

ALICE SPRINGS — Thursday 21 June 1990

PUBLIC MEETING

PRESENT:-

Committee:

Mr Hatton (Chairman)

Mr Bailey (Deputy Chairman)

Mr Ede

Mr Setter

Officers assisting the committee:

Mr R Gray (Executive Officer)

Mr G Nicholson (Legal Adviser)

Appearing before the committee:

Mr Roger Watters

Mr Denis Collins

Ms Barbara Curr

Mr Bardius Goldberg

Mr Dave Johannsen

Edited transcript

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Mr HATTON: Thank you, ladies and gentleman. It is pleasing to see that so many people have turned up for this meeting and it is particularly pleasing to see that the Alice Springs Council of Civil Liberties has come forward again for the meeting. They were particularly concerned last year to be present for these particular conferences.

I declare this meeting formally open and thank you for coming along. We are aware that there is one gentleman who wishes particularly to make a specific submission and I will invite him to do that shortly. For the purposes of the record, I would like to open by saying that this is part of the ongoing process of our committee moving around the community. We are seeking to bring an understanding and awareness of the importance of the development of a constitution for the Northern Territory to the community as a prelude to the movement towards statehood. That will enable us to set up the structures that would enable the Northern Territory then to move effectively towards arguing the case for the Northern Territory to become a state and, through that process, to develop the constitutional rights that go with being a state.

I repeat briefly, for the purposes of the record and those present that, of itself, the development of a constitution is not a process of working through the transfer of powers or the balance of powers between the Commonwealth and the Northern Territory. That argument is dealt with through the process of the transfer of powers for full self-government and it is also dealt with through the process of the constitutional shift to become a state, where issues of representation and specific powers are dealt with.

A constitution for the Northern Territory is a process that sets out the basic structures of government, that is, the structures of the parliamentary process, the legislature, the structures of the judiciary, the court system, and the balance between the courts and the parliament. It develops the balance between a governor, the parliament and the courts. It is also a process whereby the people set and entrench rights that they believe should be entrenched and which they believe that no government should ever be able to interfere with. That could involve such things as the right to vote, the right to freedom of speech, or the right to freedom to exercise a religion of your choice. It applies to those things that the community believes no government should have the power to interfere with.

A constitution is not needed in order to form a government or to form a state. The absence of a constitution merely leaves all power in the hands of the parliament. The constitution is a step whereby the people put limits on the power of government and, through that one law, they can control and direct the way in which government is carried out. In our system of government, the constitutional democracies say that that is the process whereby, finally, people have a dominance over the government as a democratic structure. I repeat that we do not have to have a constitution but, for the reasons I have just explained, we believe that it is important that we should have a constitution.

It is also important, in the inevitable move - irrespective of its timing - towards statehood, that a constitution be completed prior to the granting of statehood. The reason for that is that particular provisions of the Australian Constitution state that, where a constitution is in existence at the time of the creation of statehood, the Commonwealth cannot amend that constitution unilaterally. In other words, the power to amend such a constitution constitutionally rests clearly with that state. There is legal opinion that says that, if the constitution came into existence after the grant of statehood, it might be that the Commonwealth government would have the power to change unilaterally such a constitution. We believe that that would be contrary to the interests of the people of the Territory, and that a Northern Territory constitution should be very much the property of the Northern Territory people and the Northern Territory people only.

Thus we are working now to try to raise awareness and to encourage the involvement of people in the development of that constitution so that we can use the time available to us now to ensure that we set down a path for the future direction of the Northern Territory that we and future generations can be proud of.

By their very nature, constitutions are very stable documents. They change very, very rarely and, if they do change, it is only in very minor part and I think one could take it as read that the only way a modern constitution would be amended would be by referendum of the people, and the people are very conservative when it comes to changing constitutions. We have seen that many times with the Australian Constitution. Therefore, it is incumbent on us to try to get it right, or as right as is physically possible, the first time. We should use the time available and involve the community as much as possible in that process to work through the many competing demands and interests in the Territory to come up with a document that the broad community can feel comfortable with and satisfied that we have set in train a path for the future society of the Northern Territory.

There is no doubt that a constitution and its structure will guide the nature of the future society of the Northern Territory. It is the foundation stone of society in a modern democracy. Over time, every nation shuffles itself into a pattern of behaviour and often it is nudged into that pattern of behaviour by the way in which its constitution is structured.

That is the challenge we have in front of us. It is a challenge to set a path for the future of the Northern Territory and it is an exciting opportunity for our generation to do something that will never happen again in this country. This is the final piece in the jigsaw puzzle that will complete the federation of Australia, and it is the first time that the people are being asked to be involved actively in the writing of a constitution. If we get it right, future generations will look back on this generation with pride. If we walk away from our duty and our opportunity, we will leave behind for future generations the problems and conflicts that are here now. They will not go away. In fact, they are likely to get worse. We can do something about that if we are prepared to work through the arguments and the difficulties and to work towards developing a set of rules, a set of guidelines for people like that young girl who has just come into the room, and her children. Really, that is who we are working for.

I know that one gentleman is here specifically to make a submission and I will invite him to do so, but our basic message is, have your say. At the moment, our job is to explain, to answer questions and to encourage people to do exactly that: have your say, so that it becomes your constitution, as much as the constitution of other people in the Northern Territory.

Mr EDE: I do not want to go into any great detail. I think that it is disappointing to see the number of people that are here. Possibly we need to have another look at how we develop the process, but I would like to assure you that the numbers here

today are not indicative of the numbers that we have been getting at meetings out bush. There, a very strong message has been coming through about how Aboriginal people see the constitution, their desire to be part of its formulation and their desire to have certain things in that constitution.

As I have been telling people out bush, you have to be involved. You have to have your say, and you have to put your point of view across. For what it is worth, tonight I am saying the same thing to the people of the urban areas. You have to have your say. You have to put your particular point of view across because there are a large number of interests in the Northern Territory, sometimes competing and sometimes parallel, all of which will be attempting to have their say on just how the constitution is drafted and what the balances are within it. It is for everybody to have their go and to have their say to see what exactly we come up with in the end.

Mr HATTON: Are there any general questions anyone would like to ask before I invite Mr Watters to come forward? It seems that there are no questions, so I invite Roger Watters to come forward.

Mr WATTERS: My name is Roger Watters. I am the newly appointed Manager Southern Region for the Department of Mines and Energy which effectively makes me a mini-secretary of the department.

I am not sure whether I am doing the right thing by being here to talk about some of these things because you mentioned that you were not really interested in the transfer of powers and matters like that, but some of the things that I have to say will involve those areas.

Mr HATTON: We are not excluding that, Roger. I just wanted to make it clear that a constitution will control the Northern Territory government and its relationship with Northern Territory people, and that is an important point.

Mr WATTERS: Right. There are things in what I have to say that will bring out some of these potential conflicts and things that need to be addressed and resolved before the next generation comes along and takes power.

Some of the things that I have to say are departmental policy but much of it comes from the heart because I come from 6 generations of miners and explorers and I finished up being a geologist. I was born in Broken Hill, so mining matters are very close to my heart, and I defy anybody in the room to look around and to find something that has not been mined or that has not been fashioned by something that has been mined. Everything yours is mined, whatever it is - the bricks, the plastics, the light ...

Mr HATTON: Or grown.

Mr WATTERS: Or fashioned by something that has been mined. It can be something that has been sawn by a tool, but that tool has to be mined. There is nothing that we have in our society that has not been mined. Mining is just about the most important industry that we have for our civilisation to depend on. If it were cut off overnight, literally billions of people would be dead in the next 12 months, as a result of the northern and southern hemisphere winters.

Mr HATTON: May I clarify something? Are you making this submission on your own behalf?

Mr WATTERS: I have vetted that I can make a submission. I am making this submission because I heard the news item on the radio announcing that there was to be such a meeting. I believe that the mining industry, as such, should be making a submission on behalf of the industry. It should be making this. I have taken it upon myself to do that. This is virtually my own submission, but I am utilising some departmental notes to put the points because they happened ...

Mr HATTON: I am just trying to clarify for the record that you are making this submission formally, on your own behalf, although you may be using material from ...

Mr WATTERS: Yes. I guess you could say I am doing it on my own behalf.

Mr HATTON: I do not mind which way it is. I just want to clarify it for the record.

Mr WATTERS: I am speaking from the heart.

Mr HATTON: Okay.

Mr WATTERS: Anyway, departmentally, there are several points which can be made which should be addressed by a

Northern Territory state government, and I will enumerate these without going into each in any great detail.

There is offshore oil and gas exploration and mining, which we now know is more or less sub judice due to the Timor Gap business. There are water matters. Water is a very, very important commodity. In the north we have too much of it and yet, in the south, often we do not have enough. There are geoscientific activities. Some people equate geoscience with digging holes in the ground, but there are many other geoscientific activities which are no more nor less destructive than is a botanist or a biologist collecting scientific data for whatever purposes. We have ownership of minerals, other than uranium. We have ownership of uranium minerals.

We have the land rights question and access to ground for explorers. Indeed, we have had a problem having access to ground just for the scientific gathering of information. We have the question of mining vis-a-vis parks and reserves, and there is another matter which is rather specialist which is the Gove and Groote Eylandt mining agreements. Those would have to be addressed separately.

I could speak about each one of those for many minutes, but I do not want to do that. I want to put that together from these notes and, with departmental input, I will put a written submission to your committee going through all those things that I have here with regard to how I think we should be addressing these matters constitutionally. If what I say happens to be departmental policy and/or Northern Territory government policy, well, that just means we agree with each other. However, I believe that these things will have to be addressed.

There are loopholes in both sides of the argument. Be it, say, Aboriginal land rights vis-a-vis explorers, here are holes in the relevant acts that have to be sorted out or agreed upon. We experienced difficulty in getting a team of geologists in to do 3 days work in a chopper. That was virtually vetoed by somebody, who shall remain nameless, and I cannot see any reason why it was vetoed except out of bloody-mindedness. We do not want that sort of incident to happen again. We do not want Canberra telling us what we can do with this mineral or that. I do not. I think if you have achieved statehood, I think that the government of the day, whatever its hue, should have the final say on what happens to those minerals.

With regard to uranium, for instance, there is no reason on earth why the Northern Territory should not have ownership of that mineral because the Commonwealth has other powers with which it can curb the mining or the exportation of it. It does not need to own it to do that. But if, as a state, we owned it, we could issue title. We could let other people take the risks. That would be their problem but, if the federal government wanted to interfere in other ways, (inaudible) but the ownership should be ours.

Geoscientific activity is very close to my heart. We have agreements with BMR to do joint work together. These things should be cemented in place. We have the assessment of resources in Kakadu National Park. I believe that should be done by a suitably qualified scientific team. We do not have to dig holes in the park, but we ought to know what is there for future reference. At the APEA Conference yesterday morning, I heard a man say that development and conservation are the same process, they just have different time frames. Development is here and now and conservation is for the future, and I think that that is a very nice thought to entertain.

I am willing to answer any questions about any of these things that I have enumerated but really, to save the time of the committee, I think I should put this submission in writing. However, that is the framework of what I would like the committee to consider.

Mr EDE: To be fair, I think probably it would be best if we did receive your submission in writing. That would enable us to go through and analyse it and to get out a series of questions which we could then put back to you at a later stage.

Mr WATTERS: Right.

Mr EDE: If we were to try to do that now, our questions would be hypothetical and probably that would make it rather difficult. That might prevent us getting to the finer points that you have to make on those very important issues.

Mr WATTERS. I have had this document for only 2 days and I have simply not had a chance to put it together as a formal submission, but I can do that.

Mr SETTER: I would like to endorse that because, certainly, you have raised issues there, Roger, that we could discuss and debate for hours, as you indicated earlier. Really you have only summarised what you have in mind. I think it would be most beneficial to the committee if we could have your detailed submission in writing which we could consider and

then ask you to return at a later stage.

Mr WATTERS: I will be in that.

Mr SETTER: That way, you and we can go into it in depth.

Mr HATTON: May I just make 1 point, Roger? I equally endorse that view. I would like to see a detailed written submission because you are dealing with some very complex issues. A number of the issues you are dealing with are to do with the matter of the transfer of powers between the Commonwealth and the Territory and they are things like ownership of resources, offshore ...

Mr WATTERS: Ashmore and Cartier.

Mr HATTON: Yes, management of offshore resources, and rights with respect to Aboriginal land rights as a federal act of parliament and so on. Equally, you may wish to make submissions on those issues to the Chief Minister, who is dealing with the issues of the transfer of powers. Although they are equally submissions that will flow through in any debate about statehood and the power structure on statehood. We would like to hear about them, but you may ...

Mr WATTERS: You mean, sift them out?

Mr HATTON: Oh, do bring them to us, but you may also want to refer them to those other forums. You understand that this is a parliamentary committee and it stands separate from government. It has equal representation from both sides of the parliament, and we are dealing with the constitutional development process. Although we do have, as part of our charter, the promotion of understanding about statehood and issues associated with it, we have been concentrating our attention first and foremost on this constitutional development question. But we would certainly be very keen to receive your submission.

Mr SETTER: Roger, a paper was prepared on land matters upon the transfer of powers. Did you prepare that paper?

Mr HATTON: On statehood.

Mr SETTER: On statehood.

Mr NICHOLSON: There was also an option paper on mines and minerals.

Mr SETTER: Did you prepare that, Graham?

Mr NICHOLSON: Actually, it was the Department of Mines and Energy, and I helped to prepare it, yes.

Mr SETTER: Right.

Mr NICHOLSON: Perhaps we could provide you with a copy of that, Roger.

Mr WATTERS: I have copies of the green papers and all that sort of thing.

Mr HATTON: These are separate. There is 'Land Matters Upon Statehood'.

Mr SETTER: Yes, I do not think that you would have this one.

Mr NICHOLSON: There were 3 of them, actually, covering land, environment, minerals and resources.

Mr HATTON: Minerals and resources, yes. You may find that these relate to many of the issues that you are referring to.

Mr WATTERS: All right. I would like to have that.

Mr NICHOLSON: If he intends to prepare a written submission, I would like to ask Mr Watters whether he might like to say whether he thinks any of the matters he is raising are matters appropriate to be included in a constitution as distinct from their being dealt with as statutory matters.

Mr WATTERS: Yes. I believe that the ownership of the resources under your feet ought to be vested in the government or

in the people, via the government. One of the vital points that I would make is that I do not believe that this should be governed by Canberra.

Mr HATTON: You believe that the ownership should rest with the state government rather than with the Commonwealth government?

Mr WATTERS: Yes. The Commonwealth government has other powers which enable it to control things. That can be done through export licences, but the ownership and the issuance of leases and other mineral tenements must be vested in the state.

Mr NICHOLSON: That was not really the point I was making.

Mr HATTON: No. For example, in a number of Aboriginal communities it has and is being argued that there should be some constitutional protection for Aboriginal law, customs, language and land rights. They are issues that are very dear to the heart of very many Aboriginal people, and they are looking for a process to entrench rights to step over the top of the government's ability to remove those basic rights. The freedom of speech is another example of something that should be protected, perhaps, in a constitution.

Mr Nicholson is asking whether there are any elements in the matters that you are referring to that you think should be considered in that context.

Mr WATTERS: I will have to think about that.

Mr HATTON: You may want to give it some thought. Off the top of my head, I cannot think of any.

Mr WATTERS: No. I will have to go through it and think about it, but I cannot think of anything off the top of my head either.

Mr HATTON: In those information papers there are some guidelines and ideas on those elements of a constitution which you may find useful. Thank you very much.

Are there any other people who would like to ask any questions or make any comments? This meeting is open and free. It is not formal. This is a chance to say exactly what you think.

Mr COLLINS: For the record, my name is Denis Wilfred Collins.

Steve, I trust that, with our constitution, we may be able to avoid some of the errors in the Australian Constitution. As you said, once a constitution is in place, it is very hard to alter it in any way, so there is a need to get it right at the beginning. However, no doubt you are well aware that some backdoor methods have been employed to change our Australian Constitution. One example was the High Court ruling in the Tasmanian dams case, giving the foreign affairs power to the federal government which overrules the states. So, it really does need to be gone through with a fine toothcomb.

Another aspect that I have become aware of only during the last 2 or 3 months is that for years, indeed probably ever since the Australian Constitution has existed, governments of all shades have been signing international agreements. Actually, it is not really the government as such. Rather, it is the Attorney-General or an executive officer of the federal government of the day, of whatever shade it may be, who has the power to sign documents on our behalf. They do not go to our parliaments to be debated and, often, they have been signed without the parliaments being aware apart from the fact that the appropriate person tables those documents, which have already been signed, sealed and delivered.

I believe that some of those take away the sovereignty of the Australian voter to determine matters. It is sometimes said that the ordinary person feels that his vote does not count for much but if there is a government policy or whatever, affecting a particular area, that people do not like, if they get together collectively on it, they can change things. This is a democracy and people here have the right to get up and throw the government out. I believe that the people's right to do that sort of thing has to be guarded very strongly indeed.

Mr HATTON: I agree with that, and I understand the point you are making following such things as the Tasmanian dams case. It may be possible to look at developing, inside the body of the constitution, some mechanism whereby, if there were anything that was likely to change power, that must go through some form of process. Clearly, I do not know the answer to

that at the moment but I can well understand your concern about that matter.

Mr COLLINS: You realise, of course, that much of my concern is really a state/federal matter.

Mr SETTER: Sure.

Mr HATTON: It may well be that the process could be developed in a submission.

Mr EDE: Do you have a submission or are we just discussing things? I am just seeking clarification as to whether we are actually questioning the witness or just discussing back and forth.

Mr HATTON: We are just talking.

Mr EDE: May I ask a couple of questions?

Mr HATTON: Yes, sure.

The point I was making is that it may be possible to look at developing a clause that says that, where a decision of a court or an action taken by a government is likely to have the consequential effect of interfering with the rights of citizens of the Northern Territory, there should be either some restriction on the ability to do that or some formal public process.

Mr COLLINS: It must be ratified by referendum.

Mr HATTON: Well, that may be the answer.

Mr COLLINS: It is certainly.

Mr HATTON: It is certainly an issue that we could examine, as a community.

Mr EDE: Mr Collins, as I understood it, you were saying in your submission that you do not agree with some of the interpretations that the High Court has put upon certain sections of the Australian Constitution. Have I understood that correctly?

Mr COLLINS: I will put it this way. In effect, 5 people comprising the High Court have altered our Australian Constitution and taken away from the rights of the sovereignty, as I see it, of the Australian people. That has been taken away by the High Court now. I think that, if a High Court decision of that nature is made, there should be a mechanism in our Constitution which brings that decision back to the people. In essence, I am saying that that was the interpretation decided on by the High Court at that time. I think that it is fair to say that, in 10 years time, the High Court as then constituted might make a different interpretation.

Mr EDE: Exactly.

Mr COLLINS: That is the point. Constitutions are always open to interpretation, but we need to put it as clearly as possible that a change to our constitution must go back to the people.

Mr EDE: That is the point I wish to make. In effect, the High Court is not changing the Constitution. Its members are interpreting it, that is, they are giving their interpretation of what has always been in the Constitution. Do you consider that the courts are the proper process for the provision of that interpretation?

Mr COLLINS: I guess it is necessary to have a governing body somewhere. But no, in the overall view, the highest court of all has to be right back with the people. It is not always easy to consult but, difficult as it may be, it should go back to the people at some stage and the people should have the final say.

Mr EDE: Are you saying then that, if there is disagreement with the interpretation of what the Northern Territory constitution is saying, that should go to a referendum of the people for resolution?

Mr COLLINS: Let us put it this way. I think so, if enough public concern is raised. That may be the issue that drives that. Of course, if there is no great concern, then we will not do it. But I believe that the people are the final arbiter.

Mr EDE: Do you see an intermediate way that can be taken, rather than putting every question in dispute of interpretation to a referendum? As you know, when you get 2 lawyers together you get 5 opinions.

Mr COLLINS: That is right. I agree. However, I do not think that it will arise so very often if we can get it pretty right in the first place. However, if such matters do arise, then let them go to the courts first up but, if people are concerned about the outcome then it should go to them. That can be done in a rational time frame, perhaps at election time. It could be written in. It might crop up during the first year of a term of a government. Well, then the court will make a decision and, if the people are unhappy about the outcome, at the time of the next election a referendum will be conducted in conjunction with the election.

Mr EDE: Basically, you are saying that you want clarity in the constitution to ...

Mr COLLINS: Surely, we all want clarity.

Mr EDE: Right. I am trying to get your last point right, because I did not quite understand it. If the courts make an interpretation, and there is a degree of public outcry, which we have not defined, that matter should then go to a referendum.

Mr COLLINS: Let us put it another way. Let us say that, at the next election, the people validate that High Court decision, when it is an interpretation of the constitution.

Mr EDE: So, there would be a mechanism within the constitution whereby a referendum might be called, if the courts interpreted the constitution in a way that gave rise to a controversy, measured possibly by some form of recall or as a result of x% of the population having put their names on a document. At the next election, such a referendum would then be taken on that point to see whether the public wanted to uphold the interpretation of the courts on the point or change it.

Mr COLLINS: Well that is one way, and I am sure there are plenty of people ...

Mr EDE: I did not mean to put up a proposal. I was trying to interpret what I thought you were saying.

Mr COLLINS: Right. I see some merit in that, but I see merit also in the suggestion that where there is controversy because the court makes an interpretation which, in effect, changes the constitution, then it should go automatically to the people. As you know, the interpretation in the Tasmanian dams case gave power to the Commonwealth and took it away from the states.

Mr HATTON: Could I clarify something for the people who are listening to this interesting debate?

Mr COLLINS: Are we boring everybody?

Mr HATTON: No, I do not think it is boring people, but some people may be becoming confused.

When interpreting the Australian Constitution, it is a peculiarity of the High Court that it is not bound by precedent. That means that, in 1 year a High Court can make the decision that the Constitution means one thing and, later on, another High Court may decide to change that. It is not bound by that earlier decision. It can decide an issue as it sees fit. It is an organic process with the Australian Constitution. In effect, that means that the High Court can vary an interpretation of what a clause means. It can shift it so that, in that process, through the interpretation, it can change the effect of the Australian Constitution. It is not bound by any previous decision of the High Court. I will ask our legal adviser to confirm what I am saying.

Mr NICHOLSON: That is true, but also they do give great weight to precedent.

Mr HATTON: They are not bound by it, though?

Mr NICHOLSON: They are reluctant to depart from it.

Mr HATTON: But they are not bound by it?

Mr NICHOLSON: They are not bound.

Mr EDE: As the highest court, they cannot be bound.

Mr HATTON: That process I am referring to has led to changes and shifts in interpretation of clauses in the Australian Constitution over the 90 years since federation. I say that because that might be the sort of issue that you are referring to.

Mr COLLINS: It is, Steve, yes. I think that there should be a mechanism to ensure that it goes back to the people for them to be the final arbiters. In an instance where there is no great concern in the community about it, then no referendum would be needed at the time of an election. Of course, that would save extra expenditure and I can appreciate that fact. However, if there is concern and sufficient people respond to the CIR, the citizens initiated referendum, which has been going around, then I see some merit in that and I believe that the people should have the final say.

Mr WATTERS: May I ask a question?

Mr HATTON: Yes.

Mr WATTERS: This is a hypothetical question. If a contentious issue was causing division in the community and this was put to the High Court and it suggested (inaudible), would not this be good cause for holding a referendum?

Mr HATTON: It may be, if you want to write that in. In the absence of any rules that say that that is a cause for a referendum, you would take the majority decision.

In the High Court situation, where it has had the 4:3 splits, those decisions are more likely to run the risk of being changed later by the full bench of the High Court.

Mr SETTER: Denis, your opening comments referred to the exercise of foreign affairs powers, which we have seen on several occasions over a number of years now. Personally, I do not see any way in which we could formulate a Northern Territory constitution to prevent that in the future, because the reality is that the foreign affairs powers are vested in the Commonwealth by way, I believe, of the Australian Constitution. There is no way that a Northern Territory constitution could ever override that, so I think we have to live with that unless, at some stage, the Australian Constitution is amended.

The other thing I wanted to point out to you is that, when eventually it is written and accepted by the Northern Territory people, probably the Northern Territory constitution will be like no other constitution in this country. That will be so because it is being written in the 1990s, if you like, compared to the other constitutions which were all prepared in the late 1800s.

Furthermore, this committee is going to great lengths to seek input from people and, whilst people in urban communities may not have a great awareness of what we are on about at this point in time, it is necessary to understand that we have concentrated most of our efforts in the rural areas, in other words, with the Aboriginal communities, as the starting point. I am very confident that, as time goes by, awareness in the urban communities will build up to a crescendo with considerable interest being demonstrated in these various issues. A great deal of debate will go into this before we finally come up with a draft constitution.

Mr COLLINS: I would make a further point. I am reminded that, when I was in Tasmania in 1983, the parliamentarians there were saying that it was just the Premier of the day, Mr Lowe, (inaudible) who, unilaterally and without even the involvement of his Cabinet, put south-west Tasmania on the World Heritage List. The High Court then interpreted ...

Mr NICHOLSON: He consented to it. It was placed on the list by the Commonwealth.

Mr COLLINS: Right, I stand corrected there. But he consented to it anyway, without his Cabinet colleagues, his parliamentary colleagues or the parliament of Tasmania having any say on or real knowledge of the whole thing. From that, of course, the High Court has interpreted it now as an external matter that falls, therefore, within the province of the federal government. I would like to think that we may be able to write something into our constitution which would prevent such a course being effected by one person.

Mr BAILEY: To go back to your comment that there is a way that constitutions are interpreted by the courts, I have a problem there. As I understand it, if the courts produce an interpretation of a constitution - not a change, but an interpretation - which has the effect of causing concern with the mass of the people covered by that constitution, then you are suggesting that it should possibly go to a referendum. Would the question put to the referendum relate to interpretation

of that clause or would it be to change the clause to clarify it? In other words, would you be looking at changing the constitution, through the referendum, or changing the interpretation?

Mr COLLINS: That would depend on the particular case in question. If there is an interpretation but it does not make a change ...

Mr EDE: Depends which side of the fence you are on!

Mr COLLINS: I think we may be juggling two different things. You are saying that, if there is no change to how it should have been interpreted before and the effect and outcome, then there will be nothing to worry about.

Mr BAILEY: You seemed to accept that there needs to be the ability for the legal system, or the High Court, to interpret the Australian Constitution because there will always be issues that will come up that the Constitution may not have been tested over before. Therefore, some body is needed which can assess whether or not that situation is covered by the Constitution. Do you acknowledge that?

Mr COLLINS: I accept that there has to be some body to start the process off but, if the result of the interpretation is such that it has to be said that there is a very real effect, for example, taking away the control of a large part of a state and putting it in the hands of the Commonwealth, then that is a very real and obvious effect and that is the sort of thing that I believe that we have to bring finally to the people. Of course, it could be prevented.

Mr BAILEY: My understanding at the moment with the Constitution is that if that was objected to by such a large proportion of the population, then at least one of the political parties or someone else could have have moved for a referendum to change the Constitution to bring that back.

Mr NICHOLSON: They have to pass a law through the federal parliament to get a referendum.

Mr BAILEY: But the number of people who need to support a referendum to get a change in the Constitution would indicate that if that many people objected to a decision being made by the High Court, then there should be enough support to get a referendum in the first place.

You are saying that a decision was made that you and a number of other people may not have liked and, because you did not like it, you then said that you wanted it put to a referendum, rather than saying that really there was enough support in the community to go for a referendum anyway, to change the Constitution. If it is regarded any other way, we will arrive in a situation where, every time there is a fresh interpretation of a constitution or a concern is expressed by a group of people, we will be saying that we should have referendum on this decision or another.

There is already a process. As was mentioned by our chairman earlier, recently there have been a number of votes on proposed changes to the Australian Constitution, and it was not changed.

Mr COLLINS: That is the democratic decision of the Australian people.

Mr BAILEY: And it should have been possible for the decision that was taken by the High Court, which you felt was so innocuous, to be pushed enough ...

Mr COLLINS: Not innocuous, obnoxious!

Mr BAILEY: Obnoxious, right. It should have been possible for that to be have been taken to a referendum to have it clarified or changed within the Constitution, and that is there.

Mr COLLINS: But it is not there. As has been explained, the only way is if the government of the day is persuaded to pass a law. It is a matter of numbers.

Mr HATTON: Perhaps I could provide some guidance, and I am doing no more than that. I am not expressing my own view on this at all, but it may be that what would address the sort of problem you are talking about would be that, if there were an interpretation of the courts, the Supreme Court of the Northern Territory or the High Court or wherever, and it were decided in our constitution that you could interpret our constitution then if that interpretation was such that a large number of people in the Northern Territory were offended by that decision, because they did not mean the constitution to mean that thing, that might make a case for what is called a citizens initiated referendum. That is to say that, if 10% of the

voting population signed a petition, that could force the matter to be brought forward by way of referendum on the question of whether the constitution should be amended to take it back to what the people believed it should express. That is a process whereby the community can initiate a referendum to amend the constitution, and they do not have to rely on the government to bring forward a suggested amendment.

That is a suggestion you might want to work on and perhaps to look at bringing forward in some sort of written submission. That might provide a way of dealing with what you are talking about.

Mr COLLINS: What I am really on about is that the final say must lie with the people and a mechanism must be included that will ensure that. That is democracy at its best and the parliaments do abide by that.

Mr HATTON: That may be a mechanism. A number of people are arguing the cause for citizen initiated referenda. That situation might warrant saying that a designated number, be that 5% or 10% or whatever, of the greater population can force the government to put a referendum in place on a particular question. It might be possible to write that into a constitution to provide that protection. You might care to give some thought to that.

Mr COLLINS: Yes, I will put pen to paper on that aspect, and I thank you kindly.

Mr HATTON: Thank you, Denis.

Would anyone else like to any questions or make any comments? This is a chance to ask any question you like or say what you like.

Mr EDE: The point should be made that we are accepting submissions. I have noticed that some people have been taking these information books etc. Please do not feel that you have to wait for a formal invitation to put in a submission. If there is any issue whatsoever that you would like to raise formally, ask a question about or put forward a view on, please feel free to do so even though you may feel that you may well be backing a different point of view later on. But if you want to try out an idea now and see how it stands up, we will be glad to hear about it because we really do need to hear people's views. We have probably 50 or 60 so far and I would hope that by the time that we get to working through this, we will have a far broader range of opinion than that.

Ms CURR: Are you intending to invite schools to this forum? We feel that high school students should be involved in this sort of discussion.

Mr HATTON: We have not invited schools formally to come to these forums, but that may be a matter the committee could look. It could consider whether we might look to hold forums within the schools. I can advise that the committee has been working with the Department of Education. The process of constitutional development and the writing of a constitution are being built into the social and cultural curriculum. It is part of the education process within the schools. Young people in secondary schools are coming to an understanding of what it means to write a constitution. It is a unique opportunity for them to obtain a practical understanding of the entire setting of governments and democracy.

Mr SETTER: Mr Chairman, I think it would be fair to say that the committee has not yet developed a formal urban awareness program and such a program, of course, would include secondary schools. However, I can say that we have addressed classes in secondary schools, from time to time, over the last 12 or 18 months. I know that our chairman has addressed a whole range of service clubs and other organisations during that same period.

Mr HATTON: Not only me. Others have as well.

Mr GOLDBERG: What time frame are you working within?

Mr HATTON: We do not have a fixed time frame. We kept setting time frames and then breaking them. We know that we have the time to do the job properly. I could say that we would like to have a draft constitution written in 12 months time. We said that last year. What we really want first is to undertake the process of getting people to start thinking about it, understanding what is happening and becoming part of it. When we have that involvement of people in the process, we can start to obtain something that will really belong to the people. I do not think you can put a time on it. You simply have to keep working at the job.

We are pushing it, but we are not pushing it to a time scale. We are trying to take every opportunity we can to get people

thinking about it because it is fundamentally important. I know it is not an immediate headline grabber today in the way that the flood mitigation dam is the big topic in Alice Springs at the moment. However, it is one of those things that is fundamental. We think it extends beyond party politics and we are all trying to work with the community in relation to it. You cannot put a timetable on that. We are not locked into a timetable.

Mr COLLINS: Mr Chairman, don't you think there is a problem there? If you do not put a timetable on it, people will not really begin to grab hold of it until there is 3 months to go and they are told that the resulting constitution will be it. There is the old saying that nothing concentrates the mind so much as the knowledge that you are to be hanged in the morning.

Mr HATTON: That is true, Denis. You can take that line. However, Brian and I have been on this committee since its formation. I think we are the only 2 survivors of the original committee.

Mr EDE: Wes Lanhupuy.

Mr HATTON: We have been on the committee since 1986. We have seen a progression from shock horror that anyone would even think about the subject, through confusion about what we are talking about and then to a growing understanding of the process. I believe that it will begin to move on to involvement. In relation to the Aboriginal communities, we have seen a dramatic increase this year in the level of participation and involvement. The communities are forming drafting committees to prepare submissions. We have put a great deal of effort into communicating with rural Aboriginal communities because of the difficulties with language and culture and the lack of mass communications.

We need to develop particular strategies to get people involved in Alice Springs and Darwin because these are larger urban areas. However, I am confident that people will become involved. When we take the eventual step of producing a draft constitution, the people will understand what is going on. When we start talking about forming a constitutional convention of Territorians, people will know what is happening and be part of that process. Our job is really to start it off. We will prepare a draft constitution and recommendations for a constitutional convention which is a drafting committee of representative Territorians.

I have told every community that I have visited that the people cannot trust this job to politicians and lawyers and that they have to do it themselves. The convention will prepare the proposed constitution which will be put to a referendum of Territorians. The people will be able to accept or reject it. If they reject it, we have to continue working until we obtain a yes vote. In the end, the constitution will be approved by the Territory people. The more we involve them from the beginning and the greater the understanding that they have of the process, the greater the chance of obtaining an end result at an earlier date.

Mr SETTER: Mr Chairman, I would like to comment further on that. Even though we do not have a time frame as such, there is a program in place. The committee has been working on this for about 4 years. The first part of the program was the committee itself finding out what it is all about.

Mr HATTON: That took a couple of years.

Mr SETTER: That is right. We then prepared several position papers which are available, and I believe you have copies of them. That took a great deal of work. We then undertook the next stage which is community consultation. Last year, we visited some 60 communities in the Northern Territory. We are into the second phase of that now. At some time in the future, depending on the time and resources available, that consultation process with the broader community will be completed. We will then move to the constitutional convention stage and then to the referendum. Thus, there is a staged process that we must undertake. We are in the second stage now.

Mr COLLINS: Mr Chairman, as you have spent more time in the communities, have you noted an acceptance that, in many ways, the constitution must be a broad document in order to satisfy the wider community or are there still many vested interests desiring things in the constitution which would make it very difficult for others in the community to accept it? Many of these things can be covered by legislation which can be varied as needed from time to time.

Mr HATTON: I do not think there is any clear cut answer to that, Denis. There will always be vested interests who will promote the things that are important to them. Earlier tonight, I mentioned things that are particularly important to Aboriginal communities. Their attention is concentrated on those, but they recognise that other people have different viewpoints. The committee has explained that this constitution must apply to everybody in the Territory. For that reason, Territorians must talk through their differences, balance the needs of different sections of the community and find a

common road for the future.

Everywhere that I have gone - and I will ask the others to comment - I believe that 2 things have been clear: there is an acceptance of the need to set a path for the future and there appears to be a burning desire on everyone's part to find a process of equality. Interestingly, different communities believe other people have rights over and above the rights that they themselves enjoy and both sides are arguing for equality. I believe that it will be a really interesting process at that constitutional convention. When those people come together to talk through those differences, they might actually find that they have a common goal and will find a solution. The process of Territorians coming to terms with their own reality is really important in setting a path for the future.

Mr COLLINS: If the constitution is rejected on the basis of a straight yes or no vote, you may have no real idea of the grounds on which it has been rejected. Perhaps it may be simpler here because the Territory has a small population. I know it is a long way down the line, but one would hope that individual questions would be put so that you would have some feedback in relation to aspects that are not supported. You would then know that it is 90% acceptable or whatever.

Mr HATTON: There has been some discussion on that within the committee. I believe that probably we would recommend that that be left to the convention. There could be a yes/no structure for different sections such as the parliament, the court system etc. You could build it up like building blocks. That may well be the process, but I believe that this committee may well recommend that such decisions be taken on the floor of the convention. The structure of that convention will be really important. By the way, we are also looking for submissions in relation to that. Who should be represented on the constitutional convention? How large should it be? We have made available a discussion booklet on that subject. It will be an interesting and lengthy process.

Mr WATTERS: I thought it would go on forever.

Mr HATTON: I do not believe it will go on forever. I reckon 3 to 5 years. However, it is the first time that Territorians have ever been asked how they want the Northern Territory to be run.

Mr JOHANNSEN: Mr Chairman, I would suggest that our government should always be asking Territorians how they want the Territory to be run.

Mr HATTON: Touche. What I am talking about is the actual structure of the government, how you elect a government, what rights people should or should not have etc. We do not have the power to ask you that question except through this process. That is what I am talking about. I think there is plenty of other consultation occurring. Some people argue that there is too much, but I don't.

Mr JOHANNSEN: My name is Dave Johannsen. I am President of the Territory Nationals. However, I am here on my own account. I am not here as a representative of the Territory Nationals.

Could I say firstly that I believe the process is important. The Territory should be governed by Territorians for Territorians. We should have control of all aspects of the Territory. It is important that the federal government does not retain control over aspects of the Territory which it does not have control over in relation to the states. When it comes to statehood, which is the next step further on, we should not have 'class A' and 'class B' Australians. We should all be equal on that basis.

Could I suggest to the committee that, when it is looking at enshrining rights of individuals into our constitution, it should be conscious of the fact that, when it begins defining rights, it is actually limiting rights as well. I would suggest that that is the main reason why the Bill of Rights was knocked back when it was presented to the Australian people. When you try to define what somebody's rights are, you begin to infringe on someone else's rights. It is indeed a difficult matter.

I was interested in your comments earlier about citizen initiated referenda. If I could tie that in with my earlier interjection in respect of governments, the only way that a government can govern for all Territorians is to provide some mechanism whereby Territorians can say that they do not want a State Square or a dam or whatever and to have that binding on the government. In effect, that is the basis of citizen initiated referenda. I am no expert on this but, unless you give citizens some means of controlling what governments do, a government cannot say that it has a mandate for everything that it does.

I would like to comment also on the process that we are talking about of arriving at a constitution for the Territory. It seems that the process needs another stage in it. There is to be a convention that will prepare a draft for presentation to the

people in a referendum. It seems to me that the constitution either will be adopted with many things in it that people do not like - because it is a simple yes or no choice - or it will be rejected because there are small clauses in it to which people object. I believe that there should be a further stage of consultation with the people that goes beyond the 'take it or leave it' concept and beyond the formal convention that you are talking about.

Mr HATTON: Would you support, for example, the concept of putting a series of parts to the people?

Mr JOHANNSEN: Either put to the people one part at a time or ...

Mr HATTON: Or multiple choice?

Mr JOHANNSEN: Debated in depth one at a time, yes.

Mr SETTER: Mr Chairman, I would think multiple choice. In other words, there would be options within whatever the proposals are.

Mr EDE: I would like some clarification. It may be that you are saying that the final step will be a yes or no to the entire constitution. However, would you accept that there is a danger in finally going to multiple choice in that, during the course of the convention, there may be offsetting discussions between different groups? One group may say: 'We will accept the provisions that you want in respect of the rights of this group if you accept these rights for this other group'.

Mr JOHANNSEN: I will accept that that is a problem.

Mr EDE: We may then end up with a yes for one and a no for the other.

Mr JOHANNSEN: That may well be the case, but I am simply talking about the overriding principle of not presenting a 'take it or leave it' proposal to Territorians because the history of referenda in Australia indicates that people generally will leave it. You have to ensure that it is marketed to the people in such a way that they will accept it. You also have the problem of protecting the rights of minorities in a situation where the majority decides. There is no answer to that except that, as you have already indicated, Territorians are reasonable people. You will have to fall back on that fact.

Mr HATTON: It is a question of finding the right balance and protecting those things that are critically important to people. It is a balance aimed at achieving equality. I believe that Territorians of all cultures and beliefs seek a sense of being treated as equals and also for there to be respect for their culture.

Mr JOHANNSEN: How much interest have you had in citizen initiated referenda?

Mr HATTON: There is some interest. There is a lobby group in the Northern Territory that is promoting that cause. It has made formal and detailed submissions to us in writing. Its representatives have appeared before the committee to explain and debate the issues surrounding the concept of citizen initiated referenda. Whether or not the committee supports or opposes any concept, all the evidence that is put before us will be forwarded to the convention. We will not hide anything from the convention.

Mr JOHANNSEN: I am not part of any lobby group. I am simply interested in the concept.

Mr HATTON: Sure. We have been trying to get people to be part of this, not merely lobby groups.

Does anyone else wish to make a comment or ask a question? I thank you for coming along. Although the numbers have been small, I hope that you have found it interesting. I ask you to take the opportunity to be part of this process and please encourage your friends and acquaintances to take part also. It is our future that we are talking about. We look forward to increasing participation in this process. I formally declare this hearing closed.