

## PUBLIC MEETING

**MINJILANG — Wednesday 10 May 1989**

PRESENT: —

**Committee:**

Mr S. Hatton (Chairman)

Mr B. Ede (Deputy Chairman)

Mr C. Firmin

Mr W. Lanhupuy

Mr D. Leo

Mr R. Setter

**Officers assisting the committee:**

Mr R. Gray (Executive Officer)

Mr G. Nicholson (Legal Adviser)

**Appearing before the committee:**

Mr Stanley TIPILOURA

Mr Wayne WAUCHOPE

Mr Lloyd BOYLE

Mr Jumbo GUNGGIBARA

Peter

Mr CLOGH

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

ISSUED: 21 August 1989.

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Mr HATTON: Thanks for coming to meet us to talk about this matter. I will introduce myself and the people with me. My name is Steve Hatton. I am the member for Nightcliff in the Legislative Assembly in Darwin. I am the chairman of this committee of the Northern Territory parliament, which is called the Select Committee on Constitutional Development. I have with me here today Mr Brian Ede. He is the member for Stuart in central Australia, and he is the deputy chairman of this committee. There is Mr Rick Setter, the member for Jingili, who is also a member of this committee and, of course, Stan Tipiloura, your local member, is travelling with us as well. If you look at the back of the books which we have just circulated, you will see the pictures and the names of all the members of our committee.

This committee is different to other committees of the parliament because this committee has the same number of Labor Party people as Country Liberal Party people. There are 3 from the government side and 3 from the opposition side. That is important because on most of the parliamentary committees there are 3 government members and 2 opposition members so that there is a majority of the government people. But, for the job that we are doing now, this is one of those unusual times when both the government and the opposition, the CLP and the Labor Party, are actually working together and not fighting about it. That is why we have equal representation here and why we are going around together to talk to the

communities about the job we have to do.

I know there has been a lot of talk around the Territory about statehood. Some people think statehood is good and that we should move as soon as possible to get statehood. Other people are very nervous about it, and some people just do not want it or certainly not now. Well, please, we are not talking to you today about statehood. We are not asking you whether you think statehood is good or bad. That is a question for the future. What we are talking about today is the writing of a special law for the Northern Territory, a law which is called a constitution. Until we have done this job, we cannot even think about becoming a state, so we are not talking about statehood.

We are going around now and explaining to the communities, to the people, what we are doing to try and get the people to work together to write this law called a constitution, and to explain what that law is and how we are going about doing it. We want to encourage people to make sure they have their say in this law to make sure it is written so it will properly look after the interests of their community and their people.

This is necessary because this law is not like any other law. This is a law - how can I put it? It is a people's law. You write this law and you set that as a law that sits over the top of the government. This is the law that stands on top of the government. It tells the government what it is allowed to do and it tells the government what it is not allowed to do. In this law the people say how you go about electing the government and how you go about electing the parliament. You say here what the courts are allowed to do, how the courts and the judges work and what the Governor or the Administrator is allowed to do. The people make that law, and you put all that together. You say: 'Okay, this is how we are going to let the government work, and what we are going to let the government do'.

You also say what you are not going to let the government do, because it is just as important in this law that you say that there are some things that are so important, our rights that are really so important that no government is allowed to muck around with them. Governments are not allowed to touch those things. That might be your right to vote and it might be your right to speak and meet like this. It might be to stop the government from being able to muck around with Aboriginal land rights, to protect Aboriginal land rights. It might be to protect sacred sites or Aboriginal law, language and culture, the really important things that you say: 'Now, no government is allowed to muck around with that. That has to be there forever and the government cannot fiddle around with that'. Those are the sort of things you put inside a constitution and that sits over the top of the government.

This law is the boss over the government and the government has to go the way that law goes, and the government cannot change that law, if we write it properly. Only the people can change that law so it becomes your law, not the government's law. That way, the people have the power over the top of the government. If you do not have that constitution, then the government can do what it likes. The government can make any law it wants to make because you have not got that constitution over the top of them. This is a way that people say which way they want the Northern Territory to go in the future. It is done through that law. It is the way you put a rope on the government to stop it going too far.

You lose nothing from this, you get only rights. It gives you rights that are protected. It does not take anything away from you. And it says how the people are going to live together and work together and that you have to respect each other's rights in the future. That is what this sort of law does. It is a people's law.

We are travelling around now saying that we - the Northern Territory people - have to write this law, not the government and not the politicians. The people have to write this law, and they have to say to the government: 'There is the law. That is how we want the Northern Territory to go. Now you get on that road and you go down that road'. That is what this law is about.

If you look around Australia, the federal government in Canberra has a constitution over the top of it. All the states, Queensland, Western Australia, South Australia, New South Wales, Tasmania and Victoria, each has a constitution over it. Some of them may not be very good constitutions but they each have one over the top of them, and they were written 100 years ago, or more.

The Northern Territory does not have a constitution over the top of it. Even that federal constitution in Canberra does not help us. What it says is that the federal government can do what it likes in the Northern Territory, because we are a territory. We are saying to people: how do you want this Northern Territory to go in the future? What sort of place do you want this to be for your children, for your grandchildren and for their grandchildren? What do you want this Northern Territory to be like in the next century? How are we going to fix up the arguments and the fights that are going on between

our European community and our Aboriginal community? How are we going to work out how we will live together in the future with respect for different cultures? How do you want this government to be put together, and what do you want the government to be able to do? These are the sort of questions we are asking, and it will take a lot of work to put all that together, and it will not be done quickly.

We are just coming around now saying that this is a job that we really have to do. The people have to do it. The people have to think about where they want this Territory to go, and here is your chance to have a say in it. You make the law and you set the direction you want to go in, and you make that law over the top of the government and make the government go down the road the people want to go down. We are just coming around to you to say: 'Please, in this job, make sure you have your say'. Think about this. We have got some stuff for you, some information for you to think about. This book here has some ideas in it and some questions in it, but that is like a beginning one. We have a big book here, a thicker book, like that. That has a lot more stuff in it but it is not too hard. It says one thing at a time.

We have been working for 3 years, looking all round the world. We have been looking at things they have in America, in Canada, the West Indies, Africa and all around Australia and getting different ideas. Some things we reckon are good. Some things I do not like. If you look in this, you will say you like some of these things and you do not like others. You might think of something that we have not thought of that should be looked after in this people's law. We are asking you to have a look at it, have a think about it, talk about it amongst your community, get your ideas and think about them and, later on this year or next year, when we come back, you will have a chance to make sure you have your say about what you think should go in that law.

We are doing the same thing all over the Territory. We have been to nearly 60 communities, down in the Pitjantjatjara country, to Docker River and Mutitjulu, through Finke and up through all the desert country and on up to the Gulf and through Arnhem Land and the VRD. We have been all over. We have been in Darwin and Alice Springs, Katherine and Tennant Creek, and over to Nhulunbuy. We have been to all those places saying the same thing to the people: 'Please, have a look at this. How do you want the Northern Territory to go? How should people live together? What do you think the government should be allowed to do? What things are so important that no government should be allowed to muck around with them? What rights are so important that no government is allowed to touch them'? This is a way you can put it together, through talking to other people around the Territory, to make that law.

We are not going to write that law for you. Do not trust the politicians to write this law. You cannot trust us to do this job. The people have to do it. We are just coming here to say that we can give you some information to help you to start thinking about it. Get your ideas down and then, when we get them all together, we will try and put down what we think the people are saying, but that is only your first go at it. Then we want to go a second stage and we are asking you about that too.

We have to put together a big committee of people from all over the Northern Territory, people who can represent the communities and speak for them, people that you trust to speak for you. They have to come together, from all over the Territory, to look at what we have done and to say whether it is good or bad or whether it should be changed. They will work through it and they will write up that law and put it together. When they have finished that job, that will go back to the people for them to vote in a referendum. They will vote 'yes', if they think it is good. If it is not quite right, then you say 'no', and they will go back and start talking to people again. It will keep going back until the people say: 'Yes, that is what we want. That is good'. When the people vote 'yes' on it, then it becomes a law, and that is the law you put over the top of the government and it becomes the boss over the government. That law will make the government go down the road the people think they want to go down.

This has never happened before in the Northern Territory. It has never really happened like this before in Australia. When they wrote those other constitutions, they certainly did not talk to the Aboriginal people, did they? When they wrote those constitutions, they did not write things in them to protect Aboriginal culture and law. Now, in the states where they did not do that, those constitutions are still there and the people do not have their rights protected. It is important that this time, now, when we do it for the Northern Territory, that all the people take part in this, so that it becomes your law as much as it is balanda law. It has to have the things in it that are important for Aboriginal people just as much as it has to have the things that are important for balanda. Together, you have to talk it out and talk out where you are going. Maybe there will be a few arguments, but that is fine. Even if you argue to start with, if you talk and talk and talk, bit by bit you find an answer. The people will find an answer on how people are going to live together in the future.

It will not be a quick job either. Do you know how long it is going to take? I don't know. Maybe it will take 3 years or

perhaps 5 years. It may take longer, but that does not matter. What does matter is that, when you write that law, you get it right, so the people say: 'Yes, that is what we want'. Then people will be happy to go down that road and they can leave this for the future, for the children and for future generations. They can set the direction for people in the future and make this a place we can all be proud of. Then, when our grandchildren look back, they can say: 'Those old people did a good job. They sorted out those problems and they made this a good place to live in'.

If we do not do this job, if we say: 'Oh, it is too hard. We are not going to touch it', the problems will still be here and our grandchildren will look back and say: 'Why didn't they do what they should have done? Why did they leave this mess behind'? That is the responsibility we have. We have to work out where we want this Northern Territory to go. It is a responsibility we cannot walk away from. We all have to work together to sort out these problems and work out where we want the Territory to go, and the people have to do that.

We have come here to say: 'Please, be part of this. Think about it and talk about it, and make sure you have your say in this and make sure that, when that law is made, it is the right law for your people as well as other people'. That is why we have come here today. We are not asking you to tell us now. We are asking you to think about it and, later on, we will come back and you can tell us. If you are not sure about something and you want more information later, then Stanley, or I, or Brian or Rick can come across to talk about anything you want to know about, to give you any information you want so you can start to work out how you want it to go. Then, later, you will be able to tell us which way you think this law should go.

I might ask Brian if he wants to say some words.

Mr EDE: Thank you everybody for coming here. My electorate, Stuart, is down in the desert country. It is all around Lajamanu and Yuendumu and across to Ti Tree, Utopia and Ali Curung, and across the Queensland side from Lake Nash.

The reason why I am here from the Labor Party side along with the CLP side is because I think there may be a chance, whilst going through this job we are doing now, to see if we can find a way that we can get rid of many of the problems that we have in the Northern Territory and we have around Australia. I mean the problems we have from the Aboriginal side and the white side having arguments all the time, and the way those problems come up and get to be big problems.

Now, there are 2 sides to that. One is that I know what could happen later on, in the future, if we do not do something to try and tie things down. For example, now, in Canberra, we have our Land Rights Act, the Land Rights Act for all Aboriginal people in the Northern Territory. That is a law of the Canberra government. But, what would happen if, for example, the Labor Party got chucked out down there in the government House and the Senate and some other mob got in that did not believe in land rights at all? They might say: 'We are really against those land rights', and they could just pass a law and that would wipe out that land rights law. And where would we be then? All that land would go back from the people to being like unalienated Crown land, and people could come and apply to set up a pastoral property or a business or whatever. That could happen. We would not be in charge of it. We could make a big fight about it. We could scream and yell and get in roaring trucks and charge off down around the place. We could make a big noise, but they have the power. We do not have the power here in the Northern Territory to stop that happening.

So, what I am trying to do for this one, is to put as many blocks as possible in the way for anybody who might try to do that, and another way to do that is to have it in a constitution. A really good way would be to have it in the national constitution, for all of Australia, but we are not going to win that for now. But, we should be able to win it for the Northern Territory. We all have to live here in the Northern Territory, and this is where land rights is, here in the Northern Territory. We should be able to talk to all the white people and the Aboriginal people in the towns about how we can get things like land rights into a constitution here so that they are locked up. Then, if the mob in Canberra changes around and tries to kick it out, it cannot do it because those land rights will be locked in here too, under our law here in the Northern Territory, in that strong law that the government up here cannot change and which has to go back to the people if it is to be changed.

So this is to try to look after things like land rights and sacred sites. And what about language and culture? They have to be protected. And what about the other rights that people have? There is the good side, the things that we do not have now that we can talk about how we can put into a constitution, like the rights of people to be able to have a proper education, the rights of people to be able to have good health, the rights of people to be able to have proper things like water and accommodation and that sort of thing so they can live. That way, we can all be square like that here in the Northern Territory. That is what we are all looking for. That is what we are trying to achieve here for the Northern Territory so that we can all be proud together, all the same, Territorians.

That is the reason why I am working with CLP on this. There might come a time later on, in the future, when we might have a big blue about it and we might not be able to work together, but we do not want to go that way. What we want to do is to work through all the things we can agree on and see if we can explain them to each other, but it cannot be just us politicians sitting in there talking about things. It has to be all the people. We have to have Aboriginal people talking to whitefellows. We have to get people together. We have to get people to explain to each other why some things are really important. We need to explain why we need to hold on to those land rights and why we need to hold on to that culture.

The other people might just sit back there in town and think that Aboriginal people are just greedy buggers who want to have all that land out there. They might think that because they do not understand. We have to get them to understand and to see why that law that came from thousands of years before all the way to now, that strong law, must keep going ahead for all those kids. We have to explain that to them so they can see that that law is the strongest law and that is why that Aboriginal law and this new whitefellow law have to be side by side like that. They have to go together, side by side. Not like this so they keep on with one changing all the time and knocking into the other one so that we have a fight about it. We have all got to try to pull them together so that they are going like that.

To me, that is worth trying for. I do not know if we are going to win or not, whether we will succeed, but it is worth trying. It is really worth having a go. It is worth putting a lot of work into to see if we can get it. We must talk about it. If you say you do not understand any of it, well, let's argue about it, let's go and talk some more. Because, if we do not do it, if now, when everybody is talking about having a go, we say 'Oh no, that is too hard' or 'no, there might be an argument' or something like that and we walk away from it, what will happen if later on something does happen and we lose those land rights or lose those laws? When we make a fuss about it then, people will say: 'But you had a chance. Everybody asked you to come and talk about it to try and fix it up and make it work properly, but you did not want to'. It will be really hard then to come back and say: 'No, now we are ready and we want to talk now'. I think it is really something we have to try. We have to try for now and talk together about it and see how far we can go.

It is not statehood. This constitution can work under self-government, the same as now. We can work up that constitution and then we can talk about that statehood thing later on. We cannot be talking about statehood now because we do not know what statehood is. You cannot eat it, you cannot feel it, you cannot see it. It is just a name - statehood. We have to get this constitution down so we can see how we can all work together. If that constitution works all right, then we can start looking at whether we are going to have statehood and in how many years and how it is going to work. But this one has to come first because this is like the map, it is like the land. It is something that stays there, all the time, and that we all live on and stay on, and we will work from there to see how everything will work together and how everybody gets on so they can hand things on to their kids, their rights.

As I say, I do not know whether it will work out all right in the end but you mob have the power. Everybody has the power. If they do not like what comes out later on, they have the power to say no. Then we will have to go back and start again. It is not something where, if you say: 'Yes, we will start talking now', you will be tied down at the other end and have to agree to it. You can say 'no' later on if you do not agree with it, but the best thing is to try and start now to see what things we can agree on and lock up those things and, if we are going to have an argument later on about some things we cannot agree on, okay. But, let's put that back for later. Let us work on those things we can agree on, get those all down first and see how far we get.

That is really all I want to say today. As Steve said, this is just a start. We are only out here really to talk about how it is a start and how important it is, and how we really need for people from communities like this to be talking about the things they see as being important to be in this constitution. They can talk about it in council meetings, school meetings, community meetings, women's group meetings and in everything else and, as people keep talking about it, say: 'Okay, let's send in a letter. Let's put in this idea and this idea'. All those ideas can be in there and then people can start working them out and putting them together to see how they come together. That is where we are starting from now.

Thank you.

Mr HATTON: Thank you. Stan, do you want to say anything?

Mr TIPILOURA: No, not at this stage.

Mr SETTER: Thanks Steve.

You know, in this country there has been a lot of change and, in the Northern Territory in the last 20, 30 or 40 years, there has been enormous change. Your chairman there was telling me before how he used to work in and around Darwin, for the Conservation Commission maybe, or whatever it was called then, in the timber industry. I am sure he can tell you about the enormous change that has occurred, particularly in Darwin, and in Alice Springs and other places. It is a lot different to what it was a few years ago. Even here, in your community, there has been tremendous change. Now, a barge comes in here maybe every couple of weeks. Aeroplanes come in here probably every day, and sometimes 2 or 3 aeroplanes come. You have the telephone ...

Mr Ede: Radio telephone.

Mr SETTER: Radio telephone - you have AUSSAT here and probably you pick up Imparja television. Do you have Imparja television?

A Person: It is ABC. We are not getting Imparja.

Mr SETTER: ABC television? You know, 10 years ago you did not have any of those things. So things are changing all the time.

As far as the government in the Northern Territory is concerned, there have been changes as well. Maybe 15 years ago, we were totally controlled from Canberra by the Commonwealth government and then, in 1974, we established our own fully-elected government in the Northern Territory, in Darwin. Not long after that, in 1978, we achieved self-government, and now we have our own representatives, our own politicians, who sit in the parliament in Darwin. Stanley is your representative. Brian, Steve and myself and many others do that, and we are making decisions about the Northern Territory and we are making them in the Northern Territory. They are being made by Northern Territory people and some of those people, Stanley and Wesley, are Aboriginal people and they are there looking after your interests.

But now, maybe, it is time for some more change because, in this country, we have the Australian government and we have the state governments and they each have a constitution. They all have this very strong law and they call it a constitution, and it is like their Bible. It is very strong like the Bible, and you know the Bible has been there for 2000 years. So, now, we think it is time for a further change in the Northern Territory government. It is time for us to establish our own strong law, our own constitution, and that is what we are here to talk to you about today.

It would be an easy matter for us to sit down in Darwin and write a constitution because we could look at the Australian Constitution and the state constitutions and we could look at constitutions from other places in the world, like Papua New Guinea, where they wrote one about 20 years ago. We could do all that, but there is no point in doing that if we have not been out to speak to you, to the people, to ask you what you want in the constitution. Unless we ask you what you want, the one that we write might be wrong. You may not agree with it. You may not like it and, unless you support it, it is no good to anybody.

We are not here today to tell you what should go in that constitution. We are here to advise you about what is going on and to leave these booklets and some other booklets with you so that you can read them and talk amongst yourselves and decide what you want in the constitution. We are going to come back and talk to you, maybe early next year, and at that time we will have a much bigger discussion and you can tell us what you would like in that constitution.

We have already been to about 50 communities in the Northern Territory, all through the centre and right down to the bottom part of the Northern Territory, and the majority of those have been Aboriginal communities so we are making a very honest attempt to consult with people. We would like you to have a think about it and have a talk about it. If you have any questions this morning, please ask us. We would be only too happy to answer them for you and, when we come back next time, early next year maybe, then we will have a big discussion and you can tell us what you think.

Mr HATTON: Just to finish off, Rick was talking about change. The change we are talking about is that, for once, let the people tell the government where it has to go rather than what has always been happening before. It has always been the government telling the people where they have to go. Let's turn that round. This time, it is time for the people to take control and set the rules. That is what this job is about.

We have come here to explain what we are doing. If you have any questions or you would like to say anything, please understand that we want you to. We would welcome any questions or comments. Please, tell us what you are thinking. Do you think this is a job worth doing? That it is something we should do?

Mr Wayne WAUCHOPE: Mr Hatton, looking at the states in Australia, you have to have a constitution. What about the constitutions they have? You know, the Aboriginal people in Queensland and Western Australia, they have a state and they have a constitution. What is going to happen in the Territory if it does - you are talking about a constitution now, and you said statehood is going to come in the future ...

Mr HATTON: Later.

Mr WAUCHOPE: Yes. What is going to happen to the Aboriginal people then?

Mr HATTON: You see, when they wrote those constitutions in those states, that was 100 years ago. People were very different then. When they wrote that, they did not even go and ask the white people. Some lawyers and politicians got together and just wrote it. And they certainly did not go and ask the Aboriginal people. When they wrote that, they did not put laws in there that protected Aboriginal law, Aboriginal culture, language and land. That was not done. But a constitution stays. It was not done properly, as we see it now, and people have suffered. You do this job properly and you put the protection in place for the Aboriginal people. That is what this is about. That is why it is important, really vital, that all the communities are part of this and make sure this is done properly.

Mr WAUCHOPE: What you are saying is that, if something gets put into the constitution, it cannot be changed.

Mr HATTON: That is right. A constitution is the people's law and that people's law sits over the top of the government. I think you should put in there - but you have to write it in - that the only way that law can be changed is by a vote of the people. Do you remember that, last year, they wanted to change the federal constitution and they had to go and ask the people? You were asked 4 questions and you had to say 'yes' or 'no' to show whether you agreed or did not. In the end, the people said 'no', so they had to leave that constitution alone. They could not touch it. You make the same sort of rules in here so the government, the parliament, cannot touch that.

Mr Lloyd BOYLE: Doesn't that work both ways, though? You were saying just now that there are a lot of things that need changing, because of the changes in time and that, but it is just about proved that that constitution cannot be changed because to do it, it needed nearly 90% of the people to say 'yes', didn't it?

Mr HATTON: No, it needs half the people to say yes. Well, that is why I am saying now, when you write a constitution, you do not have to dot every 'i' and cross every 't', but you have to get in there things that are absolutely basic and fundamentally important, like freedom of speech, maybe, and the freedom to practise your own religion or the right to vote - those sort of things. You have to lock them in. At the moment, do you know that, just by changing an act of parliament, the federal government can take away our right to vote? We have no protection. We do not have any protection because we do not have a constitution.

A person: So - a constitution.

Mr HATTON: It might be hard to change this law. We hope it is hard to change. Can you change Aboriginal law?

Mr WAUCHOPE: No.

Mr HATTON: It stays there, doesn't it.

Mr BOYLE: It stays.

Mr HATTON: It stays there, doesn't it? It goes the one way all the time, and you say that is the way it should be so that everyone knows where they have to go and how they have got to live together. They know what the law is because it is always going the one way. This sort of law is the closest thing we have to anything like Aboriginal law.

Mr WAUCHOPE: Ours is different. If you try to change Aboriginal law, you die. With balanda it is different. He can change it tomorrow or he can change it in 300 years.

Mr HATTON: That is right. I am saying a constitution is the closest we get to Aboriginal law. It is there. It stays the same. It has to be hard to change. It is the foundation. Do you understand what I mean? And it has to be owned by the people.

There are other kinds of laws, you know, liquor laws or whatever. They can go backwards and forwards all over the place,

can't they? And people ask why that is so. But with this one, you are saying: 'Right, that is the road we are going to make. Now, you can change your laws, but you have to keep on that road. You can wander around on the road a bit, but you have to go down that road'. Now this is the closest we get, in our way, to a law like Aboriginal law.

Mr Jumbo GUNGGIBARA: I think that law might be - is going to be respected. Any laws, whitefellow laws, Aboriginal law, must be respected to stay under that law. But it is no good, once (indecipherable).

Mr EDE: That is why I think it is really important that everybody is involved as we go through this time and whilst we are talking about it because it will be hard to change this law afterwards. And that is why, if people are not happy with the way it is coming up, when it comes round to their chance to vote, they should vote 'no'. If they are not really happy with everything that is in there, they should just say 'no' and tell us to start again, and we can go and work it up again. We might do this for 5 years, 10 years or even 20 years. That does not matter. We have plenty of time. If we do not finish the job, our kids can take it up and they can keep going with it until they get it right.

Mr GUNGGIBARA: We cannot rush. We have got to think slowly and look at it slowly to see where we have to go and mostly, Aboriginal people, give them a chance to get (indecipherable). That is all it is, but we want really to get more education, more and more and more. Then we can get up and say: 'Look, good day my friend, me and you walk together now'.

Now today we just say: 'You stay there. I will stay here. I will hang on to my law, you hold your law there but, if you want to clear up problems, you come and see us or, if we have problems, we will come and see you and we will work together slowly'.

Mr EDE: What we are trying to do is to put people's rights into this. At the moment there is no right for people to say: 'We are going to stay here on this land and, if people want to come and visit us they have to have an entry permit or have some rights for that'. That is covered up, as I said, in that Land Rights Act. Those things can be cut out tomorrow.

Mr HATTON: We do not expect that they will.

Mr EDE: I do not think that they will. I mean, we would make a big fight and we would all be out there trying to stop it if they did ...

Mr HATTON: And no one wants to anyway.

Mr EDE: ... but the law can be changed like that because it is the same as a liquor law or a law for carrying car licences or for all those sort of things. It is all that same sort of law.

What we are trying to do is to see if we can make up a law which is stronger than that so that it has in it those things which are really the most important things about living together here in the Northern Territory. We want to see if we can put those into a law which will not change all the time, which cannot be changed by a government, which can only be changed by the people.

Mr GUNGGIBARA: What we are really worried about here is our Land Rights Act. That is the important one for people, you see? Land rights holds all sort of things. It is holding Aboriginal culture, the Aboriginal way he lives and all that, all sorts of things. That is why we keep that, because that land rights is just like hard ground.

Mr HATTON: You see, if you do not trust the government and you say: 'I do not trust that government, they might take this land away from me and I want to make sure they cannot'. If you want to keep that, what you do is write a law in a constitution. That is the way you stop governments from doing things like that. It is when you do not trust the government that you put it in a constitution.

Mr GUNGGIBARA: That is all right. They can set down our law. That is good, but ...

Mr HATTON: Yes, you see, if you put it in there the government cannot touch it. If it is not in there then the government can make the laws and change the laws. You lock it up in this constitution ...

Mr GUNGGIBARA: The only thing that we are worrying about is new generations. When the new generation will come up, he will be European. He will not recognise Aboriginal law. He will not recognise anything. He will not have a



ceremony. He will not have anything. That will be just - might be just for Europeans, and he will need to know nothing. He will be losing all that. That is why the land rights will hold that in the future, for the children, from generation to generation to generation.

Mr EDE: That is why I believe we have to try and get those things about land rights, looking after culture and language and things like that into the constitution because nobody else can teach your kids. You have got to teach your kids. But all that we can try and do is make it so that nobody is stopping you from teaching your kids and doing all those things by mucking around with that one.

Mr GUNGGIBARA: That is a very important thing that you remember that for our children there will be no languages, by that time. There will be no languages, nothing, only just English in the long run. Just be careful of that one. That is why we need land rights to stay on that.

Mr WAUCHOPE: So you reckon, Mr Hatton, that as soon as land rights is put in this constitution and it stays up in the Northern Territory, no one can touch it, even the people from Canberra, the government from Canberra?

Mr HATTON: The government cannot touch it.

Mr WAUCHOPE: The government from Canberra?

People: That is right.

Mr HATTON: No, the Northern Territory government could not touch it. You see, this would be a Northern Territory constitution and this would set the rules and the limits on the Northern Territory government. It does not make the rules for the federal government. They do that under their own ...

Mr WAUCHOPE: Oh no, what I am saying is that, once it has been put in this ...

Mr HATTON: We cannot - the Northern Territory government has got to obey this law. They cannot change it.

Mr GUNGGIBARA: It will stay there. They cannot take it away.

PETER ?: What about the federal government?

Mr HATTON: They can, they can, but again - well, I understand that, down the road - let's assume that, down the road, the Northern Territory Land Rights Act became a Northern Territory act, and that the constitution says that Aboriginal land rights have to be protected, that they cannot be taken away. Right? It becomes Aboriginal land in the Northern Territory and it is protected under the Northern Territory constitution.

When you become a state, a constitutional state, you then get the protection of the Australian Constitution and, under the Australian Constitution, you get protections. For example, they cannot acquire land off you without special cause and they have to pay compensation. Those are protections that flow from the federal constitution later, when you become a state, but your first job is to get your rights locked up and protected from your own government, because this is where we are and the government that manages land is the state government, or the Territory government in our case. You need to lock it up in there so that it says: 'That is it. Those are the rules'.

Mr EDE: Could we just ask our lawyer about this. He might be able to explain that in the lawyer's way because really you are asking, if we have a constitution here and we have land rights in there and that is all accepted, and we go a bit past there, can the federal government turn around and change something which is in our constitution? That is what you really want to hear about.

Mr PETER ?: Yes.

Mr NICHOLSON: The answer is that it is not clear.

Mr HATTON: We don't think they could.

Mr NICHOLSON: At least you could say it would be very difficult for the Commonwealth government to do it ...

Mr HATTON: They have never done it in Australia.

Mr NICHOLSON: ... because they have other problems like the acquisition problem. They would have to pay compensation. The Australian government has not passed a land rights law for the rest of Australia anyway because of the problems.

Mr HATTON: That is one of the reasons why.

Mr NICHOLSON: But, as to the strict legal answer, I am afraid there is no precise answer at this stage.

Mr HATTON: But it is reasonable to say that, if there was a constitutional entrenchment of land rights in a Northern Territory constitution and the Land Rights Act became a Northern Territory act, then that would give constitutional protection to the ownership of that land for the Aboriginal people.

Mr NICHOLSON: Certainly, in respect of ...

Mr HATTON: So far as the Northern Territory government is concerned.

Mr NICHOLSON: Oh yes, definitely. No doubt about that.

Mr EDE: There is no problem about it stopping the Northern Territory government. The federal government, because it is over the top ...

Mr HATTON: It is not bound by our constitution.

Mr EDE: But what we are saying is that it would make it really hard for them. They have never done it anywhere in Australia, gone beyond a state constitution. They might find a way of doing it but I think they would have to try and find something under external powers, or something like that ...

Mr HATTON: The only way they could do it is to use the acquisition powers. The federal constitution says that the Commonwealth government can acquire property for Commonwealth purposes under just terms. So if it became important to, say, have a defence base in a particular location, that is a Commonwealth purpose. If the Commonwealth government said that it needed to acquire that land to make a defence base, it would have to pay for the land.

Mr WAUCHOPE: Even if it is a sacred site?

Mr EDE: It depends if there is a state of war. If there was a war on ...

Mr HATTON: They have the power. Right now, they can come in and acquire land and not pay for it, because we are a territory. So there are limits, but they can take it whether they need it or not. Because we are a territory, they can come in and say: 'We want to take back the Gove Peninsula, or Croker Island', and just take it. They do not have to pay a cent. There is no legal protection.

Mr GUNGGIBARA: It is the same thing like if that is a sacred site sitting on uranium over there and the Northern Territory government wants that uranium to be taken away. Then you have got to put up a fight and say: 'Look, it is sitting there, and the sacred sites, you cannot beat that'. And you can argue and argue and argue. I do not know how far, it might be 2 mile or 3 mile you can come underground and pick it up and close it again. But you cannot take the sacred sites away. It is the same thing.

Mr HATTON: If you put it in a constitution ...

Mr GUNGGIBARA: Yes, if you put in the law.

Mr HATTON: That is where you lock it up. That is where the people make the law and it is the law of the people put down for themselves that the government has to obey.

Mr SETTER: I think it is important to realise that the Land Rights Act is a Commonwealth act of the federal government, not of the Northern Territory government but the federal government. It is only an act of parliament and, as was said earlier, they could change that tomorrow if they wanted to. They could take it away tomorrow if they wanted to. We do not

think they will, but it is possible.

Mr WAUCHOPE: What was that?

Mr SETTER: What I said was that the federal government has the power to take away the Land Rights Act. It has the power. I am not saying they are going to do it at all, but they could amend it or change it to suit themselves, because the Land Rights Act ...

Mr HATTON: It is not protected.

Mr SETTER: ... is not protected in the Australian Constitution. It is only an act of the federal parliament, and they can change that at any time.

Mr HATTON: In the same way, just by repealing an act of parliament, the federal government could wipe out any sort of government in the Northern Territory. By changing legislation, they could take away our Senators. They could take away the right for our federal member, who is Warren Snowdon now, they could take his right to even speak in parliament. They did that from the 1920s through to 1968. We elected someone but he was not allowed to speak. He could not vote. He just sat there, as if he was sitting in a cupboard for 40 years. That is true. Because we are a territory, we do not have those rights. It is only what they give us by their good heart.

Mr WAUCHOPE: So what you mean and what you are saying is now when Labor is in power, it still does not matter.

Mr HATTON: Labor or whatever. Whether they do it or they do not it, they have the power to do it. What a constitution is about ...

Mr EDE: You see, the first stage is they have to decide they will not do it. They can decide they are not going to do it because they believe in land rights. But that does not mean that they do not have the power to do it. It is like the fact that you might not want to go swimming, but you have the power to go swimming. It is as basic as that. Labor does not want to change it, but we do not know what other government might come in later on. Some other party that we do not even know yet could get in, in 10 or 20 years time, and it would have the power to change that law if it wanted to.

Mr SETTER: I do not think any of the major parties would change land rights.

Mr HATTON: They will not take it away, certainly. Do you want to raise something?

Mr Alan CLOGH: I have a question for Mr Setter.

I was very interested to hear that you had been studying the Papua New Guinea constitution very closely. You probably know then that title in the land in Papua New Guinea is vested in the traditional owners. The country is owned by the people who live there and they own everything that is on it. I would like to get your comments on that if you could, please.

Mr SETTER: I have not personally made a study of the Papua New Guinea constitution. I do not think I ever said that I had. Perhaps our constitutional lawyer here could comment on that or Rick Gray over here, our Executive Officer, who was involved at the time when the development of the Papua New Guinea was being done ...

Mr EDE: And this fellow here, too.

Mr CLOGH: Thank you. I would appreciate that.

Mr SETTER: ... and Brian. Perhaps one of you gentlemen could answer that question.

Mr EDE: When I was involved in the development in Papua New Guinea, yes, the idea was that the land and everything was vested in the rights of the people. As you know, they then worked on the idea of organic laws which I think is another thing that it would be a good idea for us to look at as part of the way of getting around some of our problems here.

For example, we may decide that the things which are in the constitution, down to a certain level, may even need a 75% majority to change. That could be written in there. Then we could decide on other things which required 50%, and we could have organic laws to do it. It may be that people say that we will not put every word of the Land Rights Act into the constitution. The act contains provisions about how the land councils meet and the delegation of powers down to

communities and those sorts of things, and people may say that, rather than having those actually in the constitution, we will have the basic things in the constitution and some of the operational things may be in organic laws to change which may require, for example, a two-thirds majority of parliament and that they have to lay there for 6 months for discussion. And other things may be covered just by ordinary law. It can be broken up like that to get different powers or lock it in in different ways. It is a question of how far you lock it into concrete.

Mr HATTON: As long as you do not break the Australian Constitution and do not go outside that, you can set up the Northern Territory the way you want it to go. You can set whatever rules and directions the people want to go in, subject to the Australian Constitution. That is to say that, we cannot, for example, become a republic because it is a monarchical system in Australia. Subject to those basic limitations, the Northern Territory people have an opportunity to set up a democratic structure that they want.

Mr CLOGH: I was more concerned with the ownership of the land under the constitution.

Mr HATTON: Land ownership issues, yes. Rick?

Mr GRAY: On the ownership of land, PNG is vested in the public under the constitution to the people of Papua New Guinea. I think only 5% of the total land mass of PNG was actually alienated land and most of that has been converted now to leasehold to the foreign people there.

Mr CLOGH: Converted to leasehold?

Mr GRAY: Yes, on a 50-year lease. What the government does is that it is making laws for that traditionally or customarily owned land and, if people wish to develop that land, they get it surveyed and so on and register it. So there is that type of process also.

Mr CLOGH: So you are saying the beginning of land ownership in Papua New Guinea is vested in the constitution and the traditional owners own the land. Then, later on, the government develops special laws, in consultation with those traditional owners, for different development projects.

Mr GRAY: Yes. There was a conscious decision of the Australian administration not to alienate the majority of the land, when it was there.

Mr CLOGH: And also by the traditional owners of Papua New Guinea?

Mr GRAY: Oh, yes, for sure.

Mr HATTON: Are getting an idea of what we are talking about? It really is wide open. It can be rather frightening when you try and think of all the different things that people are asking questions about but, if you bring it down and just take it in bite-size chunks, and just do it one piece at a time, bit by bit by bit you start to put together an entire picture of how you think the Northern Territory should go. And that is what this is about. There are a lot of questions in there. We have listed out all the questions that arise in this booklet. There are 11 typed pages of the questions. But they are one after the other.

Coming back from land rights and sacred sites and those issues for a moment, do you think we should have, as they have in Canberra, an Upper and Lower House - the Senate and the House of Representatives? Most of the states have that. Here, we have just the one House. We call it a unicameral system. Do you think we should have 1 or 2 Houses of parliament? Then, how do you elect a Chief Minister or Premier? Should you allow him to choose ministers who are not politicians, as happens in the American-type of system when they put their government together? All those sort of things are talked about in here.

This is like a reference book. You pick a subject, and it gives the different arguments backwards and forwards on that particular subject. You can look at that and say: 'Oh, I think this way', and bit by bit you start to get a picture of how you would see the parliament going. Should the Governor be able to sack the government like they did with Mr Whitlam in 1975? And, if he can, under what rules? You get a chance to write those sort of things in here.

In most people's lifetime, a situation like this never happens. It is unique. It is a once-off thing to try and set up a society, a democracy, that reflects the aspirations of the people and the directions that people want the place to go. The process of talking together, fighting and arguing about it but trying to work through it is part of everybody learning to understand

other people's needs. Really, it is through knowledge and understanding that respect grows, the development of respect for different cultures and different races. We have to work out how we are going to pull a very mixed community together to go down a road, not all looking and acting the same, each maybe with their different cultures and laws, but still being able to work side by side with respect for each other.

Mr WAUCHOPE: Excuse me, gentlemen. Why is the Northern Land Council so touchy about this?

Mr HATTON: I do not know. They have not come and talked to us yet. We are trying to set up a meeting to talk with the land council. We think it would be valuable for the land councils themselves to be part of this process.

Mr WAUCHOPE: Are they frightened that, when this comes into power, there will be no such thing as the Northern Land Council?

Mr HATTON: I do not know. I have not spoken to them about it.

Mr EDE: Can I just say something. I think that they think that we are doing a constitution so that we can jump into statehood, and that they think that those two things are coming together and that, if they say all right to this one, then everybody will think they are saying all right to statehood. What they want is for the Land Rights Act to stay under the Canberra government and not come under the Northern Territory government. They are frightened that, if they come a little bit of the way, people might think that they have agreed to everything. I think then they have said: 'Oh, well, we will play safe. We will stick out all together'.

I disagree with them on that because it is a bit like if there is a meeting going on inside a room, and everybody is in there working through and making decisions and you just sit outside. Then, when they come outside you say: 'Oh no, I do not agree'. You lose credibility, unless you were actually in there being part of the discussion and arguing it out. Then, if you do not agree at the end, you can go outside and say: 'Well, I do not agree'. You can say the same thing but at least you have been involved in the discussion and in talking about it. It may be that, because they are there, it might end up with us getting to agreement on all the things that they are after.

Mr HATTON: But I will be surprised if we find that they agree. Because you have your say, and that is part of convincing other people about what is important to you, and then hear what the other bloke is saying and try to find out a solution.

Mr EDE: We will still be going back to them all the time to see if we can get the land councils to be part of the process. I think it is really important that, not just land councils but the other Aboriginal organisations too are involved because a lot of them have been working in things like Aboriginal health and Aboriginal education and those areas and they have very important things to say about the rights that people should have under a constitution. Those are things that are really important to Aboriginal people.

In central Australia, we have trained Aboriginal lawyers who really would be good people to be involved in talking about how the things are to be written down because then they can make sure that none of the white lawyers are doing something a bit funny, a bit sort of clever with it. They can see that it is written up properly so that it actually says what people mean. All we can really do is talk around out bush to people and then ask you to talk to people back there and say: 'Well look, why don't you just have a bit of a talk to start it off. If you do not like it, okay, you can walk away, but give it a try first'.

Mr HATTON: Is there anything you would like to ask?

Mr GUNGGIBARA: Speaking in own language. Has anyone got some more questions?

Mr EDE: We will be sending stuff out and what we would really like is for people to ring up or send in. They can do it in language, do it on tape or in writing or however. Just tell us about any things that come up in meetings that people want to talk about or, if you just have questions about it or are not happy about the way we are doing it, let us know so that we can see if we can fix it up and keep working through it better.

Mr HATTON: Thank you very much.