

TENNANT CREEK — Monday 17 April 1989

PUBLIC MEETING

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:

Ms Kay ROSE

Mr Rolf SCHAEFER

Ms Maggie HICKEY

Mr Kevin BAIN

Mr Ian TUXWORTH

NOTE: Edited transcript.

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Mr HATTON: I am more than happy to receive submissions from those who have prepared them. This is very deliberate because there is still a great deal of work to be done to enable people throughout the Territory to come to terms with exactly what the processes are. Last year, the Tennant Creek Council took the opportunity to get information on the constitutional development process, and I know that it has done a considerable amount of work in order to bring some views forward to the committee. We will look forward to receiving those submissions this evening.

I commence by saying that our committee is known as the Select Committee on Constitutional Development. It is a committee of the parliament of the Northern Territory. There are 6 members on the committee and photos of the committee members are shown on the flyleaf at the back of this booklet. There are 3 members from the government's side of the House and 3 from the opposition or non-government side of the House. I am the chairman of the committee. My name is Steve Hatton and I am the member for Nightcliff. Tonight I have 2 of the committee members with me, Mr Brian Ede, the member for Stuart, who is the deputy chairman of the committee, and Mr Rick Setter, the member for Jingili.

Our select committee's task and the task that we are here to talk to you about is the process to stimulate and work towards the development of a constitution for the Northern Territory. There has been extensive debate in the Northern Territory over the last few years on the question of statehood and some controversy about the subject. There are people in the community who are strong advocates for statehood as soon as possible. There are other people who are very nervous about statehood. They are not convinced that the time is right for statehood today. And, certainly at this stage, there are some people who are opposed to the concept of statehood.

However, I would like the community to accept this view. We are not asking you for your view on statehood. We are not asking whether you think we should be moving to become a state or not to become a state. That is not the question we are asking tonight, but I would ask the Territory community to recognise that one day, whether it is next year or in 5 years, 10 years or even in 20 years, one day the Northern Territory will become a state. However, before you can even consider the concept of becoming a state or when to become a state, you need to work out what sort of place you want the Northern Territory to be. You need to work out basically what the rules are to be in the government and operation of the Northern Territory, and the process of doing that is to develop a constitution.

Essentially, a constitution is a law made by the people which is the controlling law over government, the courts and the whole administration. It could be said that it is the law that governs the government and it is a law that can be changed only by the people. It is a law that sets down how the people want the parliament to operate, how they want the courts to operate and how they want the full mechanism of government to work. Also, it includes a protection for the sort of fundamental rights that the people believe it is essential should be protected so they are removed from the ability of government to muck around with them. That could include matters such as entrenching a person's right to vote and the right to stand for parliament, or under what conditions people have those rights. It could include the right to the freedom of religious expression or the freedom of speech. There may be things you would seek to entrench in a constitution but that other people would argue should be dealt with through the courts as we have done for several centuries. However, they are issues that you can consider.

If you think that certain matters are so important that they should underlie what government can do and cannot do and you want to set those rules as a people, you do that through the drafting of a constitution. Every government in Australia has a form of constitution, except the Northern Territory in the true sense. The federal government operates under the Australian Constitution. You know that last year we were asked whether we were prepared to approve amendments to that Constitution and the government had to go to the people. As it turned out the people said no, so the Constitution stayed as it was. And that is the strength of it. Every state has a constitution also. Albeit they were drafted over 100 years ago and they are essentially of a colonial style, each state still has a constitution that governs its operation.

The Northern Territory does not have a constitution. The parliament of the Northern Territory, the governmental structure, runs under the grace of a federal act of parliament. Section 122 of the Australian Constitution says that the federal government can do with a territory - such as the Northern Territory - whatever it likes to do. Because there are no constitutional limits on government, government is all-powerful: what government gives, government can take away. For example, by repealing an act of parliament, the federal government has the power to remove all forms of political representation in the Northern Territory. By amending regulations under an act of parliament, it can wipe out, for example, the entire Northern Territory education system. I am not suggesting the federal government would do that, or that it would get away with it politically, but please understand that it has the power to do it because you, as a people, do not have the protection of your own constitution.

We are here to ask you to start to think about the sort of matters you would put into a constitution for the Northern Territory. How do you want the parliament to operate, the voting system, the courts? What sort of rights should or should not be protected by a constitution? What sort of a society do you want to leave behind for your children, your grandchildren and your great-grandchildren? The work that goes into the drafting of a constitution will essentially shape that society for your grandchildren. It is not a task to take lightly nor is it a task to rush. It is a task that the people must be essentially and deeply involved in. We must obtain a broad agreement between the total and diverse range of people in the Northern Territory to find a way that they will live together and grow together in the next century. It is not an easy task and there will be some terrible fights in the process of getting there.

It is not a task that will be done quickly but it is a task that we have an obligation to perform. If we do not do this, our children and grandchildren will turn back and ask why we turned away from setting the ground rules for a good society. They will ask why we did not take up the challenge and take up the responsibility that is in front of us. If we do, and if we do it well, our grandchildren will look back with gratitude on the work that we have done for them. That is what our task

is.

Our committee has the work of encouraging people to become involved in that task. The committee is a catalyst, a coordinator, a guidance officer in some respects but, basically, our job is to stimulate the community to start to think about this, to start to talk about it amongst yourselves. If you want to find out more, invite us back to talk. Look at the information that we have available. Think about the different questions that are involved and come up with your ideas and have your say. Our job now is to put the questions in front of you. We will be back again, more than once if necessary. We propose to come back, probably towards the end of this year or early in next year in order that the communities may bring forward ideas. In the meantime, perhaps there will be a crossflow of ideas around the Territory. After we have received submissions later this year or early next year, our job will be to prepare a first draft constitution, taking into account the different views that have come through from the community. Also, we will then be preparing recommendations to the parliament on the structure of what is known as a constitutional convention.

To put that in ordinary language, such a convention will be like a big committee of representatives from across the Territory who will come together to go through our draft and check it out, accept it, amend it, vary it and work it up. It will see whether that is, in fact, what the people in the Territory community are thinking. When they finish their work and produce their proposed constitution that will then go as a referendum for the people to accept or reject. If the people say no, we go back to square 1 and we start work again, and we will keep working at it until we get something that people will say yes to. Then we will have a constitution in place. Then, as a community, we will start to see into the future and where we may be able to go when, eventually, we achieve statehood. We will not have an idea until that job has been done. That is the task in front of us.

You can see that we are working to involve the Northern Territory community as much as possible and, as is to be expected, initially there is only a small amount of interest in the community. However, I think if you remember back, for example, to the days in Tennant Creek when people first decided that they should consider putting in local government here, I will bet that the first meeting to discuss that was not too well attended either. But bit by bit the community gets more and more involved in such subjects, and interest will build if we give people time to come to grips with it and get involved in it, and that is what we propose to do. We are not going to allow this constitution to be drafted by politicians, lawyers and academics in Darwin. Essentially, it must be drafted by the people of the Territory so that, at the end of the day, they feel that they have ownership of this, that it is theirs, that it is their law that they are giving to the government to control government and the direction of the Territory. For the first time in our history the people will have a say in how the Northern Territory has to go.

To help you with that, as you know, this booklet is available. It does not make for too hard reading. It is an introductory booklet on the issue. We have done much more work than that. There is a book here which is much thicker. This is actually a summary of the green discussion paper. This contains a number of different options arising from research around Australia and around the world - from the Americas, New Zealand, Africa and the Caribbean, and covers different sorts of constitutional provisions. I can tell you that there are things in here that members of this committee do not like and there are things in here that you may not like. It may be that what we like you do not like and vice versa. There may be things in here that some sections of the community like and others do not like. We have tried to put as many of the options as we could think of in front of the people so they will have a chance to choose and to think about different opportunities, different options. Then when you get together with other people around the Territory, you can start to debate it. In that way we can all come to grips with the reality of the Northern Territory and build a society in which we can all grow together and move into the future. That is our task and that is the task we will be asking you to become involved in over the period of time, however long, it takes to do the job properly.

That is all I have to say at this stage. We will be offering an opportunity for people to ask questions and make comments or whatever, and to make submissions, but I would like to ask my colleagues if they would like to add some comments.

Mr EDE: First of all, regarding the constitution, many of you will have had experience in drafting constitutions, whether for sporting clubs or for whatever, and you will know that constitutions cover a number of machinery matters that establish the club or whatever as a body corporate, and that provide various protections for the committee and for elections to be held every so often and that certain people shall be on the committee and so on. They are the machinery matters. Also, most such constitutions state what can and cannot be done by the organisation. For example, there may be a provision that states that the constitution cannot be changed unless a special meeting of the organisation is called for that purpose. Steve was saying that one of the things about our constitution will be that only the people can change it. Actually, in fact that in itself is something that has to be established. The only place in Australia at present where the people are required to agree

to a change to a constitution relates to the federal constitution.

Mr Hatton: Queensland?

Mr EDE: The other state constitutions ...

Mr NICHOLSON (?): Some of the constitutions in the states have isolated provisions that require agreement but, in the main, they do not.

Mr EDE: In the main, they do not. They can be changed by the government. As a committee, we believe that that should not be the case in the Northern Territory and that is why we are coming out to the people rather than sitting in a little air-conditioned office in Darwin with a couple of lawyers and writing this thing up. We believe that it should be a people's constitution. It should be something which the people are involved with and that the people have worked out what basic essentials they want it to contain. Aside from the machinery provisions which are common to all constitutions which set up a state, the people should decide what can and cannot be done by the government.

In some places I have suggested that it is similar to having a cheeky dog that bites people. You decide to put a rope round its neck and tie it up and you have to decide whether it shall be a long rope or a short one. That will depend on how much you trust the dog and how keen you are to keep other people away. A constitution is a little like that. It gives the people a hold on the government because it tells the government that it can go so far and no further. It indicates how far the people of the Territory want the government of the Northern Territory to be able to go and outlines the no-go areas which the people say that the government cannot touch because they involve what the people see to be basic principles governing living as Territorians and they do not want those things changed if there is a change of government.

It gives an indication from the people that, if they put a different government in power, they do not want that particular principle interfered with without their agreement. It will require the government to hold a referendum so that the people can indicate their wishes at that time. However, then we will have to work out what percentage of the vote taken in a referendum will be required to obtain a victory for the government. I believe that when Alaska went for statehood, it ended up with about an 80% margin. That was substantial and away they went, but those things will have to be discussed.

However, today basically we are just setting off on the first step. I would like to say that going through this process is almost as important as where we end up because in going through the process we will be questioning the values held by other people. Each of us will be looking at the proposals being put up by other people and trying to understand what other people are on about. Hopefully, through that process, we will come to understand each other better and what motivates other Territorians. We will be able to examine our own values and ask ourselves why we are so strong about a particular position, define it and decide if it is defensible or not.

Those are matters that we will be looking at over the next few years. Each of you will be looking at them and every other Territorian will be looking at them in order to decide what is defensible. We will all be finding that some matters that originally we thought it was essential to include are not so essential in the final analysis and that other things are absolutely fundamental.

At this stage, I will not be involved in discussion of what I think. I believe that one of the major strengths of this committee at this time is that, in public sessions, we are attempting not to debate the way we see issues from our side as against the CLP side. We want to see how far we can go in seeking common ground. First, we want to look for the things that we agree on and see how many of those we can find before we start to fight over aspects that we disagree over.

I will mention one fact. I do not agree with the boundaries of this Territory. I reckon it should be much bigger, but I know full well that I will not win as much as I would like to win. However, if I were to take up that issue now and say that I would not continue with this debate until the Territory is expanded into Queensland that way, South Australia that way and Western Australia that way, we would not get anywhere, would we? We have to start with the things that we agree with and work our way through those, and then start learning how we to negotiate the things that we disagree on and build those up. This is the process that we have to start today.

We will put all our cards on the table. We must encourage everyone so that nobody is frightened to put his cards on the table no matter how controversial they are and no matter how much a person may think that he is the only person in the Territory that sees his point of view. We want to hear what everyone has to say and then see how the different points of view measure up against each other. I think that that is the step that we are starting on tonight. Thank you.

Mr HATTON: Rick Setter.

Mr SETTER: Thank you, Steve. You know, there has not been a state or federal constitution, a government constitution, developed in this country for almost 100 years now. The last would have been the Australian Constitution. Of course, the Australian federation was established in 1901 and that is when the Australian Constitution came into being. The state constitutions were developed probably in the 50 years or more prior to that time.

We have been back and had a look at all of those constitutions and whilst indeed many of their functions would apply appropriately in the Northern Territory with some minor modification, the whole community has changed in that some. It is a different ball game now, and there are many issues about right now which we believe should be recognised in a Northern Territory constitution which are probably not recognised in the existing Commonwealth or state constitutions.

It is possible for a Northern Territory government to negotiate with a sympathetic federal government and, if they can strike the right deal, they can proceed and develop a constitution which those said governments could impose upon the people of the Northern Territory. It is constitutionally possible to do that, but it is the unanimous view of this committee that that is not the right way to go. We believe that, without the support of the majority of the community, any constitution that would be developed under those circumstances would not be supported. It would not have the support of the community at large. In fact, at page 3 of this green booklet, which is a Discussion Paper on a Proposed New State Constitution for the Northern Territory, under section 2(d) it says:

The view of all members of the select committee is that the new state constitution must be prepared by Territorians; it should not be imposed upon the Northern Territory by outside agencies.

That is the view of the committee and, of course, with that view in mind, we have a responsibility to go out and consult as many people as we possibly can. That is not easy because there are 60-odd communities out there, people with a whole range of varying background be they ethnic, political or whatever. You name it, they are all out there. So it is very difficult to get everybody to agree about everything all of the time. In fact it is impossible. Nevertheless, we have an obligation to consult with as many people as possible and, as a result of that consultation, a draft constitution will be developed. However, there are a couple of key things that I would like to mention to you, and they are also in the preamble to this particular document. If I may, I will read those under Section A(b). Under the heading of Summary of Select Committee Recommendations and Endorsements, it says:

The select committee considers that statehood for the Territory must provide for constitutional equality with other states.

That is very important because, without that, there should be no statehood and, of course, probably no constitution. Section B, entitled The Legislature, says: '... the select committee is of the view that the new state parliament should be given the same rights, powers and privileges as existing state parliaments'. You will read that in that introduction, so they are sort of the bottom lines.

Of course, this committee has been in place now for about 3 years and even though we have only recently commenced the consultation period, a great deal of work has been done within the parliament, within the committee of the parliament which we are, and as a result of that discussion the various documents have been produced which our chairman mentioned to you a moment ago. If you read the options paper particularly you will find that the basis of a constitution is already there, and there are various options about various matters, so that is a good starting point for anybody who wants to become involved in this debate.

I think that Steve mentioned that, at some time in the future, probably next year, a constitutional convention will be convened and representatives of the Territory community at large will come together in this convention to consider the recommendations of the committee and a draft constitution that we will put forward, and from that will come a final recommendation to the people of the Territory. Thanks Steve.

Mr HATTON: Thank you. We have talked more than enough, I think. The meeting is open to people who would like to raise questions or make some particular comments. Would you prefer to make your submissions first, Kay, or would you like to wait?

Ms ROSE: I would like to make a very brief comment. We have not looked at all of the issues raised in the green

document but at those that we felt were specific to local government. We figured that the interest groups involved with issues such as Aboriginal representation and human rights would address their specific interests and give full submissions on those. We acknowledge that, since 1978 when we got self-government by virtue of the Northern Territory Self-Government Act, the powers that have been transferred to the Legislative Assembly have meant nothing but good things for Territorians. It is now 10 years since this act came into force and Territory people and their representatives, we believe, have demonstrated their ability to accept responsibility for making decisions and that the Territory is now ready to take its place as an equal member in the federation of states. We felt that the time for caring only for the softer options is over and full statehood is not only our right but our responsibility as Territorians.

We looked at the question of a legislature and felt that the experience of 1 House, the Legislative Assembly, has been a good one for the Territory. Therefore, a single-House state parliament would seem appropriate. The new parliament should have the same powers as those of other Australian states and a 4-year term was seen as desirable. We felt that persons standing for election in a new state parliament should be subjected to a security check to establish a past free of any proven criminal charges, be an Australian citizen, and be competent in both speaking and comprehending the English language, and we presumed then that the government of the day would be in an English-speaking country.

Electorates in the Territory are of such a size and diverse population that representation and boundaries could perhaps be determined on a points basis, taking into account issues such as communications available, distance, population spread, industry mix and so forth. We also felt that voting should be both compulsory and secret.

On the page headed 'The Government' it states that only members of the new state parliament should be appointed to be ministers. The ministers should not be able to control decisions of the Governor and the office of the Governor should have the authority to protect the new state constitution.

We looked at the judiciary section and the comment that follows. The new state constitution should state that courts and the work of the judges be protected from interference and have safeguards against corruption.

Last but not least, we looked at local government. Perhaps we looked at it first but we were too polite to put it first. We believe strongly that a system of local and community government should be written into the new state constitution, allowing for elected and or appointed representation from areas of significant and permanent population. The nature of the powers, authority duties and functions of the local and community government should be in accordance with the laws of the legislature.

Although it is a very brief submission at this stage, I can say that the Tennant Creek Council really would wish to be involved in a constitutional convention and to continue to have input into it. That is all I have to say on behalf of the council. I would, however, tender an apology from Gavin Carpenter of the Confederation of Industry who very much wished to be here tonight but could not be. He assures you of the interest of the confederation in the Barkly region. We have some copies of our submission here for you.

Mr HATTON: Thank you. Kay, could I perhaps just clarify a couple of points while we are here? You made a number of points in respect of the electoral provisions such as a 4-year terms, the need for candidates to be English-speaking and so on. I didn't pick all of them up although I no doubt will when I have the opportunity to read through this submission. Could I ask how much you believe those sorts of provisions, such as the point scores in relation to electorates, should be incorporated into a constitution?

This is where we are really going to have some debate. How much do you put in the constitution as distinct from what you put into what you regard to as the appropriate legislation? Remember that the constitution is going to be more or less immutable and unchangeable. The history of referring constitutions back to the people shows that they very rarely get changed. They tend to be fixed. You have to draw the balance between stability and the flexibility that you can achieve through the legislative process to cope with changing circumstances. There might be emerging communities or a change in shape over several decades that can be dealt with by legislation built on the foundation of the fundamentals in the constitutional provisions. That is one of the issues we are going to be asking people to really think hard about.

Mr SCHAEFER: But that's really irrelevant. If a man can't talk English what's the sense of running the country?

Mr HATTON: I'm not suggesting that that not be a provision. I'm just saying ..

Mr SCHAEFER: That's what you were saying.

Mr HATTON: An issue was raised here in respect of a points score.

Ms ROSE: We looked at areas as large as the Barkly with scattered but significant spots of population and we looked at the question of one man, one vote. We felt that the only fair way, in terms of the Territory's population as it develops over the next 100 years, would be to find some way of giving people in a community of 10 more drawing power than 10 people living, say, in a single street in Nightcliff. The former group has a far greater need for representation on a percentage basis than 10 people living in a single street in Darwin.

Mr HATTON: So it is a method of measuring ...

Ms ROSE: I don't know how it would be done.

Mr HATTON: It is a method of measuring the tolerance rule, say.

Ms ROSE: Yes, yes.

Mr HATTON: You are saying that the tolerance should work in favour of smaller populations living in large areas instead of the reverse, which some people would argue has been the case at times in the Territory.

UNIDENTIFIED: So basically you would object to the principle of one person one vote as a general rule in the Territory.

Ms ROSE: I guess I object to it in Australia.

Mr HATTON: One vote one value, not one person one vote. Everybody gets a vote.

Ms ROSE: Yes, everyone gets a vote. Certainly.

Mr HATTON: There is a big difference.

Mr EDE: One of your points related to the need for a security check to establish whether a person standing for election had a past free of any proven criminal charges. Do you mean criminal charges or criminal convictions?

Ms ROSE: Convictions. I am sorry, yes.

Mr EDE: Have you thought through the degree of a criminal conviction? I mean, a parking infringement is a criminal offence.

Mr HATTON: No, it is not.

Ms ROSE: No, we did not think that was a criminal offence.

Mr EDE: It is a misdemeanour. You mean criminal in the sense of an indictable offence under the Criminal Code.

Ms ROSE: Yes. We were talking about fraud and that type of thing.

Mr EDE: It is a person who has been convicted of an offence under the Criminal Code.

Ms ROSE: We really felt that there should be some sort of screening before a nomination is accepted.

Mr EDE: You would not know. You are not saying that the electors should then decide ...

Ms ROSE: No, I am just saying that such people should not be eligible to stand.

Ms HICKEY: We were not necessarily making a judgement about people who had a criminal record. They may be free of blemish in the future, of course. But we felt that there were problems inherent in possibilities such as blackmail or in people carrying out their parliamentary function with that sort of cloud hanging over their heads.

Mr HATTON: Unless it was public knowledge at the time of the election.

Mr EDE: No. You do not believe that is good enough for it to be public knowledge at the time of the election that, 20 or 30 years in the past, a person has been convicted of a criminal offence, even though that person may not have been sent to jail for the offence? You believe that such a person should not be able to stand? Essentially I am asking whether you are really strong on this issue or whether it is a negotiable point.

Ms ROSE: I guess every point is negotiable. It is very early stages as you all said. These comments reflect our opinion at this moment. In 3 years time it may have firmed up or it may have softened. We should hear more debate on the issue.

Mr EDE: So it is a strong feeling at this stage ...

Ms ROSE: At this stage, it is.

Mr EDE: ... that it should be a matter for debate and discussion.

Ms ROSE: There has been a lot of publicity recently about such issues and I guess community feeling is pretty strong about it right now.

Mr HATTON: Could I ask about one other point, Kay? You said ministers should not be able to control decisions of the Governor. You go on to say that the office of the Governor should have the authority to protect the new state constitution. Perhaps, while you are looking for that page in the submission, I will address that point in order to give you an idea of how things work now.

Ms ROSE: Will I be honest about this? The question you posed was: 'Should the ministers be able to control a decision of the Governor'? We have written 'No, but we do not know how you are going to do it'.

Mr HATTON: Perhaps I can explain how the system operates now. The Administrator makes his decisions on the advice of a thing called the Executive Council which is really all the ministers of the Cabinet. They form themselves into a separate committee called the Executive Council which advises the Governor. He accepts their advice. If Cabinet makes a decision on, say, a regulation, and the Executive Council recommends it to the Administrator, he approves it. All right. The question is, does he have the right to say: 'No, I am not going to approve that regulation'? In other words, does he have the right to overturn the decision of the elected government?

Ms ROSE: We are saying no, he should not have that right.

Mr HATTON: He should not have that power.

Ms ROSE: We believe people are elected to govern us. They are the ones that are accountable to the electors.

Mr HATTON: The Governor is like the Administrator. He should not have the power to overturn the government decisions or the government's direction.

Ms ROSE: Governments are elected. We want them to make the decisions.

Mr HATTON: Right. That is why I wanted to just clarify that point. What you are saying is that, if the government wants to do something that is unconstitutional, the Governor should have some powers to prevent the government from carrying out an unconstitutional act. Is that the difference you are drawing?

Ms ROSE: Yes, that is right.

Mr HATTON: I think it was important to draw that. Governors are not going to overturn acts of parliaments and all those sorts of things but, rather, if the parliament enacts legislation that is unconstitutional, they can send it back.

Ms ROSE: That is right.

Mr SETTER: That is the question that I was going to ask too, Steve. The submission indicates that ministers should not be able to control decisions of the Governor and, conversely, that the Governor should not be able to control decisions of the government.

Ms ROSE: We probably should have expanded more. We read through the book and addressed the issues it raised and then

sort of ...

Mr HATTON: We have plenty of time and it is important to consider these things fully. That book is a summary of this larger book and you will find that some of the arguments that we are throwing around are debated in the larger book. It can give you more information. It is like a reference book which provides additional information. The smaller book is a starting point which summarises some of the arguments for and against various approaches. It allows you to say that you agree or disagree with this or that or to decide that you need more information.

Mr SCHAEFER: Well why don't you send one to everybody in the Territory so they can have a look?

Mr HATTON: We have tried to circulate these around the community. We have been delivering them around the Territory now for 2 years and most people have not picked them up. I am not joking. We have done that. There are some here and you are welcome to take them now so you will have a chance to read through them. We will make more of them available if need be.

Mr SCHAEFER: We are sort of walking into this blind aren't we? We have not read that book and you have, so you have one over us.

Mr HATTON: That is why we are not asking people today to make submissions. Rather we are saying: 'This is how we are going. This is the information that is available. Go away, read, think about the issues and when we come back later on you will be in a position to tell us about it'. That is what we are doing today. I knew that the Tennant Creek Council had some views to put forward because its members spoke to us when we came to Tennant Creek last June and we discussed some of the issues then. I knew that the council had worked on presenting a submission and we are receiving that today. We are not expecting people to come forward but we are happy to receive submissions if people want to make them.

Mr SETTER: I would just like to come back to the point that the council made earlier. I refer to page 53 of this book, under the heading Powers of the Governor. Under section 8, it says: 'On balance, the select committee considers that, as a general rule, the representative of the Crown should be required as a matter of law to act in accordance with the advice of his or her ministers'. So you see, we are saying that the Governor should act on the advice of the Executive Council.

Mr HATTON: The council favours a 4-year term. Did it look at the question we asked about whether there should be some sort of fixed term?

Ms ROSE: We looked at it and decided not to comment on it. We felt that there may be overriding issues. For example, we considered the possibility of a war. We felt that we might at some stage have elected a peaceful greenie type government to green us up and make us lovely and, suddenly, find ourselves thrust into a war situation in which we would prefer a different type of government. That is the analogy we used - some major catastrophe that might lead a population to say that it wanted different sorts of people in positions of power and making decisions.

Mr HATTON: But how do you go about forcing that government?

Ms ROSE: I do not know. I do not have the answer to that one.

Mr HATTON: Even in a flexible situation, it is up to the government to say when it is going to an election.

Ms ROSE: I do not know the answer to that one, Steve. We are only at the early stages of tossing these ideas around.

Mr HATTON: That is right. But it is interesting, isn't it, when you start throwing up those possibilities and begin to consider whether you can write some rules that will achieve what you want or whether it is worth attempting to write rules on such matters.

Mr EDE: One fact is that our constitution will come under the federal Constitution. We cannot do anything which would take us outside the federal Constitution. The powers of the nation at war under that constitution would override any provisions in our constitution if the country found itself at war.

Ms ROSE: Well, we just looked at that one as being absolutely ...

Mr HATTON: You are talking about a major crisis in the community.

An issue that could arise and which has been raised in the books put out by the committee relates to the situation in which, for some reason or another, the government in power does not have the confidence of the House. In other words, it does not have the numbers. This sort of situation could have arisen recently when Joh Bjelke-Petersen was defeated as leader of the National Party in Queensland and said that he was not going to resign as Premier. In that situation, should the Governor have the power to dismiss a leader and therefore his government, and invite somebody else to form a government? In that case, it would have been Mike Ahern.

Mr BAIN: The right to dismiss any elected body should belong to the people, whether it be the Premier or a government.

Mr HATTON: That is one of the question we ask. How do you go about working that into the constitution? What do you do in a situation where, clearly, the person who is the head of government does not have the support of the parliament?

Mr BAIN: Take the case of Don Lane. He was stood aside just so the government could retain its number of seats. The people in his electorate had every right to ... (inaudible).

Mr HATTON: That is a question that has arisen in a couple of communities actually - whether people should have time ...

Mr EDE: Under the American system, I think they call it the right to recall. It is basically a people's impeachment in which the people say that a person elected by them, by virtue of actions since that election, no longer commands their confidence.

Mr BAIN: It is an option you have under the Magna Charta ... (inaudible).

Mr HATTON: But you do not have it under the Australian Constitution.

Mr BAIN: The Australian Constitution is built around the Magna Charta.

Mr HATTON: Perhaps I might ask our constitutional lawyer to comment. When these questions come up, I like to ask the expert.

Mr NICHOLSON: I would have thought that the Commonwealth constitution was exhaustive on that subject. The only way you can remove a member of the federal parliament - is that what we are talking about, the federal parliament?

Mr BAIN: (inaudible).

Mr NICHOLSON: The Commonwealth Constitution does not deal with state parliaments. It only deals with the federal parliament. The only way you can remove a member of the federal parliament is in accordance with the Commonwealth Constitution. I do not think you could rely on the Magna Charta to remove a federal member.

Mr BAIN: It is one of our inalienable rights to be able to remove any elected representative by petitioning the Queen. It was the ultimate power of ...

Mr NICHOLSON: I do not think the Queen has that power.

Mr BAIN: I think you will find that she does although under ... (inaudible)..

Mr HATTON: The evolution of constitutional law in Australia has come a long way, even this century, through the Australia Act, the separation from Britain and the taking over of our own decision-making within Australia through our own national Constitution. They are the foundation stones but sometimes, in building upon them, you may move in a different direction. Clause 44 of the Australian Constitution contains provisions relating to the disqualification of members. I am not going to read them all now because they go on and on but they do not mention the people being able to take that decision. They apply if a member is bankrupt, tainted with treason, has been convicted and is 'under sentence or subject to be sentenced for any offence punishable under the law of the Commonwealth or of a state by imprisonment for 1 year or longer' and so forth. If any of that applies, a member is automatically out of parliament.

The Northern Territory is in a unique situation under our Self-Government Act, which is the closest thing we have to a constitution. The federal government actually has the power to call the Northern Territory to an election whenever it wishes. Do you really think that is fair?

Mr EDE: It depends whether you are in government or opposition.

Mr HATTON: It has the power to do it.

Mr SCHAEFER: Yes, but there are so many clauses and powers that the government can use it whatever way it wishes.

Mr HATTON: I can think of a couple of occasions, and I am sure that Mr Tuxworth also can, when the federal government has threatened to disallow laws of the Northern Territory. The Criminal Code was one example.

UNIDENTIFIED: To get back to the point about the Governor, is that a point that could be put forward for discussion in a submission?

Mr HATTON: Yes, it is in fact one of the specific issues that we are asking questions on. It is what is called the executive component. Under our monarchical system, that is the Governor. This book helps to outline the situation. Because Australia operates under a monarchical system, we also will operate under it. It is therefore a waste of energy to debate the cause of becoming a republican state. There will be a Governor who will be the Queen's representative and the executive head of government. It is the interplay of powers between the Governor, the courts and the parliament or the legislature that is what we talk about when we write up our constitution. If you look at the book, you will see that it contains 11 pages of questions that we are asking people. They deal with all sorts of matters in a wide range of areas. Some are very controversial and some are mechanical in nature but they are all there and, indeed, we might have missed some.

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

Mr BAIN: I have a submission to make. First of all, I have a small petition to hand to Mr Tuxworth and the members of the committee. It contains signatures collected over the last couple of days. The submission I make is that the total Swiss concept of the citizen-initiated referendum be included in the constitution.

Mr SETTER: Excuse me, Mr Chairman. I wonder if the gentleman could identify himself and indicate who he represents if he is representing ...

Mr BAIN: Kevin Bain and I am just representing myself.

Mr HATTON: Just your name and address, for the purpose of the record.

Mr BAIN: It is in the record. As I was saying, I would like to see the total Swiss concept of the citizen-initiated referendum included in the constitution. The reason I feel that we need citizen-initiated referenda in the 3 stages of the system is that the political party system in Australia - and I do not know whether it is quite the same here in the Territory as in the federal sphere and most of the states - is such that the party system totally controls the elected representatives. They are no longer true representatives of the people but representatives of the party hierarchy and, therefore, they are not carrying out the expressed majority rule of the people of their electorate. That is my contention and the reason why we must have CIR in the constitution.

I should probably explain a little bit about CIR so that everybody knows what I am talking about. The first stage is the citizens' initiative which allows the people, or a group of people - and it does not matter whether it is a minority group or a majority - to raise a petition of a specified number of signatures from an electorate, a state or the whole country proposing a law of the group's own desire. For example, in Florida 3 years ago, the people initiated a law whereby the government was only allowed to spend 80% of collected revenue and the other 20% was to be used to reduce state debt. Today, Florida is almost debt-free. I do not know whether that is because they used the 20% to pay it off or whether it comes from their marijuana sales but they are just about debt-free. That just shows you the sort of thing that the people can do to get their country out of strife - and we are in a lot of strife.

The second stage of the initiative is the veto, which allows the people to scrap existing laws if they are bad laws and people do not like them. You might, for example, have death penalty. With our judiciary the way it is and our police force the way it is, with corruption being shown up all over the place, the people might not want to have the death penalty. The veto would allow them to scrap it. Similarly, they might want to scrap abortion laws or something else.

The third stage is the recall. That allows the people to petition for the dismissal of elected or appointed public officials who are proven to be, or can be demonstrated to be, unfit to hold public office.

That is my submission on CIR. Are there any questions in relation to it?

Mr EDE: I have a couple, just for the record. What percentage are you talking about in terms of bringing off a successful result in a citizen-initiated referendum? Are you talking about a 50% majority?

Mr BAIN: Some countries have a 50% or 51% requirement as far as the referendum side of things is concerned, but it is probably better if only a small number is required for the petition to trigger that off. If, for example, the constitution requires a 51% or similar majority on a petition, it is obvious that there is no need for a referendum. So to trigger the mechanism off you would probably want just a small percentage.

Mr EDE: Would you like to throw in a percentage for that trigger? The trigger has been one of the major sources of argument in relation to CIR or partial CIR as it operates in the United States.

Mr BAIN: Yes, there are 23 states that are using it now to various extents.

Mr EDE: Yes, but the size of the trigger has been one of the big arguments.

Mr BAIN: Switzerland has had it for 110 years and it works on 5% of the electorate. That is just to trigger it, right.

Mr EDE: Yes.

Mr HATTON: It is important to consider that question because of the potential for highly organised fringe minority groups who have no hope at all.

Mr BAIN: It does not matter.

Mr HATTON: Hang on, let me just track it through. I am talking about groups which have no hope at all of getting their propositions up in a referendum. They would be spending significant sums of the community's money in putting these matters to referenda if they were able to get very small percentages of the electorate to say go. That becomes particularly significant on the issue of dismissal of a government or a member in an electorate. A party that is not in power would probably have the support of 20% to 30% of the electorate at any one time, who would staunchly vote the party line no matter what. A petition organised by a party which was out of power, calling for an election, would probably be signed automatically by a significant percentage of the electorate and, if appropriately timed, might actually inhibit the work of elected representatives in terms of being able to take serious and responsible decisions which are unpopular at the time but which are necessary for the well-being of the community.

Mr BAIN: I think you have missed the point there. The reason you petition to have an elected representative dismissed is not because you want to change the government but because the member has been proven to be corrupt.

Mr HATTON: How do you prove it?

Mr BAIN: How do you prove it in a court of law?

Mr HATTON: You go to a court of law. If he is proven to be corrupt in a court of law, you cover that in the constitution. Such matters do not need to go to the people; such members can simply be removed from their positions.

Mr BAIN: What about Don Lane? He stayed put and picked up about another \$80 000 in parliamentary salary.

Mr HATTON: He has not been proven to be corrupt.

Mr BAIN: He admitted corruption by his own mouth at the Fitzgerald Inquiry. If that is not grounds for dismissal, I do not know what is. The figures are not the important thing because minority groups have a right to have their say too.

Mr HATTON: That is right. The question is whether they have a right to spend public money expressing their view.

Mr BAIN: In the current situation, the people do not get any chance to express their views on the laws that are made in the House.

Mr HATTON: That was only the issue that Mr Ede raised, the percentage required to trigger a referendum.

Mr BAIN: You could have whatever percentage you liked.

Mr HATTON: Well that was the question I was asking.

Mr BAIN: Whatever the people wanted.

Mr HATTON: You mentioned the figure of 5%.

Mr BAIN: I was talking about Switzerland.

Mr HATTON: That is the only percentage you have referred to.

Mr BAIN: The Swiss have worked for 110 years on this system and they do not have very much corruption any more because they have had time to work it out.

Mr HATTON: Or they have hidden it well.

Mr BAIN: They have got the highest living standard in the world, the lowest taxation in the world and the lowest interest rates in the world. I do not think it is ...

Mr HATTON: I am not being critical of Switzerland. Please do not suggest that I am. It was a flippant and unnecessary comment and I will withdraw it.

Mr TUXWORTH: Mr Chairman, could I just say that whilst Mr Bain's petition is addressed to me, it is probably proper that it be passed on to the Select Committee on Constitutional Development and I would propose to do that during the course of the forthcoming sittings when I table it.

Mr HATTON: Yes, thank you.

Would anybody else like to ask any questions? As you can see it is going to be an interesting and lively debate. I can promise you that there have been many more issues. For your information, one person has suggested that we should include constitutional provision requiring certain environmental standards to be met in any government decisions - an environmental assessment obligation on government. That example comes strongly to my mind. Many varied views will be brought forward and people will be asked to confront them. views.

Mr SCHAEFER: Why couldn't we have one for just straight equality?

Mr HATTON: You certainly can. The question is, how do you word it?

Mr SCHAEFER: So that everybody is equal. Everybody. All colours, races, creeds, whatever you like, everybody is equal, instead of having this bias that we have now where it is all going one way and minorities are paying it. Well, minorities are gaining while the majority is getting more and more poor. Are we going to have that in the constitution?

Mr HATTON: That is a matter for you to work it through. That is what we are here to talk about.

Mr SCHAEFER: All those acts that have been passed in previous years - are we going to be able to repeal them all? If you want a block of land, you buy a block of land. If you want a house, you buy one.

Mr HATTON: That is a matter for the people to talk through.

Mr SCHAEFER: The people can do that?

Mr HATTON: All the people.

Mr EDE: There are whole aspects here on human rights. The people who wrote them are saying that they are an attempt to define creating equality. Having decided that you want equality, it is a matter of writing it up in such a way that that is what you actually get.

Mr SCHAEFER: And we can alter royalties?

Mr EDE: Basically, you can do is anything within the powers that are granted to the Territory as a state, which do not

conflict with the federal constitution.

Mr HATTON: That is right. Now it is up to the people of the state to write those rules. That is what we are here to say. That is the job in front of us.

Mr SCHAEFER: That is what we have got to do then.

Mr HATTON: And you have to sit down with other Territorians and debate it out, across the table, not from the other side of the river chucking stones.

Mr SCHAEFER: A hell of a lot of people are going to leave.

Mr HATTON: We all sit down in the same place and talk.

Mr SCHAEFER: Oh yes.

Mr HATTON: It will make an interesting change, won't it? Not having somebody else telling us what we should be doing. That is what it is about.

I think we have covered the main points. Thank you very much for coming along. It has been a stimulating debate and I am sure that it will become more and more so every time we meet, as people increasingly come to grips with the sort of things that this is all about. I can only urge you again, as I did at the start, to take the matter seriously. It is probably the most important thing that we are going to do for the future of the Northern Territory. The people are going to write the rules on how the Northern Territory is going to work in the future. It is your opportunity and your responsibility to work towards getting the sort of place that not only you are proud of but which your children and grandchildren will be proud of, and to leave that legacy, that heritage, for the future. It is an important job and if we shirk it, we will be condemned for it. If we do it and do it well, history will record that this generation of Territorians grew up and took control of their own lives. Thank you very much.