

## PUBLIC MEETING

**PULARUMPI — Thursday 11 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 Chris BROGAN

Mr Graham WHITING

Mr Cyril RIOLI

Mr Stan TIPILOURA

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

ISSUED: 4 October 1989.

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Mr HATTON: Thank you very much for giving us this chance to meet with you. We have all introduced ourselves over lunch. Thank you also for that lunch. It was great and provided a great way for us to meet people before we sit down formally to talk.

Our committee is a committee of the Legislative Assembly and it is called the Select Committee on Constitutional Development. The booklet that we have just distributed is what I call a starter's kit on talking about writing a constitution. At the back of this booklet you will see photographs of the members of this committee. There are 3 members from the CLP and 3 from the Labor Party. I have with me today Brian Ede, who is the deputy chairman of the committee, and Col Firmin and Rick Setter, who are members of the committee along with myself. The other 2 members are Wes Lanhupuy and Dan Leo.

Unlike most things in politics and government, this time both sides of politics, the Labor Party and the CLP, are working together to try to develop a constitution for the Northern Territory. For once we are not in the middle of a political fight and taking opposite sides and arguing and confusing everybody. We are doing that because both the Labor Party and the CLP believe that this particular task is too important for that. It is so important that we really should put our party politics aside and work together, as Territorians, with the Northern Territory people to write what is a people's law. We should work with the people to assist them to write that law.

No doubt, over the last few years, you have heard a lot of discussion about statehood. Some people are in favour of statehood,. Some people think it is too early, and some people just do not understand it or are nervous about it. Can I say to you that we are not asking you now whether you are in favour of statehood or against it. The issue of whether we become a state or when we become a state is something for the future. You cannot even consider that question until you know what you want and how this new state is to operate: how you are going to set the parliament; how you will protect people's rights; how you will set the rules by which people are to live and work together in a future Northern Territory.

What is a state? What is the state that you want? Before you can even say that, you have to sit down and think through it all first. How do you want the Northern Territory to work in the future? How do you want to go about electing governments and electing the parliament? What things should the parliament be allowed to deal with and what things should be outside of its control? What sort of rights are so important that nobody should be allowed to interfere with them? For example, that might be the right to vote. That is a right and you do not want a government to be able to take it away from you. It could be the right to freedom of speech so no government is allowed to touch those sorts of things.

There may be issues associated with Aboriginal law or Aboriginal culture that may be so important that you say that, no matter what, no government should be allowed to interfere with or change them. The way you do that is by preparing a special law, which is called a constitution. It is no different in principle to preparing a constitution for a community government, a town council or a football club, for that matter. You have to write the rules on how you will elect the committee or the council and how long members are to serve for, and what things the council is allowed to do and what the council is not allowed to do. You write the rules when you set those sort of constitutions up. This is the same sort of thing but it is for the whole Northern Territory. Because it is for the whole Territory and because it affects government, it will really shape the way the Northern Territory will develop over the next century.

It is not something you can do easily, it is not a thing you can treat lightly and it is not a thing you can afford to ignore and let other people do for you because it will affect your lives, your children's lives and your grandchildren's lives. Because it has such an effect on the whole of society, it is absolutely vital that, in writing this law, we involve the people. In fact, the people have to write this and they have to understand what is going on. They have to think about it, talk about it within their communities and get their ideas together. They will need to choose representatives, who the community can trust to speak honestly on their behalf, to come forward with representatives from other parts of the Territory to sit down and work through this as a Territory community - representatives from all over - from the Centre to the Top End, east to west, black and white. They will have to work through all the hassles, the fights and the problems and find out how we can work towards setting the Northern Territory up for future generations. That is the task we have in front of us.

As I said, we have prepared this booklet as a sort of starter's kit. It raises a few ideas: how do you want your parliament to operate; how do you go about electing the parliament; do you have single-member electorates or multi-member electorates? Who is to have the right to vote? Who has the right to stand for parliament? How long should the parliament sit for? What is the role of the courts and the judges? How much can the courts interfere with what the parliament is doing and how much can the parliament interfere with what the courts are doing? What about the Administrator or the Governor, what is his job? What should he be allowed to do and how much control should he have over the parliament? What about local government, community government? Should you put in a guarantee, a constitutional right, to have community government or local government, where a community says it wants that, so nobody can stop them from having it?

I mentioned before some sort of rights that people will want to talk about including in a constitution. There are a lot of really complicated questions there, but we are saying that we all need to start thinking about it.

The reason why it is so important is this. Some countries do not have a constitution. It is not essential. In Britain, they do not have a written constitution. Because they do not have a constitution in Britain, the parliament there can make any law it wants to. It can override the courts and make any law it wants to make, technically. It has that power. The parliament there has unlimited power. Some countries, like the United States of America, Canada and Australia, operate under what we call a written constitution. The written constitution puts limits on what the parliament can do and on what the government can do. It is where the people say: 'Yes, we will let the parliament do that, but it cannot go past that line. It cannot interfere with our lives past that point', and they write that down.

As you know, the federal government operates under a constitution, the Australian Constitution. It says what the federal government is allowed to do and what it is not allowed to do. It sets out how the parliament is to be elected and all those sort of things that we have been talking about for the Territory. That is for the whole of Australia.

Every state in Australia has a constitution. They might not be very good constitutions. They were written during the last century, when the states were colonies, but they do have them. When those constitutions were written, they did not go out and ask what the people thought. A group of politicians got together with a couple of lawyers and they sat down and wrote it themselves, put it into law and dumped it on the people. This is the first time in Australia that someone has gone out to the people and said: 'How do you want to set the place up? What do you think is important, essential to make the Northern Territory a better place to live in, a place where there is justice for everybody and opportunities for everybody and where there is true democracy for everybody?' You now have the chance to be part of making those sort of rules.

We have come here to say: please, start to look at the material, think about the questions, discuss them amongst yourselves and discuss them in the community. If there are things about it you are not sure about, things you would like to learn more about, please ring us up or write to us and ask us to come across and discuss the particular matter. We want to help people in the community to understand the issues and to be able to develop their thoughts, and to make sure that you all have your say in writing this.

The process we are going through is to make sure that this does become a people's law, that sets the direction, the future road for the Northern Territory, and a law that will sit over the top of the government. It needs to be a law that the government cannot change, that only the people can change so it becomes the property of the people. To do that, what we are doing now is going around to people saying: 'This job is coming up. Please start to think about it'. Look at this work that we have been doing for several years now, in this book. It is a discussion paper. It has different ideas in it - some things you will like, some things you will not. It sets out choices, different options, that deal with different ways of doing things. Have a look at it and read it. Think about it, argue about it amongst yourselves, talk it out and get an idea of how you think it should go. Get your ideas together.

Later this year or early next year, after people have had a chance really to come to grips with it, we will come back again as a full committee and then we will say: 'Okay, you tell us what you think'. We will be looking to take submissions from all the communities. Now we are going around asking you to become involved with this. Next time we come, we will ask what you want and what you think should go into a constitution, what rules there should be.

We have visited some 60 communities over the last couple of months, everywhere from Docker River and Finke, right up to here, east and west, saying the same thing. And we have to go back to all those communities. As you give us your ideas, and having collected people's ideas from all over the place, our first job will be to try and work through all that and see if we can work out what we think the people are saying - what the people want. But we are not going to do the job. We are just going to put a draft of the first ideas down.

The second important job we have to do is to put together a thing called a constitutional convention. That is a large committee of representatives of the people right across the Territory. It might be 50, 60 or 100 people. They will be the representatives of different interest groups and different communities, the whole diversity of the Northern Territory.

Those people will have to come together to look at our work, the submissions we have received, the research we have done and our suggestions, and then they will have to go through it all and start deciding what they think, as a group, and take that backwards and forwards to their communities. All the horny problems will need to be argued out. Argue out all the hard questions. For example, do you put rights into the constitution or do you not? Sort out between the white communities and the Aboriginal communities about land rights and sacred sites, Aboriginal law, culture, customs and how they need to be protected. It will be necessary to explain things backwards and forwards between the communities and sort out where people think the convention should go. In the end, those representatives who form the convention will prepare a proposed constitution.

Then that proposed constitution will have to go to the people for them to vote on. If it is not right, if the convention has not got it right and the people vote 'No', we will go back and start again and work to improve it, and we will keep building on it and building on it until the community has something that they are happy with and the people vote 'Yes' for. Then we will have that law, that constitution.

It will not happen quickly. It will take a lot of time, a lot of effort and a lot of patience. It will be necessary for people to be prepared to listen to the needs of other people and not just think selfishly for themselves. If you are prepared to do that, you can make this Northern Territory something fine. You can create a heritage in the Northern Territory that you can be proud of and future generations can be proud of.

If it is too hard and you want to walk away from the job and ignore it, you have to understand that the problems will not go away. They will still be there, and future generations will have to do this job. And I think those future generations will look back on us with some disgust because we were not prepared to take on the job. I guess we have a choice. Either, we can take up a unique opportunity and accept a unique responsibility to make the Northern Territory the way the people want it to be made and so earn the admiration of future generations, or we can walk away from it and earn the disgust of future generations because we will leave the mess behind for them to sort out. That is what we are faced with. I think the people of the Territory will take up the challenge and will be prepared to work and get this job done. I certainly hope so, and I am asking that you be very much a part of this and make sure you have your say in this whole process. Make sure that, at the end of the day, you are happy with the end result and that you have set in place something for the future.

That is what we came here to talk about. I would ask Brian and others to have a say. Really, we are here to explain what we are doing and to answer any questions and concerns. If there are things you want to talk about or argue about, we are happy to do that too. If we can keep our conversations on a constitution and not get sidetracked on other issues, it will be a great help to all of us. Other issues we are happy to talk about after this meeting.

Mr EDE: I think you have already covered most of it, Steve. The reason why the Labor Party is involved in this process in such a strong way together with the CLP is that we believe that there is a possibility that, by going through the development of the constitution, we can put in concrete, if you like, sort of fix in place, some of the things that we think are really important about being Territorians.

I have been told, and I do not have to tell anybody here, how Aboriginal law has this great strength that has been the same from right back and going all the way forward. It goes one way, straight, so it does not change, it does not move, it is always there. We know it and we live around it and it controls us. One of the difficulties that Aboriginal people have with non-Aboriginal law is that it is changing all the time. As soon as you think you get to know it, someone throws another change and people say: 'Well, how can you live with a law like that?'

Constitutions are an attempt that some countries have made to get something which will stay essentially the same for generations. The idea is that the constitution controls the government. It is on top of the government, on top of the Administrator, the courts, the police, the councils, the whole lot. All the other laws have to answer to the constitution.

If there are things that are so important that you do not want them to be changed around, then the constitution is where you look to put them. If you put them in ordinary laws, one government can put them in and the next government can come along and take them out. They have not got any strength. But what goes in the constitution, the people and only the people can take out. People will tend to say: 'It is our constitution. We worked bloody hard to get it in place and we are not having anybody mucking around and telling us what to do and changing it all the time'. So constitutions tend to stay pretty well as they are organised.

There are 2 points. One is that it is important to get it right because it will not be something that we will be coming back to every 4 or 5 years and having another go at. Once it is in place, it will be there for a long time. There will be some ways of changing it, but it will be hard, so for anybody who is not happy with the way it comes out the first time, the best way is to say 'No' and go back and start again.

The other point is that you have to work out which are the things that we do not want governments changing all the time. Steve has mentioned things like the right to vote and maybe having councils. But a lot of people are really worried about land rights and they say: 'We have land rights now. We do not want to do anything that might make that right weaker because we might lose it'. A lot of people have said that they want to keep the Land Rights Act with the federal government because they are worried about losing it. One of the possibilities I would like to put to you is that, in this constitution, you can have some form of land rights. You can have the principles there or you can have the lot there, or however much you can argue through with the other people you can get in there. If it is in a constitution, it is much harder to change it. You will not then have the same fear about changing governments and changing things about because certain things are going to be a lot harder to change than changing the government.

Whether that means that we are able to have a system where there is a federal Land Rights Act and it is in the Territory constitution as well as a Territory Land Rights Act so that you are locking things in, up and down, so that it cannot be moved around, cannot be changed easily, so that everybody goes backstop for each other, will depend on the strength of Aboriginal people talking and arguing their case. If Aboriginal people say: 'No, it is too hard. We just want to walk away from this thing and we will come back and have a look when you have finished', it will not end up being the type of

constitution that most Aboriginal people would like.

This is going to be one of those things where people are going to get in there and discuss and talk about it. You must make yourselves heard as to what you want, through talking to other communities, talking through organisations and making sure that there is a strong, central voice coming out and that it is the voice that you are after.

We are here really just to put you on notice that this is going to start along those discussions right now. You have our addresses. Stan is always around here and it is not that far to Darwin if you want to sing out for people to come back. If we go along for a few more months and something comes up and you say: 'Well, hang on, we have thought of something that could be a problem' or 'we have some questions we would like you to go through with us' or whatever, you can contact us. It can be by phone or any way you want.

We just want to wake people up and make sure that this is a people's constitution for all the people in the Territory and that everybody is involved and putting their ideas forward and negotiating how to do it.

That is why, as soon as possible, and it might be in another 12 months or so or as soon as we can, we want to move to set up this big committee from all round the Territory so there will not be politicians who will be doing what we are doing now, it will be the committee. It will have Aboriginal Territorians, men and women, the people from the bush, the towns and everybody else in it who can say: 'This is what we feel is important'. Another group will say: 'No, you are not understanding what we are saying'. Then people can argue that inside.

People may be saying: 'We want to have strong sacred sites legislation. We want to have those fundamental principles of sacred sites for protection in the constitution'. The other side may say: 'No, no, we do not agree with that', then the one side has to get up there and explain why that is important so the other side can see that people are not just saying that because they want to grab something, they are saying it because it is something that is absolutely necessary for them and their culture.

That is the way it has to go, with people learning from each other, learning how to fix the problems and learning how to go ahead. If, at the end of it, we end up with an agreed constitution, which 95% or 99% of the people agree with because they reckon it says what all Territorians are looking for, this will be a much better place to live in because we will not be having all these arguments and things later on. People will not be frightened about losing their land rights and they will not be frightened about desecration of sites, because they will know that both the Aboriginal and the white law are together, like that, and both are saying the same thing.

Mr HATTON: Thanks, Brian. There is one point I would like to make if I may.

We have a Northern Territory government, a Northern Territory parliament, and you go and vote for that. Stan is your local member in that parliament, and that government has some powers and to provide education and health services, and to build roads and bridges. It has a police force and all those sorts of things. You can say: 'Well, that is there and it is working all right. Why do you want to change?' Well, do you know that the very existence of that government depends on the federal government's goodwill? If they wanted to and if they could convince other people in the federal parliament, just by repealing an act of that parliament, they could wipe out all government in the Northern Territory. I do not think they will, in fact I am pretty sure they will not, but they have the power to do that, because we do not have the protection of a constitution and we are not protected by the Australian Constitution because we are not a state.

Even land rights come only under a federal act of parliament. Everyone says it is strong and it cannot be taken away and it is perpetual inalienable freehold title. If the politics in Sydney, Melbourne and Brisbane changed and, to get elected, somebody had to stand up and say: 'I am going to get rid of land rights', and all the people in Sydney, Melbourne and Brisbane voted to get rid of land rights - the Northern Territory has only 1 seat out of 154 in the federal parliament - and they could throw land rights out. They have the power to do that, just by repealing an act. They can take us right back to the welfare days if they want to. They have the power to do that, and all the gains people have made, their right to vote and the right for the federal member to go down there could be lost. Sam Calder fought and won the right to vote. Before Sam Calder, you remember, Jock Nelson was our member and he was never allowed even to speak in the federal parliament. It was not until 1968 that our federal member was allowed to speak in the federal parliament.

Do you remember the days before we had a Legislative Assembly, the days before we had any voice? The federal government has the power to take us back to that because we do not have any form of constitutional protection.

We have extra things here - and this is also a matter of hanging on to what you have. That is equally important and that is part of what this whole process is about. It is not about money and development and all that sort of thing. It would be nice to be able to run your own life more. It is like when you grow up and become an adult, and you get a chance to run your own life. Sometimes, it is very comfortable to be a child. Your parents feed and clothe you, and you can go fishing. You might have to go to school and your parents will tell you you have to do this and you have to do that. You have to behave yourself and do the dishes after dinner or whatever, but it is comfortable. You do not have to go to work. You do not have to have a job, because your parents are there to look after you and protect you and all the rest of it. But, one day, you want to stand up and be an adult, and take control of your own life, don't you. Now you cannot explain why that is important, why that is good, but you would not want to be a child all your life. You want to be a grown-up. You want to have the right to make decisions for yourself. You also want to have the responsibility that goes with that and you feel better as a person because of that, and you have your own family.

It is no different for a community like the Northern Territory. Before self-government, the Territory was like a small child, nursed and protected by the federal government, but we never had a say over our own lives. Then they gave us a bit of a say, but they are still there, like the parents looking at their teenage child. They give him a bit of freedom but still keep a bit of that rope on him so he does not go too far before he becomes an adult. The point is that, one day we have to become an adult. But we cannot even think about becoming an adult until we know what we want and, if we want to make decisions on how we want to run our own lives, let us make our own decisions on those rules as a community, and that constitution does that.

I am talked out. It is up to you. Is there anything you would like to raise? Is there anything you are not sure about?

Mr BROGAN: It frightens me a bit to know that if Melbourne members of parliament or whatever decide they want to run, they can get the federal government to cut out land rights or things.

Mr HATTON: They have the power. I do not believe they will do it, but they have the power to do it, because we are just a territory.

You see, Australia is what is called a federation of states and the Australian Constitution deals with how all those old colonies came together in 6 states, and how all the rights flow down to the people of the states. We are outside that because we are a territory, so even individually we do not have that constitutional protection. For example, the Commonwealth government has the power to come and acquire your property, for whatever purpose they want it for. They do not even have to have a reason, and they are not required to pay you for it. They are not required to compensate you, because you do not have the protection of that clause of the Australian Constitution that people in the states have. They cannot do that in Queensland because in Queensland it is tied down. Which clause is it, Graham?

Mr NICHOLSON: 51(29).

Mr HATTON: That is the acquisition power?

Mr NICHOLSON: The acquisition power.

Mr HATTON: Section 51, subclause (29).

Mr NICHOLSON: Do you want me to check it?

Mr HATTON: Yes, is you would Graham.

That clause says that the Commonwealth can acquire property for Commonwealth purposes, but on just terms. What that means is they can only take it if they can demonstrate that they need it for their own purposes, for example, for a defence base or something like that, and then they have to pay you for it, and you have the right to go to court over it. But, in the Territory, the High Court has already said that that does not apply. They can walk in and say: 'We want to put a radar station just outside Pularumpi' and they could come in here and say: 'Right. We are taking that bit of land'. If necessary, they would amend the Land Rights Act to say that that land is excluded. They have the power to do that, under this section 51 here which says: 'The acquisition of property on just terms from any state or person for (inaudible) respect that the parliament has power to make laws'.

In section 122 of the Constitution, which is the section that deals with the Northern Territory, it says: 'The parliament may

make laws for the government of any territory surrendered by any state to and accepted by the Commonwealth' - and that applies to the Northern Territory - 'or of any territory placed by the Queen under the authority of and accepted by the Commonwealth or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the parliament to the extent and on the terms that it thinks fit'. In other words, in layman's language, that says that they can do what they like with us, and that includes giving us the right to have a government or taking it away from us if they do not think we should have it any more. That is pretty heavy stuff, isn't it?

Mr NICHOLSON: If I could just explain that. The High Court has held with that 122, that the Territory's power is not qualified by that 51(31). So, if one was acting under 122, it does not have to provide just terms.

Mr HATTON: That is right. That was that High Court (inaudible) Tower case.

Mr NICHOLSON: It was a Papua New Guinea case.

Mr HATTON: That was when New Guinea was a territory of the Commonwealth - Bougainville, when the traditional owners of the land wanted payment when they put the mining company on there. The High Court said the government did not have to pay. That is an example.

If you want to work to overcome those problems, start writing the rules and, after you have the rules in place, after you know what you want down the road, then discuss how you become equal with everyone else in this country. You cannot even talk about that until you have done this job because you do not know what you want.

Mr WHITING: Obviously, the biggest hurdle, as far as a constitution for the Northern Territory goes, will be land rights. This is my personal view. I think the referendum taken in 1967 or 1968 ...

Mr HATTON: 1967.

Mr WHITING: ... whether rightly or wrongly, I think the average person in Australia thinks that land rights has gone well beyond what most Australians envisaged. Definitely some sort of compromise has to be reached in the Territory because otherwise Aboriginal people will be out-voted on it, that is for sure, unless some perspective and some sense is brought into it. Whether rightly or wrongly, I think that has to come up because if it gets to heated debate and that sort of thing over it, it will set one side against the other and the Aboriginal people will not (inaudible).

Mr HATTON: My reading from going round the country is that white people in the Territory are not happy with a lot of the land rights and to say they are would be wrong.

They are not against land rights. They are not against the Aboriginal people and people having ownership of their land. That is not the issue and, except in very rare cases, most people are not saying they want to take the land back from Aboriginal people. The concern in the non-Aboriginal community is the belief that Aboriginal people have some rights that those other people do not have, and they regard that as being unfair. Would that be a fair comment?.

Mr WHITING: I suppose so.

Mr HATTON: And, they are looking for equality also.

Equally, I go around to Aboriginal communities, and they believe that they do not have treatment equal to that given to the European community on health, education, housing, power and water services, access to jobs for the kids, and, a whole lot of things like that. The thing is out of balance, both ways. There is no point in me standing here trying to talk it through, and there is certainly no good in someone in Canberra trying to do it. If we are going to make this Northern Territory a decent sort of a place, the best thing is to put everyone in the same room and start talking and try and to come up with a set of rules that everyone is happy to live under, or is prepared to live under. That might be a better way to put it: rules they are prepared to accept, to give everybody a bit of breathing room.

As much as anything else, I think it would be a great help if there was some definition of how long this whole acquisition process under the Land Rights Act is to continue. If people knew what the end picture was going to be on that, they could say: 'Okay, let us stop that fight. We have got that done. Now let us work out where we are going from here'. That is another point that is valid too, isn't it, arguments over land claims, and those sort of things?

But it is not going to be easy. I did not come here to say that we have an easy job in front of us. But then again, really important things are never easy to get right.

Mr WHITING: Even amongst the Aboriginal community, some people are pro mining some are against mining. I think they have to sort out amongst themselves too what they really want. I think it would be hard enough to get a compromise there, let alone to get a compromise with (inaudible) the government.

Mr HATTON: I think what will be essential is not to try to put into a constitution the entire Land Rights Act. I mean, the whole of the administrative structure of land councils, all in place, identical and forever. What is the real core substance that you are talking about? The core, the heart of it, that is what you put in a constitution. The law deals with the bits and pieces on how it is operating. You can set some process in place over it, if you want to, but do not try to lock everything into the constitution, because that would also lock it up for future generations. It might be that people will want to go about handling and managing it in a different way in the future. There has to be a balance between what you put in a constitution, what you put in a law and what you put in regulations.

Mr RIOLI: What if, at the end of the day, the majority of Aboriginal people decide not to have a state?

Mr HATTON: That is after we have done this. We then ask the question about becoming a state.

Mr RIOLI: But what, at the end of the day?

Mr HATTON: At the end of the day? I think the reality on that day is that, unless there is substantial support from all sections of the Northern Territory community - and that includes the Aboriginal community - it will not happen. It will need substantial support, not just the entire population ...

Mr FIRMIN: There has to be a very strong will from the majority of people.

Mr HATTON: But, understand that, once we get this constitution written and Aboriginal people as well as white people vote yes for that constitution, what I think you are going to need to do then is go to the federal government and say: 'Look, we want you to put this into law to replace the Self-Government Act, so it becomes the Northern Territory Constitution Act. That would then become the way we operate as a self-governing Territory, so that constitution comes into operation.

It is essential that we get a constitution in operation even before we become a state because, under clause 106 of the Australian Constitution, it says:

a constitution of each state of the Commonwealth shall, subject to this constitution, continue as at the establishment of the Commonwealth or as at the admission or establishment of the state, as the case may be, until altered in accordance with the constitution of the state.

That means that, if the constitution is in operation, if it is working when you become a state, then it can be changed only by the state in the way the state constitution says, so the federal government does not have a say about what goes in the constitution. But, if a constitution is not in place when you become a state, and later on you make one, there is an argument that the federal government can interfere and change it, if they want to. So, if you want the constitution to be the property of just the Northern Territory people, then you have to have it in place before you become a state. It has to be in place even while you are still a Territory.

Mr RIOLI: What would happen ... ? Mr HATTON: Then, after you do that, people like me will come around and say: 'You have got your constitution in place. You can see how we are operating. When do you want to become a state?' They will ask that question. Then they will ask you how many people we should have in the House of Representatives? What power we should take. Whether land rights should become part of the new state operation, and so on. At that time, those questions will be asked.

Then, if the Aboriginal people say 'no', well, the federal government has to agree with it. If the federal government says: 'If you cannot get the Aboriginal people to agree with it, we are not going to do it', it will not happen. That is why everybody has to be part of this.

Mr FIRMIN: Also, if the majority of Aboriginal people did not want it, we would find also that there would be a large body of the white population who would not want it either.



Mr HATTON: That is right.

Mr FIRMIN: So, there would be no way that anything could be forced through. It is something that we all have to get together on and work out.

Mr HATTON: I do not think it is fair to say ...

Mr SETTER: No, it is not. Of course, it is not.

Mr HATTON: People are going to think for themselves.

Mr SETTER: They have all got their own views, even amongst the Aboriginal communities, the same as with the non-Aboriginal communities.

Mr BROGAN: So we cannot become a state without a constitution?

Mr HATTON: No. You cannot even ask the question until you have done that. That is the point I am making. You do that job, then you think about statehood, after that.

Please, there is one point I do think we should make. Whether it happens in 1 year, or 5 years or 10 years, or in 20 years time, you must recognise that one day the Northern Territory will become a state. I do not know when, but one day we must and will become a state, if for no other reason than to overcome the problems we are talking about, to stand as equals. There are no special money benefits. It will not cost us anything but also we are not going to earn any extra money for the Territory by becoming a state.

Mr WHITING: Well, it would in one way, wouldn't it? You would get a lot of money from the mining that you don't get now.

Mr HATTON: Yes, you do, but that gets offset against the grants because of the way the Grants Commission operates. There are no financial benefits or costs from statehood. Statehood is all to do with rights.

The way it operates is that we are now funded exactly as if we are a state. The way that that operates is that there is an organisation called the Grants Commission, and we have to prepare submissions for it. It looks at what it calls the 'standard states', based on New South Wales and Victoria. It says what are the range of government services and government facilities that the standard states provide and how much it would cost to provide that range to people in the Northern Territory. That involves things like health and education services, police, fire and emergency services, labour and administrative services, Treasury - all the functions that our government carries out.

They estimate how much it would cost for a reasonable range of those services, and they calculate that out, on what we call a factor assessment method, using the same formula they use for the states. Then they ask, if we charge the same sort of taxes and charges as are charged in New South Wales and Victoria, what our revenue raising capacity is. How much money can we raise, through the same taxes and charges? They work out how much our revenue raising capacity is and then the difference between those, roughly, is the amount that we get by Commonwealth grant.

They divvy that up, and they pool the money in what is called the Commonwealth/States tax-sharing pool, and they share that out between the states. That is what they do with at the Premiers Conference. We are in that pool now. We get our share, in the same way that the states do. Now, we always argue that we do not get enough, where it is a legitimate argument, because the Commonwealth decides how big that pool of money is to be, and then we argue about what share we get from it. If they make the pool smaller, all the states get less money. If they make the pool bigger, the states get more money.

Every state gets funded by the Commonwealth. New South Wales receives about about 60% of its money from the Commonwealth. Now, if suddenly we got royalties, from the uranium mines and the Coronation Hills, and the offshore oil and gas, that lifted our revenue raising capacity so it closed that gap off, ...

Mr WHITING: You are no better off.

Mr HATTON: But you are no worse off either. The only way you make more money for more spending, is if you expand

your economy, if you make more industry and more jobs ...

Mr WHITING: (inaudible).

Mr HATTON: (inaudible).

To create wealth, you have to go to work, open up new industries and create an economic base. You build your population and that builds up your tax base. But to get the population, you have to have jobs for the people to do, and so on. That is how you expand, as a Territory or as a state. But, you are not going to lose money by becoming a state. People get frightened that they will go broke because they cannot afford to be a state. The reality is that we are operating as if we are a state now, financially. On land rights there will be argument. The whole issue of having these human rights written into a constitution has led to so many arguments in Australia. They held a referendum to try and get a Bill of Rights and we have had arguments about formulating a Bill of Rights. Some people do not think that should be put into a constitution. Some people think it limits the people's freedom by writing it down, and there are arguments about that too.

I think that is where the main disputes will be, on the issues of rights. I think these other matters will be sorted out. Most people will come to agreement on those reasonably easily - the (inaudible) of parliament, how you elect people, what the Governor can do and what the courts can do - when you get those things together, I think the real discussions and arguments will be about those rights. But at least let us get together what we agree on and then start talking about the things we have arguments about. Then we can all sit down and talk about it.

Does that answer your question?

The reality is that, if the Aboriginal people do not agree with it, it will not happen and it is the same if the white people do not agree with it - it will not happen, and that will be sad. I am confident though that the more people learn about this and understand it the more they will demand it.

Mr FIRMIN: It gives us a good opportunity to get together and talk to each other about the things we find important.

Mr HATTON: That is what the reality is going to be.

Mr BROGAN: With the land rights for the Aboriginals, all you need is a dozen or so politicians to get in who think like Joh, then the land rights will get kicked right out.

Mr HATTON: Dead right.

Mr SETTER: That is right.

Mr EDE: But not just federally. We are talking now about developing this constitution and how it may or may not have various rights in it. Those rights will not be included automatically; you will need to demand that they be included and say: 'We want to have them in there'. There will not be anything in there about land rights unless you demand to have it in there. If you do not say anything about them and do not say: 'This is how we want to have it locked in', the most likely thing that will happen is that land rights will end up being moved from the federal government down to the Territory government.

We talked before about how, if there were enough votes against land rights in the federal parliament - and we have only got 1 vote in that parliament - the federal government could turn around and wipe out land rights. If it came to the Territory government, well, in the Territory you only have 1 vote and a Territory government could turn around and wipe it out, because it would be in that act.

Mr BROGAN: Then it is going to be in both.

Mr EDE: I believe both would be great. Getting it into a constitution would be great, locking it into a constitution, so that it does not matter which government is in power up here, they cannot be the ones that decide whether or not to knock off land rights. It has to go to a referendum of the people, and those things will be so entrenched, as they say, tied in there, that they will have to have a bloody good reason to want to change anything. It will have to be made so that it is not just a matter of non-Aboriginal people agreeing and Aboriginal people going down on racial lines. It has to be that, basically, people have had a look at it and said: 'We reckon we can make it weaker or stronger', and it may be that everybody wants

to make it a bit stronger in the constitution. Whatever change they want to make, there will need to be good strong grounds for what the people need for the back-up.

Mr FIRMIN: As Brian said earlier, when we started, the reason why the CLP and the ALP are both together on this is because we both believe in it, so it is not likely that the present government will try to get rid of land rights.

Mr EDE: No, but we are doing this constitution for a long time down the track, for 100 years or 200 years.

Mr FIRMIN: I cannot think that we would never get an opportunity to put land rights in the constitution in some form or another.

Mr HATTON: That is right.

Mr SETTER: But the reality is that, in the Northern Territory, unless it is written into a constitution, you will have no protection for your land rights, none whatsoever, other than an act of parliament which can be amended or rescinded or whatever at any time.

Mr TIPILOURA: Not even in the Commonwealth one?

Mr SETTER: No, not even in the Commonwealth, Stan. You have no protection in the Commonwealth right now.

Mr TIPILOURA: Not even an act of parliament?

Mr BROGAN: (inaudible).

Mr EDE: The ideal would be if it was entrenched in the Australian Constitution, but that is a massive ...

Mr SETTER: That is an interesting point just as ...

Mr EDE: Virtually nothing has ever happened.

Mr SETTER: That is an interesting point, because even ...

Mr BROGAN: Even if you had that land rights in one, like if you have it in the state constitution, the Commonwealth government can still wipe it out.

Mr HATTON: If we ever come into ...

Mr EDE: If we could have it in the other constitution, in the national constitution, that would be really tied up.

Mr BROGAN: Can the federal government overrule anything that is in the ...

Mr FIRMIN: But if we ever got to a proper constitution in the Northern Territory ...

Persons talking amongst themselves.

Mr FIRMIN: If you get it in the constitution of the Northern Territory, and we became a state, land rights would be protected with the constitution so, within a very short period of time, the rest of Australia would find that the pressure would be so great in the states that that would probably take place. You would see land rights.

Mr EDE: Yes, quite possibly in Western Australia and places like that.

Mr FIRMIN: Certainly in Western Australia and in Queensland.

Mr SETTER: It is well worth noting that even the current federal Labor government has not attempted to entrench land rights in the Australian Constitution. They have not tried to do it.

Persons talking amongst themselves.

Mr RIOLI: We have to get the people to understand it properly first ...

People talking amongst themselves.

Mr HATTON: ... (inaudible) you get those sort of wars going on too. That is, interpreting what that says. You will not get rid of those fights. It is like uranium mining. It is all very well to get control of uranium mining and operate here. We do the environmental assessment, get the mining approvals and all the rest of it, but the federal government, under its foreign affairs power, issues export licences and you cannot send anything overseas without an export licence from the federal government. So if the federal government does not want any uranium mines to go ahead, it says it will not grant an export licence, so you cannot sell it to anyone.

Mr EDE: That is whether you are a state or a territory.

Mr HATTON: Yes, whether you are a state or a territory. So it will not solve every problem. It will not make us better off than they are in the states, but it will stop us from being worse off.

Mr EDE: You mean, if we have a constitution?

Mr HATTON: Yes.

Mr SETTER: It is the first step.

Mr HATTON: The federal government will still be there. But where have all the big fights been between the Northern Territory and the federal government? They have all been over matters where the federal government is involved in activities in the Northern Territory which are done by the state governments everywhere else in Australia. Land administration is a state government function, except in the Northern Territory in respect to Aboriginal lands.

Half our land is administered by the Northern Territory and the other half is with the Commonwealth. It is not even the Land Rights Act as such that is the main problem with that. Really, it is the fact that, because it is a Commonwealth law, it has a clause that says: 'Northern Territory laws shall apply on Commonwealth land to the extent that they are not inconsistent with the Land Rights Act'. Well, that could mean anything to anyone. It is a great clause for lawyers to make money through. We had to go to the High court to find out whether the Control of Waters Act applied on Aboriginal land.

There are 400 or 500 acts of parliament, so do we have to do that with every one of them? Every time you have a meeting, do you have to check it out? Because the Land Rights Act is a federal act, there is a whole network of laws in the Northern Territory and that creates confusion, which is where most of the fights come from. It sits differently to everything else. That is where a lot of the arguments are. They are not about the fact that land rights exist and not about the fact that you own your land here, it is more to do with why it cannot be administered by the Northern Territory government. That is what the argument is.

Mr EDE: By the same token, Steve, one reason why it is not is because most Aboriginal people do not trust the Northern Territory government.

Mr HATTON: That is true. I am not denying that. It was interesting at Lajamanu. I do not think you were there, Brian. I was with Wesley, and we were sitting there at Hooker Creek and this came up. One man said: 'I do not trust the Northern Territory government', and I turned around to Wesley said: 'What if this man was in government, not us?'. He said: 'I do not trust him either'.

Laughter.

Mr HATTON: So it has nothing to do with the ALP or the CLP. It was just the Northern Territory.

Mr EDE: It is basically because on the other side they have 2 cracks at the Territory.

Mr HATTON: They have got what?

Mr SETTER: What did you say?

Mr EDE: They have got 2 cracks at the Territory - there is the Senate.

Mr SETTER: Oh, I see.

Mr EDE: (inaudible) people like up there is that if you have one party that is in government, whether it is Labor or Liberal, in the bottom house there, the House of Representatives where Warren Snowdon sits, up on top of that you have the Senate, where Bob Collins sits, and that is generally not controlled by Labor or the Liberals. There is one mob that sort of sits in the middle there. It does not matter which one has the power down the bottom, Labor and the Democrats have power at the top. I think that people take too much comfort from that because it has only been there since about 1977 ...

Mr HATTON: It is only while governments keep calling double dissolutions.

Several persons speaking at the same time.

Mr HATTON: (inaudible) double dissolution to get rid of the Democrats. The quota is so small, it is about 7.5%. They get (inaudible) of the vote and they get somebody in there. If you only get a half Senate election, the quota is 16% or 17%, and they cannot get that percentage raised.

Mr SETTER: It is a long time since we have had a half Senate election.

Mr HATTON: Are there any other issues you would like to raise? Has this given you something to think about?

A person: Yes, we will think about it.

Mr HATTON: We will leave some of these books with you also. That is that discussion book. There are more copies up there. This is one that gives some ideas on the setting up of a constitutional convention and, just for information, the options on how you go about making a state, it shows the way to do it. I will leave those for you.

Meeting concluded.