or at a later time.

Mr HATTON: The concern relates to whether the entrenchment of specifically stated rights may create an interpretation that is not written down, and whether bills of rights should be dealt with at a national rather than a state level. We are talking about a state constitution which will fit within the framework of the Australian constitutional federation. This is not a separate nation where things occur in isolation from the rest of the country. Whilst many issues are debated in constitutional terms, we need to focused on the context in which the drafting is taking place. It does not mean that we cannot do it but we at least need to think it through.

Mr REEVES: Can we just go back to the separation of powers? I want to make it clear that we quibble with the statement in 6.3, in the section headed 'Purpose of the Clause', that the strict separation of powers doctrine is not applicable to the states. We do not believe that that is necessarily a correct expression of the law as it is, or as it will be if it gets to the High Court. It may be a question of whether or not state legislatures have the power to erode the jurisdiction of a superior court by granting that jurisdiction to some administrative or quasi-judicial body.

Mr HATTON: There is a case on at the moment, is there?

Mr REEVES: There may be.

Mr RILEY: It really is a matter that you could debate and ...

Mr HATTON: It is an issue that we would want to put beyond question anyway. I think we can all understand what we want to get to. With the greatest of respect to your profession, what we do not want is lawyers making millions of dollars and driving people crazy while they try to work out what we were trying to say.

Mr NICHOLSON: Mr Chairman, if we are to have a qualified clause 6.3, we would need some guidance as to how it could

be qualified. At the moment, I am not sure how you would draft it in terms of the submission, or what sort of parameters you would put around it.

Mr WYVILL: Perhaps we can give it our hardest and best thought and send something over to you.

Mr NICHOLSON: It would be very hard to draft satisfactorily. It is easy to draft something that is either in or out.

Mr HATTON: Something that is half in.

Mr RILEY: We are not pretending that it will be easy. We were going to rely on you, and with justification. But we will have a go. Those are the issues I wanted to raise. Does anyone have other issues?

Mr SPARGO: I would like to invite the committee to indicate any ways in which we can be of further assistance. Trevor has indicated that we are strongly supportive of the process and we are happy to bring to bear any skills that might be considered relevant.

Mr HATTON: Because we are a bipartisan parliamentary committee, of necessity we need to work through this process. We would be more than happy for you to liaise with Mr Nicholson. I would ask you to never feel constrained about coming and talking to the committee. We are meeting fairly regularly, particularly at the moment. Do not feel constrained about writing to us or asking for a meeting with the committee to raise issues. We are really trying to develop a very inclusive process.

I would say for the public record that that applies to any people or groups in the Northern Territory. We are actively trying to adopt an inclusive process. Equally, members of the committee would be more than happy to go out to discuss this process with groups or associations. Invite us to come along to one of your meetings, for example, to throw ideas around. We are trying to get a feeling for where the Northern Territory community would like to go on these questions.

Mr REEVES: Is the timetable 6 months of further sittings of this committee before it reports in the appropriate process?

Mr HATTON: Some time in 1996. We would hope to have finalised a lot of our ideas by Christmas. That will be refined in the first half of next year. We would need to get the document debated in parliament in the first half of 1996. Otherwise, we will be lagging behind. We believe that 11 years is long enough. 10 years is long enough to have produced something.

Mr REEVES: For the next 6 months at least, you are open to accept any written submissions that we would have to make on particular areas that we flag, or any others.

Mr HATTON: Yes. Or verbal submissions.

Mr BAILEY: Also, bear in mind that, while we have developed a timeline for our work, we will not be setting the timeline of the constitutional convention. The committee does not initiate the convention. The government does that, through legislation in the Assembly. We have to wait to hear from the government as to what timeline it is working on. What we have put up as an outline for the constitutional convention may or may not be reflected in what the government decides. While we have a role, the actual establishment will be debated in the parliament as part of the debate on the legislation. We are assuming that they will largely do what we have suggested but it is up to them to decide.

Mr MITCHELL: Then again, when it gets to the convention it may all be changed anyway.

Mr HATTON: Your association may be interested in Interim Report No 1 on a Northern Territory Constitutional Convention. It contains our recommendations on the establishment of a convention. We recommend that it comprise 50 elected members from 10 electorates across the Northern Territory, each returning 5 members. In addition, we propose that about 16 members be nominated by particular interest groups for appointment to the convention. The reason is that we are trying to ensure that the very diverse nature of the Northern Territory is reflected inside the convention. That is also why we are recommending 5-member electorates. We are trying to enable smaller interest groups to have a chance of getting a large enough percentage vote to elect somebody to the convention. We are trying to achieve a balance, to get the right mix. If people think that is a reasonable approach, the question is: which particular groups should have the right to nominate?

Mr BALDWIN: Without making it too big. That is why we have limited it to about 60 people.

Mr HATTON: If it gets much larger than that, it will be unwieldy and unworkable.

Mr RILEY: Is that why you have left out women's groups?

Mr BALDWIN: We have just put forward some ideas. We have not left anybody out.

Mr HATTON: We said: 'such as'.

Mr RILEY: We had a concern arising out of that process. We have been discussing it amongst ourselves but we have not resolved it yet. It relates to whether you would be encouraging candidates to debate the issues before any election, with a view to finding out where everybody stands. I think there is a problem if people go in expressing set views and positions. On the other hand, if you are voting for people, you want to have some idea of what they are thinking before you put them in.

Mr HATTON: I cannot control what people are going to say when they are campaigning for election to a constitutional convention. However, by having 10 electorates, each of 5 members, there will obviously be a very good chance of significant Aboriginal representation. That relates to the nature of the demography of the Northern Territory. Inevitably, electoral processes tend to pick up people in the prime of life, although I hate to use that term. Those are people in their 30s and 40s, perhaps their 50s. Such processes tend not to catch the young or the elderly. The young will be the inheritors of this and the elderly can probably bring a lot of wisdom and experience.

Significant interest groups exist in the ethnic community. There is a possibility of specific representation of Aboriginal organisations. We would like to receive comment on such matters. There is no clear-cut view about which groups should be represented. Rather, we are interested in ways of ensuring that as broad a cross-section of Territory society be represented as is possible, within the constraints of 60 or 70 people.

I think our recommendations are fairly comprehensive.

[Inaudible discussion.]

Mr REEVES: From a personal point of view, if you have a two-thirds or three-fourths voting requirement, if you do not express it as a simple majority, it would probably result in a constitution that is the lowest common denominator coming out of the convention.

Mr HATTON: Are you actually opposing that?

[Inaudible discussion.]

Mr REEVES: My view is that, if you have two-thirds, only the clearest issues will get through. The more dynamic or controversial issues will not.

Mr HATTON: In order to get agreement, people will end up saying: 'We will all agree not to have this in there'.

Mr REEVES: It will be a minimalist position.

[Inaudible discussion.]

Mr HATTON: In terms of the convention itself, it is our view that we would not want to impose too many constraints on its process or how it carries out its functions. We would prefer to see it creating its own procedures and rules. Once we get it through the parliament, we want to take it out of the hands of politicians and put it in the hands of the people. We are just doing the homework and preparation for that. The people can take over the next phase.

Mr WYVILL: In terms of encouraging the debate, we have indicated in our submission that there may be some people who could contribute something solid and valuable to the process. Tony Fitzgerald comes to mind, for example. He made a very close examination of the parliament in Queensland and the state system and made certain recommendations. You might not agree with what he said; it is 5 years on. I would be very interested to hear what he had to say about what should be put into a state constitution. I am just wondering whether the committee has any plans to seek the involvement of such people ... [inaudible].

Mr HATTON: Most of the documentation has been distributed to an extensive mailing list. It not only covers the whole of Australia but also in some cases extends to overseas. Over the years, people from a number of areas and professions have been placed on the mailing list. We are doing that.

One of the issues in respect of the convention is the need to find a balance between the people who are debating and voting, and the advisory and support system that is available to them. What sort of legal, academic or other support needs to be provided? That certainly is an issue that the government will need to address, not least because of the need to provide for it in the budget.

Mr NICHOLSON: It is in recommendation 12.

Mr HATTON: Thank you very much everyone. It has been a positive contribution which has stimulated a lot of thought. Please do not hesitate to get involved. We would say to you, and to any other individuals or groups in the Territory, that the time is at hand. We are down to the crunch time. We cannot engage in academic debate for much longer. We are into the hard graft and we would really like people to be involved in the process. There will be further opportunities for input into the committee's processes this year.

Mr RILEY: I expect that we will be coming back to you when we have some concrete suggestions and proposals.

Mrs HICKEY: Although we have some time constraints, we are not rigid in ...[inaudible].

Mr HATTON: Thank you very much. We hope to be in regular contact with you.

Mr HATTON: In reconvening the meeting of the sessional committee, I welcome Mr Peter Carroll to make a submission. Peter, it is good to see you along. We have a copy of your original submission.

Mr CARROLL: Would you like me to read it?

Mr HATTON: No. Could you just speak to it?

Mr CARROLL: Thank you, Mr Chairman. I come before you in my personal capacity, having spent 28 years in the Northern Territory working primarily with Aboriginal people with a focus on Aboriginal language. My concern is to put before you the reality that, in rural parts of the Northern Territory, Aboriginal languages are strong, powerful and very influential. While, through the education process of past years, significant numbers of Aboriginal people have acquired a good command of English, many Aboriginal people in rural areas do not have good command of English.

In earlier stages of the committee's work, that reality was recognised. A range of consultations were conducted in Aboriginal communities where Aboriginal languages were used and interpreters and translators engaged to enable Aboriginal people to participate in the committee process through their languages. Also, I am told by Mr Gray that this parliament is one of the few parliaments in Australia where Aboriginal languages are used in the Hansard record. I assume that is correct and it is a very significant achievement for the Northern Territory. It highlights the reality that Aboriginal people comprise approximately 25% of our population.

In my submission, I refer to the fact that the last 2 censuses show that, in over 70% of Aboriginal homes in the Northern Territory, a language other than English is used. That is a very telling statistic. In some communities, an outcome of the whole self-determination and development process, is the employment of Aboriginal people in local organisations. In many cases, those Aboriginal people will be bilingual. This means that when ordinary members of the community visit the community council, the office or the shop, they will be helped by an Aboriginal person from their own community who knows their own language. This means that, in some communities, the need for the ordinary Aboriginal person to use English is fairly restricted. This reinforces the importance of Aboriginal language. I am really endorsing past actions of the committee which recognised the crucial importance of Aboriginal language.

The second aspect, which flows from that, relates to some of the material you have produced which indicates that you are working towards a constitutional convention, possibly starting next year. A range of documentation, including the NT News which quoted your tabling statement earlier this week, indicates that the constitutional development process will be fairly limited without the support and recognition of the basic rights of Aboriginal people and their involvement.

I believe that, if the constitutional development process is to be the success it needs to be, the committee really needs to

engage in another process of consultation with Aboriginal communities between now and the convention. I understand you have begun the process of consultation with the land councils and the ATSIC regional councils. Both those levels of consultation are crucial. Over and above that, although you may not have the time or resources to go to every community, there is certainly potential to go to the major communities. In such a consultation exercise, I suggest that you should engage someone to advise you on the major language groups of the Northern Territory, and which languages are spoken by which communities, and that you should seek to have regional consultations with Aboriginal people in different parts of the Territory. This would complement what you are doing with ATSIC and the land councils.

There are a number of other issues that flow from my submission. However, I think I have said sufficient in terms of introductory remarks. I am happy to respond to any questions from members of the committee.

Mr HATTON: I think it is actually the desire of our committee. In our last significant round of community consultations between 1989 and 1990, we visited 70 or 80 communities. We took interpreters with us. As you mentioned, many people spoke to us in their own language and a Hansard record was kept. We anticipated that the interpretations that we were receiving would be contextually accurate. As you are aware, there is always a danger in those situations that that may not be the case. Nonetheless, we found it very valuable. When the Hansard records were finally produced, both in the traditional language and in English, our reading of the commentary gave us a much better insight into the core issues that were concerning Aboriginal people at the time and, I believe, still are.

I am certain that I speak on behalf of the committee in saying that we are currently trying to organise a program of visits, not as an entire committee but through subcommittees, which will again do the rounds again during the remainder of this year. We have a visiting program to ...

Mr CARROLL: From talking to the committee secretary, I can appreciate the demands on you.

One principle comes to mind. I do not know whether it would be possible for the committee to seek the assistance of local members in some situations. For example, the member for MacDonnell has a long record of experience in his region, and possesses skills in Aboriginal language. When you are consulting in that region, there may be potential for him to contribute to the work of the committee. I mention that as an example of the principle because I think it is crucial, if the process is to succeed, that the views of traditional Aboriginal people in rural communities are taken into account. That is an area of the Territory that Wesley represents.

I am not in any way criticising Aboriginal organisations that you are meeting or which are appearing before you but I think there is a silent majority out there. I have interacted with a number of leaders of communities over the years. For the last 4 or 5 years, they have been repeating their wish to work with the Northern Territory government in a cooperative way. That has emerged in the programs of several government departments. That is a very strongly held view in many communities. If you can tap that view, and if my perception is right, it can only add to the strength of your committee's work and enhance our progress towards constitutional development.

Mr HATTON: We are also very lucky in having the member for Arnhem on the committee. In moving around Arnhem Land, we have somebody who can communicate quite fluently and crisply. Mr Lanhupuy has been on this committee since 1986. He has been involved continuously in the process.

Mrs HICKEY: I have a question, Mr Carroll. In terms of your submission, I take it that you are really talking about the process that this committee is going through, rather than inclusion of any of those sorts of recommendations or issues within the constitution. You are talking about information dissemination and exchange in the process leading up to the constitutional convention, rather than actually building into the constitution some of the principles that you talk about, such as the importance of Aboriginal languages. Your submission does not suggest anything that differs from what we have in the exposure draft.

Mr CARROLL: No, you are right in saying that my submission focuses on the process. However, there are things that flow from it. For example, I make a point about Aboriginal leaders describing their own groups as nations. Whilst there is a common Aboriginal tradition shared by Aboriginal people throughout the Northern Territory, there are very significant differences between clan and family groups in various regions. A leader of the Oenpelli people, who died a few years ago, said adamantly: ‘Do not call us tribes. Call us nations’. I think he used that word very advisedly.

One of the things which Aboriginal groups seek to do at a local level is control access and entry to their land. They have their own ceremonial process. They are linked with one another through family and kinship. They have links to land and

the protection of sites. From their perspective, that is very important. I am aware of agreements made with some of the Inuit people in the United States and Canada. Such agreements have been made with regional groups. There may be potential, within the context of constitutional development, to emphasise the importance of Aboriginal languages in local regions.

I have drifted from your question a little but your assumption is correct. I did not seek to address the question of the place of language in the constitution. However, do not take my silence to mean that I am saying there is no place for language in the constitution. Most white Australians who have never been exposed to other languages do not really appreciate the power that a language has or the difficulties which people have in communicating in a language other than their own. In my own work in western Arnhem Land, I have found that the knowledge of the people's language has given me considerable insight into their thinking and their approach to issues.

Mrs HICKEY: Further to that, I am thinking about the processes within the constitutional convention. Clearly, Aboriginal people will be elected to that convention. and we ...

Section of proceedings inaudible due to equipment malfunction.

Mr BAILEY: ... rather than just getting the partisan party view which you always get when you have a single member.

Mr CARROLL: As an example, is it possible that an area such as Arnhem Land might become one of those electorates with 5 representatives?

Mr BAILEY: If population were the criterion, you would need to look at about 2.5 existing electorates becoming a single electorate returning 5 representatives. Arnhem and Arafura, for example, might become a single area returning 5 people.

Mr HATTON: Perhaps part of Nhulunbuy as well.

Mr BAILEY: Would that bring in sufficient variety of people to represent the number of language groups?

Mr CARROLL: Probably not. It is possible that, if you set up a situation in which there are 5 people, you may well get some of the figureheads and leaders within a range of organisations. It is appropriate that they be participants but, again, my feeling is that most major Aboriginal organisations conduct a lot of their business in English. I think that, in many cases, they have not understood the traditional Aboriginal viewpoint enough.

That is the reaction with some of the ATSIC regional councils. The chairman of one Regional Council said: 'We do everything in English'. That is fine. I can understand why they need to do that. However, if that excludes the viewpoint of Aboriginal people throughout the communities and homeland centres in the electorate, it is a significant gap. ATSIC people are aware of that and have a whole range of strategies to overcome it but if it were to exist in our convention, it would be a very significant gap. I appreciate your problems with the numbers and everything else but to answer your question, I do not think that 5 people, say from Arnhem and Arafura, would be an adequate representation of the Aboriginal communities in those electorates. That is an example.

Mr HATTON: The probability is that it would give a chance of better representation than a series of single-member electorates.

Mr CARROLL: Undoubtedly, yes. There is no question of that.

Mrs HICKEY: I guess the other aspect is the importance of the 5 representatives ensuring that they represent the views of the people within that electorate. Again, the process is important. I noticed this with some dismay at the information stand at the Tennant Creek Show and I have heard it from people who have been staffing the display at the various shows. In many cases, although they are not expressing disinterest as such, the concept is not grabbing the attention of Aboriginal people. One apparently said: 'I leave that sort of thing to my local member'.

We obviously have to get beyond that if we are going to get a true reflection of views, especially of traditional Aboriginal people. Perhaps this will need to be addressed in the processes of the constitutional convention. When people have met together and then return to their constituencies, there may be a need for linguistic assistance to ensure that the messages get across.

Mr CARROLL: That raises the whole question of how you determine the membership of the convention and the representation of groups throughout the Territory. From our perspective, being part of a Westminster system, we are used to electing a member who puts views in various forums. However, from my observation of the reaction of some Aboriginal people, I suspect that their notion of committee participation does not really include the representative concept.

In a community, some clans and family groups will be represented on the community council. In many cases, the loyalties and obligations of the individuals concerned are to their own groups. The principle of representing people or interests other than your own is not one with which many Aboriginal people are familiar. This highlights the different approaches within the 2 societies.

Your documents and papers make it vary clear that Aboriginal people have a crucial role in making the constitutional development process a success. You are looking at recognition in terms of the constitutional process and the preservation of rights in the constitution. I really think that, if we are going to achieve that, the process during the next 6 to 9 months is fundamentally important. It may require you to make additional provision for representation of Aboriginal people, whether as a subsidiary process or through regional workshops of the constitutional convention.

In your consultations with ATSIC regional councils and the land councils, you might invite them to identify the major languages in regions of the Territory, and their own focus in relation to them. For nearly 20 years, the Northern Land Council has been consulting with Aboriginal people across the Top End of the Territory. It may have very clear views that 5 or 6 languages are quite adequate. I have not seen it express that view in any terms but it would be an interesting question to explore with both the land councils and the ATSIC regional councils. Much emphasis is placed on the ATSIC regional councils at a local level and they have to come to grips with that reality in some way.

Mr BAILEY: I have couple of points, Peter.

You pointed out that about 25% of the population is Aboriginal. When we start looking at constitutional issues relating to Aboriginal law, ceremony, land and so forth, do you have any views on whether or not any of those issues should be largely determined by Aboriginal people for inclusion in the constitution? Or, because they are part of the Territory, should they therefore be decided by all Territorians?

Mr CARROLL: I would favour an integrated approach with a prime role or priority being given to Aboriginal people first. Let them determine what part of their law would appropriately be included in the process. I see that you have prepared a discussion paper addressing the question of customary law. During the last 10 or 15 years there is a whole history in the legal studies area of inquiries and consultations in relation to customary law. However, I would suspect that from an Aboriginal perspective, it is very difficult to look at the whole of society and to say that a particular little bit is customary law.

Most papers on customary law focus on where Aboriginal tradition interacts with criminal law and other legal jurisdictions. I tend to think that Aboriginal people might find it hard to segment part of their society and say that it is somehow different from all the rest. On the other hand, I would acknowledge that when you talk with Aboriginal leaders, the traditional initiation ceremonies of men are seen as a very important part of law. In the Gunwinggu language, the word for law is ‘djamun’, and it is applied to that whole area. It is interesting that they use that word to describe the policeman and that they see the policeman as the law man.

In other areas of Aboriginal life, including the control of land and family inheritance, it links back to the ceremonies. Then you look at the question of important sites that are within the families’ land and require protection. You might start with a definable area that is customary law but it will soon have threads and influence in the whole of Aboriginal life. I find that question rather difficult to deal with in terms of what customary law should be in the constitution, other than saying that you are on the right track in saying that it has to be part of the process.

Certainly, Aboriginal people need to have a prime role in determining what they think is appropriate in the process. However, at some stage it needs to be an integrated discussion with the whole of the Territory. Again, I hear comments by Aboriginal leaders in some of the Arnhem Land communities that they want to be part of the processes on an equal basis with other Territorians, whilst keeping recognition for their own important and distinctive traditions.

Mr HATTON: Would you like to make any other points, Peter?

Mr CARROLL: I have had an adequate opportunity to summarise the submission. The questions have been good and I

have appreciated the opportunity to put my thoughts before you.

Mr MITCHELL: Just a comment in relation to your mention of Kriol. It is very relevant. It is a big communication setup out there. I am glad that you brought it up.

Mr CARROLL: In terms of the details of your constitutional convention, while you will attract criticism from Aboriginal people in the southern parts of the Territory and elsewhere in Australia, you could well consider making Kriol a language in which interpretation could be provided at the convention or in some of your consultations. A group of Aboriginal people are currently undertaking interpreter training through the Katherine Language Centre and they are progressing reasonably well.

Mr HATTON: Thank you very much, Peter.

Before we break, I notice that a number people who are present have not necessarily asked to make submissions. We would certainly welcome any contribution from any person present who feels that they would like to say something or ask questions. We are trying to make our proceedings as informal as possible. If anyone has any questions, queries or views, we would invite you to put them forward.

Ms REW: My question relates to the separation of powers. In your discussion paper on the proposed new state constitution, you did go through separation of powers and checks and balances. The politicising of judges and tribunals was mentioned. That is what I am querying.

Mr HATTON: What page are you referring to?

Ms REW: It is on page 76 of the discussion paper. It refers to 6.3, which relates to the separation of powers. Just on the basis of omission, I took it to mean that judges of the Supreme Court can chair tribunals. I was just concerned that, in a society with the low population of the Territory, it may not be appropriate in political matters. I would query that. Obviously, the committee has considered it and I would like to know why ...

Mr HATTON: Actually 6.3 was not aimed at judges heading committees but rather was saying that you do not have to have a judge.

Ms REW: It is by omission, by not including that in there. Page 76 of the discussion paper states: (inaudible)

The Bar Association queried that too. It says that the options for a new state are to adopt the doctrine, to leave the matter to be worked out by the court, or by implication from the new state constitution. I am saying that, since you have not addressed this, by implication that means that Supreme Court judges can be appointed to tribunals under this constitution. Is that allowable?

Mr HATTON: You referred to page 76. It is in fact page 51 in my document.

Ms REW: Is it? I am sorry.

Mr HATTON: You must have a different edition. You threw me for 6. I was looking at a blank page.

Ms REW: Graham, can you help me out on that one?

Mr NICHOLSON: Mr Chairman, my view would be that under the current proposals in our exposure draft, a judge could sit on a tribunal or a non-judicial body, and if that body had judicial power it could exercise judicial power.

Ms REW: Yes, but has the committee considered the ramifications of that? In the discussion paper, you mentioned that the involvement of judges in political controversy had been increasingly discussed.

Mr NICHOLSON: We raised it in the discussion paper but in the end we decided not to make any provision in the draft constitution.

Ms REW: What was the essential reason for that?

Mr NICHOLSON: Basically, I think the committee felt that it would make the constitution too rigid. It would not give us

the flexibility to deal with ...

Mr HATTON: You are suggesting that the doctrine of the separation of powers be enforced, which would ban judges from doing non-judicial things.

Ms REW: I am talking about Supreme Court judges in the Northern Territory. I would be suggesting that you may bring in Federal Court judges if it is a matter of political controversy.

Mr HATTON: It is an interesting point. If we are looking at the separation of powers and saying that only judges can judge, the contrary argument is that judges can only judge. Essentially, that is what you are putting.

Ms REW: I am saying that Supreme Court judges have a role to uphold justice in our community and to hold a certain amount of respect. It is a very small community. If they are heading tribunals which involve political controversy, they will become involved in that process and their stature will be affected. I would suggest that Federal Court judges or some equivalent should be looked at for that role.

Mr NICHOLSON: Mr Chairman, we have a specific provision in our exposure draft that at least one Supreme Court judge will be on this new body to determine whether Aboriginal freehold land can be disposed of.

Mr HATTON: Yes, that is an example. In developing proposals in the exposure draft to address issues such as the Aboriginal Land Rights Act, the basic premise was that, in a new state of the Northern Territory, the act should in fact be an act of the parliament of the Northern Territory rather than a federal act that only applies to the Northern Territory. That breaches a whole pile of principles.

To provide security and support for Aboriginal people, it is suggested that it be what is known as an organic law. In its form in the federal parliament at the time of statehood, it would transfer as an act of parliament of the Northern Territory and could only be amended by a two-thirds or three-quarters majority of the parliament through a fairly tortuous process. This would make it more deeply entrenched than the current federal legislation.

It is also proposed that certain provisions of the Aboriginal Land Rights Act would be built into the Northern Territory constitution, as well as some different concepts. These could include, for example, the ability for government to compulsorily acquire something less than a freehold title for public purposes and pay in just terms for it. For instance, if the government needs to build a school, it would actually be required to have title for the land on which the school was built, rather than the current inadequate situation in which schools, police stations, health centres and other essential government infrastructure is being built on land over which there is no tenure. It is quite messy at the moment. It is a process to be able to be able to address those sorts of issues and deal with them.

The exposure draft also proposes a mechanism whereby Aboriginal people would have the ability, if they chose, to sell their freehold title voluntarily. That would require a high level of consultation. That is where oversighting by a Supreme Court judge would be necessary to ensure that a series of steps were followed. It would not deny the right of Aboriginal people to do so but it would ensure that all relevant interests were properly taken into account in any such decisions. It would need to be for the benefit of the Aboriginal people.

Few people realise that the Commonwealth parliament still has the power of compulsory acquisition of Aboriginal land. The so-called inalienability only applies to compulsory acquisition by the Northern Territory government. The federal parliament has the right to compulsorily acquire Aboriginal land as it sees fit. It has chosen not to do so to date but there is no protection against compulsory acquisition by the Commonwealth under the Aboriginal Land Rights Act. It is amazing that very few people have taken much notice of that. The only restriction is actually on the Northern Territory government.

Mr BAILEY: Can I just try to get clarification from you? I think I understand what you are saying.

Ms REW: I would like to keep the judiciary separate and not heading tribunals which may or may not change over time.

Mr HATTON: Such as the Penny Easton tribunal or commission of inquiry which is hearing the matters involving Carmen Lawrence.

Ms REW: I would like to keep them totally separate so there is no taint of political corruption or anything at all. It should be totally separate. Why do we have to have Supreme Court judges heading such tribunals if there are alternatives? That is

my only point. It all depends on what you think about the separation of powers. People might say that there is corruption in the states and then you look at the Commonwealth, where they have the separation of powers.

Mr MITCHELL: Perhaps the impartiality of a judge may be an advantage on a tribunal.

Mr HATTON: Federal Court judges do serve on these organisations.

Ms REW: Yes, I am saying that Federal Court judges are acceptable. I see them differently from Supreme Court judges.

Mr HATTON: Why?

Ms REW: From the point of view of our situation?

Mr HATTON: As a matter of principle.

Ms REW: I think they have the same status. It is because the taint of political interference cannot be inferred if a judge comes from the outside.

Mr HATTON: Why? What if the federal government calls in inquiry with a Federal Court judge?

Ms REW: As a resident of the Northern Territory, and looking at our whole history, I would just like to keep it separate. I would just like to get your opinions on what you have discussed.

Mr HATTON: It is an interesting point of principle. You are arguing that under the separation of powers, an independent judiciary is created to carry out a judicial function, and that it should be confined to just doing that, not getting involved with public policy development. I think that is the point you are making.

Ms REW: Yes, it is. That is what they are qualified to do.

Mr BAILEY: I am having a little bit of difficulty with the rationale. Let us take a tribunal such as the Penny Easton inquiry, where no one will deny the political implications. It is a straight up and down political issue. You involve a judge. It is obvious that the terms of reference are political. In a way, you are saying that the judge is then somehow corrupted by doing that. However, if you take it a step further, legislation is often purely political. Whether they agree with it or not, judges have to work within the legislative framework that they have been given to work in.

Ms REW: They are interpreting but they are not judging, are they?

Mr BAILEY: But they have to work within the government's political agenda which determines how that legislation was written.

Ms REW: Yes.

Mr BAILEY: If the government's political agenda says that anyone who walks on the wrong side of the road should be locked away, they have to go along with it. I cannot see how it is any different with a tribunal. Judges are the pillars of doing what the law says. Whether they agree with it or not, they have to apply the law. The government may set boundaries for what the tribunal is established to do, but the judge retains independence in terms of making an assessment within the constraints of what the tribunal is set up to do. I cannot see how you would change ...

Mr HATTON: Perhaps I could give an example. Many commissions of inquiry are headed by judges, who are appointed to that role for whatever reason. The role may involve receiving evidence. It may also involve preparing recommendations on public policy. There was a commission of inquiry into the Australian economy in the 1960s. That is one that springs to mind. It had nothing to do with the political process. It was making a series of recommendations on what we should do with our economy. Would you regard that as a reasonable judicial function?

Ms REW: That is basically what I am getting at.

Mr HATTON: Yes, that is the point you are making.

Mr BAILEY: Was that a tribunal?

Mr HATTON: It was a royal commission.

Ms REW: I have another point. It relates to the convention. I know that it has 50 members, including 25 elected and 16 nominated. Everyone else is elected or nominated, but then the committee comes in. All right, they do not come in as a committee once they are members of the convention. I expect that the convention then elects its own chairperson. However, I query the role of individual members of the committee. I know that the committee has valuable experience but I am wondering why they have a vote.

Mr HATTON: We are also elected representatives of the people.

Ms REW: But the constitution is to limit the powers of government. Looking at it from the outside, I see a conflict of interest.

Mr HATTON: We are also citizens. We are actually elected to represent the people.

Ms REW: Yes, but in this instance everyone else is elected separately.

Mr HATTON: We would have more legitimacy than someone from a nominated organisation.

Ms REW: In this instance, everyone else is elected from the 10 electorates, or is from a nominated community group. I am wondering, in this particular instance, what the 8 politicians are going to do. Who are they representing? On what basis do they have a vote in that convention? That was just my query. I can see the benefit of having them there but I just query their power to have a vote. It means that 10% of the convention is comprised of politicians. These are not politicians elected separately. That is fine if they stand in the 10 electorates. These 8 politicians would be there through no reason other than being politicians. Given that the constitution is to limit the powers of the government, I see that as a conflict of interest.

Mr HATTON: It also creates a form of government. It is not just to limit the powers. It is also to create the form of government.

Ms REW: Yes, but it sets the limitations on the powers of government. The government cannot act outside the constitution.

Mr HATTON: Don’t you think it would assist the convention if there were people who had worked within the system and understood the practicalities of it?

Ms REW: I am all for assistance. I think it should be on a non-voting basis.

Mr HATTON: Let me just say that there is a view that politicians are probably the most representative people. If anyone is entitled to be in there, it should be an elected representative of the electorate.

Ms REW: You are not there as that in this instance. You are there as a member of the committee. That is how you would have got there.

Mr HATTON: You only get on the committee because you are an elected representative.

Ms REW: But in this instance, the election is over 10 electorates. It is a separate electoral process. In this instance, you are not there as a representative of your electorate.

Mr MITCHELL: It is part of the same electoral process.

Ms REW: I query that.

Mr HATTON: I understand your point and I will express a very clear view. I am not having a shot at you. It is a broadly expressed view. However, it is personally offensive to me in the sense that members of parliament anywhere in Australia, no matter which side of the fence they happen to be on, stand up publicly and cop abuse publicly, having been chosen through a fair electoral process to represent the people. Yet they are continually derided as being unrepresentative. The people who make those allegations have never faced elections or stood up or been given endorsement by the broad populace. I do not accept, in any shape or form, the concept that any elected member of parliament does not speak from a

democratically authorised position to represent the people, far more than interest groups which, by their very nature, represent small sectional interests. The role of the politician is to try and balance those competing interests in the interests of the entire community. That is why we have electorates. I will get that off my chest now.

Ms REW: Now that I know your view, I will address something formally in writing so that you will be able to understand my reasoning.

Mr HATTON: I understand what you are saying but ...

Ms REW: I am not criticising the elected politician. I am talking about consistency of election to a convention. It has an entirely different electoral system with different electoral boundaries.

Mr HATTON: But should you exclude parliamentary representatives?

Ms REW: I am not saying that they should be excluded. I think they should be thoroughly included in the process, where they have an important role as advisers. However, I do not think they should have a vote.

Mr BAILEY: Would that be the same for the other non-elected members?

Ms REW: No. They would be nominated as representatives of particular groups which would otherwise be unrepresented.

Mr HATTON: Why should they get a vote?

Mr BAILEY: Can I suggest that the committee is equally split between the 2 major parties.

Ms REW: Yes, it is bipartisan.

Mr BAILEY: In fact, it may be argued that when you are nominating people to be on the constitutional convention, representatives of parliament and political groups would probably be some of the best people to be on the convention. The 10 electorates give regional representation and there is specific group representation. The parliament is one of those specific groups It has already been through an extensive election and selection process.

You could put it in 2 ways. You could say that a number of positions are open for the parliament to nominate. The committee is suggesting that these be the leaders of the 2 major parties, the government and the opposition, together with the committee which not only has a lot of experience but is representative of the 2 major parties as well as the parliament. It is a group which represents a significant proportion of the electorate through being elected in the first place.

Ms REW: Yes. I suppose I would rather see ordinary people elected to undertake this function and to have a more unrestricted say.

Mr HATTON: Could I just say that we might actually be ordinary people too, who happen to stand up and get elected?

Ms REW: Yes, but you would not be nominated as ordinary people.

Mr HATTON: If you get elected to a convention, do you stop being a normal person?

Ms REW: No, but the committee gets disbanded, doesn't it? Once you hit the convention, you are there as ordinary people. You are not there representing ...

Mr HATTON: No, you are there representing your electorate.

Ms REW: But the 10 electorates will have voted for their own representatives.

Mr MITCHELL: This whole process will be going through parliament. We are only talking about recommendations at this stage. Anything you put in will be looked at and probably debated. Do not write to your local member.

Ms REW: Now that I know your responses, I will be able to structure my arguments more effectively.

Mrs HICKEY: Sandra, I think there is another argument which may be useful. In the same way that elected representatives

or nominated representatives of other groups will presumably liaise with their constituents and provide information to them, I would see the parliamentary members as doing the same in parliament. Parliament has a vital role in this. Parliament drove it in the first place and parliament will have to put the arguments to the federal government. Somebody recently suggested to me that we should also be involving our federal members in this process because they would be a conduit between the constitutional convention and the federal government.

If you look at it from the point of view of representation and liaison between those particular interest groups, we are the liaison between the convention and parliament.

Ms REW: I would like that type of thing spelt out rather than just saying: 'The committee goes in'. Do you know what I mean? I am interested in the reasoning behind it.

Ms HICKEY: Yes, I certainly see your point. We have argued the merits of a 10-electorate system. We have argued the merits of nominated representatives. You could argue, I suppose, that we have assumed the right of the committee to be there. I understand where you are coming from.

Ms REW: I looked for the reasons and I could not find them. All right, thank you very much.

Mr MITCHELL: I was only joking. Please do write to your local member.

Ms REW: You are my local member.

Mr SHANNON: I was going to comment that you were elected to be members of parliament. You were not elected specifically to be members of that convention, I gather.

Mr HATTON: No, that is true and it is a valid point. The question is whether the parliament has a role to play as part of the convention. We would see ourselves, I guess, as a unique committee. The committee has equal representation from both sides of the House and we would see ourselves, in that process, as representing the parliament.

Mr SHANNON: I would think that we would expect that, if it came to a vote, you would be nominated in your own right using all your parliamentary and constituent experience as qualifications.

Ms HICKEY: Who would you recommend that we be nominated by?

Mr SHANNON: By parliament - you already are.

Ms HICKEY: By the parliament presumably?

Mr SHANNON: [inaudible]

Mr BAILEY: Sorry. What we are saying is that the convention will be made up of a mixture of elected and nominated members. The Territory will be divided into 10 electorates, each of which will elect 5 people. That makes up 50. Then there will be a number of nominated people. There seems to be no dispute that at least some of them should be nominated to represent certain interest groups. These might include Aboriginal groups, whether through the land councils or ATSIC or whatever, ethnic groups, unions, employers and so on.

There does not seem to be any problem with saying that it is okay for someone from each of those groups to be included among the nominated people. We are saying that a number of nominated people should also comprise representatives of the parliament because at the moment we are suggesting how the convention should be structured. We have suggested that the parliamentary view would be represented by the Chief Minister, the Leader of the Opposition and the members of the committee.

Mr HATTON: Those would be the members at that time. The committee might change its membership.

Mr SHANNON: My preference is that the convention be all nominees.

Mr BAILEY: All elected or all nominees?

Mr SHANNON: All nominated, not just the final process. Instead of being part selected by the committee of government

and part nominees of whatever portion, I prefer all nominees and not ...

Mr HATTON: So you would say: ‘Let us get a series of interest groups and take nominations from each of the groups’.

Mr SHANNON: I would have the interest groups provide the nominations.

Mr HATTON: Yes.

Mr BAILEY: Including the parliament?

Mr SHANNON: Yes.

Mr BAILEY: In other words, you could say that there will be a number of positions to be filled by the parliament as nominated by the parliament.

Mr HATTON: You think that the process of electing people on to the convention is not the best way to go?

Mr SHANNON: Something like that. I think there is a better way.

Mr HATTON: Maybe I am not explaining myself.

Mr MITCHELL: We are talking about nominations and elections. We are talking about so many nominated positions and so many elected people, who would come in representing ...

Mr SHANNON: I am proposing all nominated ... [inaudible]

Mr HATTON: And no elected people.

Mr SHANNON: And no elected people but not disqualifying parliamentarians. Is that clear?

Mr HATTON: Yes. So you do not think we should have the 10 5-member electorates for the purpose of creating a convention.

Mr SHANNON: Total nominations.

Mr HATTON: Total nominations.

Mr SHANNON: That is my preference.

Mr HATTON: Could we have your names for the record?

Mr SHANNON: David Shannon. I submitted before, but I had forgotten.

Mr MITCHELL: You are down here to talk at 3pm.

Mr HATTON: Did you wish to make a specific ...?

Mr SHANNON: No, I am not prepared. I will put it in the mail.

Mr HATTON: Okay. Would any other people like to raise any points or ask any questions? We will adjourn the committee and resume at 2 pm.

Mr HATTON: I call the meeting to order. I welcome Mr Hoare, who Territory is here to present a submission on behalf of the Local Government Association of the Northern. It is good to see the Local Government Association here. We are fairly informal so do not feel intimidated or anything like that. I would just invite you raise any issues and talk to whatever points you would like to make.

Mr HOARE: Thank you very much, Mr Chairman, and thank you for the opportunity of appearing before the committee today. We wish to discuss generally with the committee and put a submission on the Discussion Paper No 9, which relates to the constitutional recognition of local government in a constitution here.

As the Chairman said, I am appearing of behalf of the Local Government Association of the Northern Territory, which is the peak body representing local government in the Northern Territory. We have 60 councils as our members, both municipal and community government, and incorporated associations, both under the Commonwealth legislation and the Northern Territory legislation. We have 60 members throughout the Territory, who voluntarily join the association. There is no compulsion. We have a voluntary membership of 60 of about 68 at the moment. The numbers are increasing slightly at the moment. I think the last figure I have seen is 68.

Mr HATTON: You speak for the majority under the Local Government Act now too.

Mr HOARE: Yes, that is right. There is a higher proportion under the act than under incorporated forms.

Discussion Paper No 9 contains the view of 2 separate bodies that existed some years ago, both of whom have now ceased to function. So in reading the paper, you have the views of 2 bodies that are no longer in operation. They existed until the early 1990s - the Northern Territory Local Government Association and the Community Government Association of the Northern Territory.

When a lot of this material was prepared, the Northern Territory Local Government Association, or NTLGA, represented 6 municipal councils only. They represented the municipal councils. The Community Government Association, at that time in the early 1990s represented some 15 community government councils. The 2 associations made submissions that are recorded on pages 4 and 24. What I found interesting was that both submissions were exactly the same. At that time, there was no difference between the submission of the NTLGA and the CGA. They had a common position in relation to the recognition of local government.

On page 4, in the small type under No 4, the position is put there that: ‘The Northern Territory Local Government Association has previously indicated that any provision for constitutional recognition should be in accordance with 5 principles’. They were supportive of the inclusion of local government in the constitution and they set out 5 principles that they thought should be included. On page 24, the Community Government Association did exactly the same thing. They put in the same submission.

As I said, both of those bodies have gone out of existence. One association has now been formed to cover all of the local governing bodies in the Northern Territory. That is the group I represent. I just found it interesting that, at that time, both groups put the same policy position.

Mr HATTON: Do you think they might have swapped notes?

Mr HOARE: I think so. They used to have an office next door to each other, so I suggest that that might have had something to do with it. So, they put a position that supported constitutional recognition, and they outlined 5 principles.

I now want to move to the new association’s policy position on this issue. What I can say is that it is fully supportive of the constitutional recognition of local government in the proposed constitution of the Territory. That is drawn from several different beliefs held by the association, which apply at the international level, the Australian level and at a very practical level in operation within communities throughout Australia. I would just like to outline a couple of those beliefs.

The basic belief is that it is the fundamental right of every citizen to exercise democracy at the local level. I mean, all the states of Australia have established a local government system under each state’s jurisdiction. The system aims to enable the community’s representatives to express their views at the local level and to have the opportunity of becoming involved in decision making at the local level. We believe that it is a fundamental right of all citizens to be able to exercise that democracy at the local level, if they so choose.

Such feelings are very well expressed in 2 documents that I would like to table. I will keep one for myself so that I can refer to it. I often give out things and then I end up not having one kept for myself. I go to refer to it and I cannot find it.

Mr HATTON: I know the feeling.

Mr HOARE: There are about 4 copies there, I think.

Firstly, let us look at the international scene. The blue page is the Worldwide Declaration on Local Self-Government. It was agreed upon in 1985 by a body called IULA, the International Union of Local Authorities. This is local government’s

international body. I am certainly not going to quote all of it but if we look at the international scene, this is what people from around the world view as the importance of local government. It just gives an insight into some of the things that are regarded as common.

I particularly want to refer to article 1, the constitutional foundation for local self-government. The principle there is that local self-government 'shall be recognised in the constitution or in the basic legislation concerning the governmental structures of the country'.

Mr BALDWIN: Which one do they want?

Mr HOARE: Sorry?

Mr BALDWIN: There are 2 different parts to that. It is either in the constitution or it is part of basic legislation.

Mr HOARE: As you would appreciate, around the world there is a range of different ways of tackling it.

Mr HATTON: It is clear, and I do not know anyone who is actually disputing the view that there should be some recognition of local government in our Northern Territory constitution. The issue that is really engaging our minds is this. If people have a constitutional right to local government, does that mean that local government is an enforced tier of government? A community which says that it wants to have its own local government has a right to that. On the one hand, there is a due process to go through to achieve that. On the other hand, if it was drafted a different way, it would almost create a constitutional obligation to create a local government structure across the Northern Territory. It is that a difference of ...?

Mr BALDWIN: Either on a needs basis, or enforced.

Mr HATTON: Do you have the right to have it if you want it, or you have to have it? That is the question.

Mr HOARE: We would take the view that it should not be forced. Ideally, it should be as it is here in the Territory, where communities put forward their wish to have local government and there is no compulsion. The views of the Royal Commission into Aboriginal Deaths in Custody, which spoke about the rights of Aboriginal people to choose their own structures, would be relevant to that argument as well.

Mr HATTON: Yes, I understand. That is true. Interestingly, the Royal Commission said that they had the right to construct their own local government the way they want to. That did not address the issue of the constitutional foundation of it, the legislative foundation of it. It did not even recommend that they have a right to choose under which legislation they do it.

Mr HOARE: In Australia at present, I think South Australia has recognition in its constitution. There are large unincorporated areas in South Australia. New South Wales is the same. It is there, but there is still not local government across the whole of the state.

Mr HATTON: It would be reasonable to say that your association would support the right of people to a process of self-determination and to choose to have local government, rather than a compulsion to have it.

Mr HOARE: Yes, I think that certainly would be the view of the association. Not compulsion, but a right of choice.

Mr HATTON: The right to choose. Are you going to work through these other points, or can we pick up a lot of things out of them?

Mr HOARE: No. I understand that you are supportive of the inclusion of local government in the constitution

Mr HATTON: I do not think you have to convince this committee.

Mr BALDWIN: Except that we should talk about the extent.

Mr HATTON: That is what we were working towards.

Mr HOARE: I was going to go on to that afterwards.

Very quickly, although we have more or less covered it, the white pages provide the Australian policy of local government towards constitutional recognition. Point 2.2 on page 2 just supports the Australian position that constitutions recognise local government both at the Commonwealth level and in each of the state constitution acts. I brought that along just to build up the case for constitutional recognition. I will not go any further into that, Mr Chairman.

Mr HATTON: I have a couple of points just for the purpose of the record. I suspect I know what your response will be but will raise them for the purposes of the record.

Article 2 of this worldwide Declaration of Local Self-Government refers to ‘elected on a periodic basis by equal universal suffrage’ and ‘their chief executive shall be so elected or shall be appointed with participation of the elected body’. My question relates to the particular circumstances of the Northern Territory, especially in respect of the Aboriginal communities where cultural and other important factors come into play. In fact, in some cases elections are not held. Rather, a process of ...

Mr BALDWIN: Appointment.

Mr HATTON: In our system, we would see it as appointment. It may be within their own democratic processes, and it would not conform with that. Under the Report of the Royal Commission on Aboriginal Deaths in Custody, Aboriginal communities should have the right to choose the appropriate level of self-determination.

Mr HOARE: I think any clause that attempts to cover a worldwide situation is bound to ...

Mr HATTON: Is great.

Mr HOARE: That is right.

We fully support the present community government system,. where there is flexibility in the way things like that can be handled. I personally believe that it is the ultimate in local self-government. In a way, the municipal councils of the Territory are not in as favourable a position. The ultimate self-government is for the local community to choose the way they wish to handle those issues themselves rather than have a system imposed upon them, as is the case with most municipal councils across Australia.

We fully support the ability of the community to determine those things. I would see that as the ultimate in local government. I think the community government model here is an exceptionally good model in local government terms, in that it gives a lot of choice to the community to work out what they wish to do.

Mr HATTON: And how they wish to do it.

Mr HOARE: How they wish to do it and to what extent they wish to undertake services and so forth.

Mr HATTON: Yes, we have clarified that. You will notice in the discussion paper a series of levels which indicate what is occurring elsewhere in Australia. At the most basic level, it says that people shall have the right to have their own system of local government subject to rules and limitations.

Mr HOARE: To be quite honest, that is where our current policy starts to need a bit of attention. I would like to put a proposition as to how we can come to a more precise definition of that. As I understand it, the committee supports the inclusion of local government. The question is then: what form should it take? Should it include some of the 5 principles that the previous bodies put up, or should it be something different?

As the new association at the present time, we do not have a firm policy on that. I would like to put it to you that it be included - and I already have this process in hand - in the agenda for our September meeting at Yulara, with a view to putting words together, rather than just principles, to encompass what we are seeking to achieve. In doing that, we will look at the other states.

I suspect that some of the things that were put up some years ago may not reflect the current position. I think we may be less specific than that at present. For example, the secure financial base and proper recognition of the elected members’ role may be able to be covered in words that do not have the same emphasis as in the 5 principles.

Mr HATTON: It is very hard to write into a constitution, isn’t it?

Mr HOARE: My feeling is that it is probably difficult to cover all those things. I am confident that, now that we have looked at the interstate situation, we can develop some words. I would rather see words developed in relation to the actual clauses that we are suggesting, rather than just 5 principles. I would like to see that done at our Yulara meeting in September.

There is no question that we support the inclusion of local government. The old associations had the same view some years ago. I would like to see us revisit that and come back with some words, perhaps a couple of paragraphs, which cover what we are seeking from our perspective. We can then put that forward for consideration.

Mr HATTON: That certainly would be okay within our time frame.

Mr HOARE: We have our meeting in mid-September, so I could get that back to you in late September. Every community has one vote in that process and whatever came out of that would be the collective view of the municipal councils, the community governments and the incorporated associations in the Territory.

That was what I wished to put forward as the process for us to revisit those 5 principles. To me, some of those things are very difficult to achieve through a constitution, such as the guarantee of a secure financial base.

Mr HATTON: How long is a piece of string?

Mr HOARE: That is right. In terms of the proper recognition of the elected members' role, that is crucial to all of local government. Without the elected members' participation, it is doubtful whether you have a local government system. Things like that, I think, can be worked around and some words developed to encompass them.

Mr HATTON: This is the tricky part in respect of local government. You are working in terms of the context of local government, which is also then created within a legislative framework.

Mr HOARE: That is right.

Mr HATTON: ...It is a matter of identifying what goes into the constitution and what goes into the local government legislation. What minimum circumstances should be reflected in local government legislation?

Mr HOARE: That is right. The constitution needs to be flexible so that people are not hamstrung by it at some future time. I think it is just interesting to note that major changes are occurring in local government in Victoria and in South Australia. In Victoria they have occurred. In South Australia, they were announced yesterday. They involve a major reduction in councils. That is done within the context of their constitutional recognition of local government. So you do not want to tie things down so that you do not have the ability to change.

I think people want the recognition that local government continues, together with flexibility so that it can change and vary in shape from time to time without having to go through referenda and so forth. I find it interesting that change can still occur in quite a major way in states where there is recognition, without such change being hindered by the constitution. In the Northern Territory, there will be significant change over time.

Mr BAILEY: What you are saying is that, while there should be constitutional recognition that there be some form of local government, the details of that form and I guess its manipulation, would remain in the hands of the state government.

Mr HOARE: I think it has to. That is what practically occurs right around Australia. In an ideal world, it may not be the appropriate thing to do. However, it is the practicality of what happens around Australia and is accepted in the other states as being reasonable. Of course, the people have to account for that in the longer term. Yesterday, in South Australia, a decision was made to move from 118 councils to 30 councils. The state government has put that forward and will ultimately have to account for that at the ballot box. I do not think you can entrench numbers and things like that in the constitution.

Mr BAILEY: I am not suggesting that. I guess there is a difference, however, between the ability to change the number of councils by consultation and agreement with councils, and with change only by the decision of the state. As an outside observer of the situation in Victoria, it seemed to me that many people involved in local government did not say: 'Thank you very much for changing the way the councils are organised here. That is what we wanted'. In fact, it was exactly the opposite. It was the state government imposing its power.

Mr HOARE: It was certainly by imposition.

Mr BAILEY: If you are using that rationale, is it reasonable that the federal government should have the same power over the states, allowing it to rearrange the number of states when it feels like it or thinks it is politically popular. I guess that is the analogy. I would have thought that none of the states would want to hand over that level of power.

Mr HOARE: Ideally, local government would reserve the right to do it voluntarily. But I think voluntary change like that occurs exceptionally slowly. To be quite honest, it just does not work sometimes. Many small bodies do not want put themselves out of existence. It is like combining football clubs. No football club ever wants to vote for its own destruction. It is the same with councils.

Mr BAILEY: ...The same argument applies in relation to changes in boundaries or anything.

Mr HOARE: I can see the analogy you are making but I am just expressing, in a practical sense, the view that changes do occur and that the system needs to be flexible to allow that to happen. Ultimately, the Premier of Victoria will have to account for what has happened in that state.

Mr BAILEY: Like the Prime Minister of Australia.

Ms HICKEY: Jeff, in addition to the principles that you wish the committee to be informed of and any changes, will your September meeting also consider the issue of the degree of formal entrenchment of local government? I do not know whether you have had an opportunity to have a look at the exposure draft.

Mr HOARE: No, I have not.

Ms HICKEY: I am sure that its contents will inform local government bodies about what we are suggesting in terms of entrenchment in the constitution. The options include: a form of entrenchment which could only be overturned by referendum; a form of organic law, which provides for change only with a significant majority of parliament; and ordinary legislation. We will be very interested in the views of local government on the degree of entrenchment it sees as acceptable within a constitution.

Mr HOARE: I will certainly place that on the agenda for consideration. I am intrigued by what is happening in Victoria and other states, including Tasmania, which have constitutional recognition of local government and have been making reforms. From local government's point of view, recognition does not stop these things from happening and in an ideal situation that may not be what is required. But in a practical sense, that is what is happening elsewhere.

Mr HATTON: I guess a lot will depend on you talking and going through that process in September. Would it be of any assistance to your association if a representative of this committee or perhaps one of our advisers were available to discuss some of the technicalities?

Mr HOARE: That would certainly be of assistance.

Mr HATTON: Would the committee be agreeable to that?

Ms HICKEY: Yes.

Mr HATTON: I certainly will not be available in September. I have a prior engagement.

Mr HOARE: That would be welcome. It is our annual general meeting then. The Chief Minister will be addressing the conference on the issue of statehood so this will tie in quite nicely. I will undertake to put that on the agenda and ...

Mr HATTON: If you could be in contact with our executive officer Mr Gray, we could arrange to have advisers present. Perhaps some members of the committee may also be available to attend also.

Mr HOARE: You are very welcome to attend.

Mr HATTON: I am sure Mr Baldwin will be more than happy to attend, having recently been a vice-chairman of your association.

Mr HOARE: That is right.

Mr HATTON: As you can see, the people sitting at this table have more than a passing interest in local government.

Mr HOARE: I think Cabinet is meeting down there today. So there will be other people present at that time.

Mr HATTON: Unfortunately, September is just an impossible month for me.

Mr HOARE: I have already written to our members about that discussion at Yulara, inviting people to contribute their views. Several people have indicated their interest in coming together in a small group to see what words we can come up with.

Mr HATTON: You may be able to work with our people to get some ideas together too, some options and some new things you can discuss.

Mr HOARE: That is right. I think it is very important to get down to the words, rather than us just saying ...

Mr HATTON: It most certainly is for us. We want to have our drafting task completed by the end of this year, so we are running out of time to discuss issues.

Mr HOARE: I take the view that we should put something to you. It is then your decision as to whether you cross or tick it or whatever.

Mr BALDWIN: We have purposely not provided any recommendations. We have left this as a discussion paper awaiting the views of local governments. We want to come to some ...

Mr HOARE: It is time now to develop the words involved.

That is all I had to put forward. I would be happy to respond to any other questions. Whilst we have a general policy of fully supporting constitutional recognition, the rest is not there at the moment. I am operating from the views of the 2 old associations but I am not completely confident that what I say will be the outcome of the meeting at Yulara. Certainly, I think the general feeling is that we would want to have something that is flexible and does not tie people down.

The one issue that people do talk about a lot in this context is the ability of the minister to dismiss a council. That is an issue that focuses people on this very much. At the present time, as in the other states, it is handled under the Local Government Act. Often, local government wants to see that ability ...

Mr HATTON: Some due process entrenched.

Mr HOARE: Yes, that is right.

Mr HATTON: That may well be reasonable. It would cover the right to have local government, the right to have some security over the agreed functions it carries out, and the right to due process in the event of circumstances that may lead to dismissal.

Mr HOARE: Again, there are circumstances that can occur and do occur on rare occasions, which require some sort of action like that. If you entrench things like that in the constitution, you can end up with an impossible situation.

Mr HATTON: There have to be some words to ensure that justice is done and it is not the capricious act of a minister.

Mr HOARE: That is right. Again, if the minister does that - and as you have said, a minister is unlikely to earn any points by doing it - the ...

Mr HATTON: Well, it has never been done in the Northern Territory.

Mr HOARE: No. It has not been done here and it is only ever done rarely.

Mr HATTON: There has been the odd circumstance which might have justified it.

Mr HOARE: Interstate, the general feeling is that if it is done, something should be put in place very quickly to ensure that a better situation is reached as quickly as possible, with elected members resuming. In Victoria now, where commissioners are in place, although the process had not been particularly quick, they will be reverting to elected people very shortly. The Premier may find that a lot of the people who were there before will end up being elected again. They are the things that happen in practical terms when those sorts of actions are taken.

Mr HATTON: Do any members have questions or comments?

Ms HICKEY: Jeff, apart from the submission to follow the NTLGA meeting in late September, we would be interested in views concerning the representation of people on the constitutional convention. Members of your association may also be interested in debating and discussing that issue at your meeting. It is obviously important that we have involvement from grassroots level at the next stage, which will occur next year. I would encourage your members to look at that too.

Mr HOARE: I have not looked at a lot of those other issues. I could bring that forward.

Ms HICKEY: What I am saying is that your association's involvement does not need to stop at the submission stage. It has not been determined whether local government would be represented through election or a nominated member. Certainly, I can see that as being a role for some elected members and it would be useful for people to be starting to think about that.

Mr HOARE: Right. Thank you very much for the opportunity of appearing.

Mr HATTON: Thank you for coming along. We look forward to receiving the details after September.

Mr HOARE: Thank you.

Mr HATTON: Are there any questions or comments that anyone in attendance would like to make on anything to do with the process of establishing a constitution, or the moves towards statehood? It is as much our role to answer queries or questions as it is to take submissions and views from people, as we are trying to get the community actively involved and informed on these important issues. We are also keen to find out whether we are going in the right direction in terms of our work on the drafting of a constitution.

Ms REW: I was just thinking about making the Local Government Act an organic law. That is all.

Ms HICKEY: That is why I raised it for Jeff's concern.

Mr HATTON: That is one of the issues that may well be looked at, as is the question of sufficient flexibility. At this stage, we will suspend the proceedings.

Mr HATTON: I will formally recommence the proceedings of the sessional committee and welcome the representatives of FORWAARD who are in attendance. Please do not feel shy about speaking up if you have any questions to ask or any views you would like to express. That is what this meeting is about. It is an opportunity to ask anything or to raise any points that you think we should think about in putting together a Northern Territory constitution. Whenever you feel like you would like to have a talk, just let us know. In the meantime, perhaps Mr Whyte would like to discuss some things.

Mr WHYTE: My name is Allan Whyte. I am appearing as a private citizen. I am also the serving secretary of the Islamic Society of the Northern Territory. Although I have not been mandated by that organisation to speak on their behalf at this hearing, it is possible that my views may be fairly representative of the Islamic community in general.

Having digested the documents which have been kindly distributed by Mr Gray, I would like to argue that the Northern Territory's proposed constitution should have an entrenched bill of rights. It is my personal opinion that, by having an explicit statement of rights entrenched in the constitution, with those rights being interpreted from time to time by the judiciary, there will be a desirable spread of power concerning the rights of citizens in our society.

I also believe that a bill of rights in that form would be very useful as an educative tool in my work, which is usually as an interpreter. I often come across migrants and people who are new settlers in the Northern Territory. Often, I have the impression that, before they arrive in Australia, they have some understanding of what kind of country Australia is physically but not socially and politically. I think that a bill of rights would go a long way towards embodying some of the concepts that our society holds to be very high in importance. As far as that goes, it could be a very important tool with

which to instruct new citizens to the Northern Territory.

I am not sure whether this is legally valid or not but I believe that it should have perhaps some clarifying statement that explains the way in which international treaties, to which Australia is a party, imply obligations upon the Commonwealth which then filter down to certain notions of rights and freedoms which are applicable at the Territory level. We have seen some cases in previous years in the High Court, and acts of the federal parliament, which have been based upon notions of rights and freedoms, that have come from treaties and documents to which Australia is a signatory as a nation and a Commonwealth. I think that there could perhaps be some explanatory paragraph within the bill of rights to explain that there are also national obligations which may work in conjunction with the rights explicitly described in the Northern Territory bill of rights.

Mr HATTON: Just to clarify that, what you are suggesting is that there be something in this constitution which notes the fact that some rights derive from the Australian constitution and the Australian constitutional structure, and that nothing in this constitution will derogate or detract from those rights.

Mr WHYTE: It would also say that what is set out in the Northern Territory bill of rights is possibly not the sum total of what you might get. There is more, and it comes from areas beyond the Northern Territory, either from the federal government or perhaps from beyond.

In relation to the specific content of the bill of rights, as a member of a minority religious group, I have a keen interest in the notion of freedom of religion. I have spent some time studying the references to freedom of religion in the Australian Commonwealth Constitution. It does not take very long because there are not many of them.

The single most explicit reference is in section 116, which is discussed briefly in the Discussion Paper on a Northern Territory Bill of Rights. It is notable that, although that section appears in the chapter regarding states, the wording of section 116 explicitly refers only to the Commonwealth. The establishment clause, which it says that ‘the Commonwealth shall not establish any religion of the state’ refers only to the Commonwealth of Australia. According to legal interpretation, it is technically possible that a state or territory could declare itself to have an official religion or, if you go to the second part of that section, could impose a religious test for people wanting to serve in a public office.

Although, in the current climate in the Northern Territory, it seems politically unlikely that such a possibility would ever come to pass, it might not have sounded so ludicrous about 10 years ago in Queensland. Under the very right wing Christian fundamentalist approach of the Bjelke-Petersen government, there may at some stage have been a proposal to make Queensland a Christian state, or a state based upon a particular form of religious interpretation.

So I think it is desirable that a bill of rights proposed in the Northern Territory should contain a clause explicitly guaranteeing freedom of religion. In the tradition of the Australian Constitution, that would have a broad definition of religion. Although the term ‘religion’ is not defined in the constitution, it has been interpreted by the High Court fairly widely as meaning any structured set of beliefs that has a religion-like manner. Very importantly for the Northern Territory, such a sense may be held to apply to sets of Aboriginal beliefs which, perhaps in a conventional or western sense, do not have the forms of religion that most people might recognise. By virtue of the fact that they are a comprehensive and dedicated system of beliefs, they would be described as a religion and therefore accorded protection and freedom of expression under such a clause.

In one sense, however, the High Court has narrowly interpreted the establishment of religion clause. Saying that the state shall not establish religion is not the same as saying that the state shall not provide any assistance to religious groups, or for religious purposes. That is not the case in America, where a similar clause in the American constitution has been used by secular groups to prevent the government providing aid to religious schools. In Australia, that is obviously not the case. We do have religious schools run by churches. In other states, schools are run by Islamic groups, Jewish groups and so on. Those groups are eligible to apply for state funding.

That clause was tested in a case referred to as the Defence of Government Schools or DOGS case in the High Court. It was argued along the American lines that, by funding church or religious schools, the state was in a de facto sense establishing religion. The High Court of Australia took a more liberal point of view, finding that the simple provision of funds to facilitate education was not the same as establishing a religion.

The question is raised in part 12, paragraph (e) of the discussion paper on a bill of rights. I will just read it: ‘A new guarantee in wider terms in a Northern Territory constitution would need to consider whether the position as to state aid is

to be expressly maintained'. It is on page 40, sorry. If the judicial minds of the Northern Territory continued to interpret a similar type of establishment clause in the same way as the High Court has done, I do not see that there would be any need to expressly state that aid can be maintained.

In fact, I should admit that the Islamic Society has recently received a grant of $3000 under the Ethnic Affairs program, specifically designed to service the ethnic side of our community, a large number of whom were born outside Australia. It would be unfortunate if one of the effects of putting in a freedom of religion clause would be to disallow funding of that sort, solely on the grounds that it was going to a religious body, and not looking at the specific purposes to which the funding was to be applied.

Mr HATTON: I think the issue that addresses people's minds in terms of inserting something as a freedom of religion was the apparent abuse of that right in the United States. People were able to establish what seemed like scams, to all intents and purposes, to extract money from people and avoid taxation. That Mob from Waco, the Branch Davidians, was an example. One would not want to create a constitutional loophole that would allow endorsement by way of constitutional right to practices that would be regarded as contrary to the interests of society. That is probably the one question that is really exercising our minds. I think I can speak on behalf of the committee as far as this is concerned.

Mr WHYTE: I have a feeling that there is a reference to freedom of religion in the International Convention on Civil and Political Rights. A further clause says that freedom of religion is only subject to the limitations of the civil and criminal law that applies in the land. Therefore, I would say that a government could legislate a particular practice to be against the law. It would not be able to defend that practice on the basis of freedom of religion.

Mr NICHOLSON: It is page 66, Mr Chairman, article 18.3.

Mr BAILEY: Allan, I think one of the points is that there are levels of religious freedom. This is where you start looking at groups such as the Branch Davidians. In reality, there are many such groups that would pass a test of what a religion is. There are difficulties when you become more definitive in terms of a test of religion. For example, Aboriginals would start to get cut out and many other groups may get cut out along with, I guess, undesirable groups. If we classified the Branch Davidians as an undesirable group, the criteria they used to argue that they are a religion would be the same as those used by many other religions. However, different tests can be used in relation to the issues such as taxation, which Steve mentioned, and the rights of a religion.

In other words, a group such as the Branch Davidians could choose to be a religion and you cannot actually persecute them for saying that. However, if they then try to get extra benefits from the community, you can argue that they do not fulfil certain rights for taxation purposes or something like that. In the case of funding, it could relate to their structure. Just because you are a religion does not mean that you then get a whole series of other community benefits.

I think you have to be very careful when you are trying to define appropriate and inappropriate groups that call themselves religions. Many religions which are now accepted as standard religions and have been around for years, or even some more recent ones, were persecuted at the time of their initial establishment. Now, however, they claim to be mainstream religions.

I have actually read articles which suggest that Amway and Tupperware would actually fulfil the requirements of being a religion because of the sort of meetings they have, their organisational structures and so forth. If you move from religion to cults, and things like that ...

Mr HATTON: I suspect they have more to do with Mammon than God.

Mr BAILEY: But using the same sorts of criteria, you can end up with some very interesting groups which could define themselves as religions. If they chose to do so, I would find it hard to argue that it should be made illegal for them to call themselves religions. However, I think there is a point where you can say that, for other community benefits such as in relation to taxation, a different test might be applied.

Mr WHYTE: I do not think the Australian Taxation Office is noted for its rampant generosity. I have spent a bit of time looking at taxation law. Taxation concessions apply largely to charitable acts rather than the organisations themselves. There is a very minor sales tax exemption for items that are used specifically in the process of worship. I do not think it would apply to the mortar grenades or anything that the Branch Davidians might wish to buy.

Mr BAILEY: In respect of government grants, any group could be classified as a religious group. But they have to fulfil the requirements of getting a grant to do it. As I said, if it was a group that was not seen as providing a general benefit to the community with that grant, or even a benefit for its own community, it would not get the support. You do not have to actually have to say: 'Well they are not a religion'. They are simply not meeting the criteria forgetting a grant.

Mr WHYTE: I do not think we have a practical problem there in terms of the way the situation has developed in Australia's history.

In terms of freedom of religion, the non-establishment clause not applying to states and territories has only been enacted a couple of times. In the late 1960s and early 1970s, Victoria, South Australia and Western Australia banned the Church of Scientology on the grounds that it was an undesirable organisation. They were unable to bring a defence on the grounds of freedom of religion because that clause did not specifically relate to the states. I think they changed their minds in the end, because of public pressure and so on.

Mr HATTON: I think what we are talking about here is how we want to frame the terminology to achieve the views you expressed. That is, we want to ensure that genuine legitimate religious faiths are not persecuted or discriminated against, whilst at the same time not creating a circumstance in which people can exploit society.

Mr WHYTE: We should probably finish up on this because we have just about done it to death. If the constitutional development process takes up the discussion in the report on the proposed bill of rights and if there is religious representation either intentionally or through the elected representatives on the constitutional convention, I am sure that they will be able to come up with some entrenched or legislated arrangement which is satisfactory to the needs of the Northern Territory. Given that the issue has been identified in the discussion paper, there is probably enough momentum to keep things going. I do not think it is likely to be a major problem area. However, coming from my background, I would like to see it given continued attention throughout the constitutional development process.

Mr HATTON: The question we are wrestling with in relation to a bill of rights, is whether it is advantageous or necessary to entrench it in the constitution rather than relying on a body of laws and practices resolved over several centuries. I understand the point that you are making: You would like it entrenched so that it cannot be disenfranchised through some process in the courts, even at a later date.

Mr WHYTE: That is what I came here to do.

Another comment I would like to make relates to the Westminster system. I am not a person who holds that the Westminster system is necessarily holy writ. I would argue that the Northern Territory needs a parliamentary system that synthesises democratic principles and concepts of decision-making, regardless of where they may come from. The political system should also be easy to understand and participate in.

I think that is important because an argument presented in favour of the Westminster system in one of these documents is that it is the system that is best understood by Australians. My interaction with Australians in the streets, shops, meeting halls and various other places around the country tells me that most of them have absolutely no idea of how, in theory and perhaps in the detail of practice, the Westminster system actually works or is supposed to work. I do not think that is a very good argument to defend the Westminster system.

Understanding the parliamentary process, simply from reading something like the draft constitution or even from sitting in the Legislative Assembly on a quiet Wednesday afternoon, can be very difficult. Even if you are directly involved with the tools and with the physical reality, it is hard to understand what is going on. It takes a lot of practice. It takes a lot of understanding.

Mr HATTON: It does for us too.

Mr WHYTE: It probably does not help when some of the things do not appear to be all that helpful in the way they are explained. For instance, section 2.3 of the exposure draft on page 20, talks about 'organic laws'. I was interested in it because I had not come across the term 'organic law' before. I do not have a legal background and I was interested to find out what these new beasts might be. The definition of an organic law is 'a law that is declared by this constitution to be an organic law'. I find that rather circular. Although I gained a better understanding of the concept as I continued to read, I still think that in practice it is a very difficult concept for the average person to understand.

Mr HATTON: It is a new concept in Australia.

Mr WHYTE: That is right.

Mr HATTON: We are bringing forward a concept that is not applied in Australia at the moment. In fact, to my knowledge, the only place where it operates is Papua New Guinea. As we searched constitutions around the world, the concept arose. I am sure you understand that the clause which says 'words declared by the constitution to be an organic law' is there because it is recommended elsewhere that the Aboriginal Land Rights Act will be an organic law. That would have to be constitutionally an organic law. On the other hand, the parliament itself may want to say, in respect of some other legislation that comes forward: 'This is so important that we want to entrench it further than just a basic act of parliament'. It provides the parliament with a capacity to create organic laws beyond what the constitution requires. That is really all that is saying.

Mr WHYTE: I guess I am arguing that, while the parliamentary system may indeed be complex, that is not to say that it should be difficult to understand or to participate in. I mean, your average modern Commodore is a very complex piece of machinery. They are very easy to drive. You jump in, turn the key and slam your foot on the accelerator. It is fairly straightforward to use and operate. However, the inner workings can be very complex. Given the quality of media reporting that we have or do not have in this country and particularly in this territory, it is important that the operations of the parliament and the executive be easily understood by the average person.

With no offence to present company, I think the public in general probably has a fairly low opinion of the quality of people who stand as candidates for election to parliament, and who serve as members of the Legislative Assembly, and of the overall quality of parliamentary debate and process. I am not saying that that is an absolute, but there is a perception that that is so. I have seen various opinion polls that rank politicians lower than used car salesmen and so on. I do not completely believe such things but I know that out in the community there is concern that what passes for parliamentary debate in this country can sometimes be overly theatrical and confrontative.

Last night I saw a news item concerning the role of women in parliament and their perceptions of what happens to them and what it is like to be a member of parliament. I think it reflected some of the community's concerns about the sorts of parliament that we have and the activities that take place within them. They are not necessarily the only way that we could manage good government in a place like the Northern Territory.

There may be other ways, other systems, and different concepts that we can incorporate, which will make parliament a better place for everybody. Perhaps it could be less confrontational, more enlightening, more inspirational, providing better leadership and a better quality of decision-making,. Perhaps it could be a better forum to channel the aspirations of the citizens of the Northern Territory. We should therefore be open to ways of adjusting the sorts of parliamentary systems that we consider.

As I see it, the Westminster system essentially has not evolved much over the last 200 or 300 years. For example, the practice of queuing up to write on a bit of paper and stuff it in a box once every 4 years originated in the days when it was not physically possible for people to gather in large numbers in a certain place in order to have their say. They therefore chose someone to represent them over an extended period of time. That is certainly not the case with modern communications.

There may be some way that we can incorporate an up-to-date community voice and pressure and concern in parliamentary decision-making. I think this was touched on in the discussion paper on citizens' initiated referenda, which was produced a couple of years ago. I seem to have lost my copy so I will not comment in detail upon the proposals put forward. However, I certainly hope that the issues brought forward in that paper will be kept under consideration during the process of constitutional development.

In respect of the proposed parliamentary system, I think a case can be made that a Westminster government does not operate as ideally under a unicameral system as under a bicameral system. Given that we only have the single House in the Northern Territory, it is important to extend as large amount of power as possible to the general body of the legislature. Otherwise, the executive can become far too powerful. If there is only a single House, it is important to ensure that the executive is fully accountable on the floor of the parliament and that any proposed formation, right down to the standing orders of the parliament, should keep that in mind,. The operation of the Westminster government as a unicameral system has a different dynamic to one that operates with 2 houses of parliament, where you have opportunities for review and

extra consultation.

That is about the extent of what I would like to convey to you today, so I would like to thank you very much for bearing with me.

Mr HATTON: Thank you.

Mr BAILEY: In relation to the last point you raised concerning accountability, I gather you are not actually suggesting that we change from a unicameral to a bicameral system. In other words, you are not suggesting that we have an upper house.

Mr WHYTE: Unless we get invaded by Indonesia tomorrow and the population increases enormously, I cannot see that there will be public support for an increase in either the number of politicians or the number of houses of parliament. I just do not think that the practical side of it can be accommodated at this stage.

Mr BAILEY: Within the constitutional framework - which is what we are talking about in relation to this committee - how do you make a government executive accountable to a parliament? There is an executive, but at the moment the rest of the government members have an absolute majority. When a matter comes to a vote at the moment, the government basically always has the numbers. How do you make them more accountable?

Mr WHYTE: That is interesting. Perhaps as a member of the opposition you are better able to make suggestions than I am. But I think there are probably some simple things. It is suggested that the quorum for a session of parliament is 8 members, which to me ...

Mr HATTON: It is 10.

Mr WHYTE: I thought I read 8. I think the public would like to ensure that when a debate is going on in parliament, the majority of their representatives are at least there. Again, I do not know enough about the actual practicality of operating a session of parliament. However, I would have thought, from the public's point of view, that it would be desirable to have at least a majority of the members of the House present for all of the session.

Mr HATTON: Perhaps a couple of points would be worth noting.

Mr WHYTE: Speak from experience!

Mr HATTON: From experience, it seems to me that the best way to make the executive accountable is to have a majority of backbenchers in the party room. They can turn you over tomorrow.

In respect of parliamentary debates, and frankly we see this in parliaments all around the world, the public often does not realise that debates are broadcast and shown on television monitors throughout this building, so you can actually be in your office while you are watching the debate. If you have already spoken in a debate which may continue for another 3 or 4 hours, you can sit there without legally being allowed to say anything. You can interject but you are not really supposed to do that under the standing orders. It does happen from time to time though. Often, without actually being in the Chamber, you are still following the debate. Even in advance of speaking in the debate, you may well be outside with advisers or others, preparing yourself to speak. You are actually watching and listening to the debate, even though you are not physically inside the Chamber. I know it does not give the right perception to the public, but it is a practicality of working.

Also during a sitting of parliament, all of us have groups who come to lobby and talk to us. We often leave the Chamber to meet such groups. Sometimes these groups are anticipating a particular debate and at other times they may just want to push a cause. Those democratic processes are occurring whilst the parliament proceeds.. All members here would probably agree that it is a process that you go through. Although someone looking down from the public gallery may think that nobody is there or nobody is taking any notice, processes are continuing outside the Chamber itself. That is a practical explanation, although I know you would never convince the public of that.

Mr WHYTE: That is right. Maybe it is the iceberg principle, where most of what happens in the parliamentary system is fairly well hidden. However, I think the public would like it to be as open and as visible as possible. If the member for Barkly is ranting away from the cheap seats and there are only a couple of government ministers lounging around on the hard wooden benches, it gives the impression that nobody is concerned and she is not being listened to. Regardless of the

concrete position of the opposition in terms of not being in government, they are people's representatives. They are representing a point of view of the public and ...

Mr HATTON: If you read through the debates, however, you will find that a member will often come in and respond to the points made by the member for Barkly. You might initially think that no one was listening, but a couple of speakers later someone will come back and address those issues.

Mr BAILEY: I think the issue, as you said, is one of perception. In fact, in terms of maintaining numbers on the floor of the Chamber, the quorum is one of these 300-year-old things that you were talking about before. With modern technology, it is not as relevant as it once was. 300 years ago, there were no communication systems. If you walked out of the room, you had no idea of what was going on.

Theoretically, we could almost run a virtual parliament, where members just stayed in their electorate offices in Alice Springs and other places, and we could all be connected through the Internet or with interactive video. In many ways, there is no longer a physical need to have a Chamber. However, we still have antiquated rules that say that we must all sit in the Chamber and that is where it all goes on.

The truth about parliamentary debate is that it is not interactive. You get up and speak for 20 minutes and then you sit down. Someone else gets up and speaks for 20 minutes, and then they sit down. Debate on a single topic can go on for 10 hours, and you have one opportunity to speak. For all intents and purposes, if you speak early in a debate, you have no chance to respond to other comments. Most members of the public would think that a debate allows people to exchange ideas back and forth. That is not the way parliament operates.

I take your point. I think there needs to be greater public awareness of how parliament operates. Rather than leaving people to think that nobody is interested because the Chamber is fairly empty, we could let them know that members are sitting in their offices listening and watching. That would give a better impression. Possibly, turning the television cameras to the wider public would also change the way parliament operates. There are arguments for and against that.

Getting back to the issue I raised, I was interested to see if you had any specific ideas about executive accountablity in a unicameral parliament. The Westminster system has an upper and lower house. Although the idea was that parliamentary members would be representatives of their constituents, the reality now is that we largely have a party system within Australia in a unicameral House. Whoever forms government usually has an absolute majority, although in cases like the ACT that is not necessarily so.

I would suggest that accountability for executive government, especially when it has absolute numbers, is through committees and offices such as the Auditor-General, who have a role in scrutinising what is done by the executive. The truth is that government backbenchers do not publicly scrutinise what the executive does. Decisions are mainly made behind closed doors. I think the only way of guaranteeing full accountability under a unicameral parliamentary system is by utilising committees and procedures which ensure that all decisions of government are not just accountable within the parliament but within the state. That may have to be a constitutionally entrenched position, because it does not normally occur when you have a government that has absolute control.

Mr WHYTE: Yes. It is fairly daunting for someone like me to take upon the pretence of trying to revamp 300 years of Pommy heritage overnight. So, I think the ideas will come. The important thing is that this committee and people who consider the format of a parliament should be open to ways in which the system can be revised. After all, it is only a man-made machine. It theoretically can be made better and we should apply ourselves collectively to thinking about ways in which it can be made better.

I personally do not have an overflowing basket of really good ideas just at the moment. However, I am just pointing out that members of the constitutional convention, and the parliament when it deliberates upon the report of that convention, should have fairly open minds about reforming the parliament to make it as productive and representative as possible.

Ms HICKEY: From an opposition perspective, the sentiments you have expressed would be dear to our hearts. We would be keen to see things like a Public Accounts Committee with true independence or autonomy, and legislation committees and the like that other parliaments enjoy. It is a question of how you build that into a constitution. For example, under our current system, our standing orders change almost constantly. They are the rules by which we conduct business in parliament. Through the Standing Orders Committee, we review those rules constantly. I guess those things evolve over time and are a product of what happens.

At the moment, we operate largely on a 2-party system in the Territory. It may well be that, over time, there will be Democrats who stand for election and win seats. That would change the balance considerably in our parliament. So we have to have flexibility in terms of how we conduct ourselves. Although it pains me to say so as an opposition member, I think a lot of that would have to be left within the framework of legislation rather than being entrenched in the constitution. But I know what you mean.

A lot of people who have made submissions, spoken to the committee or spoken informally have raised issues that are of interest to people. For instance, somebody in Katherine said: 'Is the committee able to consider other questions such as the issue of regional governments?' Of course, we cannot do that because it is not in our terms of reference.

Mr HATTON: I think we can.

Mrs HICKEY: Can we?

Mr HATTON: If we are preparing a draft for the constitution, it can be structured in any way. Do you mean doing away with the Territory government?

Mrs HICKEY: Yes, or even outside the Territory's borders. I think the person was envisaging something for the whole of Northern Australia.

Mr HATTON: That is a national issue.

Mrs HICKEY: That is right and obviously we cannot look into that, although it does raise interesting issues. Another issue which has been raised with me is the question of equal gender representation in Parliament. We are not charged with investigating such issues.

The exposure draft does raise the issue of whether parliamentary terms should be fixed or flexible and whether single-member or multi-member electorates are appropriate.

Mr HATTON: Could I make a couple of observations?

The issues you are talking about relate to accountability and public perceptions. I do not think any of us here are not painfully aware of those public perceptions and views. My observation would be that things are working well in terms of democracy and keeping the processes of government and parliament much closer to the people than occurs elsewhere in the nation. For example, the fact that the electorates are very small creates greater contact between local members and their constituencies. There is an expectation amongst almost any of the citizenry in the Northern Territory that they have a right not only to see their local member but also their local minister or the Chief Minister. I can assure you from personal experience that there are many people who have no hesitation in phoning the Chief Minister at 3am to raise a complaint. On one occasion, a Chief Minister was asked to resolve a bet at a Saturday night party, concerning who was the prime minister during a certain year. That very high level of contact is a function, I believe, of our very small electorates. It supports some of the accountability issues that you are referring to.

Secondly, I believe that a structure which has an executive responsible to the parliament and a parliament responsible to the people is not necessarily a bad structure. That is distinct from an executive structure system, where a head of state is elected to form a government as occurs in the United States where ministers need not be elected officials. The head of state chooses people to form the government.

There is also the question of the public following what happens in parliament. I am not sure how 10 or 12 hours of good, bad or indifferent parliamentary debate - as inevitably occurs - can be successfully and fully communicated to the public in a 60-second grab on radio or television and a few scribbled lines in a newspaper, which inevitably reflect the view of the media reporter.

Where there is no comprehensive explanation which enables the vast majority of the public to understand what is occurring inside the parliament, I am often perplexed as to how people can become informed in an easily accessible way. Not many people spend time sitting in the parliament following through from one sittings to the next or reading the record of debates. Some do but most do not. The only thing they know is what they read in the newspaper, hear on radio or see on television. That is their total perception of what occurs.

My observation is that the media desire for sensationalism almost inevitably focuses on bread and circuses and gladiatorial combat as parties vie to get their messages across. I do not know what you think but it is an observation that I make personally. Even the most sensible debate in parliament is likely to be described as boring. I do not know whether that is achieving the objective either.

Mr WHYTE: You could also discuss how the parliament is required to report its activities to the people. For instance, the Hansard is obviously a very good record of what goes on in parliament but it is not of particular ...

Mr HATTON: It is not riveting reading, is it?

Mr WHYTE: No, it is not a particularly attractive magazine. It is not the sort of thing you would reef off a newsagent's stand. There is obviously some reluctance among the public. In a way, even a forum such as this is not particularly accessible. Obviously you do not want to set up in the mall where just anybody might wander in and give you a piece of their mind. But in a sense it is not as accessible as it might be. For instance, if you were not literate enough to be able to read the notice in the newspaper or to follow the notices publicising this event, it would have been very difficult to have known about it.

There is a whole range of communication structures which the overall parliamentary and governmental system perhaps needs to look at. I find that the government has a very good publicity machine because its livelihood depends on it. But the parliament, as an institution, does not have anywhere near as good methods of communication to convey its activities to the people.

Mrs HICKEY: That is a good point.

Mr WHYTE: In that respect, it is probably a shame that the position of parliamentary education officer disappeared a few years ago. If there was any way of reinstating it, I think it would be very beneficial ...

Mr HATTON: We are still waiting for the report ...

Mr WHYTE: ... especially at a time such as this when we have not just the usual run of parliament but a very crucial stage of Northern Territory constitutional development and history. It is a shame that there is not a full-time educator available to the parliament to liaise with the people of the Northern Territory, especially the school children.

Mr HATTON: I can assure you, in my new role as Minister for Education, that the matter is being seriously addressed at the moment. I happen to have a particular interest in the matter and, as the new minister, I know that the department is currently reviewing approaches to better informing students. Under the new federal government assistance fund for civics education, we may be able to bring together a few issues to bring about better political and parliamentary education in the education system.

Mr WHYTE: Thank you for your time and the opportunity to appear.

Mr HATTON: Thank you. It was very enjoyable and informative.

Ms LEE: As you know, I have been doing the show circuit for this committee during the last few weeks. It has been an excellent experience in terms of enlightening people about what is going on. However, I do have a concern that, before we start talking, people do not seem to have any idea of what we are talking about. In light of the convention possibly going ahead in 12 months time,. I am interested to hear about your plans for publicising what is going on. It is not much time to start getting the community to the level of understanding that they need in order to get good representation.

Mr HATTON: Perhaps speaking on behalf of the committee, I would point out that the show circuit, including yourselves and the video, was the first stage of a marketing campaign. Quite apart from the literature that is going out, you are in fact the first stage of that process. We will be going back to our marketing consultants to build the continuing program.

We will also be engaging in extensive meetings in communities around the Northern Territory, particularly Aboriginal communities and smaller communities, as we did in 1989-90. We will be working through the same sort of process as we have done here. I can assure you at that, out in those communities, the environment tends not to be in as daunting as this. In fact, the formal hearing process usually involves sitting on the ground under a tree. That will be occurring.

A number of us are also seeking opportunities to speak to community groups, clubs and other organisations. Both political parties are now organising to start publicity campaigns within their own networks of membership and from there out into the community. There are a number of avenues. It depends how many advertisements you want to put on television as distinct from community processes. It is a very difficult issue to convey in a toothpaste advertisement sort of environment.

Ms LEE: It follows on from the earlier discussion about the lack of knowledge generally about how parliament works.

Mr BALDWIN: The other aspect that will generate more public awareness will be the debate in parliament on the draft constitution and the establishment of the convention. I should imagine that that will be widely publicised. It seems to me, since I have become a member of this committee, that the media is slowly but surely coming to grips with what we are doing and the stage we have reached. I think they can now see that we are coming to crunch time. It is interesting to see that they are turning up more and more whenever we have a meeting and trying to find out where we are at and how it is coming together. I think that Steve is right. It is the start of the whole marketing campaign and it is slowly building.

Wes also made a useful suggestion. I hope you don't mind me pinching it, Wes. It would be a good idea to copy the video used for the show display and to distribute it around communities. It is a good tool that does not involve sitting down and reading all of this. People can visualise what is going on. The committee needs to discuss these matters but approaches like that are useful in terms of generating interest in the wider community. So we are starting but we are open to ideas of course.

Mrs HICKEY: In that context too, Joanne, I was thinking about the sorts of questions and feedback you have given us through this process and informally. Although we have not discussed it as a committee, I think it would be useful if the people who have been working on the stand were to give us a report, either severally or as a group, about the sorts of issues that came up for them.

The response that you get from the public is probably different from the one we get. Often, people do not like to expose their ignorance of a particular issue to their parliamentary representative. Alternatively, they might want to engage you in political debate. Presumably, they do not do that with people staffing the stand. It would be interesting to hear from you about the sorts of issues that are coming up so that we can better focus our information packages from here on.

Ms LEE: I think people were a lot more willing to express their opinions to us because they did not think that we knew very much. They did not realise that we were law students.

Mr BALDWIN: We expect a 10 000 word report from all of you.

Ms LEE: Thank you. I just wanted to bring it to your attention.

Mr HATTON: I certainly think that it is worth noting. On behalf of the committee, I would like to thank all of the people who have been working and assisting us on the show circuit. Although you have another weekend of hard grind and are not yet finished, your work really has been extraordinarily helpful. On behalf of the committee and on the public record, I would like to formally thank you.

I can well remember the initial meetings in Alice Springs, through to the heavier, hard-hitting views that you are now prepared to bring forward. It is really good. I think that it is very positive. I would personally like to thank you for the way you have assisted us in the process. I hope that you keep involved in the process as individuals. It is something that is worth being involved in. I think I am speaking on behalf of all the committee when I thank you very much.

Mrs HICKEY: Certainly.

Mr HATTON: Are there any other people who would like to ask questions or bring forward submissions? It is open to the media to ask questions too. We will get you on the public record if you do.

Thank you very much for your attendance. It has been a very good day and I formally declare this meeting of the sessional committee closed.