

TENNANT CREEK — Wednesday 12 July 1995

PUBLIC HEARING

PRESENT:—

Committee:

Mr S HATTON - Chairman

Mr P. MITCHELL

Mrs M. HICKEY

Officers assisting the committee:

Mr R Gray (Executive Officer)

Appearing before the Committee:

Mr Kym Cook

Mr Barry Sharples

Ms Joan Small

Ms Sandra Rew

Mr Peter Wyatt

Ms Joanne Lee

NOTE: This is an edited transcript.

ISSUED: 27 July 1995

Mr HATTON: I now call to order this meeting of the Sessional Committee on Constitutional Development. I take this opportunity to introduce members of the committee.

I am Steve Hatton and I am the chairman of the committee. Maggie Hickey, the local member for this area, is the deputy chairman. Phil Mitchell, the member for Millner, is a member of the committee. The committee has 6 members altogether, 3 from the CLP and 3 from the ALP. The other members are unable to be present at this particular meeting.

The committee has been operating in various forms continuously since early 1986 . Its job has been essentially to prepare the ground for the Northern Territory to eventually become the seventh state of Australia. Its terms of reference are to develop recommendations for the parliament on the development of a Northern Territory constitution and the steps that are necessary for the Northern Territory to become a state.

Over a number of years, we have spent much of our time developing and researching those questions through a series of discussion papers and information papers which we have circulated widely throughout the community. These explore issues associated with statehood and the writing of a constitution.

The procedure for the Northern Territory to become a state is now fairly well settled. Firstly, the Northern Territory needs to develop and have in place its own constitution. Our committee has set as a goal the development of that constitution through a 3-stage process. The first stage is the work of this committee. Our job will be to prepare what will be known as a draft constitution, which we will table in the parliament. It will obviously be debated in the parliament. However, we will

be recommending that the draft constitution, all our research, all the submissions that have been made to us, and all the discussion and information papers we have produced, be referred to as what is known as a constitutional convention.

The constitutional convention is really like a drafting committee of representatives of the people of the Northern Territory. At this stage, it will start to move out of the hands of the politicians and into the hands of the people. The convention will have a statutory base. Our intention is that legislation to create that constitutional convention will be introduced into parliament next year.

Earlier this year, we tabled a report to the parliament on our recommendations for the formation of that constitutional convention. That follows a couple of discussion papers that we have released publicly. We actually received a number of submissions on the question, although not as many as we would have liked.

I think some copies of our recommendations are available here for people to read and peruse. Basically, we recommend that the convention should comprise a mixture of elected and nominated people with no more than 25% being nominated. We are also recommending that 50 members be elected from 10 multiple member electorates, each returning 5 members. In other words, the Northern Territory would be divided into 10 electorates of approximately equal numbers based on commonality of interest groupings, each electing 5 members. The voting system resembles that used for the Senate and means that a candidate with 16.6% of the vote would be elected to the convention. That would give us a base of 50 people. The recommendation is designed to ensure that the convention has breadth of representation from across the Territory.

We are suggesting that the other 16-odd positions be occupied by people nominated by appropriate interest groups or minority interest groups whose interests may not otherwise be represented. We are suggesting that such groups might include employers, trade unions, local government, Aboriginal groups, perhaps the youth sector and perhaps the aged sector. They are suggestions. We are, in fact, looking for submissions during the course of this year to firm up which sorts of groupings within society should have nominated representatives. It may well be that submissions will overwhelmingly indicate that everybody should be elected. This is only our recommendation at this stage and it needs to be firmed up this year.

That convention will take all of our work. They will go through it. Their aim will be to produce a proposed constitution. This would then go to a vote, or a series of votes, in a referendum of the Northern Territory people. When the Northern Territory people have voted in favour of a constitution, we would then say: 'This is what the Northern Territory people want as the way they want their government, their democracy and their society to be structured'. It would determine the shape of government, the parliament, and a range of issues including the limitations Territorians want to place on the role of their government and those individual or representative group rights which people believe should be constitutionally protected from government. A constitution is the people's law that not only creates the government but sets the limits that the people want to place on government.

It is not essential that we have a constitution. However, the absence of a constitution means that there are no limits on the style or authority of government. Your constitution is the means by which you control government. It is the ultimate control by the people over government. It is protected to that extent.

We would recommend that it can only be changed if the people by majority agree with that change. However, you can write the rules on how you think any constitution should be amended. That is part of writing the document. It is the foundation document of your society. It is very important. I know that it seems a bit scary and that you might think: 'Oh, this is a thing for lawyers, politicians and academics to chew through.' The reality however, is that it is really important for the ordinary citizen to feel that it is a document they can claim ownership of as something they are comfortable with and happy with.

We can put up ideas and you can say that you do or do not like them or that we should be doing something else. It does not have to be written in fancy legalistic language. It does not even have to be written. You are more than welcome just to stand and talk about it to our committee. Today's proceedings are actually being recorded.

This is not the first time we have held public meetings, including public meetings in Tennant Creek. We have taken hundreds of pages of submissions from well over 100 communities throughout the Northern Territory. Much of this has actually been recorded in Aboriginal languages and subsequently translated into English. That is the extent to which we are seeking to get the views of communities.

Please do not feel constrained by the thought that maybe you do not have the qualifications to speak up. It is just the

opposite. Sometimes the people with qualifications come up the craziest theoretical ideas that the people would not wear on badge day. In developing your constitution, we want to find out what the people really want.

We are working to a timetable. The timetable is basically targeted to achieve statehood during 2001, the year of the centenary of federation. We believe that, in order to achieve that target, we need to have a constitution together and successfully voted on by the people by 1998. That will give us a couple of years in which to negotiate with the federal government of the day to get this constitution introduced as a law of the federal parliament, to change our self-government act into a Northern Territory constitution act. It is similar to the way in which the Australian Constitution became a law of the parliament of Westminster in London. Secondly, that period will be used to negotiate the transfer of powers. These include issues you often hear about such as national parks and uranium mining together with other powers, such as those relating to industrial relations, for which states have responsibility where the Northern Territory parliament currently has none. A range of processes and procedures need to be negotiated. There is also the issue of representation.

Those negotiations will occur between the Northern Territory and the federal parliament because the Australian Constitution says that the federal parliament may accept such new states under such terms and conditions as the federal parliament agrees. We will need to negotiate those issues through with them and we need time to do it properly. We have done a lot of research on the issues but that is the formal negotiation process.

If we want to get that completed by 1998, we believe that we need to have the constitutional convention of Territorians elected and in operation by the middle of next year, 1996. To achieve that goal, our committee needs to have completed drafting work on our stages of process by the end of this year. That will allow it to go through parliament in the first 6 months of next year, which will put in place the law to create the convention, and implement elections for the convention so that it can be operating by the middle of next year.

We are on a serious timetable of work now. We are proceeding towards our objective and we are trying to say to people as we go along: 'Look at what we are doing and just let us know if you think we are heading in the right direction or not. If you think we are not, please let us know while we are still in the drafting stage'. That is what these consultations are about.

To assist in the process, we have produced what is known as an 'exposure draft', which was in the last sittings of parliament during May. It is like the draft of a draft. This is how far we have got - the first 7 parts of the constitution. It covers all the major parts of the constitution. It creates the government and establishes the executive - the ministry process. It sets up the judiciary, the court process and the position of governor. It works out who is allowed to do what amongst all of those different people and proposes checks and balances in the system.

It also deals with some very touchy issues in the Territory. We have worked very hard to find a fair balance on some issues that are important for the Territory. These are sensitive issues which must be addressed. Aboriginal rights are an example. We believe that, upon statehood, the Land Right Act should become a law of the Northern Territory. How do we achieve that? How do we convince the federal parliament? How do we convince Aboriginal people that they can trust the Northern Territory government not to repeal the act the day after statehood is achieved. How do we give them some assurance?

We have dealt with issues like constitutional recognition of Aboriginal customary law and Aboriginal sacred sites. The preamble to this constitution would recognise the prior existence and occupation of Aboriginal societies within the Northern Territory, prior to white settlement. This would be the first constitution in the history of Australia to make such recognition. I must admit that it is much easier to do this since the Mabo judgment. It will formally recognise that Aboriginal people did live here before and did have a society that existed beforehand. That is stating a reality. It addresses the history of the Northern Territory from that time in what we believe is a positive, practical way. That is what we call the preamble to the constitution.

The second thing we have introduced is the concept of organic law, which is new in Australia. Organic laws exist elsewhere in the world, for example in Papua New Guinea. An organic law is an act of parliament that is stronger than a normal act. It requires a special majority of parliament to become law, and a special majority to be amended. There is debate about the extent of that special majority but the suggestion is that it be somewhere between two-thirds and three-quarters of the elected members of parliament. Basically, bipartisan support would be required for an amendment to that law. It is not as strong as law which is entrenched in a constitution but it is more than an ordinary act of parliament which can be amended by any government of the day.

That concept has been introduced in order to address issues such as Aboriginal land rights. There may be some things that

might be considered too important to allow them to be fiddled with or changed around by any government of the day. It gives more entrenchment of a law. It is a new concept and something we are suggesting that people might like to think about it. We think that it has merit.

Another issue that is not covered by the draft, but which has been the subject of a discussion paper, is question of constitutional recognition of local government. The discussion paper contains a series of suggestions on how that might be achieved. The committee believes that there should be entrenchment of local government within a Northern Territory constitution. We are seeking views on the level of entrenchment. Should people have a right to local government, so that they can choose to have it or not, or should you be required to have local government? Would you give the Territory parliament the right, under certain circumstances, to dismiss a local government, appoint an administrator and perhaps call another election? Such issues need to be thought through. We released the discussion paper in order to draw out the views of the community. I am sure that the Local Government Association in particular will give us some views about that issue, but it is also a question for local councils and people in general.

There are some areas where there are clear differences of opinion within our committee or where we believe that people ought to be given some distinct choices to consider. In such cases, we have made the choices clear. For example, there are some choices to be made in terms of how the parliament is created. The constitution might say: 'You must have single-member electorates of about equal size'. Or you might say, within the constitution, that you can have either single-member electorates or multiple member electorates of about equal size. You could also say that you must have multiple member electorates, which is different to the situation we have now. You can put that into your constitution.

Now, if you chose the second option, a government of the day would have the power to vary the electoral system. At some stage, a government might say: 'Let us change our system'. We might have a series of multiple-member electorates like Tasmania, with a Hare-Clarke voting system or something like it. If you do not want a government to be able to make that choice, you would ensure that the constitution did not allow it. If you want to leave that option open for the future, so that future generations do not have to amend the constitution to change their voting system, make sure that the constitution allows the government to choose.

We have provided some ideas for you to think about. Most of us have a particular view on what we do or do not believe in. We suggest that people might think about how much they want to tie up in a constitution and what they are prepared to leave to be done by way of legislation. Those are the sorts of decisions we need to make when we are drafting our constitution.

I have talked at some length now. Maggie will be with us in a minute. We knew she had a particular call coming through. Phil, do you want to add anything?

Mr MITCHELL: No, I think you have covered it all.

Mr HATTON: Are there any particular questions or thoughts that people would like to raise?

Mr COOK: What impact would a referendum on the republic have?

Mr HATTON: We have actually dealt with that in here. We brought out a discussion paper on the effects of a republic. Each clause in the exposure draft contains a note outlining any variations which would be required if Australia became a republic.

Mr COOK: What I mean is this. At the moment, only the states get to vote on the question of Australia becoming a republic.

Mr HATTON: That is correct.

Mr COOK: We are creating a state but we will not have a vote.

Mr HATTON: That is correct. At the moment, as a Territory, we can vote in constitutional referendums. However, we are only counted in the total vote for the Australian population.

Mr COOK: But not as a state.

Mr HATTON: Not as a state. As you know, to amend the Australian constitution you need a total majority across Australia plus a majority in 4 of the states.

Mr COOK: Yes.

Mr HATTON: If we became the seventh state, it would be 4 out of 7. We would be 1 of the 7 so we would have more of a say on that question.

Ms SMALL: Steve, where does the question of representation stand at the moment? Does the draft constitution say anything about it?

Mr HATTON: Not in the constitution. You need to understand that the constitution is a contract between the Territory people and the Territory parliament. Representation in the federal parliament comes about through a contract between the Territory parliament and the federal parliament. They are separate questions.

This is the way you work out how you want your parliament to work in the Northern Territory, together with your courts, your governor and your ministry. If we get this done first, we can say: 'At the end of statehood, what is it going to be like?' We will see it. Okay?

Ms SMALL: You mentioned representation in that ...

Mr HATTON: It is part of the negotiations in the last stage of establishing the conditions of becoming a state. The Australian Constitution does not give us any rights. There is a view that we should have the same list of powers as other states although we might want to enter agency arrangements on things like industrial relations. I do not think Territorians want to have a separate Industrial Relations Commission as well as the federal commission. The system seems to work better in the Northern Territory with a combined commission. These are negotiating issues.

In terms of representation, the Australian Constitution guarantees the original states a minimum of 5 seats in the House of Representatives and equal representation in the Senate. There is no such guarantee or right for any new state. It is a matter for negotiation.

It is my view and I believe the view of most members, that we should have equal representation in the Senate as a matter of equity and justice. However, we may need to consider whether we commence with equal representation or move to equal representation in stages. We may need to negotiate to achieve the objective, particularly because another part of the Australian Constitution says basically that you need to have 2 House of Representatives seats for every Senator. There are twice as many seats in the House of Representatives as there are Senators.

In other words, if an additional 10 Senate positions were created for the Northern Territory on becoming a state, an extra 20 seats would be required throughout Australia for the House of Representative. This would massively disturb every electorate in the country. Such disturbance could be a major obstacle to achieving the key objective, which is the gaining of our constitutional rights. We need to think the process through. How do we achieve the objective of Senate representation without causing massive disruption to Australia?

Ms SMALL: Thank you.

Mr SHARP: What will be the impact of Australia becoming a republic?

Mr HATTON: It would not really have much of an impact at all. I do not think you would even change the name of the head of state. You would call them the governor. I mean, in the United States they call the head of the state the governor. In fact, in an Australian republic, it would still be possible to call the head of state the Governor-General. They do not have to be called president. I do not know why Paul Keating has not thought of that. There is no law that says the head of state has to be called a president. He is just enamoured with the thought, I think.

In respect of other issues, there are bits and pieces about the Queen's representative and prerogatives. But they are small changes.

Mr SHARP: If we had a governor, we would no longer have the Administrator.

Mr HATTON: That is right. Under statehood, whether it is a republic or the existing monarchical system, that would be

the same. You see, our Administrator is only the representative of the Governor-General. He is not the representative of the Queen here. Because we are a Territory, the Administrator is required to refer every law we pass to the Governor-General, who has a 6-month time frame within which he can disallow any such law. That is because we are only a Territory. It is a reserve power that he has kept and he takes advice from the federal Cabinet through executive council.

Mr SHARP: The other issue which sometimes crosses people's minds relates to the Premiers' Conference, where the money gets dished out per head of population. Now, would that ...

Mr HATTON: No, it does not happen like that.

Mr SHARP: As I say, that is ...

Mr HATTON: It is one of the great fallacies spread by people who know little about Commonwealth-State financial arrangements and who want to create mischief in relation to the issue of statehood. I have to tell you that they include a lot of southerners.

The truth is that we are funded now on exactly the same formula as the states are funded. Since 1988, we are not only funded under the same financial formula through the Commonwealth-State Grants Commission but we also receive our funds from the same bucket of money, the Commonwealth-state tax sharing pool. The old memorandum of understanding of financial arrangements ceased in 1988.

The nature of that formula is the reason we receive higher per capita funding. The formula is basically designed to ensure that every state has sufficient financial resources to deliver the same reasonable standard of services and facilities, assuming that it is charging an equivalent level of taxes. Victoria, for example, is a well developed state with high population and infrastructure established over 200 years. Such a state has economies of scale. Apart from New South Wales and Victoria, most states receive differential payments because of what are called diseconomies of small scale and other factors such as remoteness.

For example, it costs more to educate an Aboriginal child in a place like Lake Nash than it costs to educate a child in Parramatta. You still have to build the school. You have to provide a house for the teacher, fly the teacher out there, provide extra conditions of service, power and a range of other services. Education costs \$9000 or \$10 000 per child out there compared with \$600 to \$800 in the city. That is why we get the extra money.

It is the same with remote area health services and the large distances involved in road construction. Those cost disadvantages are the reason we get additional funds in order to provide an equivalent standard of service. There is nothing special about our funding. It is provided as part of a 1926 Commonwealth-state financial agreement that said: 'As one nation, we should take a national view on the delivery of services to our citizens'. Remember that much of the money we receive is taxes which the Commonwealth collects on our behalf. It is a consequence of that agreement, the income tax agreement of 1942, a wartime measure, and a number of other agreements under which the Commonwealth collects taxes on behalf of the states.

The Commonwealth is not giving us something that belongs to them. They are giving us something that belongs to us. It is being shared out in a manner which enables all citizens of Australia to get a fair go. That is all that is happening. I do not ever apologise for it. I can assure you that there will be no extra money for us and no less money. If we get a development boom, or if we open up more mines because of our ability to accelerate economic development through greater self-determination, our increased revenue-raising capacity would be counterbalanced by less funding from the Commonwealth. We will get a fair go with funding. The net effect will be the same. There will be no financial boom and there is no need for any financial fears.

This is about your rights as an Australian. It is simple as that. You may not know it but, as an Australian who happens to live in the Northern Territory, you happen to have no constitutional protection under the Australian Constitution, which refers to 'the citizens of the states'. We are not citizens of a state. We are fighting to get back the rights that were taken from us in 1911.

That means that you, or your government in the Northern Territory, will be able to rely on the Australian Constitution to defend your rights against wrongful acts of the Commonwealth. I can give you a very simple practical example. Section 52 of the Australian Constitution says that the Commonwealth government cannot acquire property from a person or a state except under just terms. However, the Commonwealth can and does acquire property from the Northern Territory without

paying for it.

The Land Rights Act specifically states that there will be no compensation paid to the Northern Territory government for any Crown land handed over under the act. That currently represents about 500 000 km². It will probably be about 660 000 km² at the conclusion of the land claim process -- about 50% of the land mass of the Northern Territory. Not one cent of compensation will be paid to the government of the Northern Territory.

The Commonwealth could not do that in any state. That, of course, is why the Land Rights Act only applies in the Northern Territory. All the other land rights acts are state acts. Similarly, the Commonwealth could not pass a land rights act just for the Northern Territory if we were a state. They could pass a land rights act but it would have to be the same act for the whole of Australia. They can do it to us because we are a territory. They have total authority, total powers, in respect of a territory of the Commonwealth. That is what we are. I am not arguing for or against land rights. I am simply saying that there are differences between a territory and a state. We live with practical examples on a day-by-day basis.

Ms SMALL: That is what you were saying when you said that the Northern Territory Land Rights Act could become an act of the state rather than the federal government.

Mr HATTON: Yes.

Ms SMALL: It would be the same as all the other states?

Mr HATTON: Yes, that is right. I am putting it on that basis. No reasonable person thinks that we should reverse history. However, the advantage of making it a Northern Territory law is that we will know quite clearly that every other law of the Northern Territory will apply on Aboriginal land as on all other land. That is an unclear point at the moment.

Ms REW: Is it your intention to protect this by making it an organic law?

Mr HATTON: Organic law would give protection to Aboriginal people. In fact, this document proposes some particular protections in respect of certain elements, some core elements of land rights, which would be constitutionally entrenched. You can read those. I can dig them out and address them if you wish.

We are also suggesting that the constitution should contain a mechanism which would entitle the government of the Northern Territory to compulsorily acquire something less than a freehold title - something like a leasehold title - for public purposes. Such purposes might include the building of a school or a power station. There could also be a provision or mechanism whereby Aboriginal people themselves could decide to sell their freehold title. Such a mechanism would provide for judicial review to ensure that people were not being conned, so that any such decision would be in the interests of those people. Those issues are addressed in the document. Issues of compulsory acquisition and the rights of land owners to deal with their land should be addressed. I am sure that Aboriginal people and Aboriginal organisations will address them. Nothing in the document is a compulsion; it is a right.

Mr WYATT: That would address the fact that Aboriginal people who own land cannot use it for collateral for business purposes.

Mr HATTON: That is correct. However, even with the existing form of inalienable title, a mechanism can be used and has been used in some parts of the world, which enables a leasehold system to be developed over the top of that freehold title. This allows people to voluntarily agree to lease a piece of land for a term which is long enough to be of commercial value. The lease carries a commercial value. We have been researching that mechanism through the Lands Department. As Attorney-General, I will be looking at a land titling system.

Few people realise that in 1066 William the Conqueror granted all of London to about 6 of his knights or barons by way of freehold title. The freehold title is still there. It has not held back the development of London to my knowledge.

The mechanisms exist. There is a legislative inhibition in the Land Rights Act, under which a lease to a non-Aboriginal for more than about 7 years requires the approval of the federal Minister for Aboriginal Affairs. Even though the Aboriginal people, the land trust and the land council all think it is a good idea, they still have to ask Robert Tickner. We would argue that that is just a touch paternalistic. I would not think that the land councils are a soft touch. It has not been our experience over the last 18 years.

Ms SMALL: Further to that, you have described the benefits of statehood fairly well. People have asked me some questions about this particular forum today, saying: 'Why are we wanting statehood?' I just wondered if there is a simple way of explaining the benefits to people. I had thought that it would be a financial benefit in terms of premiers' conferences but obviously it is not.

Mr HATTON: No.

Ms SMALL: But some of these other things are probably a bit hard to explain in simple words.

Mr HATTON: Equality. Equality, the simple word is equality. Constitutional equality. Why should we be second-class Australians?

Ms SMALL: I guess people want to know how it is going to effect them personally.

Mr HATTON: It probably will not, except in terms of how you structure your government. For the first time in our history, we will have a say over that. You can put it together the way you want it, not the way some bureaucrat or politician in Canberra wants it. It is the way you want it.

Mr MITCHELL: What you are saying is that we need to get out a simple and clear message and at the moment it is not very simple and clear.

Mr HATTON: I think it is as simple as that, Joan. It is basically about equality. We have almost the perfect Clayton's state. It is improbable but certainly not impossible that through the repeal of an act of parliament, we could cease to have any government in the Northern Territory. By amending the Federal Electoral Act, they can remove our rights to senate representation. We have no constitutional rights to those things. We have gained them by hard struggle over some 70 or 80 years but it is only a gift. It is not a right. It will only become a right, an untouchable right, when we become a state.

Ms SMALL: You are really saying that we only exist by the benevolence of the federal government.

Mr HATTON: Yes, absolutely.

Mr MITCHELL: A federal act of parliament.

Mr HATTON: You see, the states exist because the constitution protects them. When the federal government goes beyond its authority, a state government can challenge it in the High Court. We cannot do that. We have no rights to challenge the federal government constitutionally because it has unlimited, unfettered power over us. It has the power to remove the right of our federal representative to speak or vote in parliament, as it did to our federal member until 1967.

Mr WYATT: He only voted on Territory issues, didn't he?

Mr HATTON: He was only allowed to speak on Territory ordinances and he was not allowed to vote on anything. We did not have any Senate representation until 1975. That did not come about because we have a right to it. It happened because a government of the day thought it would do us a favour. Although I do not believe that it is likely to happen, an amendment to a federal act of parliament could wipe out the entire Northern Territory education system or health system. It could delete the powers, with the whole lot reverting to the federal parliament. It would not even be debated in parliament. There would be an amendment to a regulation. It would go through a subordinate legislation committee. You have no protection in basic things like that until you are a state. You have the protection of democratic force but you have no constitutional protection.

Mr WYATT: Perhaps the federal government should have one of these organic acts to protect our rights in the meantime.

Mr HATTON: I think we are coming to the crunch. Let us just go for it. That is really what it comes down to. They can amend our Self-Government Act whenever they feel like it. They could decide to do what they did to Canberra, enforcing a single electorate of 17 members. They could do that to the Northern Territory. They could write it into the Self-Government Act and we could not do a thing about it. You know how politics works. They create a problem and then offer the solution, which is what they originally wanted to do. They could do that as a mechanism to achieve whatever they wanted. We have no defence. I think what we have achieved as Territorians in the last 20 years has been quite extraordinary. All of us, especially those who have been here over that period, have seen the change for the better. Some

would pine for the old days but at least you have someone to bitch to now. In those days, you did not even have that.

Mr COOK: A question ordinary people ask is: 'How much extra will it cost?'

Mr HATTON: Nothing. We already have the Administrator, the judicial system, the courts, the parliament, the elected representatives, the public service and the government administration. The government infrastructure is all in place.

Mr COOK: You said before that some powers such as industrial relations were still vested federally. Are there any others?

Mr HATTON: The Land Rights Act is one. That has not been a cheap exercise to the Northern Territory budget over the years.

Ms HICKEY: Self-imposed.

Mr HATTON: Not always, I have to tell you. I will debate that point with you any time.

Ms HICKEY: Not in this forum.

Mr HATTON: Not in this forum. There is the Land Rights Act. I believe that changes to industrial relations would be relatively minimal. In 1987, a consultancy was carried out by Sir John Moore, the former president of the Industrial Relations Commission. He recommended that we take the industrial relations power whilst contracting with the federal government that the existing Northern Territory panel also carry out the industrial relations function of the new state. It would operate in exactly the same way it operates now with one difference. There would be a guarantee of a Northern Territory panel and Territorians would have some say about which deputy president was the head of that panel. We would pay an agency fee which might be \$0.5m or \$1m a year. That is within the capacity of a \$2500m budget.

Mr COOK: And all the other administration is already in place, is it?

Mr HATTON: Yes. I cannot think of anything which is not. If we took over the management of Uluru and Kakadu National Parks, there would be some additional costs. However, our current assessment by the Grants Commission assumes that we are not paying for the costs of those parks. There would be some upward adjustment up in funding through the Grants Commission for the reasonable costs of managing those parks. There would need to be a slight offset there. Whilst I cannot give you definitive figures, the costs are minimal in those sorts of areas.

The other issue is transfer of ownership, what is called the 'radical title' to the Uluru and Kakadu parks. That means you own everything under the ground - all the minerals. Few people realise that, when the Commonwealth government took over those 4 cattle stations in the 12 months after self-government in 1978-79, it acquired the radical title. That means it acquired all the mineral rights, which normally belong to states. If mining had proceeded at Coronation Hill, the Commonwealth would have received the royalties. Wasn't it crazy? We were fighting to get Coronation Hill going and the federal government would have been the financial beneficiary.

Uranium is only part of the issue in respect of Kakadu. It certainly is a big issue. The fact is that the miners are underpaying royalties fearfully because they signed an ad valorem royalty agreement. We have a profit-based royalty agreement. They are paying about \$5m a year in royalties in a year when Ranger made a recorded after-tax profit of \$100m. That situation would have required \$17.5m in royalties to the Northern Territory government. That was just one mine. That federal agreement has cost taxpayers hundreds of millions of dollars in revenue.

Those are the pluses and minuses in that exercise, Kym. However, I am quite confident in my belief that there are no financial risks. You can talk about \$0.5m here and there, which sounds like a lot of money to Joe Citizen. In a budget of \$2500m, it is like somebody who is earning \$250 a week having to spend an extra \$1 or 50¢ per week. That is the perspective. We are doing it and balancing our books with more dollars than that every year.

Ms SMALL: Steve, when do the other people in Australia become involved in this process?

Mr HATTON: They do not need to become involved. There are 2 ways of creating a new state. The hard way is to hold a national referendum to amend the Australian Constitution under section 128. That requires a majority in a majority of states. I do not want to confuse you with legal technicalities but there is at least one eminent legal view that says that you

would need a majority in every state, because you would be changing the relative Senate representation of every state. That is the hard way. In order to hold the referendum, a law has to pass through both houses of the federal parliament. You have to negotiate with the federal parliament in order to reach a position in which all of the people of Australia vote on the issue, and you have to run the associated risks.

Section 121 of the Constitution says that we can be accepted under such terms and conditions as the parliament agrees. We can actually do it by negotiating with the parliament and the government of the day and getting them to agree to pass an act of parliament. We are recommending that approach, rather than the approach which requires a national referendum. There is no way of bypassing the parliament to ask the people of Australia directly. You have got to go through the parliament anyway. It does not need to be put to a referendum.

Ms HICKEY: Joan, there is a body of opinion in the Northern Territory which favours gaining the agreement of people in other states, because it will change the Senate representation. Clearly, we need to have the support of the major states because of the influence they wield in the federal parliament.

Mr HATTON: There is no doubt that we will need to negotiate with both parties in every state around Australia and to market the just case for statehood for the Northern Territory, if for no other reason than to put some heat on a lot of federal politicians. It is fair to describe it as a marketing exercise rather than an effort to get a vote from the people in the area.

Ms SMALL: When is that process going to ...

Mr HATTON: If 5 of the 6 state governments were thumping the barrel against us becoming a state, our task would become extraordinarily difficult. Mind you, I think the political and democratic force of a very large majority vote in adopting our own constitution would create an almost irresistible momentum towards the objective of statehood.

Interestingly, public opinion polls conducted earlier this year in the Northern Territory and nationally showed surprisingly similar results. More than 80% of people were in favour of the Northern Territory becoming a state on or before the centenary. In fact, a similar majority suggested that the issue of Northern Territory statehood should be addressed before the issue of a republic. There is a clear sense of fair play within the Australian community. I am sure that we would not get that sympathy if there was a mean-minded argument that Northern Territory statehood would cost an extra \$100 out of people's weekly pay packets. They would not regard that as fair play. However, the fact is that it will not affect their lives at all.

Ms SMALL: Is that where publicity about the whole thing will be incorporated?

Mr HATTON: The marketing of statehood is an awareness program within the Territory. It is an awareness program and an acceptance program throughout the nation and within the parliaments of Australia. We have to put the idea into their minds and get them comfortable with the notion that it is fair and reasonable and will not make their lives harder. I believe that is eminently achievable.

That is why we need that time and that is why we are working towards 2001 is an achievable objective. That is the magic year. It is more achievable because we know more about how to go about it now. We are much further advanced than we were when we made a rush for 1998 and the Bicentenary. We had not done our homework and none of us really knew the implications. The groundwork was not done and the people had not thought about it and come to grips with it sufficiently. Certainly, people had not thought about it nationally. It is seeping into the consciousness of Australia now.

Ms SMALL: Are we are going to get people like John Williamson singing: 'We must have a state of our own'?

Mr HATTON: That is the sort of thing you need to rev up, isn't it? We could give Peter Garrett another cause to work towards.

Certainly, there is nothing wrong with people power. If you believe in statehood and are able to get together a group of people who are prepared to become involved, we can certainly provide you with support and information to assist in promoting discussion within your community. It is all about being informed and getting to the forefront of people's minds.

Ms HICKEY: The constitutional convention is a key part of that too. The better informed and more involved people are before they vote on membership of the convention, the greater the say they will have in what happens. This exposure draft contains the ideas of 6 politicians and some constitutional lawyers, backed by a lot of research and negotiations throughout

the Territory. However, the people of the Territory have to own it. If they are going to own it, they need to know enough about the issues to frame what will become our constitution. It is quite interesting to see how the Australian Constitution was framed. When you read about that part of our history and the people who made it, you can see how we can also be part of history by participating in the framing of our constitution.

Mr HATTON: The people involved in this will be regarded as the constitutional fathers and mothers of the Northern Territory. We talk about Sir Henry Parkes and those people in terms of the Australian Constitution. The role is the same, and it will earn a place in history 100 years from now.

Mr COOK: We will not be around to enjoy it.

Mr HATTON: Yes, you will. Your grandchildren will. I have said this at a number of forums over the years. This generation in this part of the world has a unique opportunity to do something. It is actually a unique responsibility too.

The question is now before us. Certainly, as Territorians we can say: 'We do not want to know about it. It is too hard'. We can put it aside. That will not stop us being judged. The question is: will future generations judge us well or badly on what we do and how we do it? They are the people who will have to live with the results. Even if we do nothing, they will have to live with the results and we will be judged on that. I have said to many groups: 'Are we going to be judged as people with foresight who were prepared to take up a challenge? Or are we going to be judged as a group of gutless squibs who dodged it?' We are not going to avoid the judgment; it is only a question of how we will be judged.

Ms SMALL: I seem to be doing a lot of talking.

Mr HATTON: Go for it, Joan. It is really pleasing to be asked questions.

Ms SMALL: One of the difficulties seems to be that ordinary people think it is all too hard because they really do not know anything about the constitution. I was just wondering if something could be produced for the show.

Mr HATTON: We have a display at the show. There is a video and some print materials for handing out. Over 500 people visited the display at the Alice Springs Show last week. These are ordinary people, to use that terrible phrase. They just came and talked to the people at the back of the room here, who are here going around the show circuit with us. They discussed the issues, took away some literature and watched the video. People are just starting to switch on to some bits and pieces about it. Would that be fair comment?

Inaudible discussion amongst Committee staff and witnesses.

Mr HATTON: There will be a display throughout the Tennant Creek Show. We will be dragging in people as they come past and giving them information. They can take away copies of the exposure draft and the other literature. We still have copies of the plain English version of 'What is a Constitution?'. This is all to help people start thinking about it.

It is very important to get people talking about it - people in the tourist industry, the Chamber of Commerce people, the barra people, members of Lions and Rotary clubs. I am sure that members of our committee would be more than happy to speak to any local groups who want to find out more about the issues. If they ask for somebody to come and talk to them, we are more than happy to do it. We want to communicate with people and we are looking for channels to do that. This is part of finding ways of opening up channels. The shows are there. As we move into the next round of our marketing strategy, which we have yet to finalise, we will be running advertisements. We now have a marketing budget and we will be using that to disseminate information to the public as much as possible.

Mr MITCHELL: It has taken 10 years to get this stage so hopefully there will be something.

Ms SMALL: Yes, I know.

Mr HATTON: But we are down to the crunch time now, Joan. We actually have some hard issues to deal with.

Ms SMALL: Yes, I can see that. We have come to the crunch.

I have not seen the video yet but there are some interesting issues in terms of public relations. One is the history of the Territory, especially how we have been absorbed by one state and then given back to the Commonwealth with only partial representation. I have seen that portrayed fairly effectively in cartoon form.

Mr HATTON: Where the different cars are going along the side. That is not in the video.

Ms SMALL: I have not seen that one but it was something like that. It showed how the Territory has been bounced from one place to the other over the years.

Mr HATTON: It is interesting. If you read the preamble to this exposure draft on the constitution, it is an extraordinary history. This goes back to before 1788 because, as I indicated earlier, the opening paragraph recognises that Aboriginal societies existed here in those times. Events then proceeded in a number of stages. We became part of the colony of New South Wales and then we became part of the colony of Northern Australia. Next we became part of the province of South Australia and so on. All the steps are spelt out in the preamble and it is an interesting history lesson about the Northern Territory. It states where we have come from and why, as a people, we now want to take this final step to full equality as part of the family of states of Australia.

Ms SMALL: I was suggesting that the message could be got across really effectively in cartoon form. For example, a person who is sitting in parliament but is not allowed to speak, wearing a gag.

Mr HATTON: Sitting in a cupboard with a gag on. Yes.

Mr MITCHELL: We should talk to Wicking about it.

Mr HICKEY: I think the idea of exciting some interest in this is one thing. However, there is no doubt that you have to do the hard work at some stage because there is a lot to absorb. I guess people can take it in bite-sized pieces.

Mr HATTON: There is no reason we cannot do it in bits. One is the issue of promoting statehood. We are trying to rev up that cause by saying that we have to become a state and we have to have equality. We are taking the line that we have to get those things, and the cartoons would be part of that. However, the exposure draft takes us to a more serious stage. We are actually looking for serious comment. We are asking people: 'Do you think these words are right? Are these concepts right?' We need to get those comments this year.

We are still continuing to draft additional parts of this. We have brought this material out so that it will be available for the show circuit. It covers the first 7 parts. We are addressing issues such as whether there should be a Bill of Rights and, if so, whether it should be part of the constitution, an organic law or an act of parliament. There is a discussion paper on that question.

Some other issues have been raised in submissions. For example, should there be provision for citizen-initiated referenda? For example, some people get very frustrated that you have to get the federal politicians to agree before you can find out whether the people want to amend their constitution. It may be that a provision could be created under which the parliament would be required to conduct a referendum on a proposed amendment to the constitution, if a certain percentage of the voter population signed a petition requesting that. It is ownership by the people of their document, their law. Citizen-initiated referenda could be used to compel the parliament to do things such as amending the constitution or making a particular law, as has happened in some parts of the United States. The document goes a step further by talking about citizen recall. When people believe that parliament has gone right over the top, the parliament can actually be required to face the people at an election if sufficient signatures are gathered in a petition.

Mr COOK: That sounds good to me. I like that one.

Mr HATTON: Well, it is in one of the discussion papers. It is your constitution. You set the rules. They are issues that need to be considered and debated. They are not the sorts of things that politicians are really keen to see written in. They might be exactly the sort of things that non-politicians want to see in there. We have been honest enough to take the submissions, prepare the discussion papers and put them out to the people. They would also go to the constitutional convention.

Ms REW: What happens when someone makes a submission? For example, if it contains a totally different idea that has not been covered in previous submissions, what is the process?

Mr HATTON: When it comes in, it is received by our committee. Every submission is recorded on computer by subject. Every submission on every point is logged into our computer program. The exposure draft contains references to discussion and information papers and those papers contain references to submissions. So they are all keyed in. All of that

work comes back to us through the discussion papers. The discussion papers are finding their way into here and all that information, including all of the submissions, will go to the constitutional convention.

Even if we have not picked up on an idea that people have given to us, we will not be censoring what goes forward to the constitutional convention. We have worked very hard to develop an accessible, identifiable program that will be available throughout the process up to the time of the referendum. It will be part of the history of the Northern Territory.

Ms SMALL: How long is the period for submissions?

Mr HATTON: I think we would certainly need to have them before the end of this year. If we work really hard over Christmas, we can do our final drafting then. I think we will be aiming to table the draft constitution at the February/March sittings. During the course of this year, we will be producing material and finalising a document to present to the parliament in February/March next year. We can work over Christmas to do the adjusting and amending, taking into account the submission responding to the exposure draft as we refine our work. If submissions are not in by Christmas, we will be in real strife. You will probably have missed the boat. I am sure that a string of people will scream: 'How come I never got a say in it?' But you have to draw the line at some point in your life.

Ms LEE: Will the convention still accept submissions?

Mr HATTON: They will have total control over their own procedures. I am sure that they will take submissions. Remember that at least three-quarters will be elected by their electorates specifically for that one subject. If they are smart, they will be reporting back to their constituencies about what is going on in there. So there will be ongoing feedback through your elected representatives on the convention. It is an increasingly inclusive process, through to the time when you walk into the ballot box and tick it.

Although I have not spoken with the committee about this, my recommendation will be that there be a vote on most of the core provisions in here, the basic structures that are set out and discussed. I will recommend that there be a vote on that. Those provisions that are capable of receiving specific independent consideration should be subject to choice votes: 'Yes or no? Do you want these things in your constitution?' Rather than being an inclusive all or nothing matter, the questions will be shaped through the referendum.

If you ask the people whether they want a bill of rights, they can vote yes or no. If you ask them whether they want this particular citizen-initiated referendum clause, they can vote yes or no. Those are things that can stand alone, if you like, without disrupting the entire constitution because they relate to specific subject matter. In my view, to do otherwise would run the risk that some people would vote no to the entire document simply because they dislike a particular clause. It is better to break it down so that you get the feeling of the majority of the community.

Ms HICKEY: There will be some interesting how to vote cards.

Mr HATTON: Remember the last federal referendum on the constitution? It asked people to vote yes or no and it asked 4 questions. If you disliked 1 of the 4, you voted no. Why didn't it ask people to vote yes or no on each of the 4 points?

Mr COOK: Because they wanted a no in the first place.

Mr HATTON: They wanted to drag some unpopular things in with the popular ones. Either way, I think that is the wrong way to ask questions. In fact, you could prevent governments doing that. You could write into the ...

Mr COOK: Put it in your constitution.

Mr HATTON: ...You could write into your constitution the conditions under which questions are put to people. Those are the things you can think about. You have seen what they do elsewhere. If you think that is wrong, make sure they cannot do it. It is your great chance.

Ms SMALL: The last national referendum was a farce.

Mr HATTON: You might think it was a farce. You might ask: 'Why should it be in the hands of the politicians?' They can put up questions but why can't the people put up questions?. The people might really want to put up a question that drags back the authority of politicians or forces up their public accountability, constitutionally. It will be very hard to make

politicians to put such questions to the people but perhaps that is exactly what the people want locked in. When you are considering possible amendments to the draft, you may want to consider a mechanism to force the parliament to take a particular course of action. These are interesting ideas to bounce around. However, they are practical issues that we have all lived with and been frustrated about at various times.

A witness: Can I be excused? I need to leave.

Mr HATTON: Thank you very much for coming along. If anyone wants to stay and talk more, you are welcome. Do you have any questions, Peter?

Mr WYATT: Nothing.

Mr HATTON: Please take a copy of the book with you. Have a browse through any of the discussion papers and please do not feel shy about asking: 'What do you mean by this?' We are very keen to try and make sure that people understand.

Mr COOK: Steve, this appears to be the best kept secret in Tennant Creek. I did not find out about it till today. You said it was publicised. Did anyone else see it publicised?

Ms SMALL: It was in the paper. It was also in the clubs.

Mr COOK: Who sent notices out?

Mr HATTON: We will stop recording and close the meeting.