

TENNANT CREEK —Wednesday 6 July 1988

PUBLIC MEETING

PRESENT:—

Committee:

Mr Hatton (Chairman)

Mr Ede

Mr Harris

Mr Lanhupuy

Mr Setter

(Absent overseas):Mr Smith

Appearing before the committee:

Ms Kay ROSE

Mr Robert Bruce REYBURN

Ms Joan SMALL

Ms Janelle KARRIGER

Mr John HICKEY

EDITED TRANSCRIPT

Issued: 12 August 1988.

Mr HATTON: Ladies and gentlemen, I will declare this meeting of the Northern Territory Parliamentary Select Committee on Constitutional Development open for this hearing in Tennant Creek and welcome those who are present. We have been advised today that we are due to receive submissions from the Julalikara Council whose representative was to be here at 5 pm, and the Tennant Creek Council Town Council. Neither of the people who are to present those submissions has arrived at this stage. However, we will proceed anyway and hope that they arrive in time to make their submissions.

In the meantime, I must advise that Mr Tuxworth, the member for Barkly, was to make a submission. He has responded, and I think it is appropriate that I read his letter into the Hansard record. The letter is dated 6 June 1988 and is addressed to Mr Gray, the executive officer of this committee. It reads:

Dear Mr Gray,

I regret that I am unable to attend the Tennant Creek meeting on constitutional development tonight as I have prior commitments in the Gulf region with my constituents and, as people are coming from a long way away, it is impossible for them to change their arrangements at this late stage.

I only received the letter advising me of the meeting on 29 June some time after I had made firm arrangements to be in the top end of my electorate and, as the material on the constitution has been with me only a few days, I have not had time to study it.

Aside from my own case, I would submit that it is totally unreasonable to expect lay people, who are not au fait with the issue of constitutional development for the Northern Territory, to read and digest the government's 170 pages of technical notes in the few working days before this meeting. If the response to the public meeting in Tennant Creek tonight is disappointing, it could well be that the community has not been given sufficient notice about the meeting or time to consider the papers prepared.

On the basis of the short notice given, I would have to assume that the people of Tennant Creek will be given the opportunity, at a later date, to have further discussions on the contents of the documents presented at this meeting.

Yours faithfully

Ian Tuxworth

Member for Barkly

I must take the opportunity to respond on behalf of this committee to that letter and I do so in this sense. During the last week, 3 documents have been circulated. One is titled 'A Discussion Paper on a Proposed New State Constitution for the Northern Territory', the second is 'A Discussion Paper on Representation in a Territory Constitutional Convention', and the third is 'Information Paper No 1, Options for a Grant of Statehood'.

Those 3 papers were tabled in the Legislative Assembly of the Northern Territory in October 1987 together with a tabling statement. They were circulated and were available to all members of the Legislative Assembly, of which Mr Tuxworth was a member. In addition to that, every MLA was provided with a 10 or 12 copies of each of the documents to circulate within his or her electorate to ensure that they were available for people within the electorates to study and make comment on.

In the period since October, there have been public notices seeking submissions from the public generally on matters associated with the development of a constitution and on these papers. A public notice was placed in the Tennant and District Times on 24 June advising of this meeting being held. In addition, this committee circulated these papers to a number of people to provide yet further communication with the community. A number of other organisations throughout the Barkly electorate were contacted during that period.

Therefore, I must refute totally the suggestion, firstly and most importantly, that the member for Barkly had not known of these documents until a few days ago as he was a member of the Legislative Assembly and received copies when they were tabled in the Assembly at the end of October last year. As the local member, it was requested by this parliamentary committee that he take the opportunity to make that information available to people in his electorate so that they could inform themselves and assist this committee of the parliament in the performance of its job. We do apologise for the relatively short notice given to people in the Barkly area which may have affected their ability to make contact.

This committee is charged with a very complex and difficult task, but it is one that is critically important to the people of the Northern Territory. Our job is to develop a recommended draft constitution which we are to present to the Legislative Assembly along with all the discussion documents, submissions and comments that we receive from the community in a process of community consultation. If that is approved by the Assembly, that will then be forwarded to a constitutional convention of Northern Territory people. We are also seeking views and submissions on the construction of such a constitutional convention to ensure that it is as representative as possible of a wide cross-section of views and interests throughout the Northern Territory.

That constitutional convention will be charged with the task of reviewing that draft document and approving, amending or adjusting it as it sees fit, in order to prepare a document which will be presented to the people of the Northern Territory for referendum before the final adoption of any constitution. This is really the start of that process.

For over 2 years, this committee has been preparing the background information necessary to enable people to start to address a number of the wide range of issues that are in the minds of the community about what a Northern Territory constitution should contain. This committee's job is to seek the views of the community and to endeavour to reflect those views, so far as is possible, in the draft document that it will prepare, and also to have those views to make them available to the future constitutional convention. As I said, equally, we are seeking the views of the community on how that

constitutional convention should be formed.

Our meeting here today is as much a start of an awareness program about the constitution as it is an opportunity for people to present their views or make submissions. This is not a first and only opportunity for the community to comment. We would expect that there will be further programs which will present further opportunities for people to consider the issues and the committee anticipates making further visits to the communities around the Northern Territory where, as they come to terms to the issues involved and develop their views, people will have an opportunity to bring those views forward to the committee before we sit down to finalise the committee's task of preparing the recommended draft for the Legislative Assembly.

I very much appreciate the presence of those who have come to this meeting and I trust that each of you will take the opportunity to put your views and to ask questions about what the process is, what a constitution would be and even, for that matter, why this is necessary.

The preparation of a constitution is part of the statehood program. Through this present process, we are not asking people to say that they want statehood now, or in 5, 10 or 20 years time. What we are saying is that it is a fact of life that, one day, the Northern Territory will become a state, whether that occurs now or some years into the future. The Northern Territory will not be divided between the states of Australia, it won't vanish nor will it stay forever in this present half-way house situation.

However, if we are to become a state, we will need to have a constitution. That document is the foundation. It will be the basis on which the community will determine the type of society it wants in the future. A society's rights, its responsibilities and the roles of its various elements are expressed fundamentally through the people's constitution. It is critically important that this document is prepared in a manner which will make it the people's constitution, so that it expresses the aspirations and views of the people of the Northern Territory.

This will not be a short or easy task to complete but it is one which, as Territorians, we must address so that, when the day arrives when we move into statehood, we have in place the framework to do that. A constitution will provide us with that basic framework. As I said earlier, this committee's job is to start to bring that together.

I recognise that often it is very daunting for people to start to address issues of this kind but, nonetheless, I believe it is important for all of us to turn our minds to this matter and ask ourselves how we want to see the future Northern Territory structured, what sort of a society we want and how we can best provide the basic framework and the rights and the responsibilities of the citizens of the Northern Territory. Determining that happens to be one of the tasks of our generation. It is a unique task. It is not likely to happen again. It has not happened in this country for nearly 100 years. This meeting provides the opportunity for people to start to find out about it. This committee is here now to receive whatever views people have on this and to address them.

Would you like to add a few words at this stage, Brian?

Mr EDE: Certainly, Steve.

I would like to emphasise the essential difference between the work of this committee and the decision on a date for statehood. There are people who believe that states are an anachronism in Australia and that, in fact, instead we should have a unitary system with a federal government and some form of regional assembly. However, the pragmatic fact is that, if that were the eventual structure of Australian government, it would not occur in the short term. Probably, we will be moving towards statehood before that happens.

Given that argument, for people to say that they do not believe that statehood for the Territory should occur 5 or 10 years down the track, or even much later or for them to say that they will not become involved in the constitutional development process would really be for them to cut themselves off from a very real opportunity to assist in deciding what is to be the nature of the society that we will live in in the Northern Territory. This is an historic chance, it is something that people in the Australian states had the opportunity to do well over 100 years ago.

Generally, in that period in Australia and, in fact, around the world, with the very noted exception of the United States of America, most states tended to use a constitution as a simple document which established the basis of their institutions. With the exception, as I said, of the states in the United States which used Bills of Rights and things like that which were incorporated into the constitution at a very early stage in order to talk more about the nature of the society, the powers and

functions and the rights of the people that lived in the state.

The people of the Territory must decide whether we are to have a narrow constitution or a broad constitution. What types of safeguards do we wish to include for the protection of our citizens? What safeguards do we wish to put in to reflect the special nature of Northern Territory society where we have a large Aboriginal population which is still a minority within our population? How do we ensure the rights of minorities? How do we ensure the rights of the majority? These are issues which we will have to look at in this process.

In no way do I see this as being the last time that this committee will meet in Tennant Creek. Because this process is a 'once off' exercise, if I can put it that way, it really needs to be worked on very carefully. In many ways, what we are involved with at the moment is a consciousness-raising exercise. We are trying to get people to recognise that this is serious, it is important and it is going to happen. At this stage, whilst the committee is holding this present round of meetings in Territory centres, we are seeking to get the message across to people that this is not something which can be left to the politicians to work out in Darwin or behind closed doors in party rooms. It is something which belongs to the people, and the people should be involved in it. At this point, if we are able to clear up misconceptions and obtain some initial ideas from people as to how they see either the process itself developing or the final result, I think that the committee will have done its job.

While we differentiate between the fact of statehood and the constitution, there will be things that people will want to bring in to discuss and, if people wish to talk about the timing of statehood, we will take their views on board. People may wish to talk about the terms and conditions on which we should go into statehood. That may reflect their views on the number of senators we should be entitled to have. Should we hang out for the Tasmanian option? Tasmania has a certain number of House of Representative seats and the full numbers of senators even though, on a population basis, it was nowhere near being able to justify those numbers. Or perhaps we should establish a formula which, over a period of time, will take us to that number of senators without that entitlement being based on a population change. Those are some of the issues that we need to look at.

People may wish to talk about the options for achieving statehood. There is the option under section 121 of the Australian Constitution where the federal parliament actually makes that decision. The other option is to go to a full-scale amendment of the Australian Constitution through a national referendum. Some people have said that, unless we follow the whole referendum route and obtain an amendment to the Australian Constitution to include us as a state, we will become but a 'Clayton's state' because of the very fact that the federal parliament made the decision. Some very learned people have said that would not apply because, under section 121, the parliament itself can proclaim new states.

Those are issues which people may wish to address or they may wish to confine themselves simply to the very nature of how they will feel themselves living in this new society and what their wishes and aspirations are for the society that they and their children will be living in, here in the Northern Territory. I do not think that a constitution is something which we should leave to constitutional lawyers to play around with. While we may send things off to them for decision and for advice every now and again, the real thing is that it is our constitution, and these meetings around the Territory are to provide the opportunity for people to be able to say what sort of society they want to live in.

At this meeting, even if people have not made formal submissions at this stage, it looks as though we may have time for people to come up, give their names and say whether they are here as individuals or to represent organisations, and make their views available to us. Some of you may wish to ask questions about our views and the views that the committee has received so far from other people.

Mr HATTON: I would like to make one other point. There may be other issues people may wish to raise associated with the general question of statehood. Whilst we are not formally here for that purpose, certainly we are quite prepared to address any specific issues associated with the general question of statehood that people may wish to raise.

Rick, do you want to add anything?

Mr SETTER: Thank you, Chief Minister.

The Northern Territory was governed by remote control for 100 years. In 1978, we finally achieved self-government, and that was quite a milestone in the history of the Territory. There is no question about that. Those of you who lived here in the years prior to 1978 would fully understand the lack of development and the frustrations that were evident among the community as a result of being governed by faceless people far away in Canberra.

But, in the 10 years since 1978, since we have had a Legislative Assembly comprising members elected from within our own community, enormous progress has been made. We have only to look around the Territory to see what has happened. Things went along very well for a while but, about 4 years ago, the Memorandum of Understanding that we thought we still had with the Commonwealth was disregarded, it was virtually torn up and, since then, our privileged position, our sweetheart arrangement with the Commonwealth if you like, has been gradually dissipated. It has been eroded away.

Mr HATTON: It is gone.

Mr SETTER: As the Chief Minister has just said, it is gone. It is a whole new ball game now and the end result is where we find ourselves today. We are funded basically under the same arrangements as are the states, and I am sure that the Chief Minister can explain that in detail. No longer is there any advantage in us remaining as a self-governing Territory. In my opinion, the time has come for us to move further down the line to greater constitutional development. Of course, at the end of that road is eventual statehood.

In 1985, the Chief Minister of the day established a select committee of the Legislative Assembly to develop a strategy to work towards further constitutional development and, here we are in 1988, several years later. One might well ask what has been achieved. That has certainly been asked of me. However, the reality is that there has been an enormous amount of homework put in on researching our path to constitutional development. It is a very complex matter. There have been officers, and some of them sit on my right here this evening, who have spent these several years working on that very issue. Although its membership has changed over that time, this committee has met on very many occasions and, as a result of that, a number of papers have been produced. They have been collated and appear, in a condensed form, in those documents there.

I will close by saying that, in my opinion, it is essential that we move down this path towards statehood as quickly as we possibly can because I believe it to be in the best interests of all Territorians.

Mr HARRIS: Mr Chairman, I would like to make some brief comments, not so much about the issue of constitutional development as such here, but to emphasise the need to generate interest in the community and to encourage people to come forward and make comment to this committee.

I take the points made by Brian and yourself. One of the concerns that the committee has is that people may be frightened away from coming forward and making comment because they feel that these papers, as Rick has said, are too complicated and, in consequence, only a few people will indicate their interest in relation to the constitution itself. I believe that, as a committee, we are being educated as we move around. It is very clear that we need to generate that interest. I believe that we need to broaden our approach, Mr Chairman, so that we can stimulate that interest. It is important that we encourage as many people as is possible from the communities that we visit to come forward, to listen and to question us on a whole range of issues relating to the matter of statehood. I think it is very important that that does occur.

Also, I think it is necessary for the committee to advertise not only through the printed media but also over radio and television in order to get the message out into the community that this committee is moving around and that we do want people to come forward and give evidence to us. Only then can we really obtain the views of the people in the various communities so that our final constitution will reflect the views of the people generally, and not just those of the few who are particularly interested in the issue of constitutional development.

I would suggest that the members of this committee have learnt something in the last 2 days and that is that we need to broaden our approach to the whole exercise so that people are not saying that they have not had enough time to read the material forwarded to them and that they do not know what this is all about. We want people to come forward. We want them to discuss the issues, and we need to take that on board as a committee.

Mr HATTON: Thank you very much. I will call for submissions in a moment. I notice that the representatives of the Tennant Creek Town Council are here and I welcome them.

On the table over there is a series of booklets, and I invite everybody present to take the opportunity to take a copy of them away with them. Some of them make rather heavy reading but also very interesting reading in many ways and, if each of you takes the opportunity to get them, it will start to give you an idea of the breadth of the range of issues that we need to address.

Right now, I invite the representatives of the Tennant Creek Town Council to come forward and present their submissions.

Kay, please come and talk to us. Please, for the purposes of Hansard, take the opportunity to introduce yourself and indicate who you represent.

Ms Kay ROSE: My name is Kay Rose. I am here to represent the Mayor and aldermen of Tennant Creek Town Council. I have not come to present a submission but, as you invited people to do before, to obtain some facts so that we are in a position to prepare one. The council very much wishes to be part of this process, but I think members of the committee are all aware that ours is a fairly new council at this time and we are working on it.

As I listened to you speaking, my thoughts followed 2 lines. Firstly, yes, we are moving towards statehood, and we must have this document. The second was that this is another clipping of the wings of the free spirits who made this Territory what it is today. Every step we take does confine us a little I feel.

I would ask these questions for our information and for that of other people who are here. Can you tell us, do the constitutions of the Australian states differ greatly from each other, and will ours differ greatly from theirs?

Mr HATTON: There are a number of differences. Most of those constitutions were written a century or more ago and they reflect very much the times that existed then. There have been some amendments made to them.

In preparing the discussion papers here, we have included much of what is in the other constitutions, but have also addressed a number of the more modern trends that are occurring in constitutional development. In our process, we examined every state constitution in Australia, that of New Zealand and a number of other overseas constitutions including those recently made overseas, and extracted all the elements in all of those and put them all together to give as broad a cross-section as we could. This documentation does not necessarily reflect the views of this committee; rather it presents a series of options for people to look at and say: 'Well I like that and I don't like something else'. Really, we do not have a clear picture yet of where we are going.

Ms ROSE: We live in a time of great social change and, personally, I am very alarmed when I read stories about children being allowed to divorce their parents and issues like this. Will the committee address these sorts of issues in this lead up to the preparation?

Mr HATTON: Issues of that kind are generally dealt with by way of legislation rather than through constitutions. I might add that I am as alarmed about such things as you are.

There is a view held by some people within the community that there should be a Bill of Rights or something equivalent to that. Other people do not think that one should be in there but that that aspect would be better dealt with through the common law as it generally is in Australia now. We have raised that issue for open debate.

Ms ROSE: There was another point we touched on briefly and lightly at our council meeting last night. If the Territory community said: 'We want written into our constitution words to the effect that we have the right to bear arms', how would the government and your committee feel about that sort of statement?

Mr HATTON: It will be the people's constitution and, whilst I might not approve of that if, in the end, the people of the Territory wrote that in through their constitutional convention and the referendum, that would be part of the constitution.

Ms ROSE: So it really will be a people's document when it is finished?

Mr HATTON: Yes. The process is not one of politicians passing something through the Assembly. It will be done through a constitutional convention of Territorians who will prepare the final document to go on referendum to the people.

Ms ROSE: Bearing in mind that we live in a strongly multicultural community in the Territory, are linguists and interpreters out there going through the same exercise with all the ethnic groups throughout the Territory?

Mr HATTON: Our committee itself will be travelling to some 60-odd communities throughout the Territory this year and speaking with them. That is just the first run through. We will be organising for the field staff in the Office of Local Government also to be available to speak with people in the Aboriginal communities. Those are the communities with the largest numbers of people who do not speak English. Our indigenous people have a very particular interest in a number of issues associated with a constitution and statehood. Obviously, there are other ethnic groups which we will need to make contact with and we are still refining how we are to get through to all of the groups. But, yes, the aim is to get to as many

groups as possible.

Ms ROSE: When you are looking for submissions, can we address real housekeeping issues like this as well as the rights that we would like to see included to protect our community?

Mr HATTON: Yes. The door is wide open. Also on how you would see a constitutional convention being structured. There is a book here to give you some ideas on it.

Ms ROSE: You know, that is something I have never thought about, which probably goes for about 98% of the Territory community.

Mr HATTON: Should we have an elected convention or representatives appointed or some combination of that?

Ms ROSE: There is such a widespread and isolated ...

Mr HATTON: That is right, and what size should the convention be? This document gives a few ideas which, at least, will start you thinking about it.

Mr HARRIS: Kay, the other thing to point out is that this is really an information gathering exercise as well. Many people are misinformed about the cost. The first thing many people say is: 'Oh, it will cost us too much'. That information is available ...

Mr HATTON: Or it will be shortly.

Mr HARRIS: ... and you will find out that that is not the case. People need to be informed because the whole issue of statehood is not one where a government says: 'You are going to statehood', end of the story. It has to come from the people to the government. We believe that, if the people are informed of the facts, that will be the case. People will start to show an interest and they will see the benefits that we can obtain by moving towards statehood which we cannot receive as we are at the present time.

Ms ROSE: I think probably the public interest in your portfolio and in recent legislation in the education area must assure you that there will be public comment and interest in it once people become comfortable with the idea.

Mr HATTON: Once they come to grips with the issues, then they will have a view on those issues, you can guarantee that.

Ms ROSE: Yes. I have never known the Territory community not to make comment on things.

Mr HARRIS: We should perhaps include it in the education bracket ...

Ms ROSE: Put it in the Education Act, and you'll be right!

Mr HARRIS: and generate the interest.

Ms ROSE: Really, I don't have a great deal to offer at this time, but I can assure you that, should you come again, there will certainly be a response in writing from the Tennant Creek Town Council. Certainly, will be forwarding comments.

Mr HATTON: It would be of great assistance if the council were to prepare a written submission and forward it to us so we can take that into account. Then, when we come back, at least we shall be that far ahead in terms of being familiar with the basic submission from the council and can build on it. The submission can be made verbally or in writing, either way. That does not matter.

Ms ROSE: But it is better in a written form. Will you be publishing submissions at some stage so people can read the comments made by others?

Mr HATTON: Yes.

Ms ROSE: That is a good idea.

Mr HATTON: There is another issue that the council may wish to address. One of the questions that is asked concerns the

issue of constitutional recognition of local government in a state constitution, and the nature of that recognition. You know a proposed sort of Clayton's recognition is being proposed to go into the federal constitution. The question is whether there should be some form of representation in this. The Alice Springs Town Council made submissions on that to us yesterday, and will probably make further submissions on that. It may be an issue your council would be interested to follow through on.

Ms ROSE: Fine. Thank you for your time.

Mr SETTER: Kay, there are a couple of things that I would like to raise with you.

With regard to a Northern Territory constitution, after receiving all the submissions, this committee will draft a constitution which will be tabled in the Legislative Assembly for consideration. That will then go to a constitutional convention of Northern Territory people comprising representatives of various interest groups and, following that, it will be put before the Territory people by way of a referendum.

Mr HATTON: After that.

Mr SETTER: Yes, after the convention it will be put by way of referendum to the Territory people. Even after that is approved, it will have to be submitted to the Commonwealth or the federal parliament.

Mr HATTON: No, it doesn't.

Mr SETTER: They have to approve ... ?

Mr HATTON: No.

Mr SETTER: Could you clarify that point, please Graham?

Mr NICHOLSON: It supposes that the Commonwealth act would not contain the constitution within it. That it could be referred to (inaudible) but we would not be granted statehood if the Commonwealth had some violent objection to something.

Mr SETTER: That was the point that I was trying to make, that if the Commonwealth disagreed with our constitution, it would not pass the act through parliament enabling us to achieve statehood.

Mr HATTON: Could I just address the questions: why a constitution, and why do we want to get the constitution ahead of statehood?

The Australian Constitution provides that the Commonwealth has no right to interfere with a state constitution if it exists at the time of the creation of the state. There is some question that, if the constitution came after the grant of statehood, there may be some capacity for the Commonwealth government to make some changes to or enforce some changes to that constitution. That has certainly not been settled as a question of law, but it creates a question mark. I do not believe anybody, particularly anyone in the Northern Territory, would countenance a suggestion that, as a state, we could have the federal government deciding to change our constitution. We believe very much it should be a constitution of the Northern Territory people, and approval of it should come from the Territory people and nobody else.

Ms ROSE: Maybe that is why they want the right to bear arms! I think that, next time, we will have more to offer from our council.

Mr HATTON: Thank you very much, Kay.

Mr HARRIS: We will get education involved, Kay.

Mr HATTON: Are the representatives from Julalikara Council present?

Mr REYBURN: There are no representatives from Julalikara Council here, but John Havnen and myself are appearing in our personal capacity.

Mr HATTON: John hasn't arrived yet?

Mr REYBURN: He has not arrived yet, no.

Mr HATTON: Do you want to speak? Please come forward. The floor will be open to anybody, once we get past the formal submissions. Everybody will have his say.

Mr HATTON: Thank you, Mr Reyburn. It would be appreciated if you would just introduce yourself. You mentioned that you are appearing on your own behalf.

Mr REYBURN: Yes. My name is Robert Bruce Reyburn. I am a cross-cultural consultant. I live in Schmidt Street in Tennant Creek, and I am appearing in a personal capacity. I do not have a written submission.

Mr HATTON: That is fine.

Mr REYBURN: In fact, I do not have anything to say at any great length. I hope that the things I do have to say will be pertinent to the purposes of this committee.

There are 2 key areas that I feel moved to talk about. One is the question of assent to legislation, which is contained at page 5 in one of the discussion papers. The other point I would like to address relates to examples of human rights from outside of Australia, the Universal Declaration of Human Rights, that sort of thing - the international covenants question.

I should say at the outset that I find the concept of a new state an exciting one with the proviso that it is a new state and that, when we look at the old states, which we have the benefit of not being one of at this stage, we see that they are the shadows or ghosts of the earlier colonies in Australia. By and large, those colonies, particularly those on the east coast and including Tasmania, were founded in acts of human cruelty by one group of human people to another group of human people. I refer there as much to the treatment of convicts as to that of the indigenous people who existed there when the Europeans arrived. I think also of the cruelty done to those people who were expected to carry out orders in their positions as members of the militia who, in turn, were brutalised themselves by the brutalising treatment they had to give. So, we have the benefit of not having inherited the boundaries of previous colonies, and we need to maximise our opportunities in this life.

The history of development in Australia is such that the Commonwealth did not come into being until 1901 and, in 1911, the state of South Australia transferred the Northern Territory to the Commonwealth. That was an act of great responsibility because it placed the well being of the people living in the Northern Territory in the hands of a remote population centre.

I am particularly committed to the concept of strong local government and, when I hear the argument of the Northern Territory government that being ruled by remote control from Canberra is not a good thing, I think that, in Tennant Creek, we are particularly aware that being ruled by remote control from Darwin or Alice Springs is not a good thing. I will be returning to the question of local government in connection with the question of assent to legislation.

On the question of international law, which I will address first, the material compiled by the select committee at page 117 of the large report, makes reference to some of the comprehensive statements on human rights that have been passed through the collective wisdom of nations and ratified by various nations, but not all nations, and which include the Universal Declaration of Human Rights, the Bill of Rights of the USA and the Canadian Charter of Rights. I suppose the latter 2 are domestic matters.

I would like to draw to the attention of the select committee the Convention for the Elimination of Genocide. As we look around our own surroundings at this time, it is often said that we will wake up one day and find ourselves in Asia. I think it is piccaninny daylight already. When we look at Vietnam, we see continuing economic warfare being waged against those people. We see the horrors of Kampuchea. We look at the treatment of people in the Moluccas, East Timor and Irian Jaya and we are aware that the question of genocide has not been fully distanced in contemporary times.

My training is as an anthropologist and, at some time in the very distant past, one of our ancestors discovered that he or she had the ability to pick up a weapon and kill something. That is a tremendous power, and that tremendous power has to be balanced by mechanisms that stop that power from running berserk. I think Aboriginal life has evolved such mechanisms because that power can be turned on other human beings. We need some means to control that. I guess the Convention for the Elimination of Genocide has not been particularly successful, but perhaps it could be included in the

required reading so that those who are interested can form some idea about it. I would like to read the first 2 articles of that into the record.

Article 1 says that the contracting parties confirm that genocide, whether committed in time of peace or time of war, is a crime under international law which they undertake to prevent and punish. Under Article 2, in the present convention, genocide means any of the following acts committed with intent to destroy in whole or in part a national, ethnical, racial or religious group as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.

When you read through the 5 points raised as to the meaning of genocide, one of the startling things is that, through the history of Australia and the history of the Northern Territory, we would qualify, I think, on any one of those grounds not to mention the 5 of them taken together. We have a proven history of requiring some kind of mechanism to prevent that coming about in the future.

As I said, I do not have a great deal to say, but I would recommend to the members of the select committee that, in the required reading for consideration of the content of a proposed constitution, they seriously consider the future of the people who will be resident in this new state with regard to prevention of genocide and I suggest that this text, or something like it, be included in the readings of discussion papers so that a very real threat to the human species everywhere can be addressed and measures taken to ensure that its possible occurrence is minimised.

On the question of assent to legislation and local government, I refer to page (v) of the larger paper, clause (c) of B. It says: 'The Select Committee is unanimously of the view that the representative of the Monarch should at least have the function of assenting to legislation or withholding assent. The Committee differs as to whether that representative should have power to suggest amendments back to the new State Parliament'.

There are some of us who remember the 11th day of the 11th month 1975 as perhaps a day of less shame than 13 December 1975 when the Australian people voted. But we remember the implications for any elected government of being overthrown by a person, or persons, who are not subject to being elected themselves and being elected by the people. It is my view - and I don't know if anyone else holds the same view - that the proper safeguard on the passing of acts of parliament is best institutionalised by having those acts referred back to the people via organs of local or regional government for ratification. Whether that is properly done by means of a function attached to the office of a Governor or Administrator, whatever that office is to be called, something required of that person, or whether it is something required to occur directly from the Legislative Assembly to the people, is a question for debate. I think the merit of the suggestion is that it provides a very healthy check in a situation where the representatives in the House are elected 3 or 4 years apart and laws can be passed during that time which may or may not be in accord with the will of the people.

Those are the 2 major points I have to cover. A third point, which perhaps comes into international law and may belong somewhere else, is very confusing in Australia and that is the recognition of customary Aboriginal law. Much research has been done on this topic by the Law Reform Commission. It has published a mammoth volume as a result of its findings which is now apparently gathering dust on various library shelves around the place. I think we would all benefit if that were condensed in some way and made accessible so that those of us who can speak English as a first language can talk about and digest those points and be able to enter into meaningful dialogue with those of us whose first language is the language that is tied to the country we happen to be presently residing in.

On that point, I think that having come to Australia as people from England, and having demonstrated the merit of practices derived in Europe by clear-felling the trees and showing how to let the topsoil flow into the rivers and out into the sea that, when we look to the Aboriginal people we have to admit that they have a proven record of over 40 000 years, or from time beginning as they would say, of good management of the land and of good management of life. And we have nothing to lose by giving full recognition to the place of Aboriginal law in our community.

That is all that I have to say on my own behalf. Mr Havnen did ask me to put a few points if he did not arrive here.

I am now speaking on behalf of Mr John Havnen who was to have appeared in a personal capacity. The points for the the Select Committee on Constitutional Development of the proposed new state for the Northern Territory are the following. Point No 1 relates to institutionalised disadvantage. He would have liked to raise the point that one-third of the population

in Tennant Creek is Aboriginal, and that is a permanent population. Their grandparents were here and their grandchildren will be here. We have just experienced a local election here in which Aboriginal people ran a candidate. That candidate did well on primary counts, something like third or fourth. The present electoral system worked in such a way that that person was among the tailenders in the final count. That does not seem to be a very good way of introducing Aboriginal views into the management of the community in which these people live and that impacts directly upon their life.

The fact that one third of the permanent population of Tennant Creek is Aboriginal is a relevant factor also with respect to the question of the number people holding jobs. In an equitable system, if there are no other factors operating, one would expect to find roughly the same proportion of people in one group in jobs - and not just collecting rubbish but in all sorts of jobs - as you would for any other group within the community.

Point No 2, the Westminster system: I understand this report talks about the implementation of the Westminster system. The Westminster system of government, and perhaps you could call it the Westminster system of life, evolved in England. It did not have any input from Aboriginal people. Speaking for myself, Bruce Reyburn, I would say that that is a pity. I think that affairs in England would have benefited from the kind of thinking and philosophy that we find in Aboriginal life.

I will return to Mr Havnen. The Northern Territory government is seeking to transplant that system into the lives of Aboriginal people here. I suppose, as we look at New Guinea at the present time, we could wonder about the wisdom of that. That is to say the eastern part of New Guinea.

Point No 3, the education system as presently constituted is part of the Westminster system and it reinforces the wrong ideas, or the negative stereotypes, that non-Aboriginal people have of Aboriginal people. That is because it gives full credence to philosophies of evolution and Darwinism that promotes to the forefront of human evolution those who have developed their material culture and demotes to the backside of evolution those who have not developed their material culture. The question has not been asked, even by anthropologists by and large, whether or not those people who were not developing their material culture were very busy developing some other aspect of their culture. There is evidence, though it is not highly-developed, that Aboriginal people have the most highly-developed, non-material culture on the planet.

There is great room for investigation, and discussion with Aboriginal people. Mr Havnen thinks that Aboriginal studies should be included in schools for the instruction of European people in the same degree as there are English or social culture studies of any another kind. He believes that Aboriginal languages should be taught, and that the study of Aboriginal culture and language should start from primary school in a simple, gentle fashion and proceed to more specialised studies at the secondary level.

Point No 4, the final point, of the indigenous people Mr Havnen says that the expression 'second-class citizens' is not appropriate, neither is the expression 'third-class citizens' when accurately characterising the position of Aboriginal people in Australia. He says 'fourth-class citizens' is a more accurate description of the position Aboriginal people hold in Australia at present, including the Northern Territory, and that it will reflect to the credit of other Australians when Aboriginal people hold the position of first-class citizens. That has to change.

Mr HATTON: Thank you very much. You have raised a bevy of points and I hope we can cover a few of the matters that you dealt with in the course of your discussion.

First and foremost, I would like to deal with the issue of the executive power that you referred to which, in fact, goes from page 10 of the document. Those first pages with the Roman numerals are actually a summary of what else was included. You will note there that it is referring specifically to the nature of our government. There are limitations on states in that the Australian Constitution does require the continuation of the monarchical system of government. That is part of the Australian constitutional structure. As such, the representative of the Crown is the executive in the sense that there are 3 elements of government. These are the executive which, in a republic, is the President. In our form of government, it is the Crown. There is the legislature. In our system, that is the Legislative Assembly here and the federal parliament nationally. The third arm is the judiciary. Those 3 form the structure that this refers to. The representative of the Crown is the executive. That is not a question of choice. In the end, the executive is the organ of government which approves or disapproves legislation. In fact, it passes legislation on the advice of the legislature.

The question we have been addressing in this is that, if there is a power to assent then there must be a power to withhold assent. Of course, what flows from that is a question that arises, whether the representative of the Crown could, for example, recommend amendments and, historically, there have been occasions when that process of recommending

amendments has avoided very embarrassing situations for the legislature. Those are questions that we are raising.

The concept of the legislature of the Northern Territory being required to obtain the assent of the local government level of government is an interesting one. I really had not thought of it. It would be like the federal government being required to get the approval of all the states before it could pass a law. I guess that would be an equivalent analogy.

Mr REYBURN: Yes. The federal government itself could be tied in this way so that local and regional governments could be required to ratify acts that it passes.

Mr HATTON: That would be the equivalent. Then the question arises - I am using words which I know are emotive and have connotations which I do not intend they should have - should the superior government ask the lower level government for approval to do something? It is an interesting concept and I would like to look at it further. I can see significant difficulties in trying to get any legislation through.

Mr REYBURN: One of the consequences is that it would be slower.

Mr HATTON: It might almost be impossible.

Mr REYBURN: I do not think it would impossible. It would be slower, and that might be a good thing. The other point that comes up is, I suppose, which is the superior level of government?

Mr HATTON: Yes.

Mr EDE: There is a point I would like to raise in relation to that. If the referral was made back to the various local and community governments for a decision, would you see that as being a majority decision amongst those groups?

Mr REYBURN: There are 2 ways in which I see you could go: one is a majority decision. The other is that, if local governments felt strongly enough about it, they could say that, if they did not ratify certain legislation, it would not apply to their area.

Mr EDE: Going on from that though, whatever process is gone through to reach a decision eventually, there would still have to be a formal method of ratification. Under every system of government that I can think of there is a person somewhere who finally puts his stamp on legislation and says: 'Righto, this has been through the procedure, everybody has okayed it and it is now in place'. It would seem to me that, even under that system, in the final analysis it would still be necessary to have somebody endorse the fact that legislation had passed through the system, been agreed to and had become law. This would simply be substituting a referral from the legislature to that person by a referral from a legislature to local government back to a person who would be the person who would put the mark on it eventually.

Mr REYBURN: When it comes to people putting marks on things, their hands can be tied in various ways and one way is that, if such and such is done, then that mark will be applied but, if such and such is not done, that mark will not go on. If that mark does not go on, nothing happens. If that person does not perform his or her duties, the person is removed from office.

Mr EDE: One of the proposals under this concept is that the representative of the monarch - and in talking to that, I think that we should realise that we are talking about complying with the Australia Act and ...

Mr REYBURN: You have a benefit over me there. I have not read the Australia Act.

Mr EDE: Basically, it sets out the way in which all states and the federal government have to proceed in order to obtain that final ratification.

The Australia Act could, for example, be amended. It would probably require a constitutional amendment. I am not quite sure about that. Such an amendment would actually mean that that person, and it would still be the same person, that put their mark on the paper could be an elected person, whether elected from the parliament or elected by broad representation. There are a number of Westminster systems around the world; for example, in India and Singapore. Quite a number of members of the Commonwealth, while they are still members of the Commonwealth and recognise the Queen as being head of the Commonwealth, do not recognise the Queen as being the head of their state. They elect a president or something of that nature by whatever title.

For us to do that at the Northern Territory level would be impossible because, no matter what we draw into our constitution, we still have to comply with the federal constitution in the broadstream and so we would still need to have somebody at that final point, who is seen as the representative of the monarch even though it may not be within the ambit of the monarch to be able to actually change that person formally. It may be that that person has to be appointed and has, within the constitution, absolute limitation on their powers to say no to anything. In fact, that they have to say yes whether it is to the state, the legislature which it takes notice of or whether we set up a system where the legislature refers it back to local and community government and then that mark is put on it.

It seems to me that what you are looking at really is fitting another tier into the parliamentary system which is analogous to an Upper House which will comprise the community government bodies and local government bodies around the Northern Territory. Would that be an appropriate analogy?

Mr HATTON: Before you go on, pages 103 and 104 of that booklet you have in front of you, the discussion booklet on the constitution, in fact refer to the relevant sections of the Australia Act. In particular, section 9 as cited on page 104 says:

No law or instrument shall be of any force or effect in so far as it purports to require the Governor of a State to withhold assent from any Bill for an Act of the State that has been passed in such manner and form as may from time to time be required by law made by the Parliament of the State.

Earlier, section 7(1) says:

Her Majesty's representative in each state shall be the Governor.

The question of amendments to the Australia Act is dealt with in section 15(1) of the act, which says:

This Act or the Statute of Westminster 1931 as amended and enforced from time to time, in so far as it is part of the law of the Commonwealth or of a State or of a Territory, may be repealed or amended by an act of the Parliament of the Commonwealth, passed at the request or with the concurrence of the Parliaments of all the States and, subject to subsection (3) below, only in that manner.

Subsection (3) refers to amendments to the Constitution of Australia. So, it would need the assent of every parliament of every state of Australia to pass any amendment to the Australia Act, or a constitutional amendment passed by a referendum of Australia.

Mr REYBURN: Well, that would be another example of the Territory showing the way.

Mr HATTON: We are bound by that also.

Mr REYBURN: Yes.

Mr EDE: The point that I want to make relates to one of the things that Bruce was saying. Within a constitution that is something that it is possible to do. Whether we want to do it or not is another matter. However, it is possible to do it if a person is still retained at the top who is formally the Governor, but who has no rights but to assent to legislation that has gone to the various community and local governments for their assent.

Mr REYBURN: I am not a constitutional lawyer.

Mr HATTON: I am really trying to indicate the limitations that exist as a consequence of things like the Australia Act, the Statute of Westminster and the Australian Constitution.

Mr REYBURN: I think the Statute of Westminster was passed in about 1947?

Mr HATTON: 1931.

Mr REYBURN: 1931 was it? It is a recent act. It is a new act and, as we know with legislation such as the Land Rights Act, people have problems with them and such acts are amended from time to time.

Mr HATTON: As I have said, the Australia Act can be amended only with the assent of every parliament of every state in Australia.

Mr EDE: Or by constitutional amendment.

Mr HATTON: Or by amending the Australian Constitution. I am really just indicating the sort of limitations we have to work within in this area.

Mr REYBURN: Great.

Mr HATTON: The point is valid and if it were felt by the community that requiring the assent of local and community government or something of that kind were needed, presumably that would then have to be dealt with prior to final assent by the Legislative Assembly for forwarding then to the Governor.

Mr REYBURN: Yes, well that might be a workable mechanism.

Mr HATTON: It would be the only workable mechanism, if it were felt that it would be desirable. I must say that I have reservations about it. I think it would make for a very unworkable state.

Mr REYBURN: It might make for a very healthy state in the long term.

Mr HATTON: It is very idealistic but often ideals are totally impracticable. I am expressing my own personal view. I would certainly be interested in examining that issue further and I am sure the committee will do that.

Mr REYBURN: I can't ask for more than that.

Mr EDE: As you are developing your ideas on this and finding other people who have considered it, I would be quite happy if you were prepared to put something in writing about how you would see it working. It would be of interest to know how you might wish to develop it further and to get some idea of how you would see things. Whether you are talking about a simple majority of the community and local government or what should apply to what areas of the state.

Mr REYBURN: I will certainly try to do that, but one is always limited by resources and resourcefulness.

Mr HATTON: If you do have any particular questions, you are welcome to contact the committee and we will see what we can provide for you. That is part of the committee's role and function.

Mr REYBURN: Thank you.

Mr HATTON: Thank you very much.

Would any other people like to make any submissions or comments, or ask any questions formally? If not, perhaps we could throw the meeting open for people to raise whatever issues they would like to raise.

Ms JANELLE KARRIGER: My name is Janelle Karriger and I am representing myself. I am an Australian. I am not a European or anything else. I did my last couple of years of high school here and the gentleman on your right there was speaking before about how far we have come since self-government and everything. We have lost a great deal because of self-government. We had much more freedom before. When I went to school, all the other kids were all just kids. We were all pretty much the same and we all did much the same things. Now, to the ones I went to school with, I am white and they are black. I don't think that does a lot for people. However, we are moving towards statehood and our new constitution and, if it is to be the people's constitution, that is because it will develop from the people's ideas and views, isn't it?

Mr HATTON: Yes.

Ms KARRIGER: What guidelines do we use now, because you were saying the constitution will be ... ?

Mr HATTON: We operate under what is known as the Northern Territory (Self-Government) Act, which is an act of the federal parliament. It is the closest equivalent we have to some form of a constitution. It does not have the strength of that. It can be amended or adjusted. Most of the powers of the Legislative Assembly, for example, are spelled out in regulations under that act and are capable of being changed merely by amending those regulations. Such amendments don't even have to go to parliament, except through a committee stage and what they call a 'non-assent' period. It is not a matter for debate in the House. So, we exist under an act of parliament, not under a constitution. We are not a constitutional body as

everywhere else in Australia is. That is the fundamental shift that occurs with statehood.

Ms KARRIGER: Which we have to do.

Mr HATTON: Yes.

Ms KARRIGER: I can see we have to go forward. Yes, I agree with that. It is a shame we have lost so much really along the way. We are gaining, but we have lost a lot. It is called progress. I know it is.

Mr HATTON: Could I just say that the issue of black, white, Aboriginal and non-Aboriginal divisions have nothing to do with self-government. They are a modern development that is occurring and could I suggest they would have occurred anyway.

Ms KARRIGER: Yes, it is called progress. It has worked that way and that is the way it is.

I know that we are going forward, we need a constitution and we need our statehood and we are all looking forward to it but, along the way, there are some other issues that I find even more important: for example, how expensive our water and electricity is getting. That is just an example. It is not just a matter of young people with children trying to survive. It is okay if you are a person that can put your kids in the creche and go out to work as well. I would rather see mine grow up. But I have some friends that are retired. They are people that have been here for nearly 30 years and now there is talk about the water rates going up again. I can justify the cost of electricity. You are using it, so you pay for it. But for water it is different. Under the new system, we do pay much more money and they are talking about putting it up again. People just cannot afford it, and people like them have left because of this. They are the people that got this place off the ground in the first place. If the rest of us that are buying homes here want to live here for a long time, until we die, well we won't be able to. We will be squeezed out eventually and we won't even get to see statehood. We can put up with the cost of living and maybe even the electricity costs, but the water is beyond a joke. We need that and that is ...

Mr HATTON: I would like to pick up these points. I really understand your frustrations. I get the same thing from my wife when I go home. I think we all do.

I have to tell you that the rates in the Northern Territory are 30% below the average rate in the rest of Australia. The fact is that, because of the nature of the climate we live in, we use much more water than people do elsewhere, and that is why our bills are so high. The biggest cost of producing water to your front door is the cost of pumping it, which is the electricity cost. We are subsidising your water by some \$20m a year at the moment. I realise that that does not help you at all. It is just one of the facts of life.

Our biggest problem in both the water cost and the electricity cost is the cost of electricity, and that is a major issue facing the Northern Territory people. It is a major challenge to us and we cannot push electricity prices up. They are too high now. They are the highest in Australia. Quite frankly, if we put the electricity price up, people turn the power off and the amount of money we receive goes down, not up. We have passed that point. What we have to do is find other ways to get much larger use of either gas or electricity to get the cost of producing electricity down.

Ms KARRIGER: But our water is the big thing because we cannot survive without it. You cannot. It is okay once your trees have been in 12 months or so

Mr HATTON: If I can pull the cost of electricity down, I will pull the cost of water down too.

Ms KARRIGER: Yes, water is the really big thing.

Mr HATTON: About 80% of our cost in producing water to you is the electricity cost. It all comes back to the electricity cost structure, and we have to attack that.

Ms KARRIGER: That is all I wanted to say really.

Mr SETTER: Janelle, I have a question.

Ms KARRIGER: Yes?

Mr SETTER: You made the statement earlier that you were not very happy about self-government ...

Ms KARRIGER: I am happy, but it is called progress: it is sad.

Mr SETTER: ... and you made the comment that now, at school, there is black and white. Could you explain to me how you see self-government creating or impacting on that situation?

Ms KARRIGER: That was about the time I think that things started to change. Well, not actually right then. I think it was a bit later, about 1980 I think, when things started to change. For example, all of a sudden, many more people were coming to the Territory because, through having self-government, more people were brought in to fill the government positions and everything else, the schooling and everything else that came out of it, right?

Mr SETTER: Sure.

Ms KARRIGER: Now, many of those people are trying to do a lot of good, and that is fine, but many of them are people that come out of university. A lot of our school teachers are an example, especially around here, not actually in Tennant Creek. They cannot get jobs down south and they come up here. Because we live in a much freer society, they are more inclined to sit back and they don't really have any idea about what is going on. They sit back and they take up Aboriginal issues and say the people that have lived here for a long, long time are doing the wrong thing by them, and the majority aren't. And they are segregating people. They are not letting people live together any more.

Mr SETTER: Right, so you say that it is as a result of the population growth which has followed self-government ... ?

Ms KARRIGER: That is how I see it. I don't really know if that is what has caused it.

Mr SETTER: It is the influence of outsiders that has created this perceived division between Aboriginal people and ... ?

Ms KARRIGER: I don't really know, but the change started at about the time of self-government. Things started to change. There is plenty of work in the Territory and you can always get a job if you want one, which we can be thankful for, but I don't know if there are many opportunities for people in the Territory, white or black. It doesn't matter what colour you are or whether you are an Asian or what you are. I don't know if there is much opportunity to get ahead really, because people are bantering backwards and forwards all the time, Aboriginals and whites, instead of people just getting on with it, living and just pushing ahead and not sitting back. A lot of people are creating more hassles out of it and it is not getting any better.

People lock up their homes now. You never had to lock your house here even in the last couple of years. It has just started and it is not right. They are all supposed to be your friends and your neighbours so the people that are the troublemakers in the first place, well, maybe we should put something in the constitution so that they can get sent back to where they came from.

Mr SETTER: I would like to point out to you that matters Aboriginal, if I can use that term, come under the control of the Commonwealth government and not the Northern Territory government so, the fact that the Northern Territory government achieved self-government has had no impact on our influence or control over matters Aboriginal.

Mr HATTON: It often surprises people to find that the Self-Government Act specifically excludes control over Aboriginal affairs as one of the powers of the Northern Territory government, and they are over a quarter of our population.

Mr SETTER: With statehood, that may change because ...

Mr HATTON: It must change.

Mr SETTER: ... in the existing states, Aboriginal matters do come under the control of each state whereas here they don't.

Ms KARRIGER: How can you justify that? Yes, you can't work like that.

Mr HATTON: It is one of the things in the Self-Government Act, like the much-talked about issues of the Aboriginal Land Rights Act, the management of national parks, uranium and off-shore oil and gas, and those issues that are the subjects of major debates. There are other strange things, like Aboriginal affairs, that are excluded from the control of the Northern Territory because we are not a state.

Ms KARRIGER: So that is why we need statehood and we need our constitution.

Mr LANHUPUY: Do you have any ideas about how to overcome those sort of difficulties? This committee is going around the Territory and we will be speaking to a lot of people throughout the Territory. One of the main issues that we will be confronted with is that of the Aboriginal and white relationship with the Northern Territory.

Views have been expressed to this committee, and certainly I have heard them myself, that Aboriginal people are a bit reluctant to go forward with constitutional development towards statehood for various reasons, be they historical or whatever. If people like yourself, who are genuinely concerned about places like Tennant Creek, Katherine or anywhere else in the Northern Territory, have ideas that could help to overcome some of the racial difficulties that we have, the committee would be pleased to hear about them. Please bear in mind that we are living in a multicultural society and that the human race, being what it is, will always have those sort of elements. But if anyone in the Northern Territory has any suggestions to make that might help to overcome some of those difficulties, I am sure the committee would appreciate hearing them.

Ms KARRIGER: I don't know if this would help towards statehood. My son attends the Tennant Creek area school and maybe 5 Aboriginal children go there. You can't have that. Look at South Africa: you can't have it. It is wrong because the kids don't understand and they don't know about each other because they are never around each other to find out. I really think that there should be about half and half or even a good third put in there.

I don't know if they all go to Kargaru. I don't have anything to do with that. But, when we went to school, we had only 1 school and we all went together and it didn't bloody well matter. That was the way it was, it was just that simple. We all learnt together, we all ate together, we ran around together. We were just all kids and we were allowed to be kids. The kids are being used now. It doesn't matter what colour or what they are; they are being used.

Mr LANHUPUY: The education system might have to be looked at.

Mr HATTON: That is for the Minister for Education to pick up.

Mr HARRIS: I have heard a very clear message. I think what you are saying is that everyone was treated the same.

Ms KARRIGER: Yes, we were.

Mr HARRIS: That is the clear message that I get but, unfortunately, as Wes has said, the reality is that there are very serious problems and there are cultural differences which have to be taken into account. I can assure you, however, that there are people who have been in the Territory for a long time that share your views, and I believe that we are all the same and that we should be the same. But, there are these differences which have to be addressed.

Mr HATTON: Anybody else?

Ms SMALL: Chief Minister, members of the committee, my name is Joan Small. I do not have a submission to present at this time but the Territory Nationals will be presenting one at a later date, and the questions that I have to ask are on my own behalf, just as a matter of information.

I have 2 questions. The first follows on from Kay's questions and Janelle referred to it briefly also. It relates to constitutions or guidelines for people to look at to help them understand what the Territory government is following. From what I have read, I understand that the committee has made many recommendations based on the Northern Territory (Self-Government) Act. The comments made about the states' constitutions confused me a little. I just wonder how the states operate under very outdated constitutions and whether they use common law extensively to get around some of the things which are outdated, and if any updates were done with the states at the time of federation.

Mr HATTON: Some are being done, from time to time, Joan. Graham Nicholson, who is our legal adviser, is the man that knows best about the details of this. There are provisions for amending state constitutions. Many of them are not by way of referendum but, in fact, where the state parliament passes amendments to the state constitution. That is raised in this discussion document. It is not what we recommend. We recommend that any amendments be done by referendum. Amendments have been made to some of their constitutions. Some of the basic structures, the origins, are there. They are very basic documents. Other people think that constitutions should be very full documents. You can look at either direction.

Graham, perhaps you would like to add some comments? You know more about the fine legal details of all this.

Mr NICHOLSON: All of the states operate under 19th century constitutions and none of them changed at all on federation. The existing constitutions continued and the existing self-governing colonies became states, but their constitutions did not change. All the constitutions are in the 19th century mould which basically just outlines the broad framework of the institutions, primarily the legislature, and very little else. They do not really read very much like the sort of contemporary constitutions which we have seen since World War II and I don't think they are really very good models to use.

Mr HATTON: They provide very little in the way of constitutional protection. The constitution just leaves all the power to the state government basically.

Mr NICHOLSON: They are all very flexible constitutions as against the Commonwealth Constitution which is very rigid. Just look at this very comprehensive referendum.

Ms SMALL: Right, may I make 2 statements based on that? First, that I would assume that we are looking at something quite different from the state constitutions and, secondly, if the Northern Territory (Self-Government) Act is a good basis upon which to start, are copies of the Self-Government Act to be made available to people so that they can have a look at what is in it, and make recommendations or put in submissions on some of that material perhaps?

Mr HATTON: They can be made available. They are available now. As with all acts of parliament, they are published documents and you can buy them through the government. I think they are about 10¢ or 20¢, they are not very expensive. They may be \$2 these days with a dash of inflation, but they certainly are available. It is Commonwealth legislation, and it is available through government publishing services, as are gazettes etc.

Mr SETTER: I think that the Government Information Office in Smith Street, just behind the Chan building, would have them.

Ms SMALL: Do you think it would be valuable for people to look at that document because, with most of the constitutional committees I have been on, you start with a basis of some kind of constitution that has some relevance to what you are doing and you work from there? It is a bit hard for people generally to know where to go.

Mr HATTON: That is what we have sought to provide with this discussion document. It deals with most of those issues, and other issues that are in the minds of the community, and it discusses the pros and cons of different elements; things that you must have, things that perhaps you should not have. I think you will find that this document itself is the best source document to work off.

The Self-Government Act has value because that is where we are now, it is what we are moving from, so it does give that sort of a foundation. I would urge you to look at this issue, and there may be other issues that come to your mind. If there are, please take the opportunity to contact the staff at the Legislative Assembly or myself as chairman of this committee and we could chase out any other information you need. We have booklets that thick which comprise an accumulation of a multitude of constitutions and it would drive you crazy if you tried to go through them, I can promise you.

I think we do have a summary of the various constitutional provisions in different acts that were produced.

Ms SMALL: I have no desire to read something that is not worth reading.

Mr HATTON: I think you will find that this will make a very good source document for you to work off.

Ms SMALL: My second question relates to the question of section 121 or 128 of the Australian Constitution. It is stated that the committee favours following the option of section 121. This may take a bit of time. It is explained in the document, but I was wondering whether the members of the committee could explain briefly the cases for and against the 2 methods of achieving statehood and the reason why they believe one course would be easier or better than the other. Is the public to have a say on which course is to be taken or can it be assumed from item 9 on page 4 that section 121 is to be followed? If it is, item 5 on that page would be of concern because it says:

the section 121 method gives rise to doubts as to the scope of the Commonwealth's power to impose terms and conditions on a new State that might place that new State in an inferior constitutional position compared with existing States.

Mr HATTON: That is covered in this smaller booklet, called 'Options for a Grant of Statehood' and that does deal with this sort of basic step.

Section 121 of the Australian Constitution says basically that the parliament of Australia can accept a new state under such terms and conditions as it deems appropriate. The theoretical interpretation of that is that the Commonwealth can say that a new state could have certain powers but not others. It may allow different powers from those of another state. Because Australia has never done this before, there are many unanswered questions of law, and we could find ourselves in the High Court several times in order to sort out some answers to those questions. For example, there is a very eminent legal view that a state is a state is a state - an area either is a state or it is not a state - and, if you are a state, then you are on exactly the same footing as everybody else which may, in fact, limit the power of the Commonwealth under section 121 to reduce the powers of any new state. That is what is referred to in here. That is an unanswered question of law as are many of these things, but at least we have identified one of the issues that we have to deal with there.

That is the course of action recommended because, through that process, if we reach an agreement with the Commonwealth on the structure of a new state, that can be effected by the Commonwealth passing an act in both Houses of parliament, with a constitution already in place, that locks in our constitution to ourselves and gives us status. It is believed that, even though it has been done by a federal act of parliament, having created a constitutional state the Commonwealth cannot then uncreate that state. We would become part of the federation of Australia.

The other option is that there be an amendment to the Australian Constitution under section 128, a referendum of all Australia. Now that requires the federal government to agree and to pass an act of parliament which is then put as a referendum to the people. It is an extra step requiring agreement from the majority of all Australians and a majority of states. That would then vary the words of the Australian Constitution and write it into there.

Those are the 2 ways we can go about doing it. We have opted for the first method because we believe it achieves the same objective in a more streamlined manner. Either way, we have to go through the federal parliament.

Mr EDE: There is an additional element to that. I think it is the belief of the committee, anyway it is my personal belief that, under section 121, the requirement for terms and conditions would limit the ability of the federal parliament to make this a second-class state, for example, by saying that we can have only 4 senators, or something like that, until such time as we have a population equivalent to that of New South Wales and that we can work towards having 12 senators in that way. There is a belief that the terms and conditions that the Commonwealth would put in under section 121 would have to be the same terms and conditions as those that apply to the other states, so we would have to have 12 senators straight away.

There appears to be no doubt that, if we proceeded under section 128 and went to a national referendum, a national referendum would be able to grant us statehood on the basis of having only 2 or 4 senators. Constitutional change is the supreme power of the Australian people and this supreme power could be used to make us a second-class state. However, we doubt that that could be done under section 121 so, in a way, we are trying to ensure that we do get full statehood by proceeding under section 121, quite apart from the fact that it is a far more practical method than seeking a full constitutional amendment.

Ms SMALL: All right, but I would assume that if we went to a full referendum it would be to eliminate the suggestion that original states are different to states that are created. That would be one of the things, wouldn't it, that all states would be treated the same regardless of whether they were original states or not?

Mr HATTON: It may.

Mr EDE: That would be our argument, but it would be the federal parliament which would actually be passing the legislation which would propose the amendment to the Australian Constitution to the Australian people and we would not have power over what the Commonwealth did.

Mr HATTON: That's right.

Mr EDE: For example, in its own wisdom, it might decide that it would limit us to 2 or 4 senators and put that proposal to the Australian people. Then it could run an argument that it would be ridiculous for us to have 12 senators because of our numbers and that, on that basis, we should have only 4 or something, with some sort of a possibility being raised that at some stage in the future we might achieve a couple more.

Mr HATTON: There is a recommended provision for acceptance of new states in the Constitutional Commission. That is a federal government body. It is not done through the traditional convention approach.

Mr EDE: It was prepared by the Liberal Party.

Mr HATTON: It was not! It was introduced by the Labor Party, against the will of the states.

The commission's recommendation is for the admission of new states and their numbers of Senate representatives to be based on population size. Actually, there is 1 House of Representatives seat for every 100 000 people in your population and 1 senator for every 2 House of Representative seats. That means that, for every 200 000 people, you get 1 senator with a minimum of 2. That would mean that, to get 12 senators, we would need a population of 2.5 million people in the Northern Territory whereas Tasmania is entitled to that representation with just 450 000 people. You might gather from that that some of us are somewhat violently opposed to that proposed referendum amendment.

Ms SMALL: A further comment I want to make on the situation with referenda is that, as I understand it, the referenda items which have been passed by the Australian population are those which have been put on the basis of equality. On that basis, asking for equality for the Northern Territory would have a fair chance of being passed.

Mr HATTON: Yes, that is the basis of our case for statehood. The general statehood issue is equality, and that was spelt out fairly clearly in a ministerial statement made in 1986 called 'Towards Statehood'. That has been published and is available. There are a series of other options papers dealing with a number of the issues that flow from statehood that are available also. I am happy to make those available for you to go through. They relate to land matters, mining issues and so on. A paper on financial conditions on statehood is coming out. That is a matter of some significant interest to the community.

Ms SMALL: Is it possible for ... ?

Mr HATTON: It has been delayed because they changed the rules again this year.

Ms SMALL: Is it possible for interested individuals to be placed on the mailing list for these items?

Mr HATTON: Certainly, if you would just contact us we can get the information to you.

Ms SMALL: I understand that I would probably get them anyway, but for anyone else that inquires they would be available, would they?

Mr HATTON: Certainly, yes. We are trying to disseminate the information as widely as possible and stimulate interest and awareness.

Would anybody else like to make any comments or ask any questions?

Mr HICKEY: I am John Hickey, private citizen.

Expanding on the obvious, those people who have come here and taken the trouble to find out about this are obviously very excited by this concept of a constitution being generated by public discussion and debate. As Mr Harris has said, the problem is that people are intimidated and confused by, for a start, the title of a Select Committee on Constitutional Development. That is enough to frighten 90% of people away.

It seems to me that the other problem we have is a starting point. It is a great idea to have an open forum and introduce debate but you have to start somewhere. I would put up a suggestion that a starting point that the committee could have is to go forward and propose a simplistic concept of some sort; a proposal to the people. That would serve 2 purposes: first, it would make perfectly clear what the committee is seeking and, secondly, it would provide an issue that people could then discuss and debate.

It is too big a jump to open a meeting like this with no proposal before the people. It is fine for the 10% of the people who enjoy debate and discussion but, for the 90% of the people who are easily intimidated, they need something before them before they can start speaking. That is all I have to say.

Mr HATTON: Thank you. I would like to make a couple of comments there because, again, whilst this book may have been around since October 1987, quite obviously it has not had a very wide distribution and I do not think that the people it has been distributed to have taken the time to read it.

Part of what we are trying to achieve is to lift public awareness because really this does provide that base document that you are talking about. It gives options, some recommended positions. Different views are put and the arguments surrounding them, so people can read that and say that they prefer this one to that one. That is what we are trying to get across at this stage of the process. When we have gone through this stage of our process, we will be producing a draft document to take us through that second stage.

Mr HICKEY: Certainly, I should have read it and I admit that I have not. What you are aiming at with those documents is only 10% of the population. You cannot realistically expect 90% of the population to go to those documents and read them.

Mr HATTON: No.

Mr HICKEY: Given that the average level to aim at is a 12-year-old basically, if you are dealing with the public, and I think that we are slightly astray if we are aiming that document at a 12-year-old.

Mr EDE: A point that could be raised on that is that, earlier on, we decided that we needed to have a different form of document and we are in the final process of developing that now. It is to go out to Aboriginal communities to attempt to put some basic concepts across about what a constitution is, what is the legislature, what is the role of our legislature as against the federal legislature, community government etc. It has become more and more obvious to me since we started this process that we were probably in error in confining that distribution to the Aboriginal community. There seems to be a general lack of knowledge about the nature of a constitution and the 3 different building blocks of a government - the executive, the legislature and the judiciary. People need to know how those relate to each other, how bills go through a process and become law etc.

We are finding more and more, from national polls and from national surveys, that the level of knowledge in the general community about those things is very low. There is a danger that we as actors in it, if you like, can get so tied up in the little game that we play in politics that we assume that people outside are avidly following what we are doing. In fact, the opposite is the case. People have much more sense than that and they get on with their own lives. Every now and again, we come along and expect people to take notice of us.

Mr Hatton: They view politics with extreme boredom.

Mr EDE: If we intend to insist that people take part in the preparation of a people's constitution then it is our responsibility to conduct a political education exercise throughout the Territory to give people the knowledge which will give them the power to take part as equal partners with us in that process.

Mr HARRIS: John, can I just ask how you became aware of this meeting tonight? Was it through the newspaper advertisement?

Mr HICKEY: There were a large number of sources. I am a field officer with the Office of Local government.

Mr HATTON: So you will be one of the people that we will be talking to about ... ?

Mr HICKEY: Yes.

Mr HARRIS: I would ask those people that are attending these meetings that, if they can, they spread the word that we are trying to get input from the community. Janelle Karriger, who spoke with us here just before Joan Small, indicated that she had found out that we were meeting here today through a meeting of the YWCA. It appears that people are talking about these meetings and the message is getting around the community, but we need to spread the word a little more quickly than we are doing at the present time. Perhaps next time we are in Tennant Creek, the meeting will be packed.

Ms SMALL: Can I just make a comment on that theme, Tom? With other documents that the government presents, like the Towards the 90s document, for instance, the government sends out the documents and says that it will be holding a meeting on such and such a day at a certain time to discuss the document. That focuses people's attention on the document

relating to that particular meeting. I think that is one of the things that happened with these documents. People put them on the shelf and waited to get some detail about them but they did not relate to a specific meeting until the committee arrived on the doorstep, so to speak.

Mr HARRIS: We are learning too, Joan, as we mentioned earlier on.

Mr SETTER: Could I ask whether Tennant Creek was letter-boxed?

Mr ?: Yes.

Mr SETTER: It was? With the pamphlet?

Mr HATTON: They were supposed to be letter-box dropped.

Mr EDE: They do not have letter boxes here.

Mr HATTON: Post box dropped!

Mr SETTER: That was by Australia Post?

Mr ?: Yes.

Mr HATTON: Would any other people like to raise any questions or make any comments?

Ladies and gentlemen, thank you very much for the input. I think this has been a very valuable meeting from our committee's point of view. I look forward to people taking up the issue of a Northern Territory constitution and moving to start discussing some of the issues outlined in these booklets. We will look forward to receiving some comments and submissions and seeing more active interest within the community and hope that people will become more involved in the process next time we come around.

I declare this particular hearing closed