

PUBLIC MEETING

RAMINGING — Thursday, 4 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 G BANBUMA

Mr Ray MUNYAL

Mr Peter MILAYNA

Mr John WELUK

Ms Junie THOMPSON

Ms Virginia RUSSELL

Mr Nicholas THACKER

Mr Frank FARLEY

Ms Jeanie McFARLANE

Mr Jim MULHERN

NOTE: This is a verbatim transcript that has been tape-checked. However, due to poor recording, or many people speaking at the same time, some of the recordings were inaudible and unable to be transcribed.

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Mr BANBUMA: (Djinang language)

We've got one contact person between the Balanda and Yolgnu people and it's this man Lanhupuy. We all know him and he is based in that place where they make all of the Balanda laws in Darwin. He's the one who's protecting and looking after us and those people on the committee are our partners.

They work at the Legislative Assembly which is an important place, and this constitution that we're going to look at is hard concept to understand. This constitution is difficult because Balanda laws seem to change every day. It's important for us, all of the people in this community at Ramingining and the people from the outstations, to come and listen to this business because it's a big thing for us to talk about, especially when we're talking about mining business. Everybody should speak up not just two or three people, that's not enough power two or three. These laws (political laws) can easily overcome us. We're talking about your concerns, your lives and this place, our place, and if you don't believe what the Balanda laws say then speak up. In some cases those mining people can arrive anywhere anytime and bring their big machines in because this land we're living on has bauxite. They can bring in their big machines and bulldozers, and our houses which are allocated, protected and respected by our family groups and law can still be knocked down and demolished by these Balanda people and their machines, because the Balanda law still doesn't care for us Yolnu people.

If we stand up and talk about these issues then we are acting strong and all of these people who are workers, who are here today are our partners. Our enemies are those people who are in other departments in Darwin.

Mr MUNYAL: (Djinar language)

It's true. We've been around to lots of places for meetings and many people are concerned but are not speaking up.

Mr BANGBUMA: (Djinang language)

My brother, Lanhupuy, who we all know used to work at the Northern Lands Council and now he's working in that big place now (not clear) ... the place where they make all of the big laws, and maybe later on we'll hear (not clear) ... and get shocked by all of the laws that they're making that concern us. Yes, thank you.

Mr HATTON: Thank you for coming along and giving us this chance to meet and talk with you today. My name is Steve Hatton. I am the Chairman of this committee from the Northern Territory parliament. This committee is called the Select Committee on Constitutional Development. You will see at the back of this book that you have pictures of all the members of our committee. This committee is different to any other that has been in the Legislative Assembly before. This committee has 6 members, and they are 3 people from the CLP and 3 people from the Labor Party. Both sides have the same representation. That is because the Labor Party and the Country Liberal Party are working together on this one. We are not fighting about this job that we are working on ...

A person: For a change.

Mr HATTON: Yes - for a change. We argue and fight about a lot of things in politics, but this time we both think this job is so important that we have to work together to try and make something, as Territorians, for the Northern Territory.

Our job is to help the people to work towards making a special law. It is called a constitution. A constitution law is different from the sort of laws you are used to. You know how government makes the law, and the government changes, and the new government takes the law back the other way, and it keeps chopping and changing backwards and forwards. I know Aboriginal people say: 'Why do these white men keep changing their minds all the time. They go this way, then they turn around and they go back the other way, and they go off that side all the time'. Aboriginal people are used to Aboriginal law and it has been there for thousands of years. It goes one way, all the time, and your law tells you how people live together, what your rights are, what your responsibilities are, and how you live, and it is there all the time.

In a white man's way this sort of law is very much like the Aboriginal law. It is where all the people come together and they say: 'This is how we want this place to go. This is how we want to make this law that is not going to change'. It is a law that is going to stay there and it is going to say how people can live together. The people will make this law and set that foundation down, to say that we are going to go down that road in that direction. That is the way the people want to go.

The people then make a law that is the boss over the top of the government, and that law tells the government what they are allowed to do. It also tells the government what they are not allowed to do. In this way, the people are saying to the government: 'You can do that, but you cannot do that. You must go down that way'. It is a law that says how you go about electing the government, it says who has a right to vote, who is allowed to become a member in the parliament, how the courts work and what they are allowed to do. Also, this law says that there are some things that are so important that no government can muck around with them.

For example, people might say: 'I am allowed to vote, and no government is going to take away my right to vote. So I am going to write in the law that I have a right to vote, and the government cannot touch that'. Or they might say: 'The sacred sites have to be protected. No government is allowed to muck around and upset the sacred sites'. So you put that in this constitution law and that protects the sites, because the government cannot go against it. It is a strong law and is like a boss over the top of the government.

The government in Canberra has a constitution over the top of it. The governments in Queensland, Western Australia, South Australia, New South Wales, Victoria, and Tasmania each have a constitution over the top of them, a law from the people over the top of them. But, in the Northern Territory, we do not have one. We do not have that, and that means that the government in Canberra can do whatever they like, because if you have not got this, the federal government has got total power. They can do whatever they like without this constitution. They can take away your right to vote.

In the Northern Territory, we have the Northern Territory government. That is there because the federal government says we are allowed to have our own government. If they change their minds and say they do not want us to have a government any more, and take that act of parliament away, then there is no government in the Territory. Or they might say they want to change it and they can do that. They have the power to change that law, and they could take away the whole education system. They have the power to do that, because there is no constitution standing over the top of them to stop them.

The Northern Territory government can only do what that federal act says it can do, and the Northern Territory people were not asked about that. No one has ever gone and asked the people how they want this Northern Territory to go, how they think we should work in the future, and how we are going to stop the fighting between yolgnu and balanda. How are we going to get people to work together? How are we going to build a future for our children and their grandchildren? What do we want this place to be like for them? How do we want it to go?

Now, how are you going to set that up? You do that by writing this law, and that becomes the people's law. The people say that we are going that way, we are going to fix up our problems down that road, and we are going to make sure these rights are protected, so no one can take them away from us. This law the government cannot change. The only way this law can ever get changed is if all the people vote to change it.

Do you remember that, last year, you were asked to vote in a referendum to change the federal constitution? There were 4 questions and you had to say 'yes' or 'no' 4 times. Do you remember that? That happened because the Canberra government wanted to change the Australian Constitution, but they had to go and ask the people. The people looked at it, and the people said, 'No, you cannot'. They voted 'no'. So the government could not change it. It is the same with this. When you make this law, the government cannot change it. They have to go and ask the people if they want to change it. If the people say, 'Leave it alone', the government has to leave it alone. That is what a constitution is, and it is your law.

I was down in the Centre with Wesley's friend, Brian Ede, who is one of the men on our committee. We were in the desert country talking with the people there, and he said: 'If you have a crazy dog that is biting people all the time and you do not want it to bite too many people, you put a rope around its neck and you tie it up to a tree. If you give it a bit of rope, it can run around as much as it likes inside that rope, but it cannot get outside the rope, because it is tied up. Well, this constitution is a bit like a rope around the government's neck. They can go around as far as you want them to go, but they can not go out past that rope. A constitution is the rope that says how far the government can go. And you make that law.

That is why we have come here today to talk to you about this job that we have to do. Today, I do not expect you to say: 'Oh, I think you should do this, or you should that'. This is too important a job for that. What we are saying is that all the Northern Territory people - everyone, yolgnu, Chinese people, the lot - have all got to start thinking about this. Have a look at the stuff that has been written and think for yourself about what is important for you. Where do you want this Northern Territory to go and how do you want this to work in the future? We want to encourage you to sit and talk amongst your community about this. Get your ideas together and, later on, maybe at the end of this year or it may be early next year, we will come back when you are ready and you tell us then what you think should go in this law.

We are going all over the Northern Territory. We have been down to Kintore and Finke, and we have been over to VRD, to Borroloola and in the Barkly and around Arnhem Land. We are going to Port Keats, and up into the Tiwi country, and in Alice Springs and Darwin. We are going all over. We are visiting 59 or 60 communities and saying the same thing, because this is not a job for the politicians to do. This is your job. This is a job for the people to do.

This time we are going around to say: 'You have to start thinking about this, because this is how you can say how this

Northern Territory is going to go in the future'. Don't let the governments do it. Don't let the politicians and the lawyers do it. This has to be what the people think and has to say where the people want to go. The people must make this law and put that law over the top of the government, and make the government go down that way. That is what a constitution does. And that is how you can make a good place for your grandchildren, and a good place for their grandchildren. Then, in 100 years time, they can look back and say: 'Those old people they did a good job for us. They made this Northern Territory a good place for us'. If we do not do this job, they are going to look back and say: 'These people left a mess behind because they were too lazy'. Now, what do you want? Do you want them to look back and say: 'Those old people they did a good job. They made this a good place. They made this law that makes the Northern Territory a good place for us', or do you want them to look back and say: 'They were lazy, hopeless people who would not work. They would not do this job. They left a mess for us to fix up'?

This job will have to be done one day, and we are saying we should start now, to find out how we can make this place go the right way. We are not going to do the job for you. We will come here and help you. If you are not sure what we are talking about, we will get someone to come out here, to sit down with you and talk to you about this or that or something else, and you can go away and think about that, work out what you want and how you want this to go. After that, you come back and you tell us what you think, and all the other people in the Territory will tell us what they think, and then we will do our first job. We will sit down and put down what we think the people are saying. But we are not going to do all the writing, because we have another job to do.

For our next job, we have to put together a special committee of representative people from all over the Northern Territory, people from the Centre and people from the Top End, Aboriginal people and people from the different towns, all the different types of people - women, the whole lot. They will be representatives, people who you think can speak properly for your community. We will get them together in a special committee which we call a constitutional convention. That is just a special committee whose job it is to look at what we have done, and see whether they think it is right or whether it should be changed again, and fixed up so that it says what the people are saying.

When they have worked and worked and argued and talked about it, and fought it through and got something that they all agree with, then that goes out to all of the people to look at and to vote on. If everyone has done a good job, the people will say that that is what they want, and they will vote 'yes'. Then we will have a constitution. If it is not quite right, you say: 'No, not yet', and then they will have to go back and start working again, and they will keep working until they get this law the way the people want it. Then it will become the people's law.

That is going to take a long time. It is not going to happen quickly, but it is a job we have to do. That is why we are coming around now saying: here is your chance to start working to make this Northern Territory go the way you think it should go, so that everyone can start working together, side by side, and going down the same way. They can have respect for each other. We can each have our own culture, our own ways, but in a way that shows respect for the others too. Side by side we can build this place for everyone. It will take a lot of work, and it is not going to be easy but, if we do this job properly, we will make this Northern Territory a place that everyone will be happy to live in and proud of. It will be a place where everyone has a future. Only the people can do that. Governments cannot do that for you; you have to do that job for yourself.

We are here to help you in that process, but you have to do the job and take us down that road. That is why we are here to say: please, start thinking about this, and make sure that, in this job, you have your say. Take part in this so you have your say and the things that are important to you are properly looked after when we make this law so that, at the end of the day, when it is finished, you can say: 'Yes, that is my law. That is the people's law. And that is where the Northern Territory is going to go in the future'. That is what we are here for.

I will ask Wesley if he would like to say a couple of words.

Mr LANHUPUY: (Wangurri and Djambarrpuynu languages)

Just for the purpose of recording. Now I'm just going to talk to you in my Mother's language, otherwise my language is Wangurri, and you might not understand my language, so I'll talk to you in my Mother's language, which is Djambarrpuynu, so you can all understand because it is more understandable.

.....

Steve has already told you the reasons why we have come here today. We are bringing books and pamphlets on

constitutional development along with us during our visits to communities right throughout the Northern Territory to both European and Aboriginal communities.

This is the first committee of Parliament on constitutional development, and we are all working together as one team, both Labor Party and Country Liberal Party. The CLP is Steve's party and the ALP is mine, and both parties support these books and pamphlets on developing a constitution for the Territory. We are heading towards statehood by going through this process called constitutional development. All of the other states throughout Australia, Victoria, New South Wales, South Australia, Western Australia, Tasmania and Queensland, have a constitution which is like their bible which gives people their rights and it is written in a book. But for us mob, the Northern Territory people, we have no constitution like other people in other states.

Even today the Federal Government can easily take back the power from us if they wanted to, from our education system, our public service system, our transport and works or even our land rights.

We have our land rights laws written down on white man's papers, but they are just papers which haven't gone through any constitution to become rooted or permanent. That's why we in the Northern Territory Parliament are thinking of having a meeting for both black and white together throughout the Northern Territory for a constitution.

I've already told you that we will be visiting over sixty communities asking both black and white people, asking questions like this, "What do you think about a constitution? Do you want it or not? If you want it let us know, tell us your story. What do you want in it? What do you want for yourselves, your children and your children's children?" In the end the white man's paper will affect our children when we are gone. For our children's rights. Do we protect their rights or not? For example, their education system. Do we want bilingual education to be written in this white man's paper? Do we want to keep it strong or not? Do we want land rights to be written into this white man's law or not?

The land rights we have today is presently in the hands of the Federal Government which is okay, but it is not permanent yet. It is not written in the constitution. There is nothing in it, nothing.

So we are asking the Federal Government for our rights because at the moment the Territory Government are only servicing health, transport, community services, the public service and education. The Federal Government has control over mining, uranium mining, control of parks and land rights. let's ask them for these rights. The purpose of this committee is to visit the communities so we can tell you this story and for you to tell us your story. If you want us to come back and visit your some time next year, or at the end of the year, it's okay, we will come. It's up to you. We're not making you hurry, we're not forcing you. You look at this white man's paper and think about it, discuss it and give us your views. In this white man's paper there are many hard English words so we are going to break it up into a simple English version for you to understand.

Mr MUNYAL: (Djinang language)

These two people standing here have asked me what do these people (the committee) really mean by what they are saying? They need a clearer explanation so they can understand. These people standing over there have misunderstood what has been said here today.

(not clear) ... Do not rush these people too much with this business, they don't want to be rushed. They want to find out from us what we think as well. The committee are suggesting that we should have our own state and have our own bosses for the Northern Territory Parliament. This state will be for all of the people in the Northern Territory,

Aborigines, urban Aborigines, Chinese and other people living in the Territory.

This committee shouldn't rush our people with all of these issues that they are talking about. The issues that they are referring to are for our benefit, for all people but we need to understand what is being said, and it is for that reason that these people (the committee) have come here today.

They are waiting for us... (not clear) They are here because they want to deal with our Yolnu laws, our business.

Then these white people may decide to take it (what has been discussed) to the Legislative Assembly, but other people may ignore their decisions. It is for this reason that we should come together on this issue as one strong voice for all Aboriginal people. Then the laws will be there forever. What is decided on will be like a bible for our laws and it will remain there forever ... (not clear).

The committee and Wesley are saying that this constitution will be like a bible. The people in the Parliament are also talking about different things. They've got their own laws and they also will put suggestions into this constitution, but they will be different to ours.

These people who are here today want our ideas on these matters because they are concerned for the people of the Northern Territory and Yolnu people. They are talking about how they are going to communities, bringing the news of this constitution and talking to people first. They will then draft our ideas into a paper before a constitution is made. We must make up our mind. We must think properly and carefully before we make our decisions.

Yes, it's good that they've decided to put down these laws that they are talking about it, and when they make a decision they're going to make a decision for both Balanda and Yolnu, and that will also be our decision, our law and our story.

These people, the politicians in the Parliament, will make a strong law for us and then they won't be able to over ride it. It will stay there forever, for all of the people in the Territory .

Yes, the Federal Government will look at those laws and they won't be able to influence or change laws that are made for the constitution. It will be the people's decision as to what laws are made.

These people who have come today are here to help us. They will work for us and they will protect and fight for us... (not clear). But we must look at this law properly and in a good way.

I'm only expressing my ideas on what I think the committee has told us today. When Wesley was talking about these issues I understood him and accepted what he said as true. But other politicians come with many ideas and they are too fast in their thinking and ideas for us.

This committee was selected to help communities with these issues. They are telling people why they have come and what is important about these issues, and they are making sure that they are clearly understood by our people, because they are our people's concerns.

Mr WELUK:

Is what you are talking about already law? Are we talking only about statehood? May I ask the question, how can the NT manage with the numbers per head?

Mr HATTON: I think the question I was just asked is how can the Northern Territory manage to become a state with only a small population?' Is that right?

Ms Junie THOMPSON: (inaudible) How can we be autonomous?

Mr HATTON: Well, how can we be that? I will pick up a couple of things. First of all, we have not all the powers that a state has now, and we do not have quite all the functions that a state has. Some things are different. But already we have a parliament that you vote for - Wesley and myself. We have the parliament. We have all the public servants, the teachers, the nurses, the doctors, the police and all the people working in what we call the government administration. That is all there. It is out here. You have teachers here, and schools are being built all through the Territory. We have got all the courts in the Northern Territory. So we have all of what we call the institutions, all the things that are there now. We have

the parliament, the public service, the courts, and the taxes the same as the states have. The money we have coming in from the federal government, since last year, is exactly the same as it would be if we were a state. We are not getting any special money any more. That stopped last year. So we are not getting any special money at all for being a territory. We are being financed as if we are a state. All the things are in place, the only thing you have not got is constitutional rights. That is what you do not have.

Well, you have all the responsibilities. You are paying the taxes. You are electing governments. You have a public service to support. You have all those things in place, but you have not got the rights. We are already managing as if we were a state, but you do not have the same rights, because we are not a state, and what you have is not protected by a constitution. The federal government could take it all away tomorrow. They have the power. They can just take the whole thing away. What the government gives you, the government can take away.

Ms THOMPSON: So can a state.

Mr HATTON: A government can, unless you write it up in a constitution.

Ms THOMPSON: You can amend that constitution too.

Mr HATTON: Only the people can.

Ms THOMPSON: You can make by-laws.

Mr HATTON: No, you cannot. Not for a constitution.

A person: Yes, you can. A state legislation can.

Mr HATTON: By-laws to a constitution, Graham?

Mr NICHOLSON: I have never heard of it.

Mr HATTON: No. You cannot do it. I am not talking about a school constitution or a ...

Ms THOMPSON: I know what you are talking about.

Mr HATTON: All right. This constitution that is it. It is the law, it is there. There are no by-laws to a constitution. If the government tries to go outside that ...

Ms THOMPSON: Yes, but you can amend it by taking it to a referendum.

Mr HATTON: That is right, yes you can.

Ms THOMPSON: If you wish something to be changed, once the state constitution is made, it can be changed.

Mr HATTON: Only by the people.

Ms THOMPSON: Yes.

Mr HATTON: Yes, but it has to go to the people.

Ms THOMPSON: But, you did not tell the people that ...

Mr HATTON: Yes, I did.

Ms THOMPSON: ... an Australian state, the Australian Constitution can go above that.

Mr HATTON: The Australian Constitution is there now.

Ms THOMPSON: It is above the state too. You have to tell them that.

Mr HATTON: No, it is beside the state constitutions, actually.

Ms THOMPSON: No, it is above the states.

Mr HATTON: In some respects it is, yes.

Ms THOMPSON: It is above the states.

Mr HATTON: Okay. I will explain that fully.

There is 1 constitution for the federal government of Australia and that covers the whole of Australia. That constitution says that the federal government can do these things and a state government can do those things. It separates them out. Sometimes it says that both the federal and state governments can do certain things but, where both the federal government and a state government can both be in it, if the federal government makes a law on that subject, then that federal law stands over the top of the state law, but only in those areas. That is how they fit together.

When we write a constitution here, our constitution for the Northern Territory cannot go outside the constitution for the whole of Australia. For example, the most important part of that is that you cannot make the Northern Territory a republic. You have still to have the Queen as the head of state because the Queen is the head of Australia and that goes through to the states too. So, if you think we should be a republic, you do not do it for the Northern Territory. You have to do it for the whole of Australia. Those are the differences.

But, right now, you need to understand this. That federal Australian Constitution and the rights it protects, those rights belong to people who live in the states, because Australia is a federation of states. People in the Territory are outside that and, in layman's terms, section 122 of the federal constitution says that the federal government can do what it likes in the Northern Territory. There are no limitations. And I will say this on the federal constitution: they have the power to acquire property, without compensation. They cannot do that in the states because the Australian Constitution says they cannot, but they can do it in a territory.

I will say this too: there has been a lot of talk about land rights. The Land Rights Act is there. It is an act of the federal parliament. Now I do not believe any government is going to take it away, but they have the power to repeal that act of the federal parliament and, if they do, then land rights are gone, because it is not protected by the constitution. There is nothing to stop the federal government taking it away, except politics. It is a federal act of parliament.

I know Wesley was talking to you, and a lot of people have said: 'Well, how can you trust this Northern Territory government with things like that?' Well, if you cannot trust the government about something, you put it in there. That is to stop the government doing things you do not want it to do. It takes the power away from the government.

Mr WELUK: Steve, if we put it in here, will it exist for maybe 10 or 20 years, and be constant?

Mr HATTON: Yes, until such time as the people change it. Only the people can change that. You can write in there that only the Territory people can change that, and they have to vote, like you did last year on the federal one when people said: 'No, do not change it'. Not only that, when you look at some of this stuff, you will see what they call entrenchment. That is when the people have to vote. And you can have different levels of entrenchment. You can say that more than half of the people have to say 'yes' to change it. Or you can say that three-quarters of the people have to say 'yes' to change it, or 90% of the people have to say 'yes' to change it. Different parts of it can be made tighter inside by different levels of entrenchment.

Mr CRAWFORD: Who says how deep the level of entrenchment will be?

Mr HATTON: You do, when you write the constitution. You put that into it.

Ms RUSSELL: What if the Northern Territory government wants to develop mineral resources on Aboriginal lands and they think it is imperative for the good of the state's development? Can they override, say, the wishes of the Aboriginal people in these communities?

Mr HATTON: That is why I am saying that you have to determine whether you are going to give the government those sorts of powers. That is how the people write a constitution, to decide those sort of things.

Ms RUSSELL: What if the Aboriginal people are in the minority, and the majority of a state votes that maybe uranium

could be exploited out on these communities, but the people do not want it?

Mr HATTON: Let us just take it a step at a time so we come back, because we are now moving beyond the constitution and beyond the next decision which could be statehood, and assuming it has transferred powers to the Northern Territory at statehood. There are 3 sets of steps you have taken to get to the question you are asking me.

The first thing you do is get a constitution in place, that all the people agree with. When that is made, to bring it into operation, we have to go to the federal government and say: 'This is what the people have voted for. Now, we want you to change the Self-Government Act and make that a Northern Territory Constitution Act. So then this will replace the Self-Government Act on how we are going to operate'. It will still be a federal act, but it will be there and in place, to put the constitution in place. When that is there and going, and everyone says, 'Yes, that is the way we want to go', then they say: 'Well, do you want to become a state?' Then the people talk about that and say that, yes, they want to become a state, and that might happen in 5 or 10 or 20 years time. Then they become a state, and this constitution is locked up for the Northern Territory people.

When they become a state, they discuss what powers are to come across. When all that has happened, say, all mining, including uranium mining and mining in Kakadu and all those areas will transfer to the Northern Territory. Apart from uranium, all mining is now under the control of the Northern Territory government.

When all that happens, if the Northern Territory government says it wants to mine uranium, do not forget there is still a federal government up there, and you cannot export anything out of this country without a federal government licence. So, even though we might get a mining tenement, if the federal government will not give them an export licence, they will not open a mine, because they will have no one to sell it to.

Ms RUSSELL: What if they do like the idea? What if the federal government says that is fine, go ahead?

Mr HATTON: Okay - and that goes ahead. The question you are asking is whether the individual landowner has the right to veto mining on his or her land.

Ms RUSSELL: Yes, that is right.

Mr HATTON: That is a question you have to deal with at the beginning, when you write a constitution. Because you can write those sort of things into there if you think they are important, and if all the Northern Territory community, as a group, come to that decision. And ask yourself the question: should any landowner, white or black, have that right of veto? That is another question you might want to ask. Or do you say that there should be no veto.

I am not going to say: 'You do this or you do that'. I am saying that that is your job. That is why this has to become the people's law.

Mr THACKER: Does the Australian Constitution have anything in it about human rights.

Mr HATTON: No, it does not.

Mr THACKER: Then, if we are putting a state constitution together, and plan on saying something about human rights, which you say here, and you have already said that, in the state constitution, we cannot go above the Australian Constitution ...

Mr HATTON: Go outside the Australian Constitution.

Mr THACKER: ... go outside ...

Mr HATTON: You cannot break it.

Mr THACKER: Yes. How can we implement this then?

Mr HATTON: Well, the Australian Constitution is silent on the issue of human rights.

Ms THOMPSON: It comes under common law, doesn't it.

Mr HATTON: That is right. It operates through the common law system, the courts and the judgments of the courts going back for centuries.

One of the arguments in the Northern Territory will be about whether we should have a kind of written Bill of Rights statement inside the constitution, and there will be arguments about that, for sure. But, if the people here say: 'Yes, you can write them in there', then they become binding in the Northern Territory, and they are binding on your Northern Territory government. We cannot put those rights in here and make them apply to the federal government. That is all. We can make them apply to the Northern Territory government, but not the federal government.

Ms THOMPSON: When you talk about human rights, you've never put the (inaudible) amendments in (inaudible)?

Mr HATTON: I am not putting anything in here. I am saying that you have the right to raise and debate that, and argue it out with other Territorians. Nothing is excluded from being argued about. I am not going to say: 'You are allowed to do this, and you are not allowed to do that'. I am saying to you that, if you think that it is important that certain things go in there, you put them up, and you argue them out with other people in the Territory. If you can convince them that they should have it, then they will put it in there. All right? I am not going to do the job for you. I want you to start your minds working.

Mr LANHUPUY: I just want to clarify a point that was raised earlier in relation to the veto power that Aboriginal people have on our land. At the moment, the legislation gives us that power to veto or give consent to a mine for a period up to 5 years, on Aboriginal land specifically. After 5 years, a mining company who has an interest on that lease can come back again and ask a second time. If the people say 'No', then that veto exists for about another 5 years.

Ms RUSSELL: Is that federal ...?

Mr LANHUPUY: Yes. That is under federal legislation at the moment.

Mr HATTON: That is in the Land Rights Act.

Ms RUSSELL: Thank you. But it only lasts 5 years, then it is renewable?

Mr HATTON: Yes.

Ms RUSSELL: And, if this is not written in the constitution, anyone could step in and say: 'That is waived now. We can go in and mine there'. Could they do that?

Mr HATTON: If that is what the people of the Northern Territory argued through. It is a question of whether you write into the constitution a guarantee of the right of veto, or whether you leave the constitution silent on that question and argue it out in the context of legislation.

Ms RUSSELL: Well, would Aboriginal people be in the minority in the Northern Territory?

Mr HATTON: Yes, they are 22% of the Northern Territory.

Ms RUSSELL: So their decisions could be vetoed then? Could they?

Mr HATTON: No, it really is not that simple. This whole thing is not going to work - and I was saying this same thing in Alice Springs and Darwin - this whole thing is not going to work unless it works for everyone. You cannot just freeze out a quarter of the population.

If you do not believe that the Territory people are honourable enough not to do that, if you do not believe that, take heart from the fact that, down the road, to get this whole thing working, we have to go past the federal government, because they are still over the top of us. The federal government is not going to let something happen that will chop out a quarter of the population. They will make sure those people are looked after properly.

Ms RUSSELL: Do we have that guarantee?

Mr HATTON: It is a better guarantee than having no guarantees on anything in the future with the federal government. You see, you have no guaranteed rights now. There is nothing to lose through this. All this does is give you rights. It does

not take them away from you. A constitution will give you rights. It limits government.

In Britain, they do not have a written constitution, and the government is all-powerful. There are no limits on what that government can do. They can pass any law on anything. In what we call a constitutional democracy, like Australia, the United States and Canada, where we have written constitutions, we limit the power of government through those constitutions. This is the way the people maintain the ultimate power in a democracy.

So, you have everything to gain in this, and nothing to lose. It is a question of how much you try to put in there to lock it up, and remembering when you make that law, that you know how hard it is to change a constitution. If people are not sure about a change, they will leave it alone. They will not touch it. It is very hard to change it. So you have to work very hard to get that right for the future, because it is going to set the direction for generations to come. That is why we are going out of our way to say: 'Get involved. Have your say. Speak up'. Don't leave it to somebody else, don't walk away from that job. It is too important for you to do that.

Ms THOMPSON: In the states - South Australia and the Northern Territory are the only ones for that have land rights, aren't they?

Mr HATTON: No.

Ms THOMPSON: Yes.

Mr HATTON: A Land Rights Act as such, yes.

Ms THOMPSON: Unless the Australian government interferes ...

Mr HATTON: You said once that Victoria does.

Ms THOMPSON: Victoria has got a land rights act. New South Wales is thinking about incorporating it.

Now, in South Australia, they get title. In the Northern Territory, at present, they do not get the title to the land. They have land rights, but they do not get the title.

Mr HATTON: The owners?

Ms THOMPSON: They are in trust.

Mr LANHUPUY: It goes to a land trust.

Ms THOMPSON: But in South Australia, they own that land. Now, is it going to be different for the Northern Territory people?

Mr HATTON: Well, all I can say is that, in the Northern Territory, firstly ...

Ms THOMPSON: In Queensland they have no rights at all. There, they come in and move houses and everything. And they have a constitution.

Mr HATTON: Yes, that is right.

Ms THOMPSON: Western Australia will not even look at land rights now.

Mr HATTON: Yes. Well, I cannot answer this question, and I will tell you why. The first thing that it is important to know is that everybody in the parliament, the CLP, the Labor Party, and I think even the National Party, are all saying there is a guarantee of a continuation of land rights. We are saying that if you do not trust the government about that, then you have a way of protecting yourself through a constitutional provision, through constitutional rights. That is to have land rights.

As to what sort of land rights you have, how the title to the land is to be held, what can be done with the land, who has the decision-making rights, the roles of the land councils, and how the thing operates - and I am talking from the government side now - we have always said that we will not say that it is going to go this way or that way. We have said that we want to sit down with the Aboriginal people, the owners, and ask how they want it to work. All the time it has always been

people saying: 'We are telling you that you are going to do it this way. We are telling you to do it that way'. We are saying that what we should do on something like land rights is sit down and talk about all the problems. We should work it out and the Aboriginal people should say how they think it should work.

Do you think the Land Rights Act is perfect now, that there are no changes that could make it better? I don't know. Perhaps you do. Some people think that some things could be changed in it. What we are saying is that, as Northern Territory people, we should sit down together and talk about it, and sort out what is the best way to do it. You do not want me to tell you it has to be done this way, or it has to be that way.

Ms THOMPSON: No, but you need to guarantee to the Aboriginal people that they are going to have land rights incorporated into the constitution.

Mr HATTON: I will give you a guarantee now. The only thing that the government has ever written on land rights in this exercise is a book, and we will send copies of this book to you. Wes, can you bring them out, or I will post them out.

Mr FARLEY: Send them through OLG.

Mr HATTON: I will get the OLG people to bring some copies out. It is called 'Land Options on Statehood'. The one thing it says is that, on statehood, there is a guarantee that land rights will continue. It talks about the different ways in which we can make sure it continues, and how you can get something like an insurance policy against the government - and the top insurance policy is a constitution. So, there is guarantee of that.

Ms THOMPSON: Are you going to have a select committee also on constitution rights there in the constitution?

Mr HATTON: On the constitution? Yes, we are members.

Ms THOMPSON: When you have that select committee, the majority of Aboriginal people will be sitting there to look at protection for Aboriginal rights. Now, a lot of these people do not understand everything that is going on. Are you going to have someone there translating for them and providing legal clarification on a lot of things?

Mr HATTON: That is why we have been going really out of our way. We have been talking about how we can get information out in language, on videos, on tapes, educational materials.

Mr WELUK: Employ more people from each local community that know the languages.

Ms THOMPSON: But, I mean, on the select committee?

Mr HATTON: On the select committee? Yes, well remember that this select committee is only part of the job. Our select committee will be sending stuff out to people. There are only 6 of us, and we are like the first step going down a long long road.

Ms THOMPSON: How many Aboriginal people have you got on this select committee?

Mr HATTON: One - one out of 6, at the moment, and that is Wesley. We are all members of the Legislative Assembly. We are all politicians, if you like.

Ms THOMPSON: I know that!

Mr HATTON: Yes, right!

What I am saying is that the real job will be done when we pick that constitutional convention, and one thing we are asking is how we will go about setting that up. You tell us that. What sort of Aboriginal representation should there be on that constitutional convention? What sort of things should they be doing to make sure that the communities' views are going through to that convention?. You tell us that. Think about it yourselves and, when we come back, you tell us. Because, if we sat down by ourselves to work out what goes in that constitutional convention, I bet you somebody would say: 'Oh, they just rigged it.' Wouldn't they? So, we are not going to do that. We are going to ask you for your views.

When we come back, we will want submissions. They can be in writing or they can be verbal. Just talk and tell us what you think anyway. They can come from a group, or they can come from individuals. If different people have different

ideas, we want them to come forward individually and to get involved. We want people to have their say.

Wes, do you want to add to that?

Mr BANBUMA:

We want to get information from you. This is just finding (not clear). Is there no constitution or law, yet?

Mr LANHUPUY:

Yes, nothing yet.

Mr BANBUMA: That's coming

That's coming to us. We will think about this information so we can learn from it.

Mr LANHUPUY:

Yes.

Mr BANBUMA:

I'm thinking this just for myself, myself. I do not know enough about this or that. I don't know enough, yet.

Mr LANHUPUY:

Yes, for that reason we will come again to give you more information, and I'll come back to see you again.

Mr BANBUMA:

Not yet. When we are ready we would like to know more about your policy and then we will go through it step by step. That's what I see. If I go too far or too fast ... (not clear). What will you do then? (not clear) If we give you mob the authority, if we give you the power for this one. What will you do with it? We need to do our thinking before you mob take on the power.

Mr LANHUPUY:

What do you want? If you want us to put your power into this paper you need to let us know.

Mr BANBUMA:

Will you accept it?

Mr LANHUPUY:

Yes, we will accept it and put it into the constitution. You must talk about this again.

Mr BANBUMA:

You mob, don't take the power away from us.

Mr LANHUPUY:

No, we can't. This power will over ride us because this power is beyond us. It's bigger.

Mr BANBUMA:

Like Yolnu thinking, right? Like Yolnu and Balanda?

Mr LANHUPUY: Northern Territory.

Mr BANBUMA: Northern Territory people.

.....
Don't give us your ideas. Don't tell us how to think, but you listen to Yolnu people, Northern Territory people.

Mr LANHUPUY:

Our (the committee's) ideas are in this paper. They're our ideas and then we present them to you.

Mr BANBUMA:

Whose paper is this? Who did the planning? Whose programme is this?

Mr LANHUPUY:

(not clear)

Mr BANBUMA:

Why don't we have a constitution? Why don't we have power in the Northern Territory for Chinese, Indians, Indonesians, halfcastes and Balanda, our power. If Federal people or government people come (not clear) they can come anytime they want.

Mr LANHUPUY:

(not clear)

Mr MILAYNGA:

One question for you about the constitution. What is very important is the changes that will be made in the NT when statehood happens. What I'm trying to say is, that I was thinking about the old people. I'll talk on their behalf. You said that the Northern Territory has no power. Is that right? And if we change the NT into a state then what will happen? Will we then have power? For example, if white people come and say, "Hey we want to do some exploration work on your sacred sites." Will we have the power to say, "No". Is this true or not? What will happen in the future, talking about this statehood.

Mr LANHUPUY:

Last time a lady asked me the same question. And I said to her, if you don't trust the Labor Party or Liberal Party then say, "I don't trust them." They might later change and take away my land rights. It sounds that you might have this question in mind. Okay. If you express what you are saying and put it down in the constitution that constitution is then more powerful than the Parliament. Part of what will be written into the constitution will be your concern over land rights. It is your right to put land rights into the constitution, and it will be a first in the history of Australia as all of the other states don't have it.

If we Yolnu people fight for our land rights to be written into the constitution then it will be a first. The power in the constitution will overcome the Parliament, and it will protect our freedom, religion, and other things to do with power.

Mr MILAYA:

The constitution can do that?

Mr LANHUPUY:

Yes.

Mr MILANYA:

The other thing was back in 1970, 1901? Is that right?

Mr LANHUPUY:

In 1901.

Mr MILAYNA:

First Victoria, Queensland and Western Australia became states. Is that right? Maybe what I'm saying is what the old men are thinking because when those other places became states their system changed.

Mr LANHUPUY:

Yes.

Mr MILAYNA:

You see? It doesn't matter if I talk straight? Then they started to build big cities, and so there are big cities now. This is just maybe what they (the old men) think.

Mr LANHUPUY:

And this is the reason, the paper is here. It's one of the reasons why we are giving you the paper and saying, "Here's the paper, think about it and discuss it amongst yourselves about what you think. Would you like the Northern Territory to develop like the other states or do you want the NT to develop in different ways?

Mr MILANYA: I see.

Mr LANHUPUY: - That's why

That's why this paper ...

Mr MILAYNA:

... Yes, yes alright, yes.

Mr LANHUPUY:

The style of life or how we Territorians should live ...

Unknown :

It's just that I saw in the paper made in 1901 those who gained statehood (referring to other states) ...

Mr LANHUPUY:

They were the last to get it, yes.

Mr MILAYNA:

Those towns became bigger after statehood. What happens if we change and our towns became bigger? Is it the right way? I'm just thinking. Will we find a good way for Yolnu people? What changes will statehood bring? Will it change our law? Will you follow our way or will you follow their way?

Mr LANHUPUY:

We will follow your way, for those who vote for us.

Mr MILAYNA:

Yes, that was my question.

Mr MUNYAL:

That is, will we become more powerful (mori)?

Mr LANHUPUY:

From this time on (after constitution) no one will fool around with our land when the law changes to statehood. What we are trying to do is to put our laws into this constitution permanently. Our land rights have to be written down on this paper, the constitution, to be strong and more powerful.

Mr MILAYNA:

Shall we still have that power? This is the same question that I have asked before, about the exploration.

Mr LANHUPUY:

If (after land rights are written into the constitution) will we still have that power?

Mr MILAYNA:

Hold onto that same power.

Mr LANHUPUY:

Yes, only if the Parliament doesn't change any laws.

Mr MILAYNA: thank-you.

Yes, thank you.

Mr MILAYNA:

That's alright.

Mr WELUK:

They are giving people the opportunity all over the NT to decide on this one. What group was that you mentioned where we can send in people?

Mr LANHUPUY:

The constitutional convention. If say Raminigining, Milingimbi and Galiwinku want they can send our mob into this convention.

Mr LANHUPUY: As long as, in the end, we hope that we will find a way so that one of these days a constitution will be made up for the Territory by the people of the Northern Territory - not by us politicians. That is what we want. The reason why we are going around so many communities is to ensure that a lot of people listen, hear about it and express their views. Whether it is about anything to do with land rights, fishing, whatever. Let us do it now so that our children and our children's children can live under legislation which we have framed and which might be good for people in the Territory. (language)

Ms THOMPSON: Well, on land rights, the only state that has embedded in its constitution things on land rights is South Australia.

Mr HATTON: It is not in the constitution though.

Ms THOMPSON: Yes, that is correct.

Mr NICHOLSON: It is just in legislation.

Mr HATTON: That is just in legislation. It is not in the constitution.

Mr LANHUPUY: I think it is just in legislation.

Ms THOMPSON: It is embedded into the constitution.

Mr HATTON: No. Well, my lawyer says it is not.

Ms THOMPSON: It is embedded into the constitution.

Mr LANHUPUY: Pitjantjatjara Land Rights Act.

Mr HATTON: The Pitjantjatjara Land Rights Act, but that is not a constitution.

Mr LANHUPUY: It is just an act like we are under.

Ms THOMPSON: (inaudible) in the state constitution of South Australia. When Dunstan (inaudible).

Mr LANHUPUY: State legislation.

Mr HATTON: State legislation, not the state constitution.

Ms THOMPSON: It is the state constitution, because I was looking through the archives in the Tasmanian university.

Mr HATTON: Graham, do you want to go and double check that?

Mr NICHOLSON: I can look it up but I know the answer.

Mr HATTON: He says he can look it up but he knows the answer. It is in the act and not in the constitution.

Mr LANHUPUY: It is just like we are, I think. The South Australian Pitjantjatjara Land Rights Act is the same as we have. It is under a federal act of parliament.

Mr NICHOLSON: No, it is a state act.

Mr HATTON: It is a state act.

Mr LANHUPUY: A state act. We are under a federal act of parliament, us mob. Us mob - the Territory government, cannot make any laws that are above the Aboriginal Land Rights Act.

Mr HATTON: We cannot even make (inaudible).

Mr LANHUPUY: I am referring to the Territory Land Rights Act. We cannot make laws that are above the Aboriginal Land Rights Act 1976, but we can make laws that will work with it.

That is one of the main reasons why I am going around saying to our people that they need to ensure that they talk about this. Our people are about one quarter of the Territory's population. If we do not like it, the federal legislators have a right to protect our interests. They will say to us mob in the Territory: 'Oh, you have not consulted. Go back and do some work'. That is why we want a lot of people to have as much input as they can on this one.

Mr HATTON: Can I say another thing? This job is not going to be easy. This job will not to be nice and smooth, with everybody being nice and friendly and happy to go along. Now you know that many of the things we are talking about now other people think very differently about, don't they?. And when the representatives of all the groups get together, there will be lots of arguments. We have to understand that, but what are we going to do if we really want to make this place for the future? We will have to work through those arguments and talk them out, and talk them out, and it is important that you make other people understand why those things that are important to you are so important for you.

That is why we are getting you all in the one place, in that constitutional convention . You will have to talk to each other

across the table about these things, and explain why these things are important to you, so that other people can understand. And they will explain to you what is important to them, so you understand what they are thinking about. Then, bit by bit by bit, we can start turning and going together. And just that way of doing it will work to bring this Territory together. It is not just the end result that is important; the process will be just as important to make this Northern Territory go the way we want it to go. We need to start to talk out the differences in the Northern Territory.

Ms THOMPSON: Have all yolgnu people sat down and talked about this? You know, yolgnu (inaudible)?

Mr LANHUPUY: What we have done over the last - what, 2 or 3 months?

Mr HATTON: Since March.

Mr LANHUPUY: Since March, is go around to the major communities, Alice, Darwin, Katherine, Nhulunbuy ...

Ms THOMPSON: Yes, I know about that, but have they sat down (inaudible) and talked about it?

Mr HATTON: Saying what we are saying here.

Mr LANHUPUY: ... all those communities there, just visiting. This is the first phase of our visit. Any individual, any group, any community that wants us back, we will certainly come back to. We have had meetings at - where, Bagot?

Mr HATTON: Bagot.

Ms THOMPSON: But they have not really had a good (inaudible)?

Mr LANHUPUY: No, because it is just the first part of the process. We know it is going to be a long drawn out one. We have not got a time limit on it, although we have a time placed upon ourselves as to when to report to the Assembly. But, as far as when the constitution is to be finalised, that is anyone's guess.

Ms THOMPSON: Now that you have got this thing out, the proposal for a new state constitution, (inaudible) an idea - 5 years? 10 years? When are you looking at?

Mr HATTON: I think, if this went smoothly, it would take us 3 to 5 years - just to write a constitution. If it goes reasonably smoothly, it will take that sort of time frame. It could take longer because, if people have not sorted it out, then they will have to keep talking until they do sort it out. Let us say 3 to 5 years to get this written.

Ms McFARLANE: Can I just jump ...?

Mr HATTON: After that, you then say: 'Now, let us start talking about when we want to become a state - and if we want to become a state'.

Ms McFARLANE: Part of that process, once we reach the end, and we have got this (inaudible) we have this constitution that the whole of the Territory is happy with, you are saying that then it needs to be accepted by the federal parliament?.

Mr HATTON: Yes. Understand that we are sailing into uncharted waters. This has never been done before in Australia ...

Ms McFARLANE: Neither has the homeland centre RATE program.

Mr HATTON: No, okay.

We are dealing with sections of the Australian Constitution that have never been used before. Probably, we will be in and out of the High Court 20 times sorting out what the Australian Constitution says. We are all trying to feel the way as to how we are going to go about this. I believe that the sort of thing that will happen is that, when this constitution has been made, we would approach the federal government and ask them to introduce a Northern Territory Constitution Act to replace the Self-Government Act, so that that becomes the model for self-government. It becomes our constitution in existence.

Then we start talking about the process of becoming constitutionally a state, and the transfer of powers issues, political representation, and all those other issues. And, before we do that, we have said that we will go and ask the Northern

Territory people, so there will be a referendum from Territorians to determine whether they want to go to a state.

Ms McFARLANE: My concern is that we have done this work and written in the (language) the constitution, it has something about land rights and uranium mining. If the federal parliament agrees with land rights, but does not agree on uranium mining, what happens then? Does that federal government try to bully people of the Territory into agreement?

Mr HATTON: You have got 2 things. Firstly, if uranium mining is a state responsibility, then they must fall within these rules. That is, if it becomes a non-transferred power on statehood, then they become moribund clauses of the constitution, because we do not have the power over that particular aspect of our life. But ...

Ms THOMPSON: Over uranium, platinum, and what else we do not have the power over?

Mr LANHUPUY: (inaudible).

Mr HATTON: At the moment we do not have power over uranium.

Ms THOMPSON: And platinum?

Mr HATTON: No, we do not have power over mines in Kakadu. It does not matter what sort of mineral it is.

Ms THOMPSON: The federal constitution has that power.

Mr HATTON: No, the federal government has that power, because they excluded that from us under the Self-Government Act.

Ms THOMPSON: But that is excluded from all states.

Mr HATTON: No, it is not. Uranium mining in South Australia is under the South Australian government, and the royalties are paid to the South Australian government. Here, the royalties are paid to the federal government.

Ms THOMPSON: And you get a percentage. The Territory government gets a percentage don't they?

Mr HATTON: No, no we do not. They collect the money, then they go through the back door and give part of it back to us. We spend, I think, every cent of that money on research and environmental monitoring. The Northern Territory government makes no money out of uranium. Whatever we get by way of special grants from the Commonwealth to replace the royalties, we spend on research and monitoring of the industry. Uranium is not supporting the Northern Territory government at all. It is supporting the federal government, just as a matter of interest.

Ms THOMPSON: But it would if it were a state.

Mr HATTON: If, on statehood, ownership of those minerals came to the Northern Territory, then those royalties would be paid under our act to us and that would increase our revenue-raising power and that would be offset in the Grants Commission structure. The total amount of money available to us would be the same. It is just like moving the cargo on a ship.

Ms McFARLANE: Unless the cargo stays in the ground. Because, that is what people want.

Mr HATTON: Well, that is what some people want. If it stays in the ground, maybe the consequence over the years is that there is a lower standard of living in the Northern Territory, because, you do not have that revenue available to run things like RATE programs.

Ms McFARLANE: Touche!

Laughter.

Mr LANHUPUY: The little bend has a twist!

A person: (speaking Aboriginal language). I think we might have to ask this politician mob to come back again to us.

Mr LANHUPUY: (speaking Aboriginal language).

A person: Don't come during the pay weeks.

Ms THOMPSON: You come on an off week.

Mr HATTON: All we wanted to do this time was to say what we are doing to start people thinking about it. Next time we will work out a time. You say: 'Look, can you come this time when we can spend a good amount of time, a day or 2 days, to really talk it through'. A time when you can go away and have a think about it and come back.

Ms THOMPSON: Monday and Tuesday, or Wednesday is fine.

Ms McFARLANE: Tuesdays are good days. They are quiet days.

Mr HATTON: So long as it does not happen to be a week when everybody is going off on a ceremony somewhere.

Ms McFARLANE: No. Tuesdays are quiet days in this community.

Mr HATTON: Every week?

Ms McFARLANE: Every Tuesday. Thursdays are always a busy day in the community, and Fridays.

Mr Jim MULHERN: If this constitution goes through the way you expect it to, does it mean we will get Sheffield Shield cricket soon?

Mr HATTON: Only when we have enough good cricketers, and I hope that is soon, because my kids would love to have a crack at it. Can I write that into the constitution - that my kids are allowed to play in Sheffield Shield cricket too?

Mr THACKER: Thank you, Steve Hatton, Wes Lanhupuy, Rick (own language)

Meeting closed.