PUBLIC MEETING

PALMERSTON — Tuesday 28 March 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)

Mr C. Firmin

Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)

Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Andrew KEARNEY

Mr Frank HOLLAND

Mr Robert TREMETHICK

Mr David SHANNON

Mr Chris DRAFFIN

Mr Steve BENNETT

Ms Sonja WILLIAMS

Ms Mali GRAY

Mr Andrew MODRA

Mr Derek HOGBEN

Ms Dawn COOK

Also present:

Ms Janelle RUMBLE

Ms Margaret BUNDY

NOTE: EDITED TRANSCRIPT

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Mr HATTON: In welcoming everybody to this public meeting of the Select Committee on Constitutional Development, I should make it clear that this is the only committee of the Legislative Assembly which has equal representation of both government and opposition members, there being 3 representatives from each side of the House. The Chief Minister and the Leader of the Opposition are also able to participate in committee meetings although as a matter of practice they

generally do not involve themselves directly.

The committee's terms of reference are set out in the brochure which has been circulated tonight. In simple terms, our task is twofold: firstly, to prepare a draft constitution for the Northern Territory and, secondly, to prepare recommendations to the Assembly on the structure and formation of a constitutional convention of Northern Territory citizens. In other words, our task is to guide the process of formulating a Territory constitution.

There are 3 stages in the process. The first, which we are now engaged in, is the preparation of a draft constitution to go to the Legislative Assembly. So far we have undertaken nearly 3 years of research into the background of constitutions throughout Australia and the world and, placing them in the context of the Northern Territory (Self-Government) Act, produced a discussion paper which sets out in some detail the sort of clauses that go into a constitution, together with some of the options, some of the issues which relate to the writing of a constitution, and some comments in terms of approaches to amending a constitution. The paper covers the possible role of the judiciary, which is the judges and courts; the executive, which would be the Governor and the Cabinet; the question of whether there should be a constitutional entrenchment of local government; special provisions for Aboriginal rights; whether or not human rights provisions should be written into the constitution; how the constitution can be varied; whether there should be 1 or 2 houses of parliament; whether there should be single-member electorates or multi-member electorates; matters relating to elections; and who has the right to vote and who has the right to stand for parliament. Those are the those sorts of issues which can be raised and dealt with in the constitution.

Having completed that task, we are now involving the community as much as possible. We want to get the community thinking about the issues, talking about them, and bringing its views forward to the committee, either informally or formally with written or oral submissions. We will then take those submissions and our own background work and prepare the draft document. As I said, that is stage 1.

Stage 2 is the formation of a convention of Territorians, comprising a representative cross-section of the Northern Territory community, who will meet and take our work through to the next stage by accepting, rejecting, modifying and adjusting the various proposals. That convention will produce a document which it believes should be the constitution of the Northern Territory.

In stage 3, the draft constitution formulated by the convention will be put to all Territorians in a referendum which will give them the opportunity to accept or reject it. There is a long way to go yet in the drafting of this constitution. The most significant stage of the process is the task we are engaged in now. It will set the ground rules and provide the platform which will determine the shape of society in the Northern Territory in the future. Our constitution will determine that.

You will notice that I have only been talking about a constitution. This committee is not asking you whether you support statehood or are opposed to it, or whether you think it should come about now, in 20 years, or somewhere in between. We are not asking you that question. We do ask you to recognise, however, that the Northern Territory will become a state at some time, whether that be next year or 5, 10 or 20 years in the future. We should all accept that reality. It is, however, quite certain that we cannot address the question of statehood until we have a constitution which could be adopted by the new state. The issue of statehood cannot be addressed properly until we know what we want in that new state. The constitution will tell us what we want in that new state and, until we have put it together, the timing of statehood is irrelevant. We are not asking you to express a view on statehood but to recognise that it will happen and to make a commitment to working towards the development of a constitution that you believe will serve not only your own interests but those of your children and grandchildren.

The task is to focus upon the sort of a society that you would like the Northern Territory to be as it moves into next century. The job of this committee is to act as a catalyst by stimulating people to come forward and participate, so that in the end we will have a constitution which is not the product of a few politicians and academics but of the people, a constitution which reflects the views and aspirations of the people of the Northern Territory. We would ask you to be involved in that process.

I have spoken a lot but I hope that I have given you an introduction to the work of the committee and the reasons it is here tonight. I welcome any comments which people may wish to make. I know that there is one gentleman here tonight who has done some work on the subject and wishes to put forward some views.

Mr KEARNEY: My full name is Andrew Christopher Kearney and I live in Berrimah Road.

I think it is important that the constitution guarantees the right of all children and teenagers in the Northern Territory, irrespective of the remoteness of the locations in which they live, to both primary and secondary education. There are presently a lot of children in very remote places who do not receive primary education and the majority of such children do not receive any secondary education whatsoever. That is my first concern.

My second point may be controversial, but I think it is important that there be guaranteed places for residents of the Northern Territory at the Northern Territory University and other institutions of higher learning. The aim of such a guarantee would be to prevent such institutions developing their student enrolments solely on commercial or profit-making criteria. There is no question of xenophobia directed at Asians or of racial prejudice. That is not what I am talking about. The principle upon which I base my view is that institutions funded by Australian taxpayers, irrespective of the size of the income of each taxpayer, should not disadvantage resident Australians, or place obstacles in their paths, in terms of obtaining higher education in this country. The provision of places for students from overseas, as a means of obtaining income, should not be permitted to create such obstacles. I repeat, however, that my view is not based on xenophobia or anti-Asian feeling.

An example of the sort of practice I am querying is last year's visit to South-east Asia by the Dean of the Faculty of Education at the university. His intention was to obtain enrolments from Asian students. My objection to that sort of practice is not based on racial or cultural grounds, but on other grounds which I hope to be able to explain later.

Education resources are finite and valuable and should be provided for Australians first. The future development of this country depends upon our ability to develop new industries and technologies. If we are to have a highly skilled work force, we must encourage research into new industries and technologies and to achieve that we need to provide the best opportunities for Australians in the education sector.

Mr HATTON: Are you suggesting that we should not be offering places to non-Australians in higher education institutions at the expense of Australians? You are not just talking about a ban on non-Australians having access to our education system, are you?.

Mr KEARNEY: I think it is basically a question of conflict of interest.

Mr HATTON: Yes, but am I correct in saying that your concern is that Australians may be excluded from higher education places because of the ability of overseas students to take up those places?

Mr KEARNEY: Yes.

Mr HATTON: If it could be demonstrated that non-Australian students entering those institutions created a profit for those institutions and therefore increased the available resources to educate Australians, would your objections still stand?

Mr KEARNEY: No.

My third point relates to the matter of electoral boundaries. I believe that the constitution should provide that electorates be approximately equal in terms of the numbers of eligible voters. We should prevent any practice or process that allows rigging of electorates or gerrymandering, as has occurred in Queensland, or any process which can enable any party to have an unfair advantage in the drawing of electoral boundaries. Is that clear and precise?

Mr HATTON: Yes it is.

Mr FIRMIN: That actually is the case at the moment, Chris. The Northern Territory Electoral Act provides for that provision but we take the point.

Mr KEARNEY: Would it immediately become part of the new constitution?

Mr HATTON: That could happen. The discussion document makes some suggestions as to how that might come about in terms of tolerances, single-member electorates and so on.

Mr SETTER: I would just like to make a comment here. The current situation in the Northern Territory and the states is that there is a mean number of voters in each electorate, but there is a tolerance - plus or minus. There are a number of reasons for that in the Northern Territory.

Mr HATTON: 20%

Mr SETTER: Yes, I think in some of the states it is 10%.

Mr HATTON: In practice they try to work within 10% but the legislation provides for up to 20% in the Northern Territory.

Mr KEARNEY: My next point is that the Administrator or Governor should not have the legal power to terminate the authority of the majority party in the Legislative Assembly. Whether governments maintain or relinquish their right to govern should be matters that the people determine, and should not be a matter for any Governor-General or judge, as occurred in the case of the High Court judge, Sir Justice Barwick in the 1975 constitutional crisis. If there is a major political crisis which threatens the stability of a Northern Territory state, a plebiscite should be taken to determine the real feelings of the community. That would overcome any need for intervention by a third party such as an Administrator or Governor.

Mr HATTON: How would you get the plebiscite held?

Mr KEARNEY: The Administrator or Governor would ...

Mr HATTON: Call an election.

Mr KEARNEY: No, he would determine it on the basis of a plebiscite.

Mr HATTON: As to whether or not there should be an election?

Mr KEARNEY: Yes, on the basis that that would resolve the matter of intervention by ...

Mr HATTON: Isn't he already interfering in the role of government by calling a plebiscite to see whether or not an election should be held?

Mr KEARNEY: Yes, but in the case of the constitutional crisis of 1975, the Governor-General took advice from a man who was a former Attorney-General in the Menzies administration.

Mr HATTON: I think we should be fairly careful about our facts here and I would like to build up a scenario. In the Westminster style of parliament, the government is the Chief Minister and his ministers or, in other words, the Cabinet. Technically, backbenchers are not part of the government. What happens in a situation like that which arose in Queensland in 1988 where a party overthrew its leader who was then the Premier and appointed somebody else as its leader, only to find that the former leader refused to resign as Premier, despite the fact that he clearly did not have the confidence of his party and therefore did not have the confidence of the parliament? Should the Governor then have the right to dismiss him and allow the majority leader of the majority party to form a government?

Mr KEARNEY: Well, in that instance ...

Mr HOLLAND: It is not really a relevant question because people elect governments rather than party leaders. The people do not elect Marshall Perron as Chief Minister or Bob Hawke as Prime Minister.

Mr HATTON: That is true but the problem is that the Governor, as the Monarch's representative, appoints somebody as the head of government and invites a person to form a government.

Mr HOLLAND: But the position of the Governor in today's world is ...

Mr HATTON: It is a formality.

Mr HOLLAND: Yes, and it is a silly position really.

Mr HATTON: But this is very specifically the sort of situation we would need to address in the drafting of a constitution. That situation virtually arose in Queensland in 1988, when Sir Joh Bjelke-Petersen was refusing to resign as Premier. If had not resigned and had formed the government, the only option was for the Governor to dismiss him because he did not have the confidence of the parliament.

Mr KEARNEY: I don't think it needs to involve the Governor. If there is a loss of confidence in the leader of the majority party and that party is able to present a new leader in which it has confidence, the situation resolves itself.

Mr HATTON: I agree. The issue is the technical means of arriving at that situation, given that the Australian Constitution requires us to form a monarchical structure of government. That is, we have to have the Queen's representative as the Governor or head of state.

Mr HOLLAND: But that is going to change eventually.

Mr HATTON: When it changes for the whole of Australia it can change here too.

Mr TREMETHICK: The Territory is required to form a constitution that has a monarchical structure.

Mr HATTON: Yes, because of the Australian Constitution.

Mr KEARNEY: Is it section 106?

Mr HATTON: I think so. It is dealt with in the document but we do not have an option in relation to it.

Mr KEARNEY: The thing that concerns me is the case of the constitutional crisis of 1975. No one disputes the fact that the argument was not over whether or not the power existed but over the interpretation of that power.

Mr HATTON: I understand the point you are making. You are suggesting that the Governor or the titular head of state should not be able to remove the elected government.

Mr KEARNEY: That is correct. All you would have to do is word it in such a way as to say something like ...

Mr HATTON: You have to very seriously constrain that right.

Mr KEARNEY: All you would have to say is that in such a situation and where a provisional leader was nominated by the majority party, the Governor shall declare this man or this woman

Mr HATTON: Yes, I had to raise that because there are technical responsibilities that the Governor has. What you are saying is you need to constrain his powers so that he cannot act of his own volition.

Mr HOLLAND: His position is purely one in which ....

Mr HATTON: He acts this way under certain criteria.

Mr HOLLAND: ... he is given a clearly defined course of action to follow in a given situation.

Mr DRAFFIN: My name is Chris Draffin. The alternative to what is being suggested is another model altogether, such as the American presidential model. In the American system, there are 3 facets of government - the legislature, the executive and the judiciary - whereas the Westminster system has only 2, because the legislature and the executive are virtually the same organisation, often comprising the same people. In the American model, any 2 branches can hold the third branch in control. For example, the removal of a President requires the endorsement of both the legislature and the judiciary. In the Westminster system, you do not have that principle of 2 branches keeping the third in check. Perhaps we should be looking at that principle as we frame our Northern Territory Constitution.

Mr HATTON: It is a good point. In fact, again there is some debate about the explanation of those differences. The American model is called executive government. It it is comprised of an elected President, an elected congress and a separate judiciary and contrasts with what we call responsible government, typified by the Westminster system, where the executive is responsible to the parliament which is responsible to the people. In the USA, the parliament cannot sack the President. They can overturn his decision but they cannot sack him except by impeachment.

Mr DRAFFIN: And that impeachment has to be in cohorts with the third branch.

Mr HATTON: It is like getting rid of a judge in Australia. It is the same system. I think you have made your point well. I wanted to generate that debate because I thought it might have helped other people to grasp some of the ideas that we have

to throw around.

Mr KEARNEY: The problem is that the Governor is not elected and therefore should not be in a position to make a political decision, which is what occurred in 1975 when the Governor-General made a decision after receiving advice from a Chief Justice who was a previous conservative Attorney-General. It is clearly absurd to assume that such a Chief Justice could be apolitical.

Mr HATTON: Mind you, he had a strong Labor background.

Mr KEARNEY: Kerr did but not Barwick.

Mr HATTON: No, but the Governor-General did.

Mr SETTER: I would like to make a comment, Mr Chairman. On page 43 of the Discussion Paper on a Proposed New State Constitution for the Northern Territory, under the heading 'Governor and the Crown', the select committee identifies a number of the issues which it has considered in this area. Section 10, under the heading 'Powers of the Governor' says:

Where it is clear that the government retains the confidence of the parliament, the select committee considers that the Governor should have no power to dismiss his or her ministers, or to dissolve the parliament within the first 3 years of its 4 year term, nor any power to dissolve the parliament in the last year of that term without the advice of his or her ministers.

You can see that the matter has been considered at length and that the committee's recommendation is in line with what has been said tonight.

Mr HATTON: Our committee also made some recommendations referring to a guaranteed minimum 3 year term so that the government of the day cannot call an election within the first 3 years following an election. It was suggested that that be incorporated into the constitution.

Mr KEARNEY: I think that is appropriate.

I am not sure about this next point; my background is in history rather then law. However, given the Fitzgerald Inquiry in Queensland and and the legacy of corruption there, perhaps there needs to be some sort of independent status or specific status for the police commissioner.

Mr HATTON: That was raised in a discussion which I was involved in on talkback radio this morning. It seems very odd to me to propose, in the light of the Fitzgerald Inquiry situation where the Police Commissioner was the person being charged with corruption, that the commissioner should be made constitutionally independent of the parliament so that the parliament cannot get at him. It seems to me that it should be the other way around, and that he should be under the closer control of the parliament.

Mr KEARNEY: Of course, it is all allegations at this stage.

Mr HATTON: Yes, I am not suggesting otherwise. I am just talking about the general circumstance.

Mr KEARNEY: Yes. I am not saying that there is corruption in the Northern Territory at the moment but if, at some stage in the future, the minister in charge of police was corrupt, as well as the police commissioner, what safeguards would there be? How could we prevent that situation occurring?

Mr HATTON: If you can find a formula I would appreciate it. Personally, I cannot comprehend the situation where you can write a law that is going to stop people from breaking the law. By definition, the people who are corrupt are acting contrary to the laws of the land and are certainly not going to worry about a constitutional provision. In the end you need to rely on the processes of public scrutiny to expose those situations.

Mr KEARNEY: That might indicate that there is a relationship between freedom of information legislation containing real power rather than just rhetoric and ...

Mr HATTON: I am not convinced that freedom of information would solve your problem either.

Mr KEARNEY: Well, a bill of rights.

Mr HATTON: That is an issue which is addressed in this question. We all have views on the matter and it is discussed in the document. We would be interested in receiving some submissions on the matter.

Mr HOLLAND: There is one possible way of avoiding a situation such as that which has occurred in Queensland. A system could be introduced which would allow for independent observations on the operations of government at specific periods, for example a year after each election. Perhaps delegates from other states could be used. I am not talking about something with the dimensions of the Fitzgerald Inquiry but rather an examination or general audit.

Mr HATTON: Some sort of independent judicial audit from time to time?

Mr HOLLAND: I am suggesting that it could apply in all states.

Mr SETTER: Isn't that the sort of thing that the National Crime Authority is doing now without formally going in and conducting an audit? It certainly performs that monitoring role.

Mr HOLLAND: It is interesting situation. When the National Crime Authority knocks on your door, the assumption is that something is wrong. What I am suggesting would be part and parcel of the normal procedure, like showing the books when you fill in a tax return. It is just to check that everything is up-front and above board.

Mr HATTON: I think we are talking about the issue of public disclosure. An example of that is the requirement that members of the Northern Territory Legislative Assembly provide a declaration of all of their interests every 6 or 12 months.

The issue came up in relation to the question of police powers at a conference which I attended in Sydney last week. The conference was sponsored by the International Society for the Reform of Criminal Law and covered issues relating to investigating crime, apprehending suspects and police powers versus citizens rights. That never-ending debate will go on as long as people commit crimes and other people try to catch them. The issue of corruption was debated very heavily at the conference by people from all over the world, including Canada, the United States, New Zealand, Asia, Africa and Australia.

The need for a corporate environment which discourages corruption became very clear. Whilst disclosure is important, a corporate environment that discourages corruption is the only effective way to deal with the issue organisationally and internally within systems. A lot of work is being done around Australia and the world, in coming to grips with the issue. Programs such as community policing are part of a process of creating defence mechanisms against corruption.

I am not sure that the issue of corruption can be addressed in a constitutional manner. We would all like to think that it is possible and I would be interested if somebody can come up with a suggestion in respect of that. It is certainly part of what we are seeking to draw on here. However, I would not like to have a debate just on the issue of corruption for the tonight's purposes. Is there someone else who would like to formally address the meeting?

Mr SHANNON: My name is David Shannon and I live and work in Darwin. My contribution should take about 5 minutes. I will read what I have here and get on with the submission later.

My prime concern relates to accountability. As I understand it, the constitution is a contract between the people and the government which specifies limits and channels of power and how they are affected. I will try to read this stuff and get on with the submission later. I am concerned that the constitution should have some muscle in terms of accountability. The best way of making representatives in government accountable is to simply be able to fire them if they do not deliver. In some places, it is called 'voters recall' or 'voters dismissal'. If I employed a gardener and he was able to determine his own wages and the time and conditions of his replacement, he would not be working for me for very long simply because I would have no way of controlling him.

In the case of elected representatives, there is a need for feedback on a day-to-day basis rather than once every 3 or 4 years. I strongly recommend the incorporation of a provision which would provide that a member could be dismissed or at least have his powers curtailed on the basis of a petition signed by 50% of the electorate and delivered to a court of law.

Mr HATTON: Perhaps a requirement for an election might be the preferable way to go.

Mr SHANNON: Yes. I do not mean shoot the fellow. Simply remove him from office until ...

Mr HATTON: But he would be eligible to stand again.

Mr SHANNON: Yes.

Mr HATTON: Would you apply this to an individual member or to a parliament?

Mr SHANNON: No. It would be a matter between electorate members and their representative.

Ms WILLIAMS: There could be a small referendum in the member's electorate.

Mr SHANNON: Yes, so that the electorate has responsibility for that member. When something goes wrong, it is not just the member who is responsible but the voter in the electorate.

Mr FIRMIN: There could be a problem if there was a considerable number of parties, as we saw recently in Canberra. With a great number of candidates, distribution of preferences might provide you with a candidate that some of you may not necessarily like. You could almost have a frivolous 50% come up straight away and have the person removed because they have not achieved a 50% majority in the first instance and have got the 36%

Mr HATTON: How would you collect the 50%?

Mr SHANNON: I am just saying that if enough citizens felt that the issue was important enough, they would have an avenue which could not be denied.

Mr HATTON: I have never heard the concept but I am just trying to let my mind freewheel on it at the moment.

Mr SHANNON: Sure. I have been working on constitutional reforms and effects since 1984.

Mr HATTON: I would be curious if you could develop that idea and I am sure that the committee would welcome a formal submission on it.

Mr SHANNON: Okay. To move on to some other areas, I recommend that there be a single house of parliament rather than 2 houses, simply because of the straight simplicity of command. The business of 2 arms versus 3 arms - judiciary, executive and legislative - is a waste of time because there is only one purse and whoever pays the money gets the results. You are better off having good feedback into where it counts rather than trying to make sure that 2 parts can topple the third. We should have a single house with single-member electorates; make it as simple as possible.

The document itself should be a statement of principle rather than a collection of details. It should be understandable at least at high school level because people who are going to vote have to understand what they are voting for and what their rights and limitations are. In a choice concerning something like freedom of speech, it is better to say 'speech to be free' than to try to set the number of decibels and the locations at which things can be said. The federal constitution is some 11 000 words long and I cannot find one person in town who has read it let alone understands it.

Mr HATTON: A lot of lawyers have become very rich trying to work out what it means, though.

Mr SHANNON: I know what it means. It is depressing.

I did not know how much material to cover because I was not sure how much time would be available to me.

Mr HATTON: Let me be very clear about that. There is certainly plenty of time. We are taking submissions. We have not fixed a time frame but we would like to receive submissions this year if possible.

Mr SHANNON: Corruption is easy to fix. Don't make laws that intrude on people's private affairs. I am serious. If you take a situation where a guy is doing something that comes naturally or does not think about, an activity which does not involve other people, making it a crime turns him into a criminal and leaves him open to pressure from people who are evil, malicious or whatever. Crime is something that people grow into. If you make people criminals they start thinking like criminals. They do not want to go to the police. The police therefore get no information, and so the cycle continues.

Mr HATTON: Thank you. Are there some other people who would like to make comments?

Mr BENNETT: My name is Steve Bennett and I have a couple of comments to make in relation to what has been said. Parliaments generally seem to have a great problem with the question of who prosecutes the prosecutor. In terms of something like the Fitzgerald Inquiry, parliament uses the prosecutor as its agent to administer justice before the courts. We have been trying to come to grips with the question of who prosecutes the prosecutor. What role and means of control does any parliament have in relation to the corporate identity which we call the police commissioner? There seems to be a crying need for some mechanism other than royal commissions, which seem to find it very difficult to get at the facts and to administer some form of justice beyond simply coming up with a statement or recommendation. The audit process seems like a fine example of an alternative approach but perhaps the parliament needs another power whereby, in certain circumstances, it could become the prosecutor itself. There are legislatures in the world which have that process. It can become a very lengthy and indirect process but there is an opportunity to do that.

Mr HATTON: Yes. That is a valid point. In fact, there are some related powers in the Northern Territory (Self-Government) Act as it presently exists. The idea could certainly be developed and I would be interested in seeing whether somebody might be able to come up with some forms of words setting out how such ideas could practically be put into effect. I think that we are in agreement about the objective, which is to ensure that there is public confidence in our police force and our policing systems. I think that is really what we were looking for along with the knowledge that, if anybody goes off the rails, they will be caught and dealt with.

Ms GRAY: In terms of what has been said about corruption, it might be worth looking at the Papua New Guinea Constitution, which contains what is called a leadership code. There is a requirement on people in power to report on their assets, business activities and so forth. If anyone is found to be contravening that code, they are taken to court on a continuing basis, not only when they are found. Perhaps we could look at something like that here. That leadership code deals with the sort of thing we are talking about now.

Mr HATTON: That would be worth looking into further.

Mr DRAFFIN: I would like to make some initial comments which will let you know where I am coming from and why I am presenting some of my points of view.

I have given a fair bit of thought to the Australian political model in terms of our federal system as well as to constitutional questions generally. In discussions about these matters, there always seems to be a preoccupation about the checks and balances in relation to possible excesses of any branch of the government. One of the things that this country has been encumbered with - and I use that term in a fairly derogatory sense - is a bicameral system of parliament. The separate colonies which existed at the time of federation became entrenched as states with considerable self-governing powers within a federal structure which was drawn up with the aim of satisfying the desire of those colonies to exercise some control over the rest of the legislature. We have been paying for that sin ever since, the result of which was our Senate.

What I want to see is not the creation of a new state but the abolition of all existing states to give us a unitary government. People throw their hands up in horror at this idea and talk about checks and balances and control. This is not what we are on about. The great model that is held up for us, the responsible government model, is invariably the Westminster model. Warts and all, the Westminster model in the UK is one in which a unitary government governs an entire country. Certainly, the powers have been divided among some regional governments but the original concept remains.

Mr HATTON: And that is in a country the size of Britain.

Mr DRAFFIN: Okay, but it has a hell of a lot more people in it than we have. I see no reason why we cannot have a system in this country which operates on the same principle. That is where I am coming from.

The political reality, of course, is that that is not going to happen. My position, therefore, is that I want to delay the creation of a Northern Territory state for as long as possible so that it can be given the maximum amount of thought. The reality, however, is that I will have to fight for the inclusion of some things in the Northern Territory Constitution and one of these has to be the checks and balances. I am not completely satisfied with the model of responsible government, which is why I advocate the tripartite separation of the powers of government. I am talking about total government, not the actual executive or the legislature or judiciary. I intend to lobby for that on a continuing basis. You may say that that is not satisfactory but I think the checks and balances are necessary. I am not very conservative but I am conservative enough to argue for them.

I am also very concerned about the notion of ministerial responsibility and certain parliamentary conventions. For

example, the position of Prime Minister is only a convention; it is not entrenched in our constitution. We should think about that sort of thing when we are creating our own model of government because one convention after another is being broken. The notion of ministerial responsibility has been increasingly eroded over the last 100 years, particularly the last 50 years. I believe that there needs to be a strengthening of freedom of information provisions in order to replace that ministerial responsibility. Everybody pooh-poohs that but I believe it is needed in order to balance the erosion of the convention of ministerial responsibility. Of course, that has to be linked with the freedom of the press. There should be entrenched rights in our constitution relating to these things.

Whilst on the subject of rights, I will say that I am not utterly convinced that a bill of rights based on the American model is an appropriate way to go. That is because, time and time again, we are seeing lawyers getting very wealthy where there are clashes in rights. For example, the right to privacy can often be contradicted by the right to free speech. The entrenchment of rights in a constitution has to be done very carefully. The Canadian approach may be appropriate. In that case, a bill of rights was created in the form of ordinary legislation which could be changed by the government of the day. Such legislation can exist for a period while the curly points are sorted out prior to entrenching it. I would be reluctant to see a very prescriptive bill of rights entrenched in the constitution.

Mr HATTON: You raised the issue of freedom of information and the freedom of the press to run with that information. Given the concentration of power in the media and the all-pervading influence that the media can have on the community, do you believe that if the press purveys a lie that it should be able to be prosecuted for doing so?

Mr DRAFFIN: I think that is highly appropriate. That is one reason for talking about rights.

Mr HATTON: But it cuts across freedom of speech.

Mr DRAFFIN: That is why I am saying that it is dangerous to lock up information. I believe that people have the right to have access to the truth. Given that we are talking about the truth, of course there must be provisions which will allow people to be prosecuted or sued for defamation. That right has to be available and it is difficult.

Mr SETTER: Exactly. It is very difficult indeed and expensive.

Mr SHANNON: Quite often the truth is completely immaterial to the life of the average person. Someone might get raped and her name is dragged all over the countryside with media bosses making an absolute fortune out of it on the basis that people have the right to know everything. There are times when the rights of the individual are more important than the right to know.

The issue of freedom of the press also arises in the context of the recent situation in which Muslims have been up in arms all over the place. There have been cries about freedom of speech but the fact is that people have been genuinely hurt emotionally and the guy is going to make a big buck out of upsetting large numbers of people. I do not think people should have an automatic right to do that.

I cannot slander you while you are alive because you can sue me. The minute you die, however, I can say whatever I like about you. I believe that our constitution should contain a clause which protects the rights of the individual, not only in life but in death. It should also protect the rights of particular religious groups. Religious beliefs should not be a target at which people can freely throw stones on the basis of freedom of speech. I point out here that I have no religious beliefs whatsoever but I respect the fact that people do have religious beliefs. I think that if we are going to say that people have a right to their beliefs in this country, we should say that we will respect those beliefs whether we agree with them or not and will give them the protection of our laws. Do you agree?

Mr HATTON: Yes, that is a good point.

Mr BENNETT: A right with exceptions is like being a little bit pregnant. If you are going to have freedom of speech it has to include the freedom to be wrong and to be accountable for what you say, whether deliberately or not. I recommend unlimited freedom of speech. However, there has to be accountability for what you write, print and distribute through the press.

Mr SHANNON: It is not freedom of the press when you can slander me because you own a newspaper but I cannot slander you because I don't own one. All I can do is tell my friends that what they read in the newspaper is wrong but I cannot reply through my own newspaper. That means that there is an unfair advantage to whoever controls the press. Laws should

be about removing such advantages so that people are equal.

Mr HATTON: Can I put another element into the debate? We are talking about the sorts of things that are covered by a bill of rights, freedom of speech, freedom of religion, freedom of assembly etc. There are 2 ways of dealing with such things in this world. In the British tradition, those rights are developed through what is known as the common law process. The rights exist, but they exist as a result of interpretations by the courts over centuries and the refinements of those interpretations over centuries. They are no less real, but the method of development and adjustment and amendment is through the court process, what is called the common law process.

Mr BENNETT: They can be changed through legislation.

Mr HATTON: Certainly, those rights can be amended, varied, adjusted and strengthened by legislation. In other words, rights can be set out by an act of parliament statutorily.

Thirdly, such rights can be written into the constitution as in the case of the American and Canadian Bills of Rights. That takes the rights completely out of the political arena, out of the sphere of the elected representatives of the people and into the hands of the judiciary. However, somebody is always going to interpret what they mean.

Mr BENNETT: Freedom of speech is a very difficult area because it means that there is nothing to stop the dissemination of ideas which may, for example, be racist. It means that there is nothing to stop people saying the sorts of things Stalin or Hitler said in the 1930s. Whilst I think it should be legal to say those things, it is another matter when such ideas are broadcast publicly through the media. That is a real problem.

Mr HATTON: Yes, I am trying to relate it to the sort of role I am playing here. If you look at how these issues come up in the context of a constitution, the question you ask yourself is: 'Do we continue to maintain and develop our rights and responsibilities in those areas through the common law process, as we have traditionally done in Australia, or do we change from that and write them down in a statute or constitution'? That is really the question that people need to think about.

The other question is whether it is appropriate in the Northern Territory context to do something which differs from the system of rights and freedoms which applies in the rest of Australia?

Mr BENNETT: There are possibly a couple of exceptions.

Mr HATTON: Or whether these matters are better dealt with by way of the federal Constitution rather than a state constitution.

UNIDENTIFIED: Can you be more specific?

Mr HATTON: For example, a bill of rights, which is not stipulated in any of the constitutions in Australia and is not contained in the federal Constitution. In fact, a bill or rights has on one occasion been rejected in a national referendum. If such rights were written into a Northern Territory Constitution the structure of your rights will inevitably be affected by the words in that constitution. Those rights will apply whilst you are within the borders of the Territory, but once you move outside them, the rights which apply in the remainder of Australia are the ones which apply.

Mr BENNETT: I have no quarrel with the Northern Territory setting an example.

Mr HATTON: That is the question I think you need to ask. My job here is to put the questions before you. Do you want to be the same or to take a lead or to go in a different direction? I am simply putting the alternatives before the community.

UNIDENTIFIED: We should remember that the Northern Territory Constitution will be the first state constitution drafted under Australian law. The others were developed under British colonial law. The impact of that is that the Australian government will identify anything which they see as appropriate in the Territory's constitution. If it sees that we are leading in certain areas of prescription, it may not support that concept and may send it back for further discussion with the people.

Mr HATTON: That is not a question I would like to address. I do not believe that the federal parliament has any role in what goes into our constitution other than to the extent that we cannot be in conflict with the Australian Constitution. That

is my firm belief. Every member of the committee has also expressed the belief that the content of the Northern Territory Constitution is a matter for the Northern Territory people alone.

Ms WILLIAMS: As long as we accept that we are still part of Australia.

Mr HATTON: Yes. That is why I say it must fit within and not conflict with the Australian Constitution. As far as our own internal constitution is concerned, it is a matter for us. We should not be have anything imposed on us from outside.

Mr SETTER: Mr Chairman, with respect, I support your view totally. The reality is, however, that regardless of the constitution that we develop including all the rights which we want as Territorians, if we elect for the Commonwealth government to grant statehood to the Northern Territory under section 121 of the Constitution - and that is the options preferred by the committee, to have statehood granted by an act of the Commonwealth parliament - statehood may be granted on such terms and conditions as the federal parliament thinks fit. My interpretation of that is that, at the end of the day, it is the Commonwealth parliament which decides the terms and conditions.

Mr HATTON: Of statehood.

Mr SETTER: Yes, of statehood. However, if the Commonwealth does not accept our draft constitution, it will of course amend it.

Mr HATTON: That is one area in which we might find ourselves in the High Court.

Mr SETTER: We may well be, but you need to be aware of that pitfall.

Mr DRAFFIN: It really begs the question of why we are going through the whole exercise of statehood in the first place. If we can be granted those powers now, without statehood ...

Mr HATTON: You cannot do it without a constitution to start with. I can knock up a constitution in a couple of days. Whether it is what the people want is another question.

Mr DRAFFIN: That is not the point I am making. It seems that the federal government can grant us as many powers as it deems fit, and give use representation as it deems fit, as a territory.

Mr HATTON: As a territory.

Mr DRAFFIN: As a territory.

Mr HATTON: That raises a separate question, which is getting away from the constitution. If we are given powers as a territory only, there is no constitutional entrenchment of the rights. Do you know that the very existence of any form of government in the Northern Territory exists as a result of a federal act of parliament which is capable of being amended or repealed? By merely repealing an act of parliament, the Commonwealth can wipe out all forms of government in the Northern Territory, the entire public service, the whole lot.

Mr KEARNEY: Yes, but what is the reality to that?

Mr HATTON: The reality is that I do not believe that it will happen. There is, however, potential for amendments to the regulations of the Northern Territory (Self-Government) Act. Irrespective of which party is in power, all the powers of your government derive from regulations under that act, which can be amended without even necessarily going to parliament. An amendment to a regulation under that act can add to or delete from the powers and authorities of your parliament. It is technically possible that, by removing a sinle line in a regulation, the Commonwealth could remove the entire Northern Territory education system. That is all it would take. That cannot happen in the states.

I refer you to the situation and I am not a lawyer. Please accept it as layman's interpretation. I do know that under the Australian Constitution, the Commonwealth government cannot acquire property except for Commonwealth purposes and even then it can only acquire it under just terms. It has to pay for any property it acquires. It does not have to do that in a territory. It can acquire without compensation and that has been demonstrated in a case in the High Court, which related to Bougainville. The Commonwealth already owns all the property and it would only be acquiring it from itself. You only have a loan of it while you are a territory.

Mr FIRMIN: We have seen that done in the Territory already.

Mr HATTON: That is still the case.

Mr DRAFFIN: That sort of thing was rejected very convincingly in the last referendum.

Mr HATTON: No. There is already a clause in the Australian Constitution. The federal government sought to expand the acquisition powers of the Commonwealth. That was what was rejected in the referendum. In fact, the acquisition powers are limited in the Australian Constitution now for the states, but not for territories.

Mr MODRA: My name is Andrew Modra and I am a student at Darwin High School. I just want you to clarify the statement you made about the Australian government being able to wipe out the entire NT education system by ...

Mr HATTON: Amending a regulation under the Self-Government Act.

Mr MODRA: Would the constitution of the Northern Territory or statehood prevent that happening?

Mr HATTON: Yes, because ...

Mr MODRA: Which one? Both of them?

Mr HATTON: Yes, both. The issue of what powers we have now is not the issue of statehood. Those powers can be increased without statehood and, indeed, the Chief Minister is presently making submissions to add to the powers of the Territory, under the Self-Government Act, to bring us into line with the power structure in the states. However, the federal government is capable of taking away whatever it may give under that act. It is only through constitutional entrenchment in a constitutionally structured state that those democratic rights can be protected, and that arises with the constitutional shift that occurs with statehood. The protections of the Australian Constitution and the Australia Act, all of which refer to a federation of states, are then available to you as citizens. They do not come to you until you become citizens of a state. If you move to a state, you acquire them. If you leave a state and come to a territory, you lose them. That is the core of the statehood issue. It is not money and it is not power. The fundamental issue of statehood is the constitutional entrenchment of your rights.

Mr DRAFFIN: Those same fears you are talking about apply to the whole Australian Constitution. It is only an ordinary piece of legislation in the Westminster system ...

Mr HATTON: I cannot respond to that off the top of my head. I am not a lawyer but I understand that it is more strongly entrenched than that.

Mr DRAFFIN: There are 2 ways to amend the Australian Constitution. One is by an act of the British parliament and another is ....

Mr FIRMIN: I understand that the British parliament no longer has the right.

Mr HATTON: Please understand that what I am talking about is the constitutional shifts which will occur as long as we continue to be a territory. They applied in the Bougainville situation. In the case of Christmas Island, the Commonwealth exercised its power. The people formed a government there but when the Commonwealth decided that it was not working, it simply moved in and wiped it out. The federal government today still has powers to disallow any law of the Northern Territory within 6 months of its being passed. It still has the power to call an election for the Northern Territory at its whim.

Mr KEARNEY: But in some circumstances ...

Mr HATTON: It would be political suicide to do that, but that is not the issue.

Ms WILLIAMS: I want to raise the matter of electoral systems. What discussion has taken place in relation to optional preferential or proportional systems? Somebody referred earlier to the situation in the ACT where 35-odd names appeared on the card and the 35 preferences meant that voters were not getting the people they wanted.

Mr HATTON: It is discussed in the discussion paper. There is an option for entrenching certain electoral provisions in the

constitution. It is a judgement you need to make in terms of how much detail the constitution contains about that, as distinct from what you would put into an act of parliament. The committee recommends that, except for certain key and important provisions, we do not entrench too many of the electoral provisions in the constitution. We do, however, recommend the entrenchment of the right to a secret ballot, universal adult suffrage and the eligibility to vote. In terms of that eligibility, the recommendation is that the same qualifications apply to that eligibility as apply under the Self-Government Act. For example, you must be an Australian citizen, have been resident in Australia for 6 months and in the Northern Territory for a specified period, you must not be currently serving a jail sentence, and so forth. Those provisions also apply to persons in terms of their eligibility to stand for parliament.

Interestingly, there are also recommendations which relate to the present situation in which certain people are not allowed to stand for parliament, such as public servants and people holding an office in local government. The committee's recommendation is that a person who is a member of the federal House of Representatives, the Senate or another state parliament cannot stand for election to the Northern Territory parliament. In other words, you cannot be the federal member and then become the member for Palmerston. That sort of thing is wrong in our view. Secondly, we are recommending that people like aldermen and public servants can stand for Legislative Assembly elections but, if they are elected, they are automatically deemed to have resigned from the other post. That reverses the current process. It is a more logical way to approach it. We are suggesting that those things should be constitutionally entrenched.

Mr KEARNEY: What about the actual system of voting?

Ms WILLIAMS: Wouldn't you think that that is a key element?

Mr HATTON: Personally, no. Such matters as the voting system, whether it be first past the post, optional preferential or whatever, and whether we have single or multi-member electorates, are best dealt with through an electoral act.

Mr SETTER: Which is what currently happens.

Mr HATTON: That is the recommendation of the committee, although the community might have a different opinion. You certainly have the right to debate those recommendations.

Mr HOLLAND: There is some conflict in the way the voting system works at the moment. You can support the Liberal movement or you can support the Labor movement but, in a particular electorate, you may feel that the candidate put forward by the movement you support is the biggest idiot who ever walked the earth. The way the system works is you must vote for the idiot if you want the party to get in. I believe that the system would be much better if each party gave voters a list of candidates, perhaps in the party's own order of preference, and the voter would have the option of using that order or of choosing his or her own order. That would give the individual the opportunity to express support for a particular party but also to give some sort of preference to individual candidates from another party on the basis of their personal characteristics and abilities. That would give a much better representation in terms of what people really want.

Mr HATTON: That is not excluded under any system but you you are getting beyond the sort of things you would write into a constitution. You are even going beyond what you would put in an electoral act and venturing into the area of the electioneering strategies of parties.

Mr TREMETHICK: Yes. I can join the Palmerston branch of the Liberal Party and say: 'I want this man to be the candidate and I will vote for him in preselection so that I can vote for him later on'. That is base level politics. It is not a constitutional matter.

Mr HATTON: You have to be careful when you are talking about what you put into a constitution and that is why I am trying to draw the line. Remember, if you put something in and want to change it 5 years later, even if it is only a minor modification, you have to put it to the vote of every voter in the Northern Territory.

Mr TREMETHICK: Can I ask what modification processes the committee has recommended?

Mr HATTON: Referendum to the people. No amendments except by referendum.

Mr DRAFFIN: What sort of majority is required?

Mr HATTON: We have not put any recommendations forward on that yet. We have raised the issue of whether there could

be different levels of majority required for different clauses in the constitution.

Mr TREMETHICK: The last 2 referendums held in Australia have been multi-question referendums. In each case, I was happy with half of what was being put forward but had to vote against the other half. Will the NT constitution be such that single questions will have to be put forward so that we can vote on single changes?

Mr HATTON: Are you putting that forward as a submission?

Mr TREMETHICK: Yes. Most definitely.

Mr SETTER: I think that is an excellent concept.

Mr TREMETHICK: I am looking for feedback.

Mr HATTON: Well, we have not made recommendations in respect to that.

Mr FIRMIN: It is not a problem. From what you have just said, though, I would have presumed that you would have been able to vote in favour of 2 of the questions in the recent referendum and against the other 2. There were 4 individual questions, each having an effect on the constitution in its own right.

Mr TREMETHICK: But each had one or 2 choices. That is what I am getting at.

Mr SETTER: I think that is a ploy used by both parties to package up something that may not be very palatable with something that is generally acceptable, in the hope that ...

Mr TREMETHICK: It will go through.

Mr KEARNEY: In the case of that referendum, the opposition parties were criticised because of the way they opposed the questions. The problem is that, even if the majority of the population are in favour of proposals put forward in a referendum, the proposals have to achieve a majority in 4 of the 6 states. That means that, even if a proposal is passed in Victoria, New South Wales and Queensland, which contain the majority of the population, it will fail to pass if there is no majority in the other states.

Mr SETTER: I think all political parties have been guilty of putting forward multi-question proposals in the past and the fact that only 7 or 8 referenda have been carried since federation is evidence of that.

Mr KEARNEY: That begs the question of whether many more referendum proposals would have been passed if a straightforward majority applied.

Mr HATTON: The question is, of course, whether some of them really should have got through anyway.

Mr KEARNEY: We could argue about that at length.

Mr HATTON: Because the people might have said no and, in fact, they did.

Mr DRAFFIN: Whilst we are on this point, we should consider the implications of the Territory becoming a state. It will change the balance in relation to referendum questions. At present, if only 3 states have a majority, the question is lost. However, that balance will alter and make it easier to get amendments through because ...

Mr HATTON: It will be 4 out of 7 instead of 4 out of 6.

Mr SHANNON: I have a recommendation on the qualifications of voters. The provisions for taking someone off the voting list because they are in prison or in hospital is a bad idea on 2 counts. The extreme case probably does not apply in Australia, it being that those who oppose the system end up in hospital. Secondly, we are missing out on a major source of prison reform. People with the greatest experience of the consequences of imprisonment are being denied access to the political system and the opportunity to give feedback. That is showing up in that as many places as we can afford to provide in prisons are being filled almost at once.

Mr HATTON: I think the proposal at the moment is that if you have been sentenced and are currently serving a term of

imprisonment of more than a year, you are not eligible to stand for election.

Mr SHANNON: But it does not affect voting.

Mr HATTON: No, it does not affect voting.

Mr SHANNON: I am sorry. I take it that all people in hospital vote as well. The situation in Queensland is different. The only stipulation I believe should apply is one which specifies a minimum voting age.

Mr KEARNEY: I thought that prisoners could not vote if they had been sentenced to 5 or more years of imprisonment, whether they were allowed out on parole after a time or not. You are saying that a prisoner who serves a 1-year sentence can vote but a person sentenced for, say, 8 years cannot.

Mr SETTER: I think it would be impossible to police if they are out on parole.

Mr FIRMIN: I know that, in Territory elections, the prisoners at Berrimah Prison can vote if they are correctly enrolled on the electoral roll.

Mr HATTON: The select committee's recommendation appears on page 34 of the discussion paper. It says:

The select committee is of the view that there should be a 3-month residential requirement in the new state for a person to be eligible to vote for the new state parliament. Persons eligible to vote in Commonwealth elections anywhere in Australia immediately before the commencement of statehood should be eligible to vote for the new state parliament if meeting this residential qualification. Subject thereto, voting should be limited to Australian citizens. In other respects, the committee favours similar provisions to those presently applying in the Northern Territory. These qualifications should be included in the new state constitution.

The qualifications for voting are set out earlier on page 33:

The qualifications for voting in the Commonwealth Electoral Act are that the voter has attained 18 years of age, is an Australian citizen (with some transitional arrangements for British subjects), is not of unsound mind or under sentence of imprisonment for 5 years or longer or has not been convicted of treason or treachery without a pardon. Prisoners have now been given a vote in Legislative Assembly elections by section 27 of the NT Electoral Act.

It is noted in the preceding paragraph that the qualifications to vote for the Legislative Assembly in the Territory are primarily derived from section 14 of the Northern Territory (Self-Government) Act. Basically, the committee's recommendation is that the existing situation should continue to apply and be entrenched in the constitution.

Mr KEARNEY: Yes, I agree with that.

Mr HOLLAND: Can you elaborate on the notion of 'unsound mind'. For example, a person who is manic depressive would be declared as being of unsound mind and yet, quite clearly ...

Mr HATTON: I think the definition that applies would be that contained in the Mental Health Act. I am not a lawyer though and it would be unreasonable for me make a definitive statement. I believe the same situation applies throughout Australia, under the Commonwealth Electoral Act.

Mr FIRMIN: My understanding is that a declaration of the Supreme Court the Mental Health Act is that the definition of a person of unsound mind is a person who is unable to administer his or her own affairs. It is probably similar to the judicial provision for wards of state and so on.

Mr TREMETHICK: The issue of voting systems was raised by Ms Williams and I thought that it was a pretty important issue. I think she was talking about proportional voting.

Mr HATTON: No, I raised the issue.

Ms WILLIAMS: My view is that, whatever system is chosen by the people of the Territory, it ought to be entrenched.

Mr HATTON: There is a capacity there to entrench it in the constitution, if the people of the Territory want to do so. There

is nothing to prevent that happening but the committee's recommendation is that it would be better to do that through legislation than through the constitution. Do not just let us bully you around though. If you have a strong view one way or the other, we want you to tell us. That is really what we are saying.

Mr KEARNEY: Don't you think that that certain types of electoral systems are biased towards certain decision-making?

Mr HATTON: No.

Mr KEARNEY: In a first past the post system, a majority of electors may be opposed to the elected candidate whereas in a proportional voting, the candidates elected are those supported by the most people.

Mr HATTON: What happens when turmoil is the result?

Mr KEARNEY: What is wrong with a bit of turmoil? People automatically assume that a hung parliament will be the result. If we consider the history of the European democracies, however, it is clear that it is quite possible to operate with such a system. To my way of thinking, under a proportional voting system, people know that the person elected has the support of most people.

Mr HATTON: That is not the principle of proportional representation. The principle of proportional representation is, firstly, that you have multi-member electorates rather than single member electorates. If a party wins 5% of the vote, that party gets 5% of the seats. That leads to the representation of minority interest groups in the parliament. That is the ultimate form of proportional representation. How much that can be watered down is a matter for debate.

Mr FIRMIN: It is a very difficult thing to handle in very sparsely populated area like the Northern Territory, especially with single member electorates and trying to keep costs down.

Mr KEARNEY: I will concede that.

Mr HATTON: I am going debate the issue now. I cannot help myself, I am sorry. I think the most lunatic situation in Australia exists in the ACT at the moment. That is supposed to be a 25-member parliament, but even now they have not worked out who the members will be. The ACT has been declared to be a single electorate and people voted for 100-odd candidates, 19 of whom are to be elected in some weird, complicated electoral process. I would be curious to know how a constituent who lives in Woden would know which member to take a complaint to in terms of being their local member.

Ms COOK: They are asking the same question themselves.

Mr KEARNEY: What about the other side of the argument? In the British political system, you can have a situation in which it does not matter that an elected candidate has not been the choice of a majority of the people.

Mr HATTON: That is the problem where you have voluntary voting and first past the post voting. If you have compulsory attendance at the polling booth and full preferential voting, you know that more than half the people would prefer that candidate to the others. They might not like that candidate but they prefer that candidate to the others.

Mr SHANNON: Most systems are warped in one way or another.

Mr HATTON: That is right, there is no perfect one.

Mr SHANNON: I could be wrong on this one but I think that the only 2 countries that have compulsory voting are Australia and the Soviet Union.

Mr HATTON: I did not know that the Soviet Union did it.

Mr FIRMIN: Certainly there are very few countries.

Mr HATTON: No other western democracy uses compulsory voting.

Mr SHANNON: Yes, I am starting to change my way of thinking about it.

Mr HATTON: Please, it is not a matter of compulsory voting. It is a matter of compulsory attendance at the polling booth.

Mr KEARNEY: There should be room in the constitution for the donkey vote. You should be able to go to an election and say that you do not like any of the candidates.

Mr HATTON: None of the above.

Mr KEARNEY: Yes, you should be able to say that.

Mr HATTON: You can do that.

Mr FIRMIN: Sometimes, in Legislative Assembly elections, voters write the name of somebody on the ballot paper. On one occasion in my electorate, there were 4 votes for a man who did not even stand for election. It worried the hell out of me but it seemed that his family felt that their dad would make a far better candidate than those who were standing. A populist movement could take place if people wanted to push that view.

Mr TREMETHICK: I think we are getting well off the track. Mr Chairman, you and I have a right, if we wish, to go to the Palmerston branches of the CLP and the ALP and say that we would like to strangle the incumbent and have the opportunity to vote for a preselected candidate of our choice in Palmerston. That is the bottom line.

Mr COOK: You want that entrenched in our constitution.

Mr TREMETHICK: No, it is not necessary. I can strangle Coulter anytime.

Mr Chairman, could I ask you to outline what you are proposing in relation to the terms of governments in the NT?

Mr HATTON: The committee has recommended a maximum 4-year term with a minimum of 3 years to be served before the leader of the government and the Governor can issue writs for an election. There are some specific technical exceptions to that, such as the situation in which a government acts unconstitutionally or where no effective government can be formed. Those exceptions aside, we are saying that governments should be expected to serve most of their elected term, rather than to go to the people whenever it is convenient. That is why we have recommended a minimum term of 3 years. There is flexibility in relation to the fourth year.

Mr TREMETHICK: Is there is any reason why we should not to go to a fixed term so that on a specific date, such as 1 July of every 4-year period, we are going to have an election come hell or high water?

Mr HATTON: That option has been discussed, although it has not been recommended by the committee.

Mr TREMETHICK: Can I ask why? No, it is all right; I will look it up.

Mr HATTON: I can give you some answers. One of those is the practicality of having it accepted.

Mr TREMETHICK: It is the same as Presidential elections in the United States. On 1 January, we know that in 4 years time we will have a new president of the United States.

Mr SHANNON: If the government wants to opt out, it can always resign. Members would simply vacate their individual posts.

Mr HATTON: The arguments for and against fixed terms are set out on pages 26, 27 and 28 of the discussion paper. One of the arguments in respect of fixed term parliaments is that you end up in a much longer electioneering mode in the sense that ...

Mr TREMETHICK: That is your problem not ours.

Mr HATTON: It might be, although I would not have put it that way. I would have thought the opposite.

Mr FIRMIN: You mean to say that you want to put up with it more?

Mr TREMETHICK: Okay, point taken.

Mr DRAFFIN: Can I submit that we consider a compromise? What I am suggesting is that we do not necessarily stipulate

that there be no election inside the 3 years but that, if there is such an election, it be only for the remainder of the original 4-year term.

Mr HATTON: That is not an option which has been considered.

Mr DRAFFIN: Obviously, a mid-term election like that would only occur in some sort of crisis situation. It would eliminate the political opportunism which presently occurs in relation to early elections. Clearly, governments sometimes call elections simply because they are on a high and the opposition is on a low. This option would eliminate that whilst still allowing for the possibility of a mid-term election in a crisis situation.

Mr FIRMIN: I cannot imagine any crisis situation in which a majority government would seek to go to the people, in the middle of a 4-year term, for an election which would apply only for the remainder of that term.

Mr DRAFFIN: I could imagine situations in which a government had a comfortable majority.

Mr FIRMIN: The whole object of this recommendation is to achieve what we have been doing ever since self-government anyway, which is to run our maximum term because it is the cheapest option for the people.

Mr SETTER: Yes. There is a considerable cost in running an election.

Mr DRAFFIN: I appreciate that. What I am proposing is an approach which takes the political advantage out of early elections and ensures that they will only be called in dire straits. Certainly, in a bicameral system, a situation can arise in which an upper house blocks supply.

Mr HATTON: We are recommending a unicameral system.

Mr DRAFFIN: Nevertheless, a crisis could occur if a government with a majority of 1 had to face a by-election and lost its majority, meaning that there could be a change of government on the basis of the result in a single seat. I think that it would be appropriate, in that situation, to go to the people.

Mr HOLLAND: It could be a scenario.

Mr TREMETHICK: If you have a responsible government, you can get it to ban advertising. A responsible government would ban all political advertising except for perhaps the last 30 days before the election.

Mr HOLLAND: Then you will have ministers jumping up saying: 'This has nothing to do with the election but ...'

Mr TREMETHICK: Freedom of speech.

Mr HATTON: I think you have to be practical about some of these things. We need to be careful about what we put into constitutions. The suggestion has been put forward on the basis that there would essentially be a fixed term, but that a degree of flexibility would apply.

Mr KEARNEY: Why is there a need for flexibility?

Mr HATTON: I would refer you to the arguments set out in the discussion paper. If you would like to argue otherwise, that is fine, but there are equally valid arguments for flexibility.

Mr FIRMIN: Can I pass the question back to you again? Do you have any fixed position in relation to 4 years? Whilst we have agreed as a committee to a 4-year term ...

Mr KEARNEY: I think it should be longer.

Mr FIRMIN: I personally believe it should be at least 5 years.

Mr KEARNEY: I think it should be 6 years. You should govern for 6 years. Governments should be able to frame and implement long-term policies. Even in the supposedly wonderful days of Menzies, there was no long-term planning. What this country lacks is long-term research and long-term planning for the future and the development of technology. We have never done it. We have been in the forefront of technological innovation, including computers and the aircraft industry, but

we threw away our advantages during the years of conservative government. I am not making a political statement.

Mr HATTON: You are getting pretty close to one.

Mr KEARNEY: It is information based on historical analysis.

Mr HATTON: You are encouraging a political response, I can promise you.

Mr SHANNON: I would not like to see anything longer than 5 years.

Mr HATTON: You need a balance. Parliaments are responsible to the people and they have to go back to the people to renew their mandates.

Mr FIRMIN: At least make sure you are alive.

Mr HATTON: There is a responsiveness that comes from that. One of the reasons for the 4-year term with a minimum of 3 years is that 3-year terms tend to lead to elections after 2 years. There are problems in terms of insufficient time to settle into government, introduce programs and see the results of those programs at the other end. If there is a guarantee that 3 years of a 4-year term will be served, there is enough time to introduce some measures and work them through so that you can go to the people with evidence of success of failure.

The danger of the shorter terms is that you go to the people too early, before programs have time to be properly developed. That leads to short-term thinking because governments want to see quick results before they go back to the polls. It limits the ability of governments to make some of the more important and fundamental changes that are often needed from time to time. Such change will often be disruptive in the early stages and no government wants to go to the polls in the middle of a disruptive period. It discourages governments from doing things that they know they should do.

Mr KEARNEY: Making hard decisions.

Mr HATTON: That is right. Making the hard but necessary decisions. I believe, however, that the 4-year term with the option to go to the polls after 3 years overcomes that problem.

Mr KEARNEY: I think it would be even better with at least 5 years and preferably 6.

Mr HATTON: Then you have the problem of getting too remote from the people in terms of how frequently they have their say.

Mr KEARNEY: The majority of Australian citizens tend to derive much of their political information from the mass media, particularly television. That is a poor medium to receive information from and I see a problem in this area. The problem may have been created by the media more than by the politicians. It is that, when the media covers politics or constitutional matters, it is only concerned about entertainment. It is not concerned with any deep analysis of the issues. It focuses on personalities. However, people of reasonable intelligence are concerned about real long-term issues.

Radio is a better medium but, overall, Australians are becoming less politically intelligent. They are not politically articulate and they do not try to become politically articulate. They do not become involved in the process of discussing things like the constitutional development of their own country. It is not encouraged at either primary or secondary school level, which is where it should be encouraged. This sort of meeting is a very good thing. Whilst I disagree with your political philosophy, I think that this process is very worthwhile. I might add that it is very unusual for me to pay compliments to people like you.

Mr HATTON: Thank you.

Mr KEARNEY: What you are doing is a very rare and courageous thing. This is a very progressive step, supported by both political parties. This is a very rare thing. I have never seen it up here.

Mr HATTON: Maybe it is part of walking into the new world. Are there any other issues which people would like to raise? I know that some of you have been sitting there quietly listening to the discussion.

UNIDENTIFIED: I do not want to say anything at this stage.

Mr HOLLAND: I wonder if I could raise a different issue. I have browsed through the document and I do not see any reference to the environment. In these times, the whole world is hopefully becoming more involved in environmental issues and protection of the environment. If we are framing a constitution, it would be foolish not to ensure that it contains provisions which actually protect our environment.

In this context, I am reminded of the current situation in the United States, in which a company can produce a substance and it is up to the authorities to prove that it is a hazard. That seems ludicrous to me. I believe that our constitution should require manufacturers who operate here to prove that their products and by-products are not hazardous to the environment or to society. If there is some degree of hazard, it needs to be assessed and determinations made in relation to what sort of compensation the state receives if it puts up with the effects of that activity.

I also believe that, in situations where a company is going to produce a pollutant into the environment, the decision in respect of the degree of toxicity which is tolerable should not be made by the government, but by way of a referendum. The people should decide whether the Ranger uranium mine can pour its wastes into Kakadu National park.

Mr HATTON: That example does not fit your criteria because the toxins cannot be measured.

Mr HOLLAND: I am not trying to jump on a particular bandwagon.

Mr HATTON: You raised the issue of a particular company and I really have to ...

Mr HOLLAND: All I am saying is that, in a case which involves radioactive waste at any level ...

Mr HATTON: You are raising the issue of whether there needs to be some constitutional entrenchment of environmental guidelines.

Mr HOLLAND: I am not asking whether there should be. I am saying that there should be.

Mr HATTON: You are putting a submission that there should be.

Mr HOLLAND: I am making a statement that there should be, given that the world is very conscious of environmental issues. It would be negligent of us not to include protection of the environment in the constitution.

Mr SETTER: The issues that you raise are generally addressed by legislation in the Commonwealth and in the states. The situation varies from state to state and if you were going to write something like that into a constitution then you ...

Mr HATTON: So is the knowledge of the world.

Mr SETTER: It is very difficult to do in detail.

Mr BENNETT: Perhaps the gentleman is suggesting that the basic right of the individual is to have clean water and clean air.

Mr SETTER: Sure. Something like that could be written in.

Mr BENNETT: It could be entrenched in a constitution. The implementation of that statement would evolve with legislation

Mr HOLLAND: We could have a grading of toxins so that a definitional grading could be introduced. For example, level A toxins might be those which break down in a 10-year span, at which time they might be classified under a different level.

Mr SETTER: You cannot do that without going to a referendum. If you entrench it within the constitution, you have to go to a referendum to alter that classification.

Mr HOLLAND: No, because the classifications can be determined by legislature. The actual ...

Mr SETTER: Oh, I see what you mean.

Mr HOLLAND: Yes, the constitution would contain a broad principle and legislation could then implement it flexibly, adjusting the levels in terms of the grading of toxins and so forth.

Mr HATTON: What is the value of putting it into the constitution?

Mr HOLLAND: By having it there, we avoid the possibility of environmentally disastrous decisions being taken because the country is in economic trouble and there is a perceived short-term advantage to be gained in terms of export income. The trouble is that, 10 years later when the country is booming, that decision might be a cause for great regret. The consequences might be around for 1000 years. Such major decisions should be made by the people at large, through a referendum. That way, if a mistake is made, it is the responsibility of the whole community and not just a few politicians. The people will have to live with that responsibility.

Mr HATTON: It is an interesting concept. We have it recorded now. I cannot for the life of me think of how it might be put into constitutional terms. However, if you want to develop it and put something to the committee, that is fine. To be honest, I do not have much of a feeling for it. Perhaps you would like to develop something more substantial in terms of the wording.

Mr HOLLAND: Yes, it is something I have given some thought to.

Mr HATTON: Obviously, discussion across the table at this particular stage is not going to advance that. It is a matter that can be picked up at a later stage. Perhaps you and other people might be interested in making further comment in relation to some sort of constitutional entrenchment of environmental guidelines.

Mr FIRMIN: In terms of the constitutions I have read, particularly the United Nations draft constitution, I endorse the remark which was made earlier in relation to the need for broad underlying principles which relate to how you want your life to be controlled and developed. That is what determines the entrenchment of particular specific matters in a constitution and allows legislation to flow from that. That is why I liked Steve's comment about the right to clean air and clean water. It is a very simple principle and from that would flow the protections that you are seeking, although in a different format.

Mr SHANNON: I can articulate part of the concept in order to state it formally. The responsibility of the government is to provide, in order of priority: firstly, liberty for its citizens; secondly, security for its citizens - meaning safety; and thirdly, profit - as in wealth. In other words, people are to be free before they are safe, and safe before they are rich. Having said that, I would like to move on to another topic now.

Mr MODRA: I would like to make another comment on the environmental issue. I think we need to be very aware of the fine line we tread in terms of the impact of our activities on the atmosphere and the environment generally and I think that needs to be recognised in the constitution.

Mr HATTON: So you are speaking in support of some form of constitutional entrenchment.

Mr MODRA: I am saying that we need to be careful of what we do environmentally.

Mr HATTON: We must thoroughly understand the environmental consequences of actions that we are taking. It is very hard to find the right form of words, isn't it.

Mr HOLLAND: It is not enough just to say that there is a basic right to clean air and clean water because you will then have people with large financial backing spending millions of dollars in the process of defining what 'clean' means and they will soon convince you that toxins are very clean things which are not at all dirty. The meaning of the broad provision needs to be very finely articulated without being too specific.

Mr HATTON: Can I just remind also everybody of one matter which I think is worth remembering. There is a phrase in the Australian Constitution which says that trade and commerce between the states shall be absolutely free. That is about as clear a statement as could possibly be made but its interpretation has made more lawyers into millionaires than any other single clause in the Australian Constitution.

Mr SHANNON: I can still ride my motorcycle across the border without ...

Mr HATTON: Yes, but my point is that even simple words become contentious when the lawyers and vested interests get to work. The argument over the meaning of that clause, which seems very simple, has been going on for 80 years. We have a situation in New South Wales, for example, in which freight can be moved across the state border and back again in order to avoid road tax in New South Wales.

Mr SHANNON: Especially if you live at Albury or Wodonga.

Mr HATTON: That is right.

Mr SHANNON: Another question relates to whether or not there should be a distinct part of the constitution which relates to Aborigines. I recommend that that not occur because, if we start differentiating between citizens on any basis whatsoever, we will set up an 'us and them' situation which is the first step towards war. If Aborigines or any other identifiable group needs particular distinctive cultural rights, they should be incorporated within the general statements in relation to rights, liberties and entitlements. The constitution should provide that everybody is entitled to reach a certain standard of education or to have some form of assistance in terms of any danger to a given culture. I recommend that no distinction be made on any basis.

Mr HATTON: Two issues have been raised with us in respect of Aboriginal people and they certainly are in the minds of Aboriginal communities. One is the issue of Aboriginal Land Rights. There is a fear in the Aboriginal communities that, upon statehood, all of their existing land rights will somehow be taken away from them. They are looking for some guarantees that they will not loose the land that they have got back.

I raise that issue because the question of the constitutional entrenchment of Aboriginal land rights has been raised. People in Arnhem Land have private ownership of that land at the moment. Should the government, on the granting of statehood, be able to walk in and say that that is all finished? I raise that question because the matter of land rights has been the foremost concern in the Aboriginal communities which we have visited.

The second issue relates to the process of healing some of the racial wounds. I am seeking to honestly reflect the expressions that have been put to us. As a process of healing the racial wounds between Aboriginal and non-Aboriginal people, the question arises as to whether it would be appropriate to add some form of a preamble to a Northern Territory constitution. Such a preamble could recognise the fact that Aboriginal people existed and occupied land in the Northern Territory prior to non-Aboriginal occupancy from 1788 onwards. The question is whether there should be some constitutional recognition of the prior occupancy of indigenous people. Of course, there are some real concerns about that sort of approach. How could it be done without leading us into an international legal minefield? I do not know the answer to that but I need to honestly put the issue before you because it has been raised with the committee.

The discussion booklet canvasses these issues and, when we visit the Aboriginal communities, they are raised directly with us. We need to develop a constitution that will stand in good stead among everybody in the Northern Territory. That applies to the Aboriginal community as much as anybody else. It cannot just think for itself. It must think in terms of all Territory people. The same applies to us. If it is possible, we must find a formula that will enable us to develop a society where we can live together with some sense of mutual respect.

Mr SETTER: You have to understand that they represent almost 25% of the population of the Northern Territory and that their needs and aspirations therefore need to be properly addressed.

Mr SHANNON: I have no quarrel with a preamble that states the truth.

Mr HATTON: I do not know of any citizen who does not say that Aboriginal people were here before whites, that they have their own culture, traditions and religion, and that they have a special place as an indigenous people. That is internationally recognised. The question which arises in relation to a constitutional preamble is how that can be recognised without walking into a minefield of legal claims in relation to compensation, reparations and so forth.

Mr SHANNON: Yes, that is a risk you accept in walking into a minefield.

Mr HATTON: That is an issue which I would like the Territory people to address in the totality of the debate.

Mr HOLLAND: I have not had much of a chance to read this document. The first part of it talks about repatriating the Aboriginal Land Rights Act back to the Northern Territory. Why do that? If you are worried about the reaction of the

Aboriginal people, why not leave that act in the hands of the federal government. When the 1967 constitutional referendum gave the federal government the power to make laws in relation to these matters.

Mr HATTON: I think it stretched the truth a long way in relation to that. The referendum gave the federal government certain powers which it then interpreted very broadly. I do not think that, in that referendum, people actually gave approval for what occurred subsequently. In my view, they simply voted to give citizenship rights to Aboriginal people. I do not want to debate that issue because it is irrelevant to the present situation.

The reason for the proposal to patriate the Aboriginal Land Rights Act is this: if you are going to govern at a state level, the land is the basis of government just as much as it is the basis of people's lives. Government at a state level is government that is associated with the administration of people and land. Our laws interrelate with that. When something like 50% of your land mass has an administration base which is outside your control and direction, that means that that land is subject of an entirely separate legal fabric. The Aboriginal Land Rights Act says that the laws of the Northern Territory apply on Aboriginal land to the extent that they are not inconsistent with that act. The problem is that that can mean all things to all men. We had to go to the federal High Court to find that the Control of Waters Act applied on Aboriginal land. We have 400 or 500 acts of parliament. Do we have to do that with every one of them? Can we impose stock control laws on Aboriginal land? Can we charge a land tax on Aboriginal land, as states charge on private land, and so on.

We do not know how to extend our laws to apply to Aboriginal land. An issue which arose last year caused an amendment to the Traffic Act: a person got off a dangerous driving charge in an Aboriginal community in Arnhem Land on the basis that they were travelling on a private road and that the Traffic Act therefore did not apply. The road was in a town of over 600 people. The result was that we had to change the Traffic Act and deem all private roads on Aboriginal land to be public roads for the purposes of the act. We have to go through that sort of nonsense simply because the Aboriginal Land Rights Act is a Commonwealth act. The problem has nothing to do with the principle of land rights itself; it is simply that, because the act is an act of the Commonwealth, it cuts across the fabric of our laws in the Northern Territory.

Mr HOLLAND: Would it be possible to specifically document the actual Aboriginal customs? If that was done, the preamble could then state that the rights and beliefs of all people living in Australia would be respected regardless of race. The constitution, by documenting the Aboriginal customs in the context of that preamble, would recognise Aboriginal people as part of the total population. Their rights would not be particularly singled out to create an us and them situation, but they would nevertheless be protected.

Mr HATTON: On the same basis as other people's rights are protected.

Mr HOLLAND: There would still be a preamble more or less acknowledging their ...

Mr HATTON: As long as it is not an ATSIC form of preamble. That would have created really difficult problems because of the legal ramifications.

Mr HOLLAND: I was thinking more along the lines of a preamble which stated that their culture had existed for 40 000 years and would set out some of the aspects of that culture. That be a specific reference but it would be covered by the more general statement in terms of the rights of all people.

Mr HATTON: I believe that these will be the most difficult issues we will face in the drafting of the constitution. It will be relatively simple to thrash out such matters as whether the parliament has 1 or 2 houses and so forth. However, in the case of emotional issues like this, it will be much harder to find a solution that will not give offence to one section of the community or the other. This is going to be the test for the future.

Mr KEARNEY: On page 93 of the discussion paper, under the heading of Aboriginal Rights, it says:

One option, favoured by the select committee, is to entrench these guarantees of Aboriginal ownership in the new state constitution, such that they can only be amended by following specified entrenchment procedures. The extent of these guarantees and the degree of entrenchment of matters upon which public comment is invited.

What is the extent of these guarantees? You opened this out for public discussion.

Mr HATTON: Yes, could I say that other discussion papers are available although I do not know whether we have copies

here. They certainly can be made available to you. There are 3 papers altogether and they came out in 1986. One relates to land matters on statehood. It is not actually a select committee paper. It was produced and went past the select committee prior to tabling in the Legislative Assembly. It deals with such matters as the manner of transfer of federal land, including Aboriginal land under Northern Territory jurisdiction. A second paper related to national parks upon statehood and a third to minerals and energy upon statehood. The 3 discussion papers relate to some of the work which we are now doing and are available to people as additional information.

Mr HOLLAND: I have a short question which relates to the Aboriginal land problem. The Commonwealth Constitution contains provisions relating to federal land acquisition. What does the NT government or your committee propose in relation to land acquisition under a Northern Territory constitution. If the government can acquire my land - or 968m² of it - can it acquire Aboriginal land?

Mr HATTON: We cannot acquire Aboriginal land. It is perpetual inalienable freehold title which means exactly what it says: perpetual, inalienable and freehold. That is Aboriginal land under the Land Rights Act.

Mr FIRMIN: Which is a right you do not have.

Mr HOLLAND: That is right.

Mr HATTON: The Northern Territory government is restricted in its ability to acquire land under the Northern Territory (Self-Government) Act. We can compulsorily acquire on just terms, which means that we have to pay for it. There are rights of appeal under the Lands Acquisition Act but we cannot just take land without paying for it as some state governments can do. In New South Wales, for example, the state government can acquire land without compensation and has done so. You might remember that Neville Wran took all the coalfields in the 1970s. It is the recommendation of our committee that acquisition on just terms be written into the constitution to prevent the government taking land without compensation. The committee believes that the government should pay for any land it acquires, whether it be for a road, an easement or whatever. It is an acquisition of property which includes a person's rights too. It is not just real estate.

Mr HOLLAND: I believe that you should avoid using the term 'Aboriginal land'. It is an offensive thing. It immediately draws a line. It says: 'This is my back yard. You keep away'. I think it should be referred to as ...

Mr HATTON: Private land.

Mr HOLLAND: No, I think the term should be Aboriginal sacred sites. The same applies in the case of Westminster Cathedral or something like that. We are talking about land which does not actually belong to somebody but is sacred to the Aboriginal people. I would not even put it under ownership and say that it belongs to the Aboriginal people. I would say that that land is sacred sites and that is it. It stays there. It does not belong to anyone. It never will. It is sacred sites.

Mr FIRMIN: Can you just clarify that? Are you talking about the totality of Aboriginal land?

Mr HOLLAND: I am not talking about situations like Arnhem Land, where land has been set aside so that the Aboriginal people can live their traditional life. I am talking about situations like Uluru, or Ayers Rock. If that is a sacred site, it does not belong to anyone. It is an Aboriginal sacred site and no one gets a buck anywhere. It is a sacred site and that is the end of the story.

Mr HATTON: The problem with the concept of sacredness is that it may have a meaning according to our cultural beliefs to that which applies in Aboriginal belief.

Mr HOLLAND: Ownership has a completely different meaning in each culture. To say that they own the ...

Mr HATTON: That is right. It certainly does.

Mr HOLLAND: They are flying the flag now.

Mr SETTER: I think it is important to draw the distinction between Aboriginal land and sacred sites. You are inferring that all Aboriginal land is a sacred site or. It is not, of course.

Mr HOLLAND: No, what I am saying ...

Mr SETTER: There are sacred sites dotted around in Aboriginal land.

Mr HOLLAND: Yes, but what I am saying is that sites that are considered Aboriginal sacred sites should not belong to anybody. They should simply be deemed sacred sites without attaching the concept of ownership. They should not belong to anybody for ever and a day. This relates to the problem I perceive in relation to what is called Aboriginal land, which is that it forces society to address the question: when is an Aboriginal not an Aboriginal? At what point does someone become a non-Aboriginal?

Mr SETTER: That is a good question.

Mr HOLLAND: The issue does not matter at present because we can say: 'Yes, this person is a true Aboriginal'. In 200 years' time, however, that may not be the case. It may be that the concept of Aboriginality as we know it today may not apply. However, if we word our constitution appropriately, people will be able to say that particular sites are sacred and remain so regardless of any idea of Aboriginality. Hopefully, the Aboriginal culture will remain. Certainly, the principles of the culture can remain alive.

Mr HATTON: I would urge you to read the relevant material in the discussion papers. The issue of Aboriginal land rights will certainly be critical in the development of the constitution. The papers present a series of options in terms of dealing with Aboriginal land. We have to accept certain realities. Large sections of the Northern Territory land mass are privately owned by Aboriginal land trusts on behalf of particular Aboriginal communities. Those areas are lands which were traditional tribal property - and I use that term very loosely - of particular groups. That situation is fact. We do not have to deal with the question of what has happened in the past. We do not even have to deal with the question of whether current form of Aboriginal land ownership should continue.

Everyone tends to assume that Aboriginal people think that the Aboriginal Land Rights Act is perfect in its present form. I do not believe that is true. Nor do I think that the vast majority of Aboriginal people are of the view that Aboriginal land should be left fallow in its natural state and that they should continue to lead their traditional nomadic lifestyle in the future. I do not believe Aboriginal people think that way. The vast majority do not. However, they regard that land as their own, just as strongly as you regard your 962m² block as your land. Indeed, they may feel even more strongly attached to the land. That does not mean they do not want to turn it to their economic advantage. They may well want to.

Mr HOLLAND: I have fears in relation to that notion. Whether you like it or not, you are implying that we have come in as invaders and taken the land and, without making any moral judgement about that, are looking at the question of rectifying the situation.

Mr HATTON: I did not say that.

Mr HOLLAND: No, but that is the implication.

Mr HATTON: I am making a statement about the aspirations of many Aboriginal people.

Mr FIRMIN: Let's reverse the argument for a moment. You live in Palmerston. The land in Palmerston is owned by the people who live there and those people build houses for themselves. If you want to live somewhere else, however, it is simply a matter of selling your house. Some Aborigines have put it to me that they are not prepared to build their own houses on Aboriginal land because they have no individual land tenure. If they build a house, how can they sell it? They do not have individual tenure on the land. They do not have a square plot of land marked out, upon which they have the right to develop, trade, or sell as they see fit. Such people feel disadvantaged by the Land Rights Act in its present form. They cannot sell anything on their land, and they cannot sell their land or anything that goes with it. They cannot mortgage the land to create an opportunity to build a house. You can go to the bank. You have collateral on your land and so on. They cannot do that.

Mr HOLLAND: I do not believe that the act ...

Mr DRAFFIN: When we start talking about entrenching anything in the constitution in relation to land rights, we are getting into a very difficult area.

Mr HATTON: I would be less than honest if I did not tell you that that matter is on the agenda in terms of the constitution. That is what I have been doing.

Mr KEARNEY: I don't think the constitution should get bogged down in questions of ownership of land because that is an area of great controversy which would be the cause of considerable conflict between groups of people. We should look to resolving the conflict rather than fighting. People talk about the past. We cannot change the past. The people here were not responsible for what happened in the past. My parents were not responsible for what happened in the past and your parents were probably not responsible either so it is pointless talking about the past.

Mr HATTON: It will be a matter of some interest to listen to the debates on these subjects at the constitutional convention.

Mr BENNETT: We have to recognise that we are talking about the enshrinement of the rights of individuals in a constitution. On the other hand, the land trusts vest land in groups of people, leading to the problems which Col has explained in terms of the rights of individuals who live on Aboriginal land. The rights of individuals and the rights of groups of people are 2 distinct matters and I suppose that is why the committee has looked at a preamble in terms of recognising that there are different forms of land tenure in the Northern Territory. We cannot get away from that. It has been enshrined in terms that are beyond the scope of this constitution to change, and any attempt to change that situation would probably be rendered invalid by the Commonwealth, which is the source of any power we might have to develop and Territory constitution.

Mr SETTER: That is right. It is very important to understand that the Aboriginal Land Rights Act is a Commonwealth act.

Mr BENNETT: Exactly.

Mr SHANNON: I have a recommendation regarding anybody else's land rights. It is that only Australian persons, defined by citizenship, should be allowed to own property in the Northern Territory.

Mr SETTER: Does that exclude permanent residents?

Mr SHANNON: Yes. If you want to own real estate, you should have to be a citizen. I know that might to be hard to explain to our foreign trading partners and I am sure that it is in conflict with way in which the Trade Development Zone has been established.

Mr HATTON: What about people who are not yet Australian citizens but who have been granted permanent residency status?

Mr SHANNON: That would be the responsibility of people who are accountable. I am just after accountability here.

Mr HATTON: I understand the point you are making.

Mr MODRA: Could I just have some information on your proposal for a Territory Constitutional Convention? It was one of the matters you referred to in your opening comments.

Mr HATTON: To be honest, we do not have a fixed view. I can make some general comments, however. Basically, 2 options have been presented. The first is that the convention be comprised of people appointed from representative groups in the community and the second is that it be comprised of people elected either from within particular groups or areas. The choice is between an appointed or elected convention, or one which is a mixture of both.

One of the questions which arises is how we get something that is representative and is seen to be representative? Another is that of Aboriginal representation, cultural representation, women's representation versus men's representation, regional representation, local government representation, trade union representation, industry representation, religious representation and so on.

Mr TREMETHICK: Pensioners, grey power.

Mr HATTON: There are so many different interest groups which will want to have a say.

Mr TREMETHICK: What about our high school students, who will be the future residents of the Territory?

Mr HATTON: Yes, youth. The fear is that if we sat down and wrote a list of the groups which might be represented, there is almost a guarantee that we would get it wrong somewhere. However, we have been trying to get an idea of which

interest groups people feel should be represented, leaving aside the question of whether it should be on an elected or appointed basis, so that we can get an idea of how large the convention might be. At this stage, we are thinking in terms of 50 to 60 people.

Mr TREMETHICK: Representing 120 000 people?

Mr HATTON: Yes. There are other issues as well. One is the question of whether that convention may break into specialist groups. I believe that there is certainly a need for some legal representation. It will certainly avoid problems further down the track if good constitutional legal advice is available in some way. It will certainly be essential at some stage. It may be possible for the convention to break into smaller subgroups and for those groups to report back to the convention as a whole. The select committee has not made any recommendations in relation to these matters and I am sure that you will understand why. As I said today to a lady in my electorate office, if I put up a recommendation in relation to the formation of the constitutional convention, there is one thing I can absolutely guarantee: it will be alleged that I have tried to rig it, no matter who the members of the convention are.

Ms COOK: Steve, you said earlier tonight that you hoped that you would stir some interest and obtain some feedback. I am sure that the people who have attended this meeting will go home and talk to their neighbours and friends and, as that happens, this meeting will have a spreading effect which will create a great deal of discussion within our community. I would like to think our community will have the opportunity to sit down at some stage in the future, probably in greater numbers, in another meeting like this one. Do you see that as a possibility?

Mr HATTON: Most certainly, either with the committee as a whole or with members of the committee. The opportunity is available to either the broad community or to particular groups within the community. We are really keen to have the opportunity to mix with the community and to discuss issues with people.

Ms COOK: I believe quite firmly that most of the people here tonight were not quite sure about what you were looking for. I believe that they are well and truly aware of that now and that, probably in a few months' time, a discussion like this would be quite fruitful.

Mr HATTON: I understand that between now and the middle of May we are going through this exercise with 59 separate communities throughout the Territory. The aim is to get people thinking and talking about the issues. We expect to go back to all of those communities later in the year, hoping that by then people will have thought about some of the issues and will be able to come forward with comments and submissions.

Mr SETTER: Mr Chairman, it is worth drawing attention to the fact that, on 29 May and 30 May, the committee will be meeting publicly in Darwin. I think that meeting will be held in the Legislative Assembly.

Mr KEARNEY: Is that for ordinary citizens?

Mr HATTON: Anyone can come along.

Mr SETTER: If you would like to make a written or a formal submission, that would be an opportunity.

Mr HATTON: Or you could attend and listen to the submissions

Mr DRAFFIN: This is a very important question. When are you going to call this new state?

Mr HATTON: You want my view? I would call it the Northern Territory.

Ms COOK: On behalf of the Palmerston community, I would like to thank the committee for this meeting and I look forward to its next visit.

Mr HATTON: Thank you very much. I thank everybody for their participation. It has been an excellent evening.