PUBLIC MEETING

DARWIN— Wednesday 10 August 1988

PRESENT:—

Committee:

Mr T. Harris (Chairman)

Mr B. Ede (absent)

Mr W. Lanhupuy

Mr M. Perron (absent)

Mr R. Setter

Mr T. Smith

Officers assisting the committee:

Mr R. Gray (Executive Officer)

Mr G Nicholson (Legal Adviser)

Appearing before the committee:

Ms Sue SCHMOLKE

Ms Ida WILLIAMS

Ms Myrna BULL - representing the Women's Advisory Council

Ms Lyn POWIERZA

Mr Harry COEHN - representing the Office of Equal Opportunity

Mr John HARE

Mr Peter McNAB

Mr Kevin FLETCHER

Mr Peter TULLGREN - representing Federated Miscellaneous Workers Union

NOTE: Edited Transcript

Issued: 21 November 1988.

Mr HARRIS: Good morning ladies and gentlemen, welcome to this fifth public meeting of the Select Committee on Constitutional Development. There are 3 members of the committee present - Terry Smith, Rick Setter and myself. Unfortunately, the others members are not able to be here at this time, but Wes Lanhupuy should be arriving soon. I would like to emphasise that, at these hearings, we are examining the development of a constitution for the Northern Territory. It needs to be made clear that we are not a statehood committee. Whether we proceed to statehood in 5, 10 or 50 years, we need a constitution that is accepted by the people and, by visiting communities throughout the Northern Territory, we are working towards the development of such a constitution. Statehood is not something that is to be pushed on the people; statehood must come from the people themselves. We would like to know what people would like to see in our

constitution when we eventually become a state.

We have been given the task of preparing the groundwork for our new constitution. In order to do that, we have distributed 3 documents. The first examines the options for the granting of statehood and copies are available for interested persons. There are 2 methods spelled out in the document. The first is that statehood may be achieved by means of an act of the Commonwealth parliament. Under section 121 of the Australian Constitution, statehood may be granted on certain terms and conditions. The other method is by means of a referendum to alter the Australian Constitution under section 128. The views of the committee are given in these documents and we would like to hear the comments of people in relation to those.

The second document is a discussion paper on representation in respect of a Territory constitutional convention. By way of background, perhaps I could refer to the former Chief Minister's policy statement 'Towards Statehood'. It indicated that the development of a constitution is a 3-stage process. The first stage is the preparation of a draft constitution by the Select Committee on Constitutional Development. That draft constitution would be submitted to the Legislative Assembly and later be put before a constitutional convention. The composition of the convention is a matter for discussion. Should it be fully elected, partly elected or nominated? Eventually, the constitution would go back to the Legislative Assembly for ratification and then be put before the electors of the Northern Territory.

The final document issued by the committee is a discussion paper relating to the executive, the judiciary, local government, land matters, Aboriginal rights, human rights etc. We are seeking comments on these matters as well. The process of constitutional development is complex in that it impacts on some 35 Commonwealth acts. I am not sure of the precise nature or the extent of the amendments that would be required to those acts, but it is a very big task indeed. I guess our aim is to ensure that we have the same constitutional rights, privileges, entitlements and responsibilities that people in the existing states have. We need the same political representation in the federal parliament so that the needs of the Territory's people can be properly served. We need secure financial arrangements with the Commonwealth similar to those of the states. It is the view of all members of the committee that the constitution for the new state must be prepared by Territorians. We feel very strongly about that and we would like to hear other people's views on that. With that in mind, we have been visiting a number of communities throughout the Northern Territory and have been receiving written and oral submissions. That process will continue. We have an extensive mailing list which includes judges, unions, business and employer groups, local governments, community governments, political parties, teachers, educationalists, land councils and private citizens. We would be only too pleased to hear of any groups who would like to become involved in this exercise. We want to hear from as many community groups as possible.

I hope that gives some background on what the committee has been doing. I might mention also that there has been some confusion about the nature of these public hearings. The purpose of the hearings is to enable people to give evidence at a public meeting. We have a number of people who wish to contribute today. The first people are representatives of the Women's Advisory Council which has submitted a written submission to the committee. I ask the representatives of the Women's Advisory Council to come forward.

This is a select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect as proceedings in the House itself. For the Hansard record, would you please state your full name and the capacity in which you appear today.

Ms WILLIAMS: Ida Williams, Women's Advisory Council.

Ms SCHMOLKE: Sue Schmolke, Convenor of the Women's Advisory Council.

Ms BULL: Myrna Bull, Executive Officer for the Women's Advisory Council.

Mr HARRIS: Sue, we have received a written submission from your council which covers a range of matters. Would you care to expand on any of the points in the submission?

Ms SCHMOLKE: I would like to make a few introductory comments. Our submission is the result of serious consideration by the Women's Advisory Council, especially during the period of the past Convenor. I have been Convenor for the past 3 months. Ida Williams, who is with me today, is a past member of the council. She was Deputy Convenor of the immediate past council.

The Women's Advisory Council represents women throughout the Northern Territory. We have 14 members who come

from the length and breadth of the Northern Territory and who represent a wide range of backgrounds, opinions and expertise. We have representation from Aboriginal women, women from non-English-speaking backgrounds, women from pastoral properties and remote communities, professional women and women who are involved in the community in general. In fact, women are half of the voting strength of the Northern Territory and we believe it is essential that their voices be heard at every stage of the constitutional development for the Northern Territory.

It is a great disappointment that there are only men on the select committee. In the vital formative stage of this 3-step operation, women of the NT, to all intents and purposes, deliberately or by the accident of numbers in the Assembly, have been successfully ignored. This statement can be denied in political terms, but not in actuality. We have only to look at the composition of the select committee. The Women's Advisory Council has already raised this very important issue in its written submission. We do not believe that the situation was created deliberately - far from it - but it is an example of the way in which men in politics can easily presume that women's views are the same as theirs and have the same emphasis. That is a very dangerous assumption to make in this day and age. Not only is it fraught with peril for the committee in terms of its being able to produce balanced recommendations, it is morally wrong for a group totally comprised of one sex to claim to be able to adjudicate and recommend on matters involving both men and women.

Our first recommendation, therefore, is that this select committee should appoint a subcommittee of women experts to be involved in all stages of constitutional development. Committee members have already received our formal submission. The submission is an indication of intent in principle. We do not pretend to be constitutional lawyers and, when the constitution is being drawn up, we intend to obtain expert opinion and make further comment. However, there are some items in the submission that should be highlighted because our council believes they are very important to women in the Territory. Recommendation 8 is that the constitution should be written in non-sexist language and we commend the committee for having adopted this approach so far. Recommendation 9 is that we want the constitution and its complementary legislation to establish basic human rights. Recommendation 10 is that we want a constitutional commitment to the principle of equality of the sexes and legislation empowering it. We would be happy to answer any questions involving other matters raised in our submission.

Mr HARRIS: Thank you, Sue. Ida, do you wish to make any comment at this stage.

Ms WILLIAMS: No, I do not.

Mr HARRIS: Can I indicate that the committee is still considering your first recommendation in relation to a subcommittee. We have some concerns in respect of that proposal and we will be meeting soon to consider it further. However, I can assure you that we are in no way trying to ignore the input of women in this process. We would invite as many submissions as possible from representatives of your council in the various communities that we will visit. It is important that we have their views and we encourage your members to become involved in that way.

Ms SCHMOLKE: We feel that it is vital that the involvement of women should be in a formal and recognised sense and that it is within your power to establish such a subcommittee of women experts. A representative at least from that subcommittee should be involved formally in the sittings and hearings of the select committee. The provision of adequate resources and facilities and also payment for the time put in by women involved in such a subcommittee should be considered and implemented. It is all very well to call on the expertise and comments of women generally, but it needs to be done in a formalised sense.

Mr SMITH: Sue, could you elaborate on your argument that it is within our power to establish a formal subcommittee because the advice that we have at the moment indicates that there are some great difficulties with that?

Ms SCHMOLKE: We have actually responded to this very issue and we wrote on 27 June outlining the background. There is a speech in 1985 in the Parliamentary Record indicating that you have the power to coopt specialist knowledge. We believe that, within your current terms of reference - I think it is item 17 - you have the power to provide the committee with all necessary staff, facilities and resources and to appoint persons with specialist knowledge for the purposes of the committee.

Mr SMITH: But that does not actually refer to the power of this committee to set up subcommittees other than subcommittees of the main committee. I think that is the legal and technical problem that we have at present.

Ms SCHMOLKE: We are saying that it is vital that a way be found to enable the representation that we are suggesting. We suggested a subcommittee comprised of representatives from the Ethnic Communities Council, the Territory Women

Lawyers Association and from the Women's Advisory Council because of its broad-ranging responsibility. We believe that, given what has been recorded in the Parliamentary Record and given your terms of reference, this could be done with goodwill.

Mr HARRIS: Sue, as I said, we are looking at the matter. Could I stress that we are in no way trying to remove the opportunity for women to have an input in this process. Could I just indicate very clearly that there is no way we are trying to take away the opportunity for you to have input. I really believe that you can have just as much input through the processes that are available. In fact, we urge you to become involved in the entire process, including the constitutional convention, and we will be ensuring that you have that opportunity. Do you have any comment on that matter, Rick?

Mr SETTER: I would like to ask a question in relation to the request for a subcommittee. Do you consider that similar subcommittees should be established for other interest groups such as the unions, Aboriginals, ethnic groups and so on?

Ms SCHMOLKE: This is an example where 50% of the population is not receiving adequate representation and the matter should be examined seriously. However, it is not really our province to comment in respect of those other groups, but I understand what you are saying.

Mr CHAIRMAN: Would you like to address any other specific issues this morning? I note that you are in favour of the section 121 proposal and that you also comment in respect of the 12 Senators. You believe in equality there. Could you expand a little on your suggestion that the Senators be elected progressively at appropriate federal elections over a period of no greater than 12 years.

Ms SCHMOLKE: We feel that, given the Northern Territory's population size, it would be best to phase in our Senate representation, starting with 4 Senators and adding an additional 4 Senators 4 years later and so on. Ultimately, we should be represented in the Senate on a basis that is equal to that of the other states.

Mr SMITH: In recommendation 2 in your submission, you talk about the composition of the constitutional convention. You suggest that 50% of the participants be elected and 50% be nominated. Throughout your submission, there is reference to the need for a balance between specialists and generalists. What sort of specialists are you talking about in relation to that convention?

Ms SCHMOLKE: We must never forget the community at large. Quite often, the emphasis is placed on the legal and professional people of one sort or another. I would make the point that the general community must be represented. However, I think there are areas, and women are included in these, where there are people who have specialist expertise. The migrant communities and the unions are other examples. I believe that there has to be a balance between people with professional qualifications and representatives from the broader community so that there are no gaps in the knowledge and wisdom that is available as the basis for decision-making.

Mr SMITH: Professional qualifications in what?

Ms SCHMOLKE: Perhaps Ida would like to comment further.

Ms WILLIAMS: In relation to the 50:50 proposal, we often have an imbalance in respect of such matters because most of the decisions are taken by people from the legal fraternity. As Sue said, the people in the general community are often forgotten. There will be many women in the community, for example, who will not realise what is going on, who do not know what a constitution is about and who perhaps will not have the opportunity or the knowledge to comment. I think it is up to the Women's Advisory Council to provide that representation and to ensure that we do not have the professionals framing a constitution that is not from the people, and that is one of the aims that you expressed in your opening comments, Mr Chairman.

Ms SCHMOLKE: I do take your point though. You are asking what professionals and I ...

Mr SMITH: I am asking what specialists.

Ms SCHMOLKE: If you refer to the mailing list for the dissemination of information that we were told about, hopefully by now you would have an adequate cross-referencing of the various specialists who would be interested in having input. We will always be alert to drawing to your attention any groups who have not been involved and whom we feel should be involved in this process.

Mr HARRIS: The reason why I referred to the mailing list was that the comment was made at one of the hearings that such groups had not been informed that we were about to discuss this matter. We hope that the parent organisations will contact their various sub-groups issue and make them aware that the committee will be travelling throughout the Territory seeking comment. The committee wishes to ensure that everyone in the community has the opportunity to provide input.

Ms WILLIAMS: There has been very little reference in the media to today's hearing. We were discussing that before we came here this morning. I think that it is a pity that the media is not playing a greater role in publicising something as important as this.

Mr HARRIS: I guess you can only go so far.

Ms WILLIAMS: I realise that.

Mr HARRIS: We are trying to generate interest. If we were merely examining the question of statehood as such, there would indeed be considerable interest because there are many people with differing views on whether we should be pursuing such a goal. When it comes to asking people what they would like to see in their state when it comes into existence, they do not seem to be as interested in that process even though it is a vital one. How do we get the message across? We are examining how we can encourage the Aboriginal communities to become involved. They constitute 22.4% of our society. We will be visiting many of the Aboriginal communities. We will be providing them with information and sending out people to talk to them about the issues prior to our visit. We will have local government representatives talk to them and get them involved so that, when we arrive, we will be able to have meaningful discussions with them.

Mr SETTER: It is important to understand that the aim of these hearings of the select committee is to take formal evidence from witnesses and that they are open to the public. They are not public meetings as such.

Ms WILLIAMS: I realise that.

Mr HARRIS: Do you have any other suggestions in relation to how the committee can draw people's attention to the fact that we will be visiting their particular community. As I said, we have tried to use the media as far as possible. It has been suggested, for example, that service clubs and other groups in various areas should have guest speakers attend their meetings to talk about the question of statehood and perhaps generate interest among the people. I do not know what else we can do other than what we have already done.

Ms SCHMOLKE: This is a personal comment. I think that the formal arrangements for contact with various groups is in place but greater use could be made of the media as a means of making information available. Advertisements could have been inserted in the paper over the last few days, particularly last Friday, Saturday and Sunday, alerting people to the fact that the hearings were to be held today and tomorrow and that they were welcome to come and listen or, if they made prior arrangement, present a formal submission to the committee. The media could be used as a means of educating people on this matter. The newspapers and radio are very effective channels of communication because they reach a wide range of people. Such a media campaign could have created greater awareness of these hearings.

Mr HARRIS: We have a limited budget but we will take that on board. Thank you.

Mr SETTER: Do you agree that this is an appropriate time for the Territory to move towards developing its own constitution with the achievement of statehood being the ultimate aim? Do you also agree that it is appropriate that Territory people develop that constitution as opposed to having one imposed on us by the Commonwealth at some future time.

Ms SCHMOLKE: The answer to both of those questions is yes - very much so.

Ms WILLIAMS: It is very important that the people feel that it is their constitution. In addition, it would create a bonding among Territory people that would enable the eventual gaining of full statehood.

Mr SETTER: Yes, indeed.

Mr SMITH: Mr Chairman, the constitutional convention obviously will be of paramount importance in the development of a constitution. The committee itself has proposed 3 options in relation to its composition. I would like to hear your arguments as to why you prefer the third option rather than the option of fully-elected representation. I do not think that

anyone can favour the fully-nominated option. Secondly, how far would you take your recommendation that membership of the convention proportionately reflect the Territory population? In your submission, you identified 3 groups - women, Aborigines and people from non-English-speaking backgrounds - and I expect that you would say that they should be proportionately represented on the convention. Are there other groups whom you think should also be represented on the convention according to their proportion in the population?

Ms SCHMOLKE: In answer to that question, I would like to clarify that we are not arguing for 50% specialists and 50% generalists. I understand that you have not asked that but I would like to say it. We are particularly arguing for women and specialists to speak on behalf of women to be represented. There are other groups, apart from Aboriginals and people from non-English-speaking backgrounds, who should be represented: mining communities, remote communities, pastoral properties etc. Those elements of the Northern Territory's population who are living in different situations should be identified and their representation on the convention ensured.

Mr HARRIS: In respect of the composition of the parliament, your submission indicates that you agree that it should be a unicameral system but it does not go into any detail about the actual structure. Do you agree, for example, that the parliament should have the same powers, including legislative powers, privileges and rights, as exist in the state parliaments?

Ms SCHMOLKE: Our submission indicates that we believe that we should have equality with the other states.

Mr SMITH: Your recommendation 6 proposes rather a quantum leap in the recognition of local government. In particular, you recommend that parliamentary privilege, or whatever you would call it for local government people, should be extended to local government. That is a proposition that I have not heard advanced before. Perhaps Ida might like to expand on that.

Ms WILLIAMS: Local government is always referred to as the third tier of government. If there is parliamentary privilege at the state level, then I think it should also exist at the local government level. Local government should be recognised as a very important part of the democratic process and it should have equality with the other areas of government.

Mr SMITH: What advantage would parliamentary privilege give local government that it does not have at present?

Ms WILLIAMS: Sometimes local government people are not given the respect or perhaps the support that we think we should receive. Although we receive an allowance, we are not on wages and there are very many differences. We are working in the same areas as people from the Legislative Assembly and, if we could have things like parliamentary privilege, we would feel that we were working hand in hand with the state and with the Commonwealth and that we are not a separate identity catering simply for the basics. The responsibilities of local government have increased and will continue to increase over the years. I think it is a general feeling of being accorded the same privileges that are given to state and federal politicians.

Mr SMITH: But, what practical difficulties does the absence of the concept of parliamentary privilege present at the local government level?

Ms WILLIAMS: I do not see that there are great difficulties with it. However, it certainly makes it easier if you have parliamentary privilege in relation to what you are saying, doesn't it?

Mr SMITH: Okay, I take your point.

Your submission refers to 'constitutional recognition'. Can you elaborate on the extent of the constitutional recognition that you would like to see? For example, should the recognition that you say should be provided in the new Northern Territory constitution go as far as preventing that the new Territory government having the power to dismiss elected local governments?

Ms SCHMOLKE: We believe that there should not be any such dismissal without a public inquiry and adequate investigation. To that extent, the answer to your question is yes. The matter would have to be aired and investigated before a local governing body could be dismissed.

Mr SMITH: If we became a state, we would be regarded as an equal constitutional partner with the Commonwealth in the sense that the Commonwealth certainly cannot dismiss a state government. Are you saying that there still should be a

power, under certain defined circumstances, for the state government to dismiss a local government?

Ms SCHMOLKE: I am saying that the power should be very much controlled ...

Mr SMITH: But, there should be a power there?

Ms SCHMOLKE: A limited, controlled power.

Mr SETTER: I noted that you agree that a unicameral system is more appropriate for the Northern Territory at this stage. Would you envisage that, at some time in the future as the population increases, we should move to a bicameral system?

Ms SCHMOLKE: At the moment, we believe that there should be only one House but we should not eliminate the possibility of a second House being created should that be the wish of the community at large at some future time. However, it would have to be an expression of the wishes of the community. Historically, we have had a unicameral system and that is something that the Territory community relates to.

Mr SETTER: I think Queensland and the Northern Territory are the only places which have a unicameral system. Mind you, it has worked very well in the Northern Territory to date.

The other matter I would like to discuss with you is your proposal that, on the achievement of statehood, we should elect 4 Senators but, within 12 years, move to the full complement of 12. From my discussions with political parties interstate, there could well be some difficulty with that. There is a nexus between number of representatives in the Senate and in the House of Representatives in that the number representatives in the Lower House is approximately twice that in the Senate. That would require a considerable increase in the number of members in the House of Representatives over that 12-year period. Do you think there would be any difficulty from other states and the Commonwealth if that were to occur?

Ms SCHMOLKE: I think there would be an enormous difficulty and that is something that needs to be addressed. Our council expressed the view that the Territory needs to have equal representation with that of the other states.

Mr SETTER: Yes, I share that view. If we are to move to statehood under section 121 of the Constitution, that would require an act of the Australian parliament. It would require, of course, that statehood for the Territory be acceptable to the major political parties in Canberra. We must bear that in mind.

Ms SCHMOLKE: Yes. The other thing to bear in mind is that the time frame that the council has suggested is a recommendation only at this stage.

Mr HARRIS: Do you have any comments in respect of the number of members of parliament and whether or not that should be enshrined in the constitution?

Ms SCHMOLKE: At this time, we do not have any further comment in relation to that. That is very much a specialist area. We are concerned and interested lay people in the community and therefore I cannot give any further detail. Certainly, we can look at that matter.

Mr HARRIS: What about the terms of parliament? For example, should there be a fixed 3-year term? Do you have any comment on that in your submission?

Ms SCHMOLKE: A point that I probably did not make clear at the beginning is that, from the discussion papers and information papers, we selected some areas that we felt were pertinent for us to comment on at this time. We have not covered every area in the papers that you have distributed.

Mr CHAIRMAN: There have been comments from many people in respect of whether or not there should be fixed terms. Do you agree that the term of a parliament should be fixed at 3 years and that there can be no dissolution before that time unless a vote of no confidence is carried or a Premier resigns or vacates office and another government with the confidence of parliament cannot be formed within a reasonable period? Those are the sorts of issues that we would like to address in the course of our deliberations.

Ms SCHMOLKE: That issue has not been examined in depth by our council. It is something that we can follow up and provide more information to you later.

Mr CHAIRMAN: There are a number of questions that we would like to pursue with you but that would take considerable time. Perhaps we could look at specific issues that we would like to pursue with you in more detail and perhaps contact you again.

Ms SCHMOLKE: Before we finish, I would like to emphasise certain points in our submission.

Mr CHAIRMAN: I am not trying to wind you up. I am just saying that there are several questions that we would like to pursue with you in more detail. I am suggesting that perhaps we can contact you in respect of those and you can respond accordingly.

Ms SCHMOLKE: That would be excellent. We would be very pleased to do that.

Mr CHAIRMAN: Are there other areas that you wish to comment on?

Ms SCHMOLKE: We are particularly concerned about our recommendation on page 13 relating to human rights and equality of rights. We believe that provision should be made within the constitution for the protection of those.

Mr SMITH: Sue, I do not understand why you have both recommendations 9 and 10. Why have both of them. Isn't recommendation 10 - calling for the principle of equality of the sexes - covered by recommendation 9 which relates to basic human rights, including non-discrimination.

Ms SCHMOLKE: No, not adequately.

Mr SMITH: Could you spell out how those 2 recommendations are not identical?

Ms SCHMOLKE: Equality of the sexes is something that has not been clearly addressed or acknowledged. In fact, it is not covered adequately by common law. We believe that there needs to be stated clearly, probably in the preamble to the Constitution, that there is a commitment to the equality between men and women. The recommendation relating to basic human rights covers various other areas. However, we feel so strongly that there needs to be a clarification and a commitment to the equality between men and women that we have made that an additional recommendation.

Mr SMITH: Is there a difference between non-discrimination and equality or are you just saying that, because you feel so strongly about the issue of equality for women, it should be specified separately?

Ms SCHMOLKE: I will pick up your reference to non-discrimination. Quite often, it is very easy for the law makers to feel that, by saying that there will be no discrimination, people in fact will be treated equally. There can be an assumption that all groups - and I am not talking only about women - have access to the same power and resources that the makers of the law have at their disposal when, in actual fact, they do not. In this case, we are talking about women but it applies to other groups also. We feel that there must be a clear statement of a commitment to that equality between men and women which would then flow on through the various legislation that is enacted and would be implemented in that way. That would be a major step forward and would probably remove the need for various other legislation that is being considered such as the legislation in relation to domestic violence that is trying to redress these existing inequities. We feel that the constitution would provide a very simple, adequate and emphatic opportunity to make this commitment.

Mr SMITH: Are you asking for a higher commitment towards the rights of women than for other groups?

Ms SCHMOLKE: No. We have been asked to give this submission as a body representing women and therefore we are speaking very strongly on behalf of the women who constitute half of our population. We feel that it must be drawn to the attention of this select committee. We acknowledge that there are other groups that possibly feel that they have a similar need to be treated fairly and equitably and it is their responsibility to make that submission for themselves. However, possibly it is something that this select committee can bear in mind.

Mr HARRIS: Recommendation 9 relates to the inclusion in the preamble to the constitution the establishing of basic human rights in the new state whereas recommendation 10 indicates that the constitution itself should contain a commitment.

Ms SCHMOLKE: Yes.

Mr HARRIS: At this stage, I acknowledge the presence of the member for Koolpinyah, Mrs Noel Padgham-Purich, in the

gallery. Noel, you can come down into the Chamber if you wish. Are there any further questions?

Mr SETTER: Recommendation 7 refers to extensive debate and consultation being undertaken in respect of Aboriginal land rights etc. We heard this morning that women comprise 50% of the Territory's population. Given that 50% of the Aboriginal population would be women, I assume that you see yourselves as representing their interests as well.

Ms SCHMOLKE: Yes.

Mr SETTER: Do you have a view in respect of the suggestion that has been made to us that an acknowledgement of the prior ownership of land by Aboriginals - that is, prior to white settlement - should be included in the constitution? Others have suggested that it be included in a preamble to the constitution and others again have suggested that it should not be included at all.

Ms SCHMOLKE: The whole issue of Aboriginal rights and Aboriginal land rights is a matter that the Women's Advisory Council firmly believes needs to be thoroughly aired and discussed by the community at large. At this point, we do not feel that we are in a position to say that one thing should or should not happen or that any other thing should or should not happen because the ramifications of ownership of land for Aboriginals and non-Aboriginals is massive and has a big impact on the Territory as a whole. At this point, we are not in a position to comment and I really doubt that many other people are either. We feel that there should be thorough consultation and discussion of the issue.

Mr SETTER: Thank you.

Mr HARRIS: I am sure there will be, Sue. The problem is trying to get the traditional Aboriginal people involved. It is a very complex matter. I do not have any solutions to the problem of getting people more involved in this process. I agree that there needs to be extensive debate on the issue. I am sure that there will be and I hope that we can arrive at some resolution of the matter.

The suggestion that the act be patriated back to the Territory had also been made. My colleague, Brian Ede, maintains that there is no such thing as 'patriation' and the expression should be 'devolution' on the Territory. Nevertheless, it is an issue of which we are very much aware and much comment has been made in the past in relation to it.

Are there any other points in your submission that you would like to refer to specifically?

Ms SCHMOLKE: At this point, I think that, in conjunction with our written submission, our initial comments have been fairly comprehensive. We look forward to making further comments on the items on which you require further information from us. We will be more than happy to supply that. I simply re-emphasise our belief that a subcommittee of expert women from various areas is absolutely essential to the fair treatment of this subject by the select committee.

Mr HARRIS: As I said, the matter of women being involved in the exercise is not really a question because it will in fact occur. How it will occur is perhaps the question. Nevertheless, we will ensure that your group has opportunity to comment throughout the entire process. As I said, we will contact you in relation to matters on which we require further information.

Ms SCHMOLKE: On behalf of the Women's Advisory Council, I thank the select committee for extending to us this opportunity to comment.

Mr HARRIS: I am sure there will be many more opportunities to speak to us.

Ms SCHMOLKE: Thank you.

Mr HARRIS: I welcome the other member of the select committee, Wes Lanhupuy.

We have a written submission also from the Office of Equal Opportunity. Could I ask Lyn to come forward. I repeat that this is a select committee of the Legislative Assembly and any evidence from witnesses demands the same respect as proceedings in the House itself. For the Hansard record, could you please state your full name and the capacity in which you are appearing before us today.

Ms POWIERZA: My name is Lynette Powierza and I am here as the Director of the Office of Equal Opportunity. I have with me Harry Coehn who is a member of that office.

Mr HARRIS: Lyn, we have received a written submission from you. The main issues that you refer to in that submission are human rights, Aboriginal rights, the number of parliamentarians, length of residency, terms of office, constitutional convention, electoral allowance etc. Would you like to expand on any of those matters.

Ms POWIERZA: Not really. The members of the office examined all the papers that were distributed. The headings that we gave are the matters that we wanted to comment on in particular at this stage.

In particular, we felt very strongly that there should be at least a minimum position in relation to human rights set out in the preamble to the constitution. We make the point that, whilst this is not included in other constitutions in Australia, there is no reason why the Territory should not take the lead, particularly given that the composition of our population perhaps is unique in Australia. We also felt that such a provision would provide a foundation for the development of particular legislation covering equality of opportunity in the Territory. Do you want me to talk to all of the points on the paper?

Mr HARRIS: In relation to the number of parliamentarians, your submission indicates that 'the number of parliamentarians or an appropriate ratio should be set out in the constitution'. We would like you to expand a little on statements such as that. If you would like to expand on any of the points in your submission, we would be pleased hear it.

Ms POWIERZA: The reference to the number of parliamentarians is brief because we did not have a specific idea on the particular number which should be applied for the Territory. However, we did think that it should be delineated in the constitution so that the number could not be changed at whim, as it were. That is our reason for saying that it should be set out in the constitution.

In respect of the length of residency, we simply agreed with the select committee's view that the 6 months residency clause in both the Territory and the Commonwealth legislation should be the one that applies in relation to voting eligibility. We think that that is a reasonable and adequate time.

We supported the 4-year option for terms of office after discussing the various propositions that have been made in that regard. That is simply the view that we reached on those issues.

Mr HARRIS: I was interested in that comment because the select committee recommended that the number of members of the new state parliament continue to be stipulated in legislation rather than in the constitution itself because there are times when it would need to be changed.

Do members have any matters that they wish to raise in respect of any part of Lyn's submission.

Mr SETTER: With regard to the constitutional convention and its composition, I noted that you say that 'while mention is made of the participation of key groups, population groups are not featured'. The composition of the convention is one of the difficulties that will be faced in the future. We have heard various views expressed today. It is a very difficult matter because, whatever is decided, somebody will feel that he has missed out. I would like to hear your view on that. How can we allow everybody the opportunity to have input into the convention without disadvantaging any group?

Ms POWIERZA: It is a difficult question. The reason that we have emphasised population groups is that they are pretty basic. There should at least be representation for groups such as Aboriginal people, women, people with disabilities and people from non-English-speaking backgrounds etc. We tend to talk about specialist groups such as unions or whatever else, but sometimes ignore those basic groups which should not be overlooked. The reason that we recommended also that there should be a mixed model of selection of the convention is precisely to try to address the problem of obtaining as wide as possible representation of various groups and interests in the community. We are mindful that, in the voting process, which is a very competitive one, the results sometimes come out skewed. The mixed model would allow the filling in of the gaps, but also allow the democratic process of selection to occur to an extent.

I was listening to the previous witnesses this morning, and I would like to indicate that I too believe that it is important that people who live in remote areas and in special situations should be represented. Harry, do you wish to add anything to that?

Mr COEHN: Perhaps there should be prior involvement of these particular groups, be they population groups or whatever. I am not certain - and I stand to be corrected - that those groups are particularly involved at this time. From my observations, to have many people from the various groups go through a fairly heavy set of documents such as these

makes their submission and involvement less than what they should be. If convention does not permit the possibility of representation from all these groups, prior involvement before a submission is made should be much heavier than it is. At least, what you are seeking - their involvement and their point of view - will be obtained at an early stage.

The chairman has pointed out that the committee works within a certain budget. Nevertheless, it appears to me that more consideration could be given to the type of information papers and the type of publicity that the committee is focussing on. To make a personal comment, it seems to me that the discussion on the constitution centres on the legislation to the neglect of many other major points. For example, every time I pick up the paper, there seems to be talk about the number of Senators that we should have. There is a whole host of other items on which the media does not focus. Consequently, when you are talking about the types of groups from whom you should be trying to obtain submissions, those subjects are not necessarily the sorts of things that those people are totally involved in. I was in Nhulunbuy recently and it seemed to me that the information available in respect of the constitution centred very much on the number of parliamentarians and the number of Senators. From reading these documents, it is clear that there is much more than that to the constitution. Perhaps if the various groups gave submissions and became involved in the very early stages, the composition of the convention may not be such a difficult matter.

Mr SETTER: Are you suggesting, Harry, that this committee needs to conduct a considerable amount of promotion with regard to the real issues involved in this whole debate as opposed to letting the media have the running on it because it tends to seize on emotive issues?

Mr COEHN: I agree. I think this committee should identify groups of people who perhaps could do much of its work. Putting aside the fact that many would be in other localities, how many of the groups would feel comfortable in attending a hearing such as this? I think it would be easier if you prepared reasonable working papers and sought input from these people. These people may feel very comfortable soliciting information and data and giving their point of view. This could then be collated for public information. At least, by doing that, you would obtain their point of view. The publicity in relation to the hearings of the committee is quite good. I do not think there is a single Territorian who does not know that there is such a committee and that it is collecting information. However, I would be interested in the number of people who actually do attend a hearing.

Mr SETTER: If the convention were composed of 50% elected and 50% appointed people and the appointees were professional people, constitutional lawyers, politicians etc, do you think that the elected people would feel rather overawed in that they would not have the same knowledge of constitutional matters that the professionals would have? Do you think that there is an opportunity to use a subcommittee system within the convention whereby people who have special interests - for example, ethnic affairs, issues relating to Aborigines etc - could have input? I imagine that much of the debate that would occur at the convention would not be of interest to all the participants.

Mr COEHN: I think that that at least would cover the interests of many of the groups that may not necessarily be represented as a result of the election system. Let us be honest and recognise the fact that the people who are elected may not cover the entire range of people who compromise the various groups.

Ms POWIERZA: My idea in respect of the mixed composition was not that the appointed people would be specialists such as constitutional lawyers etc. After the election of the 50% of the delegates, you could then determine where the gaps were and fill them by means of the appointees. This could involve the appointment of lawyers or people from remote areas or whatever. The appointment system should aimed deliberately at filling the gaps missed by the election system.

Mr SETTER: Of course, no decision has yet been made.

Ms POWIERZA: No.

Mr SETTER: However, your point is a very valid one. Thank you.

Mr HARRIS: These are issues which we will have to address. All we are saying at present is that all the information that has been provided will be looked at. At the appropriate time, people will be able to comment on that at a constitutional convention. I hope that all the issues are raised well and truly prior to that. We need to know those views for our deliberations in relation to a draft constitution. Our task is to try to glean from members of the community any issue that they feel is of concern and should be addressed.

Harry, I take the point that there are a number of major concerns in the documents which need to be addressed by the

community. Many of them are very straightforward issues. The question of the number of Senators is of real concern to us naturally because it is a major issue which will confront us at some stage. The whole matter of having a new state with a small population having equal numbers in the Senate is a frightening prospect for other governments in Australia. Those issues will have to be addressed and we want the views and the arguments of people in the community in relation to them. Some people are saying that, under no circumstance, should we move to statehood. We need to discuss these views.

Lyn, in your submission you raised bilingual education in relation to Aboriginal rights. I am not raising this because I also happen to be the Minister for Education. It has been raised at other hearings. I am interested in your reference to 'specific treatment'. Are you able to expand on that in any way? What should that specific treatment be?

Ms POWIERZA: I think that the bilingual education program certainly has been crucial to the preservation of Aboriginal languages. It is my belief that it is a very important element of education for Aboriginal children and for Aboriginal adults. The framing of a constitution presents a wonderful opportunity to recognise the significance of Aboriginal languages to the people. In many ways, the Territory is unique in the world in the number of languages that are dealt with in the school system. It is not as easy as it was in Canada which merely determined that both French and English would be official languages. Whether or not we can go that far, I think it would be possible to refer to the right of people to be educated in their own language when that refers to Aboriginal languages. I know that there are many other people from non-English-speaking backgrounds and that 50 or 60 languages from around the world are spoken in the Territory on a daily basis. However, I do not think that those languages have quite the same status as the languages of Aboriginal people. I believe that the bilingual education program is essential to the continued existence of those languages. That is why I have said that it requires specific mention.

Mr HARRIS: All I query is the equality of the whole exercise. I am trying to look at the matter right across the board. I know that we make specific reference to certain areas. I simply wanted you to expand on that.

Ms POWIERZA: I think that it is particularly important that the program is viable. We have proved in the Territory that it is viable and this is an opportunity to enshrine it. We have made some provision at least within our education system for other non-English languages in the Territory. Also, the government has given support to the establishment of schools that communities themselves run. That is an attempt to overcome difficulty in terms of numbers and the dispersion of people and children from different backgrounds throughout schools. I am mindful that, in other parts of Australia, there are opportunities for bilingual education. Greek is an example of which I am aware. However, I do not really see it as being viable here because of the present numbers unless it is in a non-government school situation. There have been applications for that from the Greek community.

Mr SMITH: Lyn, I think that it would be difficult to entrench in any constitution an education program and the principle of support for bilingual education or the rights of Aborigines to continue to receive education in their first language. However, it is the type of matter that it may be possible to look at in terms of the constitution.

Ms POWIERZA: Yes, possibly that should have been reworded so that, in relation to the constitution, we are referring to the principle and not to the specific program. I agree.

Mr SMITH: In your preceding paragraph, you talk about Aboriginal people and state that the history and ownership of the land 'should be entrenched'. What do you mean by 'entrenched'?

Ms POWIERZA: I am referring to the preamble to the constitution. I suppose that 'entrenched' means that it should be written into the constitution so that there is a real recognition of the history of the people in relation to the Territory.

Mr SMITH: You mean written in. In my view, and I am not sure whether I am legally correct, 'entrenched' means that there are special provisions inserted into the constitution and, to change those provisions, requires action that is different from changing normal provisions of the constitution. In other words, when talking about entrenching Aboriginal land rights in the constitution, people are saying that there must be a two-thirds majority of people at a referendum to change that whereas normal provisions of the constitution may be changed by, say, 50% plus 1 of people voting in a referendum. I wanted to elicit from you whether you thought there should be special provisions or whether by 'entrenchment' you meant simply placing it in the constitution whereby it could be altered by the same procedure that you would use to alter any other provision of the constitution.

Ms POWIERZA: I did not really consider the technicalities of that. Did you have anything to say on that, Harry.

Mr COEHN: No. I think that the language part ties in with the whole cultural heritage of the Aboriginal people. There should be recognition of the whole cultural heritage of the people. We did not intend to enter into deep discussion on whether that should be entrenched or otherwise. I think that recognition in the constitution would give it that status anyway.

Mr HARRIS: Any further comments?

Mr SMITH: I wanted to take up the matter of electoral tolerance which obviously is of particular interest to politicians. I note that you base your call for 20% tolerance on the fact that it provides us the opportunity to take into account vast distances and sparsely populated areas. However, the reality of the result of the 20% tolerance so far in the Northern Territory's electoral history is that the larger electorates have tended to be in those very areas. For example, Wesley Lanhupuy has one of the largest electorates in terms of numbers of people, as does Stanley Tipiloura, and the smaller seats have tended to be in the urban areas. At present, the smaller seats are in Alice Springs. Some electorates there have 500 or 600 fewer people than Wesley's. I know also that my electorate of Millner has fewer people than the Arnhem electorate. That is not the result of any gerrymander or anything like that. It results from the way in which the independent electoral distribution commission has worked through its task. Perhaps I am not really asking a question. Maybe I am merely making the observation that it does not seem to me that the point you have made in support of a 20% tolerance really works out in practice.

Mr SETTER: I would like to ask for a point of clarification in regard to what you mean by a tolerance of 'up to 20%'. Do you mean 20% plus or minus or 10% plus or minus.

Ms POWIERZA: We are all reading the discussion papers in responding to that.

Mr SMITH: The discussion paper means 20% ...

Mr SETTER: Yes, and that is the current situation in the Northern Territory.

Ms POWIERZA: I suppose that we were virtually looking at the status quo. I did not realise that, in practice, the Arnhem electorate has more people than the Millner electorate. My perception was that the 20% tolerance would allow for the sparseness of population. Who makes the determination about where the boundaries are and what sort of tolerance is appropriate?

Mr SETTER: There is an independent tribunal established from time to time which draws the boundaries based on its assumption of population spread.

Ms POWIERZA: Yes.

Mr HARRIS: It is a difficult problem to arrive at areas that are consistent with one another. The drawing of boundaries is a very sensitive matter. That tolerance is required if there is massive growth in an area or where you can see that a particular area is developing quickly. The problem is in linking it all together, particularly in relation to the Aboriginal scene where there are completely different tribal groupings. The electorate of Stuart is perhaps the perfect example where Yuendumu people, for example, relate to people as far up as Lajamanu. That has to be taken into account when you are drawing up the electoral boundaries. Thus, it is very difficult when you talk about land areas as compared with the population in those areas.

Ms POWIERZA: I understand that. We were really reflecting the view that the status quo should be maintained in that respect.

Mr SMITH: Of course, the matter may be taken out of our hands if the referendum is passed.

Mr SETTER: Yes, that is one of the things to be considered in the referendum on 3 September.

Mr HARRIS: Are there any further questions. Do you have any further comments?

Ms POWIERZA: No, only to thank you very much for allowing us the opportunity to give evidence. If there are other issues on which you would like specific comment from us, we would be happy to sit down and talk those through.

Mr HARRIS: Thank you very much for that offer and for presenting your evidence today.

Ms POWIERZA: Thank you very much.

Mr HARRIS: We have a submission from Mr John Hare. Can I ask Mr Hare to come forward to present his evidence. John, you are aware that this is a committee of the Assembly and that we require you to observe the normal courtesies extended to the House. Could I ask you to state your full name and the capacity in which you appear today before the Committee.

Mr HARE: Thank you, Mr Chairman. My name is John Denham Hare and I appear in my capacity as a private citizen. I am a local businessman.

Mr HARRIS: We have only just received your submission, John. Perhaps you could speak to it and we will go from there.

Mr HARE: Mr Chairman, it is fairly brief and I apologise for its late arrival. If you could bear with me, perhaps I could read through it - it should not take too much time - to give everybody a chance to pick up the main points which I am raising.

Mr HARRIS: Certainly.

Mr HARE: Basically, there are 2 major issues which I wish to address. One is under the heading of options for a draft of statehood and the other one relates to the proposed new state constitution. The terms of reference of the Select Committee on Constitutional Development include provision for the committee to inquire into and report and make recommendations on the issues, conditions and procedures pertinent to the entry of the Northern Territory into the federation as a new state. In its Information Paper No 1, the committee states that the preferred method of creating a new state is by an act of the Commonwealth parliament under section 121. I am of the view that section 121 should be the preferred method. It is contended that the Commonwealth parliament would be more competent in analysing the issues involved in the grant of statehood, and hopefully in an objective manner, than, say, a nationwide referendum where the majority of citizens may not understand the issues. Politicians - in this case Commonwealth parliamentarians - would be held accountable; the general public cannot be.

Irrespective of the constitutional power which the Commonwealth may or may not have under section 121, re the imposition of terms and conditions, the new state would have determined its bargaining position prior to approaching the Commonwealth parliament. While it is unlikely that the Territory, particularly with the current political complexion of the Commonwealth parliament, could obtain in advance a public commitment from the Commonwealth government to support the proposed grant, it follows that support from within the Territory must be demonstrated. The select committee's concurrence with the holding of a Territory referendum within a reasonable time is supported. The key issue is the definition of 'within a reasonable time'. The timetable for statehood should not be determined by political considerations nor be at the whim of the government. The government has indicated it is moving 'towards statehood'. That process has commenced and, in my opinion, should be finalised within 18 months. The preparation of a draft constitution for presentation to the Legislative Assembly and the establishment of a Territory constitutional convention should be in place by the end of 1989.

My major point is that the low level of political knowledge and education in the community at large is appalling. Surveys Australia-wide indicate a poor level of knowledge or understanding of the constitution or the political process. The development of a new constitution for the Northern Territory provides an excellent opportunity to educate the general population on the parliamentary system of government as it operates in the Northern Territory as well as Australia-wide. Such education hopefully would result in a more politically-literate community which, in itself, would contribute to the enhancement of the institution of parliament and the good governance of the Northern Territory.

I make a distinction in such an awareness program between the selling of the concept of statehood and its advantages in relation to the fundamental issues of control of land, mineral rights etc, on the one hand, and an awareness program on our system of government on the other. While the government of the day should have responsibility for the former, I believe the select committee should have responsibility for the latter.

On the subject of the proposed new state constitution, I have but one major issue which I would like to raise. The drafting of a new state constitution provides a unique opportunity for a Territory constitution to be drawn up to reflect the social, economic and geographic diversity of the Northern Territory. Lessons should be drawn from the inadequacies of existing state constitutions. We have a unique opportunity to devise a constitution in keeping with the evolution and development of the Territory. The principle remains that the Territory should not have a constitution enforced on it, but rather should

develop its own.

As I said, I wish to comment only on one particular aspect of the constitution and that relates to the executive. As a general rule, I support the select committee's view that the Premier and other ministers of the new state should be chosen from the members of the new state parliament. However, I would ask the select committee to consider a complementary system which would allow the Governor, on the Premier's recommendation, to make ministerial appointments from outside the parliament. This would have the advantage of allowing the Premier to choose the best available brains to assist in the good governance of the Northern Territory. Ministerial accountability would still be through the parliament and this could be achieved in one of two ways. Firstly, the non-parliamentary Cabinet minister could be called to the bar of the House to address parliament or be subject to questioning or, secondly, the non-parliamentary Cabinet minister could be 'shadowed' by a parliamentary colleague. This system would afford the government the best possible scope and range of expertise to the executive level of government.

As admitted in the select committee's discussion paper on the proposed new state constitution for the Northern Territory, the executive has become the dominant arm in the Westminster system. The executive sets the agenda for the parliament and effectively dictates the business. While, in theory, the parliament has control over the executive, the reality is that the parliament does not have that power in any practical sense. Since that strand of responsibility has been effectively removed, it also removes the constraint, at least in theory, or inhibition that some of the ministry could not be drawn, with certain safeguards, from outside the parliament. Under this system, the executive would still be dependent on the legislature for the passage of its registered proposals and, most importantly, for the ongoing appropriation of funds necessary for the performance of government functions.

The ministry is responsible to parliament because parliament claims to represent the people on whose behalf it acts and to whom it is therefore responsible. But, as I said, like most other parliaments, there is the criticism that the executive is not really accountable to the parliament. In the Territory, there is the added criticism that, because of its small population base, the government of the day is unlikely to have a large enough pool from which to draw its managers - that is, the ministers. As mentioned, necessary safeguards would have to be built into the system. For example, it has to be the function of parliament to appropriate moneys. It would be essential that the Treasurer and or finance ministers be parliamentary ministers to at least afford the parliament the opportunity to vet appropriations. No doubt other mechanisms could be devised, such as an expanded committee system, to act as a necessary watchdog.

Mr HARRIS. Thank you, John. You have raised some interesting points. There will indeed be a comment made in the community at large when such a proposal is put forward. I note your comment that the timetable for statehood should not be determined by political considerations or be at the whim of the government. You say that the government has indicated that it is moving 'towards statehood', that process has commenced and should be finalised within 18 months. I suppose that the issue of statehood and the direction of government in that regard is a matter for government. As I made it clear at the opening of this hearing, that we are a constitutional development committee. I acknowledge your point and, in fact, I have made the comment on other occasions that I believe we have perhaps gone about this whole exercise the wrong way. However, I believe that the process can still be achieved in the manner in which we are going about it. We are already educating the children in our schools about parliament. Every sitting day of the Assembly, there are children in the public gallery and members from both sides of the House speak at the various schools about the operation of the parliament. Perhaps there are matters that the public need to be made more aware of. I take the point that there is a need to generate interest if we really do want comment to flow back to a committee such as this.

No doubt, some of us would have concerns about the proposal for ministerial appointments from outside the parliament.

Mr HARE: Mr Chairman, to take up the matter of public education, it is interesting - and I certainly have not had a chance to discuss anybody else's submission - that the Convenor of the Women's Advisory Council, Sue Schmolke, made exactly the same reference. There may well be a public perception out there but anything that can assist in a greater understanding of the political process really has to be a responsibility of this committee. I am sure that you have limited funds, as you mentioned earlier. I hoped to try to make the distinction between constitutional development and the move towards statehood which obviously has to be determined by the government of the day, and hopefully by means of a bipartisan approach. However, I do not think that a committee such as this can expect to receive submissions in relation to a new constitution unless people understand the current system and receive information in a format which they can understand. While I commend those information papers, they are pretty dry and I wonder how many people have actually read them. Thus, I would simply like to reinforce that point about public education.

Mr HARRIS: Various groups such as unions have made submissions relating to their concerns in respect of the statehood issue - industrial relations matters etc. Those groups are following the process quite carefully and making their comments to the committee in the appropriate manner. However, we do need comment from the people at large in the community and that is one problem that we do not seem to have solved as yet. Do you have any comment, Rick?

Mr SETTER: Yes, Mr Chairman. John, I noticed that you favour section 121 as the preferred method and you further comment that the Commonwealth parliament would be more competent in analysing the issues involved in the granting of statehood than the community at large. Do you then continue to support the establishment of a constitutional convention which would consider a draft constitution and that that convention should comprise representatives of the community in full or in part? Do you favour that system as opposed to having the constitution developed by, say, a committee of this parliament? In other words, on the one hand, you are saying that the Commonwealth parliament is more competent to grant statehood to the Northern Territory but, on the other hand, you are suggesting that a Territory convention is appropriate to develop the constitution.

Mr HARE: I have no problem with that. I certainly think that there should be a constitutional convention. How that convention is comprised is a matter for later discussion. My point in advocating the section 121 option is that there would still be a the constitutional convention. However, it would be by means of section 121 that the constitution, however it was arrived at, would be put to the Commonwealth parliament. In this case, I favour that option rather than going to a nationwide referendum. We are having enough problems in the Territory trying to educate people on the constitutional niceties or the challenges and therefore I do not see how we would excite the people of Queensland or South Australia. However, there is a fair chance that, through our existing channels of information, we can at least lobby, for want of a better word, the existing members of the Commonwealth parliament. That is why I favour the section 121 option. It has no bearing whatsoever on whether I like or support a constitutional convention. I have no problems with a Territory constitutional convention being formed.

Mr SETTER: John, you observed that there seems to be a low level of political knowledge and education in the community at large and you consider that that is appalling. Do you think that that problem is unique to the Northern Territory or is it is a nationwide phenomenon?

Mr HARE: It certainly is a nationwide one. It is a subject which I have been following for some years. No doubt, you would have noticed in the press recently comments on surveys that revealed that a surprising number of people could not nominate in which House the Prime Minister sits. That indication must give cause for considerable concern. We are asking people to partake in a unique experience. Not many people have a chance in their lifetime to have an input into how their state is to be run. Whilst I have no intention to deny people that right, I think we have a responsibility to ensure that people can come to their decisions with the best possible information at their fingertips. It is certainly not a problem that is unique to the Northern Territory. In fact, I would suggest that possibly the Territory education system addresses the matter of political education and constitutional history to a greater extent than some of the states. Nevertheless, it is a universal problem.

Mr SMITH: John, when you say that the process should be finalised within 18 months, are you talking about a grant of statehood within 18 months?

Mr HARE: Oh no! I see no reason why this sort of activity cannot continue at a higher level whatever the decision of the government or the bipartisan approach to actual statehood is. In fact, I would have thought that the longer that the average citizen understands what the new constitution is and what the various options are, the better. It comes back again to better education. That in itself will generate sufficient debate, hopefully, to allow people to address the wider issues of whether they actually want statehood. I cannot see why this committee could not arrive at a draft constitution by the end of next year. Would you then circulate that draft throughout the community and have another round in 1990 after feedback? I think that one of the problems is that this whole issue is dragging on. We seem to go through great roller coaster activity when it comes to constitutional development or statehood. One minute we are up in the air and the next minute we are down in the trough. That is not assisting the whole education process.

Mr HARRIS: We are required to report back to the Legislative Assembly within a year of our establishment. We hope that we will be able to come up with something within a reasonable period of time. However, you are talking about the timetable for statehood. That is something that has yet to be determined.

Mr HARE: Yes. I am sorry, my terminology was probably a bit loose there.

Mr HARRIS: Our specific aim is to have a draft constitution as quickly as possible after consultation with as many people in the Territory as possible. We hope to come up with a document that can be submitted to a convention after ratification by the Legislative Assembly. It would then be made available for further public comment and put to a referendum. However, that is a different issue to the question of statehood.

Mr SETTER: John, I would like to comment on what you said a moment ago about the move towards constitutional development going through highs and lows over the last few years. I think the reason for that is that, several years ago, when the Chief Minister of the day made the announcement that we would make a push for statehood, there was lot of media hype at the time. Most of that centred on how many Senators we would have. That matter was debated back and forth for some time. When this committee settled down initially to examine this whole issue, it realised that it was very complex indeed and that an enormous amount of research needed to be done. We have been through most of that process now and these documents are a result of that. We accept, of course, that it is an ongoing process which will continue for several years at least. Whilst that research was being done, there was not a great amount of media hype occurring. In other words, it was not very exciting work and it was addressing a whole range of issues. The committee has been meeting on a regular basis over the last couple of years and I simply wanted to reassure you that much groundwork has been done and we are now standing on fairly firm ground in the sense that we know where we are going. We are now undertaking the process of consulting with the community on the issues that we have previously discussed. I anticipate that the hype will continue to rise from now on.

Mr HARRIS: John, I am aware of your involvement in the wider community and your interest in parliaments and the parliamentary process. Do you have any strong view in relation to whether the new state parliament should be unicameral or bicameral?

Mr HARE: I have no particularly strong view. Probably, a single chamber would be my preference at the moment.

Mr HARRIS: Do you have any views on the matter of qualifications for nomination as members of the new state parliament? Do you agree with the view that the person should be an Australian citizen of at least 18 years of age?

Mr HARE: I think that 18 years is quite acceptable and I certainly think that, whether it needs to be written into the constitution or not, Australian citizenship should be a prerequisite.

Mr HARRIS: Do members have any further questions?

Mr SETTER: John, you made the comment that, because the Territory has such a small population base, the government of the day is unlikely to have a large enough pool from which to draw its managers - the ministers. Are you suggesting that there is a need to enlarge the size of this parliament from its current level of 25 members?

Mr HARE: No. I think argument about increasing the size of the parliament is based understandably on the premise that you draw your ministry from within the parliament. The other way you can do it is to provide a system whereby the Chief Minister of the day can advise the Governor that he or she wishes to appoint a minister in the manner of the American system from outside the parliament. It does not necessarily follow that you need to increase the size of the parliament.

Mr SETTER: To your knowledge, is there any precedent for that within the Westminster system of parliamentary democracy as you understand it?

Mr HARE: There is no precedent as far as I am aware.

Mr SETTER: Thank you.

Mr HARRIS: Any further questions? John, thank you very much for presenting your evidence.

Mr HARE: Thank you, Mr Chairman.

Mr HARRIS: The next submission is from Peter McNab. I indicate again that this is a committee of the select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect as proceedings in the House itself. For the Hansard record, would you please state your full name and capacity in which you are appearing today.

Mr McNAB: My name is Peter Donald McNab and I am appearing in a private capacity to present a submission.

Mr HARRIS: Thank you, Peter. You have presented us with a written submission. Are there any points that you wish to expand on before we ask you some questions?

Mr McNAB: I would like perhaps to make a very brief general statement, Mr Chairman. The model proposed in my submission is basically a pretty conservative one, apart from some departures on the question of Aboriginal land rights and the matter of a limited form of a bill of rights. Apart from those things, generally the submission supports a state constitution model similar to those of the existing states of Australia.

Mr HARRIS: I note that you agree with the proposal for a unicameral legislature.

Mr McNAB: Yes.

Mr HARRIS: You propose direct democratic elections from more or less uniform constituencies. There is a reference to 'see below'. I am a little confused about that. You propose also that ministers be appointed solely from the legislature. I raise that because, this morning, we had a proposal that the committee should consider a complementary system which would allow the Governor, on the recommendation of the Premier, to make ministerial appointments from outside the parliament. It was suggested that such a system would have the advantage of allowing the Premier to choose the best of the available brains to assist in the good governance of the Northern Territory. Could you expand on your comment that ministers should be appointed solely from within the legislature?

Mr McNAB: Dealing first with the query about direct democratic election from more or less uniform constituencies, the 'see below' is a reference to the matter of entrenchment of fair electoral laws in paragraph 8. It is to make it clear that there is no inconsistency and that the 2 matters are to be read together. Paragraph 8 deals with a democratic standard, a general standard, put into the constitution. I guess I was trying to make it clear that, somewhere in the constitution, direct democratic election would be spelt out - that is, there would be a system like the existing one whereby the people would elect members from constituencies rather than having some sort of appointment or one large constituency with multiple membership.

Regardless of that question of mechanics, I am suggesting that there be a general standard set down in the constitution by which all electoral laws would be measured. That is something along the lines of ensuring a secret ballot, that the election is generally democratic and that it is fair and free. It may be that the actual detail of the method of election should not be mentioned at all in the constitution and that all the constitution should have is the democratic standard so that any laws passed by the new parliament could be subject to judicial review against that standard. I was trying to make it clear that the 2 matters have to be read together.

In respect of the second point about the appointment of ministers from outside the legislature, it should be pointed out that, in the United Kingdom, ministers can be appointed from outside of either of the Houses. There were examples of this in the 1960s but I am not aware of any recent example of its happening. There have been examples of appointed ministers standing for election and being defeated. I believe that the traditional notion of responsible government - that is, all ministers being responsible to the people through the parliament - should be upheld. Even though Britain has the capacity in its constitution to allow this to happen - its constitution being an unwritten one - it has not generally done that. The fact that there have been examples of appointed ministers who have subsequently stood for election and have been defeated does not seem to me to gel well with the democratic flavour. If the problem is perceived to be in relation to the talent available from within the legislature, that should be addressed by means of salaries and things of that nature.

Mr HARRIS: You also touched on the matter of Aborigines and Aboriginal land. I agree that is one of the most contentious problems that needs to addressed. We heard this morning that there needs to be much more debate on this matter. The problem is that there are time constraints even though we wish to obtain the views of as many Aborigines as possible. To date, we have not been successful in having the land councils come forward but I hope that they will at some stage. You support the patriation of the act to the new state but you also propose constitutional safeguards which would require a two-thirds majority of the legislature and a referendum for alteration. Could you expand on that a little? I am interested in any proposal in respect of this matter. Obviously, many people hold the view that the Land Rights Act should remain with the Commonwealth.

Mr McNAB: Basically, the suggestion is aimed at a compromise. The existing orthodoxy allows the Commonwealth parliament a fair degree of control over the question of a new state being admitted. While that remains, the issue of Aboriginal land rights will be high on the agenda of members of the Commonwealth. No doubt, they will be subjected to a

great deal of political pressure on this question of land rights as being a central matter to be resolved before statehood. I think that is the real politics of the situation.

If one accepts that the Commonwealth parliament has the power to do something about that, even if it is only to delay the granting of statehood, there will have to be some sort of compromise and some workable position arrived at that would satisfy the new state by not unduly hindering it in relation to the exercise of the rest of its powers and, at the same time, give the Aboriginal people some degree of confidence that they could abandon in effect their links with Canberra. There are no doubt many models that could be arrived at. This is my personal suggestion of a model that could be adopted whereby the Land Rights Act itself would become a Territory act. It would not be specifically entrenched but there would be a constitutional standard by which the exercise of legislative and executive powers in the Territory would have to be judged: the test of the benefit to the community as a whole but it would also effect some degree of Aboriginal ownership, control, use etc. That is the constitutional standard by which the exercise of powers would be judged. What suggests that that would be a reasonable compromise for Aboriginal people is that, having that constitutional standard in the constitution, would mean that the fact of the patriation of the Land Rights Act to the new state would not be a problem and they would have some degree of judicial review. Because the Land Rights Act itself would not to be entrenched under this proposal, it could be amended but each amendment that the Territory government sought could be judged ultimately against this constitutional standard.

Mr SMITH: Judged by whom?

Mr McNAB: By the courts. It would be a matter for judicial review. In effect, the courts are already a battleground for judicial review in an indirect sense. One element of the compromise package, if you like, might be to have a constitutional standard by which it would be directly judged. For example, I have suggested some entrenched status of the land councils for some transitional period - say, 5 to 10 years. However, under this model, there would be nothing to prevent the new Northern Territory parliament, after the expiration of that period, passing a new law restructuring the Aboriginal land councils. Provided that that was for the benefit of the community as a whole and it sought to continue Aboriginal ownership, control, use and exploitation of Aboriginal land, the mere fact that there was a new and restructured land council would not be a problem - provided it met that standard.

For example, rightly or wrongly, it may be thought that the land councils are not democratic enough or they should be more representative or they should have more women or that there should only be one land council for the whole of the Territory. If the Territory parliament thought fit to pass such a law, it would be a matter of justifying to the courts that it met the constitutional standard. It would give the Territory government and the parliament some degree of control and influence but it would be measured always against the constitutional standard. The constitutional standard would be the safeguard, if you like, for Aboriginal interests. In my view, different and more flexible mechanisms of use of Aboriginal land may well survive that constitutional standard provided there was proper and reasonable consultation with the Aboriginal people. It is really a question of the new parliament amending the mechanisms and the forms rather than taking away the direct rights.

Mr HARRIS: You would be aware that we are travelling throughout the whole of the Northern Territory.

Mr McNAB: Yes.

Mr SMITH: To pursue that matter for a few minutes, how does your two-thirds majority of the legislature and a referendum for alteration fit in with what you have outlined?

Mr McNAB: The constitutional standard would be entrenched. It could not be changed.

Mr SMITH: Right, I am with you.

Mr McNAB: Presumably, the whole package would be perhaps a condition on admission to statehood. The whole package would be that the Land Rights Act became a Territory law, that the land councils would be preserved in an interim sense with their existing status and that future developments in relation to Aboriginal land would then be measured against this specially entrenched provision. It may be that people could argue that that degree of entrenchment is not sufficient and perhaps a four-fifths or whatever majority would be required. The point that needs to be made is that special entrenchment would be something that may persuade Aboriginal people that this new model is something that they could live with.

Mr SMITH: There is a philosophical point. I may well be wrong but it seems to me that, under the Australian Constitution,

there is a passive power to go outside the parliament to the High Court in order to test the constitution. What you are suggesting seems to be a more active power. You are suggesting a formal process of judicial review written into the constitution. Is that correct?

Mr McNAB: Yes.

Mr SMITH: Will that impact on the balance that we presently have between the role of the judiciary and the role of the parliament?

Mr McNAB: Yes. Already, it is not unusual for the High Court to be used as a sounding ground for judicial review in a wide sense. I agree that there are very few constitutional provisions dealing, if you like, with questions of social policy by which laws can be measured. There are plenty, such as section 92, dealing with economic policy that people have used to judge the laws made by the federal parliament against. However, this would be a novel departure. This is almost an area - protection of minorities, general concepts - covered traditionally in bills of rights, the International Covenant on Human Rights, the Canadian Charter of Rights etc.

It would have an impact on the judiciary because the Territory would be directly embroiled in what would be seen by many people - and we have to be frank about this - as political questions being decided by the courts. However, I might add that the trend is to move to that anyway. Have a look at the example of Canada. There is considerable discussion in places such as New Zealand and Britain about such things as bills of rights. There is considerable discussion on this very issue of the impact on the judiciary. One of the references that I added to the list is a general article by Mr Ison in the Adelaide Law Review. Incidentally, this is referred to also by Peter Hanks in 'Australia's Seventh State'. He discusses in great detail the impact it has had on moving political power apparently from the parliament, the elected people, to the courts. He argues that there are many dangers in this. I commend that article to members of the committee if they are concerned about this issue.

As I said, the Constitutional Commission has recommended that a series of rights be enunciated for the Australian Constitution and, at some stage, that may be taken up and put to the people. The same issue will arise there. Even if the Territory people are against the concept of a bill of rights, in order to overcome this hurdle in respect of the question of Aboriginal land rights, it may be necessary for the parliament of the Territory to concede that this may be an exception. If they are philosophically opposed to having a shift to the judiciary in relation to these questions of rights, they could still preserve that but make an exception in this case in order to achieve statehood and in order to overcome the hurdle about Aboriginal land rights in the Northern Territory. The other alternative would be that we would have a limited form of statehood with control of everything except this question of Aboriginal land. That would be against the equality principle which this committee has already endorsed and which many others in the community feel is paramount.

Mr SMITH: One of the other changes that would result if we pick this up is that one of the basic tests of whether Aboriginal land would be granted is being changed from the question of detriment to the question of benefit to the wider community. Would you accept that as a consequence of what you are suggesting?

Mr McNAB: Are you asking whether that change could occur?

Mr SMITH: I am saying that that change would occur. Would I be correct in my interpretation?

Mr McNAB: Not necessarily, but it could happen if the Land Rights Act were patriated to the Northern Territory and the Northern Territory parliament passed an amendment reversing the test, if you like. If that were to happen, perhaps the land councils may feel that that would offend against these constitutional safeguards. I do not think it would because, in a sense, it would simply shift the onus. The right to claim Aboriginal land would still be there. You would still have to make a case. The body making recommendations to grant Aboriginal land might have to consider things differently but it may well be, nevertheless, an acceptable thing that would meet that standard. It would certainly be seen as a benefit for the community as a whole because that test would be imposed on the decision maker. In relation to the ownership, control, use, exploitation and occupation of Aboriginal land, I have already indicated that that includes the right to claim Aboriginal land.

Mr SMITH: Yes.

Mr McNAB: That may be a difficult question but it may well be that a court could say that the right to claim Aboriginal land is still being maintained and all that has changed is the mechanics. Thus, it may well survive the test of the

constitutional standard I am suggesting.

Mr SMITH: When you are putting in place those 2 conflicting principles of the benefit to the community and the principle of continued Aboriginal ownership etc, is it possible to word the constitutional standard in such a way that it would avoid a judicial review which basically reflects the judge's own prejudices? How can that be done?

Mr McNAB: That is the $64 000 question.

Mr SMITH: It is a difficult question, isn't it?

Mr McNAB: It is and it is the same question that arises in relation to bills of rights. I do not think you can. The judiciary will say that it is merely applying the words as best it can and trying to give legal meaning to them and doing it by means of a traditional judicial method. Other people will say that the judges are merely putting their own philosophy or views ahead of the electors and parliamentarians. There is no way you can resolve it.

All I can say is that it seems that, in America, and to a lesser extent perhaps in Canada, there has been an acceptance despite these criticisms which were levelled at the judiciary. Over time and on the whole, the community begins to accept that these are part of the framework of government, that the judges' decisions are justified and that the task that judges have undertaken in applying bills of rights or constitutional standards has been done in accordance with legal principles. There might be the odd aberration which people will criticise but the relevant court - whether it be the High Court or our Supreme Court - will have the authority, the independence and the quality of judges. Unlike parliamentarians and even ministers, judges are required to give detailed reasoning of how they reached a certain decision and that can be subject to appeal in a hierarchy. Those sorts of limitations and constraints - and given the fact judges are not seen as part of the hurly-burly of politics - mean that the decisions of the judges often survive those sorts of criticisms which are made all the time, particularly in Canada.

Mr SETTER: I would like to pursue that a little further. If I understand you correctly, Peter, what you are suggesting is that the Supreme Court of the new state be empowered to review legislation from this parliament. Are you suggesting that it review all legislation or particular legislation?. Could you explain that?

Mr McNAB: If the Territory decided to have its own bill of rights, then any piece of legislation could be subject to being impugned against that constitutional standard of the bill of rights, whether it be the Dog Act or a major piece of legislation.

Basically, the standard that I have talked about in paragraph 15 would have the same effect but, obviously, it would be limited to legislation of the Territory parliament that dealt in some way with Aboriginal land rights in the most general sense of that word. That would not be an automatic review. People would have to file process in the normal way and they would have to establish a legal basis for challenge. There would not be any ongoing process of judicial review. There would have to be actual court cases ...

Mr SETTER: That is the point I was trying to define. However, surely there is already that option to appeal through to the High Court?

Mr McNAB: Not against the constitutional standard. At the moment, decisions are reviewed against the existing meaning of the words in the Land Rights Act.

Mr SETTER: Hasn't the High Court sat in relation to a number of matters concerning the interpretation of the constitution?

Mr McNAB: Yes, but that is interpreting a legal document and an instrument that gives power.

Mr SETTER: Are you suggesting that the judiciary should be interpreting philosophy or ideology as opposed to considering a matter in purely legal terms?

Mr McNAB: That is the philosophical point that Mr Smith was raising and that many people see in those terms. Of course, once the words are inserted into a constitution or an act of parliament, they become legal words and they are like the word 'reasonable'. The word 'reasonable' appears in many statutes and there are many things of a general nature that are left up to judges to interpret. These are all still legal questions but, obviously, questions of philosophy come into them.

Mr SETTER: Wouldn't you agree that the community could have a problem with somebody who is appointed to the

judiciary making such decisions as opposed to legislators who are directly responsible to the community? In other words, they have to be re-elected.

Mr McNAB: Yes, I would have to concede that there could be concern in the community about that. All I can say is that that happens in respect of many areas of the law at the moment. It is happening in many countries which have entrenched bills of rights and those societies seem to have survived that. However, I would have to concede that there would be considerable concern that we had non-elected people applying what many people would consider to be political questions.

Can I add that it may be that, in order to overcome this problem in relation to land rights, this is the only model that would suit everybody. To a certain degree, to be frank, there is a vesting in the judiciary of decision-making in respect of some fairly general words. But, that may be the best thing that we can work towards in order to overcome some very disparate views on a question of land rights.

Mr SMITH: I want to pose an unfair, hypothetical question to you and, obviously, you can decline to answer it if you wish. One of the vexed questions in terms of the transfer of land rights is whether Aborigines should have the opportunity to dispose of the land that they have title to. Would the constitutional standard, as you envisage it, preclude a change to inalienable title?

Mr McNAB: That is something I have actually thought about because it seems to me that that will be a crucial question. It is obvious there is a large school of thought in the Northern Territory that the Land Rights Act is not flexible enough in terms of allowing alienation of land even where everyone supports it and it seems that there is a fair degree of support in a relevant Aboriginal community. Thus, it is a real issue now under the Land Rights Act. There is school of thought against that. In the commentary in 'Australia's Seventh State' by Professor Loveday, he mentions the situation in Canada where there was a large scale freeing up of the inalienation provisions which meant that an enormous amount of indigenous land was mortgaged and, in the end, lost because it was charged and debts could not be paid.

Those are the 2 schools of thought: those who advocate a complete freeze and those who see dangers in lifting that freeze. If the Territory passed a law freeing up the disposal of Aboriginal land or opening up the question of its leaving the hands of the Lands Trust, that would be a very difficult question for the Supreme Court or the other courts in the appellate structure to decide whether it breached the constitutional standard. All I can say is that you would have to look at the possible impact of the new law. I would think that, if the Canadian-type situation could be demonstrated as a possibility, the court would rule that such a law was invalid. Therefore, the Territory parliament would need to have some controls to uphold the underlying philosophy of the Land Rights Act which, at the moment, is against alienation because of this very danger that, if it were alienated, it could be lost again for all time.

However, if a law were passed by the Territory which allowed Aboriginal people to consent to 99-year leases or the alienation of very small parcels of land for public purposes or for joint ownership perhaps with the Territory Crown - that is an unusual concept but it could happen - or joint ownership between a statutory authority such as the Power and Water Authority and an Aboriginal land trust, if that sort of flexibility were enacted, I think that the courts would decide that it would probably not offend against the constitutional standard. There would be no danger of its being lost and it would be a small amount of land which was jointly vested with the Aboriginal people who would still be controlling it.

Thus, it would be very much a question of degree. You would have to look at the law that was passed or the executive action that was undertaken under that law and decide whether or not it offended against the constitutional standard. There would be many judicial battles about that. If the law were changed to enable a degree of alienation of Aboriginal land, many Aboriginal people no doubt would go to the courts and claim that the law offended against the constitutional standard and that they did not want the sort of situation that developed in Canada and elsewhere. I think that, unless there were strict controls on the alienation of land, it may well offend the constitutional standard. However, in respect of the point made by Mr Setter, I guess you would have to trust the Supreme Court to use its judgment and to examine these issues in order to determine whether such actions offended against the constitutional standard.

Mr SETTER: It is probably true to say that, at the moment, the majority of Aboriginal people would prefer the system whereby the land would be inalienable.

Mr McNAB: I agree.

Mr SETTER: I think the reality is that, at some time in the future, albeit several generations, those attitudes and perceptions will change as Aboriginal people become better educated and take a different role in our society. At that time,

and this will not happen overnight, I am quite sure that there will be a desire on the part of those people to change the status of that land. It may well be in their best interests to build in to the constitution some sort of framework to allow that to occur if that is what they want.

Mr McNAB: Generally, I would agree with you that there must be some measure of flexibility and this model does allow that. I am aware already of cases where the inhibitions on alienation are seen by some Aboriginals as being a hindrance. Nevertheless, the majority of Aboriginals would see them as being necessary for the reasons I have alluded to in relation to Canada. Certainly, that flexibility may well be something that should be thought about in the long term.

Mr SMITH: Let me explore that too. I understand that the concept of community standard - and I am not quite sure if that is the technical or correct expression - is quite important in those higher court deliberations and, over a period, you find courts varying their opinions on these key issues as they take into account where they think the community has moved.

Mr McNAB: Yes, that is right.

Mr SMITH: To pick up Rick's point, would your proposal be flexible enough for the Supreme Court to say next year, if it were presented to it, that inalienable freehold title could not be changed because of the principles pertaining to Aboriginal ownership, control etc but that, in 40 or 50 years time, it could be changed because of changes in community standards?

Mr McNAB: Yes, I think that could be the result, and probably would be the result. Obviously, Aboriginal use and control had, has and will have a different meaning and a different direction in 1976, 1988 and 20 years on. For whatever reasons, it may well be that a different meaning would be applied. I think there would be that flexibility. But that is a normal judicial function, as you pointed out. The interpretation of legal words possibly will move over time. I would not have thought there was any doubt that use and occupation in 1988 may well mean something completely different in 40 years time.

Mr SETTER: Mr Chairman, it would be fair enough to say that we have even seen that in the High Court over the last 20 or 30 years. There has been a changing approach in its rulings on various issues as a result of changing community attitudes.

Mr SMITH: Can I come back to the entrenchment of electoral laws? The principle is exactly the same. You are proposing that a general constitutional standard be put in place and, every time the government proposes an electoral amendment, there is provision for judicial review against that standard.

Mr McNAB: Yes, that would be the effect of it. It would not happen automatically but people could challenge it at any time.

Mr Smith: Yes, I understand that.

Mr McNAB: For example, it may be found that the law, when passed, looked perfectly okay but, in its operation, it was found that there was an unintended discriminatory effect or something that was unforeseen and, in that case, you may seek to challenge it.

Mr SMITH: Thus, losing political parties could seek to invalidate whole elections?

Mr McNAB: They could seek to invalidate at any time the relevant electoral law. You raised a point earlier as to whether there should be savings provisions. I think that would happen. I think the High Court takes the view that it would not invalidate full scale parliaments at elections. The courts do not usually upset governments or dissolve parliaments that have been elected and are holding office.

Mr SMITH: Where would you place key questions such as the amount of tolerance you would allow in seats?. Would that be part of the constitutional standards?

Mr McNAB: That would have to be judged against the words 'democratic', 'fair' and 'free'. People might want to flesh them out a little more so that there is reasonable tolerance between electorates.

Mr SMITH: However, you would not see a precise percentage being a constitutional standard?

Mr McNAB: No. I would much rather leave that flexibility to the parliament and allow the courts to determine at what point it ceased to be fair. I think it is more important that you have the opportunity for review against the standard rather

than fixing in legislation for all time a maximum tolerance percentage. Others would have views on that. It is not perhaps the most gripping and vital point. You could have, of course, the constitutional standard and the tolerance fixed in the constitution. However, it may be better to vest this judicial review in the courts. It has happened in America which, by means of interpretation of its Bill of Rights, has struck down gerrymandered and unfair electoral boundaries. The High Court has said that there are no such guarantees implied in our constitutions. I think that we should insert some general standard in relation to this in the constitution, regardless of whether a fixed figure or otherwise appears.

Mr SMITH: Yes.

Mr SETTER: The Commonwealth government has 4 proposals that it is putting to a referendum in the near future. One of those refers to the flexibility with regard to the plus or minus relative to the states by way of numbers of people in electorates. If that tolerance, be it 10% or 20% or whatever, were written into the state's constitution, would it still be possible for the Commonwealth to write into its constitution an overriding power to control that matter?

Mr McNAB: Section 124B(1) says: 'Where a law provides for electoral divisions in an electoral region, the division shall be determined so that the number of electors in each division does not depart to a greater extent than one-tenth more or one-tenth less than the number calculated under subsection (2)'. If that were carried and became part of the Constitution of Australia, it would bind all the states because it is paramount law in Australia. In so far as it affected the Commonwealth, it would also bind the Commonwealth. But that would not offend the equality principle because we would be bound like every other state and also the Commonwealth itself. The Commonwealth could do that but only by operation of the referendum proposal which would become paramount law applying across Australia and binding the states as well as the Commonwealth and the Territory.

Mr SETTER: Thus, there is no point in a state writing into its own constitution the limitations that I described a moment ago.

Mr McNAB: I would not have thought that there would be any need except that I guess it would prevent constitutional challenges in the High Court. You could challenge things in your own Supreme Court on your own constitutional standard. On the other hand, the view might be taken that the Australian Constitution covered the field and therefore it was of no force and effect and you could not challenge it. It would be a difficult legal question.

Mr SMITH: But you said that a state constitution could not contravene the Australian Constitution.

Mr McNAB: That is so.

Mr SMITH: That is what Rick was getting at.

Mr McNAB: If we inserted a tolerance that was greater than that permitted by the Australian Constitution, it would be invalid and of no effect.

Mr HARRIS: In relation to the independence of the judiciary, you agreed that the appointment of judges should be by the ministers. However, you propose that an independent judicial service commission be established by legislation to advise the executive in relation to appointments. What would be the form of this independent judicial service commission?

Mr McNAB: In the references, I refer to a book by Peter Wesley-Smith. I do not know if he is a relation of the more famous Territory Wesley-Smith.

Mr SMITH: He is his brother.

Mr McNAB: In his discussion, Wesley-Smith summarises the judicial service commission of Hong Kong. Speaking from memory, basically it is a statutory body that is broadly representative of the government, the lawyers and the community in so far as there is a form of democracy in Hong Kong. It has the job of advising the Governor on the appointment of superior judges and the equivalent of district court judges and I think that it may also extend as far as magistrates. In a sense, that would be a statutory imposition.

At the moment, I note that the committee has called for a convention of informal consultation with the Chief Justice in relation to judicial appointments. This would be a statutory replacement of that, if you like. It still would not bind the ministers, but they would be duty bound to consult with this commission which would be comprised of community and

legal representatives. Their views on who would be appropriate judges, their esteem and their qualities obviously would be a matter that the ministers would take into account in their appointments. I did not mean by that to rule out consultation with the Chief Justice. I must say that I rather assumed that he would have some sort of role in this judicial service commission. I cannot recall whether the Chief Justice of Hong Kong, whose exact title escapes me, is a party to this body, but I am pretty sure that he is.

Mr HARRIS: You also touched on the matter of the constitutional convention and you agreed with a mix of elected and nominated members. You suggested that perhaps 75% of the convention could be elected. One of the problems would be the selection of persons as nominated members. The problem is obtaining representation which is representative of all sections of the community.

Mr McNAB: I have referred to an article by Professor Lumb entitled 'Methods of Alteration of State Constitutions in the United States and Australia'. I respectfully commend pages 8 and 9 of that article where Professor Lumb discusses the constitutional conventions in the United States. On page 9, he states, in relation to constitutional conventions in the United States: 'In the overwhelming number of states, the delegates are elected by the people. Such an election is usually on a non-partisan basis - that is, the candidates do not run on a party ticket'. That is one aspect of its representativeness.

The general point I am making is that, in the United States - although theirs is a different political system - this does seem to be a reasonably successful method in relation to conventions. There is also some discussion by Peter Bayne in 'Australia's Seventh State' on this question of conventions. There would have to be a close study of the American provisions to see exactly what electoral mechanisms they use and how they encourage representativeness and how that actually achieves this non-partisan basis so that people who are outside the political process, who would never think of standing for parliaments or who may not even be members of political parties would feel, nevertheless, that there is nothing to stop their standing as delegates for a constitutional convention. I do not know whether we look on local government as a model for that or not but I commend to the committee a detailed study of the American system.

Mr HARRIS: It might be a little bit premature for the Northern Territory to get away from the politics of it. I guess people are clearly identified. I was interested in your remarks and we will definitely take note of the attachments that you have included with your submission. Are there any further questions.

Mr SMITH: No. I think Peter has opened up thoughtful avenues for discussion.

Mr HARRIS: Thank you very much Peter for appearing before the committee. If we have further questions in relation to your submission, I hope that you will allow us to contact you.

Mr McNAB: Certainly, I thank the members of the committee for allowing me to make this submission today.

Mr HARRIS: The next submission is to presented by Mr Kevin Fletcher and I note that Kevin is in the gallery. Would you like to come forward?

Kevin, this is a select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect at proceedings as in the House itself. For the Hansard record would you please state your full name, address and the capacity in which you are appearing before us today.

Mr FLETCHER: My name is Kevin Frederick Fletcher. I live at Unit 3, 39 Kurrajong Crescent, Nightcliff. I am making this submission as a citizen, taxpayer and ratepayer of the Northern Territory.

Mr HARRIS: Thank you, Kevin. We have your submission. Would you like to expand on any of the points that you raise in your submission.

Mr FLETCHER: Thank you, Mr Chairman. I will just go through the original submission which was forwarded in May 1986 when submissions were first called for from the public. My submission gives some ideas that I thought would be worth consideration by the committee.

In relation to representation in the federal parliament, we should have the equal electorates for the Lower House as indicated in the Australian Constitution and equal representation with the other states in the Upper House. My reason for that comment is that the purpose of the Upper House is to allow the smaller states equal representation in the House of review and that we were legally part of an original state at the time of federation - namely, South Australia.

This morning, I was able to do some reading in a bookshop and, once again, I came across the fact that, prior to federation, the people of the Northern Territory voted in the South Australian electorates, they voted in the federal elections and they voted in the referendums. It was only some years later, when the federal government passed the act in 1911 to take over control of the Territory, that the people in the Northern Territory lost those franchises. I think this is an important point that needs to be pursued even if it has to go to the High Court. The citizens of the Northern Territory had full rights and entitlements of South Australians and then, in 1911, those were taken away from them.

Legislative power should be the same as applies to other sovereign Australian states, and certainly no less. Provision should be made for an Upper House once the Northern Territory population exceeds 350 000 people. The Territory should be one electorate, returning 12 members or about half the number of members in the Lower House, the Legislative Assembly. It seems to be a standard rule that an Upper House has about half the number of members as the Lower House.

In relation to executive powers, the Governor or Administrator should have a reserve power to dismiss the government and force an election. This power should be spelt out and the electorate made aware of it. Such action should be used only as a last resort - that is, if the government was doing something illegal or was corrupt. I think that is even more important if there is only one House as the committee has recommended. With due respect, sometimes politicians tend to become carried away with their power and become a little megalomaniacal. The idea of an Upper House in the other states and in the federal sphere is that it is a means of a brake or control on such power. Where there is no Upper House, as has been recommended, I think that the Governor or Administrator would need to have some authority, if the government was acting unlawfully or unconstitutionally, to force an election. In the history of this country, there are 2 cases where this has happened: in New South Wales and in the federal sphere in 1975. In both cases, the electorate overwhelmingly supported the Governors' action. I consider this is important if there is to be only one House.

The Public Service Commissioner and departmental heads should be appointed by the Executive Council and be removed only by the Executive Council. Senior public servants, however, should be under the direction of the minister. In relation to judicial powers, I cannot see any immediate need to change the present system other than by giving consideration to the establishment of a district or county court at some time in the future. A procedure for the removal from office of any judge or magistrate who is corrupt or incompetent should perhaps be set in place at this time.

The format of our constitution should be based on the Australian Constitution and should include a means to amend it from time to time. The initial constitution should be based on a conservative model which could then be amended as necessary. The principles on which it should be drawn in my view should be the Westminster ideals. In relation to the method of approval of the constitution, the only answer to this question is by the people of the Territory voting in a referendum.

In respect of the steps desirable for the granting of statehood, there are none that I can think of other than legal ones. As I see it, such action should require only the consent of the federal and Territory governments. Requirements may depend on what other states have to say about Senate representation and some other matters. If it is at all possible, I would like to see another 10 years pass before we accept statehood. This would give us a chance to build up certain community foundations which I see as important.

As I said, my submission was written in 1986 which is several years ago. I have not changed my ideas about any of that other than to say that I have gained the impression that some people are concerned about statehood because they feel that it will mean that they will have to pay more in the way of state taxes and state charges. I feel that the select committee or some other authority should undertake a campaign of putting the case for statehood, even at the school level. They should visit the schools and let the people there know what is happening and how it will affect them. Certainly, they will be affected in time to come. However, the gravest concern that I have heard from people probably is what statehood will cost. Once you start hitting people in their pockets, they become very wary.

I have had some thoughts in relation to your discussion papers, particularly on the larger booklet. I will mention those. Some of these things are covered in the original paper, but I am trying to clarify them as they were expressed in this discussion paper.

In respect of pages 5 and 10, the Governor should have the power to suggest amendments to the new state parliament and be able to dismiss parliament at will for breaching the constitution or acting unlawfully. I gave my reasons for this. It is very important if you do not have an Upper House which would have some means of perhaps making the politicians of the day think about a particular bill before the parliament. Giving the Governor this power would provide a safeguard for the electorate because, basically, all a Governor can do is put the matter back in the hands of the electorate.

In relation to pages page 8 and 25, instead of a maximum 6-month period between successive sittings, I would like to see that read a 3-month period. I feel that, if our parliamentary representatives cannot meet once every 3 months, there is something wrong with the system.

Referring to page xix, I support the idea that local government should be recognised in the constitution. As I see it, local governments are the creation of the state governments and the Territory governments and therefore they should be recognised in the state constitutions. I do not feel that recognition of local government needs to be written into the Australian Constitution.

Referring to page xx, I do not favour the idea of Aboriginal rights being entrenched rights. I think that this would be and could be seen by many people in the community as a form of discrimination. As I understand it, as a result of the changes to the Australian Constitution some years ago, many Aboriginal rights are controlled by the federal government through its Department of Aboriginal Affairs.

On page 5, there is reference to entrenched rights. I do not favour the idea of a written bill of rights as cases overseas have shown that a written bill of rights in some cases has meant very little in terms of safeguarding individual rights. There was a survey which I have not got with me. I have not seen the full survey undertaken by a learned barrister in Victoria. It indicated which country had the greatest number of rights and Australia was rated even higher than the United States. The United States of course has a written bill of rights. It was only a couple of points but certainly we rated much higher than other countries which had bills of rights such as the USSR and some Latin American countries.

On page 15, the definition in (c) should include the words, 'the Queen's representative'. In relation to page 16, provision should be made in the constitution so that a second chamber can be added at a later date when the NT population increases and the people desire it. I have suggested a population of 350 000. Page 18 also refers to the number of Houses of parliament.

Referring to page 22, a prisoner serving more than 6 months should not have the right to vote while in prison. I feel that such people have breached the rules of society. Anyone serving a sentence of more than 6 months has been imprisoned for a fairly serious crime and, if that is the case, I feel he should not have that right to vote.

In respect of tolerance in the electorates on page 32, I support a 10% tolerance.

Page 38: I think that refers to some of the things that we have covered such as provision for a second Chamber, 10% tolerance and that the Governor be allowed to recommend amendments to acts of the new state parliament.

Page 47: the positions of Premier and minister should be mentioned in the constitution as they are in the Australian Constitution which refers to the ministers.

Page 65: state judges should have a similar guarantee to High Court judges listed in the constitution. Section 72 of the Australian Constitution refers to that and I think a similar section in the new state constitution would be sufficient.

Page 67 should include a section similar to section 71 of the Australian Constitution to cover the Northern Territory courts, particularly the Supreme Court. These are just brief notes. There should also be a section dealing with proposed alterations to the new state constitution and the method of voting to change it.

Mr HARRIS: Thank you very much, Kevin.

Mr FLETCHER: Mr Chairman, could I make a brief comment on the constitutional convention. I think that it should be an elected convention and, as far as possible, have representatives from a broad field so that each area where there is a town of any size should be able to return one delegate to that convention. I think that is important otherwise we will tend to have people from Darwin or Alice Springs having all the say. If there is system whereby all such areas have a delegate, there would be far better representation of the Territory people.

Mr HARRIS: You commented on the need to promote the positive aspects of statehood or the move to statehood. One of the comments that I make at the beginning of each hearing is that we are a constitutional committee, not a statehood committee. It is very important that we address this issue on that basis. I take your point that the perception in the community is that statehood will cost the world and that there are a number of positive aspects and a number of negative aspects. I guess that is where the politics comes into it and we can start to argue those issues. We are working on the basis

of listening to the views of people and then deliberating on those. Nevertheless, we are a constitutional development committee and we have not actively pursued the matter of the benefits of moving to statehood even though, on occasion, we have heard political comments from both sides in relation to that.

Kevin, I am interested in your method of election if there were to be an Upper House. You propose that there would be a single electorate which would return 12 members or about half the number of members in the Lower House. In relation to a fully elected constitutional convention, you argued that steps should be taken to prevent the dominance of Darwin and Alice Springs. Don't you feel that, with your proposal for the election of an Upper House, certain sections of the community could be disadvantaged or not represented?

Mr FLETCHER: Now that you mention it, in light of my comment in respect of the choosing of delegates for the constitutional convention, perhaps that would need to be examined. If an Upper House is established, it may be wiser to have more than 1 electorate, perhaps even up to 4 electorates.

Mr HARRIS: Do other members have any questions?

Mr SMITH: I have some major philosophical disagreements with Kevin. The major point of issue that I would take is the question of the ultimate responsibility of the parliament versus, in your case, the Governor or a second house. I find it difficult to accept that, ultimately, the people do not decide. I guess that, in the case of the Governor, you are short-circuiting that process and saying the Governor can decide that there is something wrong and put it to the people more quickly than it would normally be put.

However, to zero in on the second House concept, how do you reconcile the second House concept and a belief in democracy? It staggers me that, in this day and age, anyone can support the concept of a second House. The Senate was developed in the 1890s as a protection for the states when they entered the new federation. However, the second Houses in the states were established by the landed gentry or the powerful people of that time to protect themselves against the new democratic development of the Lower House for which everybody had a vote. In fact, if my memory serves me correctly, some of the Upper Houses when they first started were not democratic in the sense that everybody had a vote. If we have a belief in democracy, why do we need 2 Houses of parliament?

Mr FLETCHER: Basically because, with all due respect to you gentlemen, politicians have shown from time to time a degree of megalomania and there needs to be a means of whereby there can be a review, a second look or more discussion on important matters. Normally, the politicians control by means of political parties the way that a House operates. Certainly, in a Lower House, that is very much the case. I do not think that is the case with an Upper House. Certainly, from what I have seen of the Upper House in Tasmania, it is not.

Mr SMITH: That is a true House of independents too.

Mr FLETCHER: It is very much more a House of review. That is the sort of system that I was proposing. Normally in the political organisation to which you belong, if caucus made a decision in relation to a certain matter, that would be it for the parliament if the party had the numbers in the Lower House. In the Tasmanian system, there is an independent second House, a true House of review.

Mr SMITH: How is it a true House of review? It is made up of independent people. There is no guarantee that they reflect the wishes of the Tasmanian people any more than the Lower House does. That is the problem that I have with your proposal.

Mr FLETCHER: That may be your way of looking at it. I have had a look at parliaments in quite a few countries where I have travelled overseas, including some of the states in the USA. They all seem to have this system of a second House. It is all shown as part and parcel of their system of democracy. It is my belief that it is important to have a means of reviewing what the first Chamber does for whatever reason. Certainly, in this country, there have been one or two examples where that has probably been necessary. I can understand that, in most cases, it probably has been against the ideology of the Labor Party. I still think it is an important consideration. As I say, it certainly seems to be the system that is operating in most countries that call themselves democratic. The politicians are the elected leaders of the community.

Mr SETTER: Kevin, in the absence of an Upper House, I agree with your point that the Administrator should have that reserve power to call a government into line because otherwise, under our current system of Westminster democracy, the majority party has its way in the parliament on virtually every issue. There is no brake whatsoever. In most states of

Australia, the Upper House does apply that brake. Where there is no Upper House, and that is what is proposed here, the Governor or Administrator should have that reserve power. That is my personal opinion.

The other thing I wanted to take up with you was your comment with regard to equal representation in the Senate - that is, 12 members. Whilst we all would like to see the Northern Territory, if and when it moves to statehood, achieve 12 members in the Senate, the political reality is that that would most likely be unacceptable to the major political parties in Canberra. There is the option of seeking representation by 4 or perhaps 6 Senates initially with an in-built formula whereby we would move to a full quota of 12 Senators within the period that the formula dictates. Do you think that sort of formula would be acceptable to the community at large?

Mr FLETCHER: I would say that, if the southern states indicated that the new state would not be acceptable without some such arrangement, there would not be much option. However, I still feel that we must pursue the goal that the citizens of the Northern Territory had full voting rights and full status prior to 1911 and therefore they should have it when they become part and parcel of the Australian Commonwealth. As I said earlier, I would even pursue that with a challenge in the High Court because I think that is important. You would need to take legal advice on that but, if there is no other choice and the southern states force on us the sort of formula that you suggested, we would have no choice. Certainly, my first choice would be for 12 Senators even to the point of a High Court challenge.

Mr SETTER: Mr Chairman, I would like to ask a question of our legal adviser. Graham, would you see any validity in making a High Court challenge as Mr Fletcher suggests on the basis that we had the constitutional rights prior to 1911 and lost them at that time?

Mr NICHOLSON: I would not like to express a final view. However, I very much doubt that there would be any case to be made out of it. The problem is that, between 1901 and 1911, we were part of South Australia. South Australia was an original state and the Constitution gives certain rights to original states in terms of representation which it does not give to new states. We ceased to be part of the original state in 1911 and became a Commonwealth territory. If we now become a new state, I do not think that would revive our status as being part of an original state. On that basis, I do not think that the constitutional guarantees of representation for original states would apply to us. That would be my off-the-cuff view.

Mr FLETCHER: To my way of thinking, that would be very unfair in that, because of a federal act, people were disenfranchised and were made second-class citizens. When we want to achieve what most people will probably look for in the end - the status of a sovereign state within the Commonwealth of Australia - you are saying that what happened in the past is really of no relevance.

Mr NICHOLSON: I am only expressing a legal view. I am not expressing a view on what should or should not be the case.

Mr SETTER: If I could pursue the other point with regard to representation in the Senate, there is a nexus between the number in the Senate and the number in the House of Representatives. There are approximately twice the number of members in the Lower House than there are Senators. If we moved immediately to 12 Senators, that would be an additional 10 Senators in Australia. As a result, there would be an automatic requirement for an additional 20 members in the House of Representatives. These would be distributed on the basis of population. The Northern Territory would probably not increase its representation in the House of Representatives by more than 1 member at the very most.

Mr FLETCHER: Some time ago, I heard the former Chief Minister say that they should perhaps have a look at that nexus between the numbers in the Senate and I think that certainly they should. This is probably one of the things we should be voting on now rather than some of the issues which we will be voting on next month.

Mr SETTER: That may well be a valid argument but, nevertheless, under the existing Australian Constitution, the situation that I described is the one which applies. That means that the majority of those additional members of the House of Representatives would be distributed in the major metropolitan areas. The major political parties would ask themselves where the balance would fall and, certainly, the conservative parties would have some concern in relation to that. Probably, they could cope with it over a period but would have some difficulty in the short term. That is one reason that, in the long term, might force us to consider a formula for the number of Senators as opposed to standing on our dig for 12 from the beginning.

Mr FLETCHER: I appreciate that. There has to be a lot of negotiation and the other people involved no doubt will have their say about Senate representation. I think I referred to that in my 1986 submission. Certainly, whoever does the negotiation will have to be ready to stand up to some of the tough politicians with whom he will have to deal down south.

Mr SETTER: Mr Chairman, Kevin, I noted your support for the recognition of local government in the new state constitution. Did I hear you say that you are opposed to its recognition in the Australian Constitution?

Mr FLETCHER: I do not feel that it is properly a child of the federal Constitution. I think it is an important form of government. However, it has always been the states that have created local government and therefore it is the states which should give recognition to it in their constitutions. I think the federal government is becoming involved in something that is probably outside its jurisdiction.

Mr SMITH: But it is also true that the federal government provides the overwhelming amount of funds for local government.

Mr FLETCHER: It provides the overall amount of funds for everyone because it collects it. The states gave the federal government the authority to collect the taxes.

Mr SMITH: I think that the federal government won it through the courts rather than the states voluntarily giving it up. But, the same principle applies. The states are given official recognition in the Australian Constitution.

Mr FLETCHER: Sure.

Mr SMITH: I think there is certainly an argument for saying that, because the basis for local government funding comes from the federal level, similar recognition can be provided.

Mr FLETCHER: That is certainly true but it is certainly not my view. My view is that, if it has been created by a particular form of sovereign government, then that sovereign government should have the control over it. That is the way I see it.

Mr SETTER: Kevin, I notice that you are not in favour of Aboriginal rights being entrenched in the constitution. You commented that you considered that to be a form of discrimination. Would you like to expand on that?

Mr FLETCHER: I would be very wary about whatever was put in the constitution in terms of entrenched rights. Certainly, I acknowledge that the Aboriginal people were here prior to the arrival of white people but I do not think that they or other groups, women for example, should have rights entrenched in the constitution. If you have a constitution, I think that it should deal fairly and squarely with every citizen in the community. If you have particular provisions governing Aboriginals, women, Greek people or whatever, I think that gets away from the fundamental purpose of the document which is to safeguard the rights of all Northern Territorians or whatever they are to be called - Capricornians, North Australians or whatever.

Mr HARRIS: Kevin, thank you very much for presenting your submission and we will take on board all of the issues that you have raised. If there is any issue we wish to pursue further, I am sure that you would be only too willing to assist us.

Mr FLETCHER: Thank you Mr Chairman. Thank you members.

Mr HARRIS: I welcome Peter Tullgren to this hearing. Peter, this is a select committee of the Legislative Assembly and, as such, evidence by witnesses demands the same respect as the proceedings of the House itself. For the Hansard record, would you please state your full name and the capacity in which you appear today.

Mr TULLGREN: My full name is Peter William Edwin Tullgren. I am the Assistant Secretary of the North Australian Workers Union Branch of the Federated Miscellaneous Workers Union of Australia and we have provided an interim submission to the select committee. It is my purpose to address that and to answer any questions that members of the select committee might have.

Mr HARRIS: Thank you Peter. Please proceed.

Mr TULLGREN: On 11 May, we wrote to the secretary of the select committee making an interim submission which sets out the union's position in relation to statehood. Our position is one of opposition to statehood. A resolution adopted by our Central Council, which is the highest governing body of our union in the Northern Territory, rejected statehood at this time on the following bases: the Territory does not have the necessary tax base to support being a state; we believe that the current Northern Territory government is, as the resolution says, anti-worker and therefore it should not be given control over industrial relations; and that there is no justification for giving the Northern Territory Senate representation equal to

that of the original states in the Senate. The submission goes on to include 2 other resolutions. One is the resolution of the Northern Territory Trades and Labor Council and I will not address that because I understand that it has made a submission to the committee anyway. The other is a resolution carried by our federal executive with a recommendation to the Australian Council of Trade Unions concerning the transfer of industrial powers to any new state in the Northern Territory.

Firstly, I might briefly address the Central Council resolution and then, secondly, the resolution of the federal executive. The resolution of the Central Council states that we are opposed to statehood at this time. Obviously, it can be seen from that that we do not totally oppose statehood for ever and a day. However, we believe that it is not advantageous to move towards statehood at this time. We have identified many reasons, but we specify 3. The first one listed is the matter of a tax base to support being a state. While that refers to a 'tax base', it can be taken wider than that. It is our view that, based on the current economic state of the Northern Territory and its potential for economic development, it is simply not in the same sort of position as states like New South Wales and Victoria or even states like Queensland or Western Australia.

Despite the fact that, in the tax-sharing arrangements with the Commonwealth, the Territory would be treated in a similar manner to the states, it is in our view quite obvious that the Territory has a small economic base. Consider some of the reductions in federal government funding to the Territory and the difficulty that the Territory has had in making up that shortfall. It has had to introduce measures such as the tourism levy and to attempt to and partially remove some conditions of employment for employees of the Northern Territory government. Without making some very drastic cuts, it has found it very difficult to make up that financial shortfall. Despite indications by the then Treasurer that it would consider revenue-raising measures such as the introduction of a land tax, the Territory government has failed to come to grips with those matters - at least as far as we can ascertain from the public record. According to all the most up-to-date and reliable information, the Territory has a very small economic base. It has a percentage of its population which makes no material contribution to its economy - and I am not being critical there, but it is a fact that has to be taken into account. We have no manufacturing or heavy industry base. We are principally a mining and pastoral economy which suffers from the difficulties that mining and pastoral economies suffer from generally.

In his paper to the Law Society seminar on statehood last year, Dr Gerritsen talked about the Northern Territory in effect flying on a parallel with Queensland. While that is an option, it is our view that that argument was not particularly convincing and that the Territory government would have real difficulty - and I might say that a Territory government regardless of its political persuasion - in funding statehood simply because, unlike a state like New South Wales or Victoria or even Queensland, it does not have the major taxing resources itself to fall back on in terms of being able to introduce a variety of state-type taxes.

In respect of industrial relations, we make no apology for the way the resolution is worded. Based on an examination of the approach to industrial relations by successive Northern Territory governments, it is our view that it is not principally in support of trade unions as such or of a structured industrial relations system. If we recall last year's public service dispute and all the drama that was caused there, it was clear that, when it came to making cost savings, one of the principal ways of doing that, if not the principal way , was simply to hoe into workers' terms and conditions. As a result of some traditional industrial activities, those conditions were slightly modified. However, we believe that there is great deal of concern and I need look no further than the speech by the Minister for Labour, Administrative Services and Local Government when opening the Industrial Relations Society Convention last weekend, the subject of which was that we could be in real state - a discussion on statehood. I presume that the minister was speaking on behalf of the Territory government. He trotted out the usual jargon about the industrial relations club, that it was very archaic and self-protective and needed change, and that he or the government wanted to see very substantial changes which gave the Northern Territory power over industrial relations.

Based on a whole variety of public statements on the record and the approach of the government, we would be most concerned if that occurred. I draw your attention to the fact that, in every national wage case in the past 5 years, the submission of the Northern Territory government, while it has been short, has been to support the submission of the Confederation of Australian Industry. Never once in that time - and I think it goes back further but I have only had a chance recently to look at the past 5 years - has the Territory government supported a wage increase for employees. It always simply parroted the position of the Confederation of Australian Industry. I might say that, on the obverse side of that coin, that even Labor states have not always supported the position of a federal Labor government in relation to wage cases. There have been variations.

It is the view of our union that, on the whole, the approach of the Northern Territory government to industrial relations is

quite unimaginative. It is simply a fairly conservative approach which attacks the alleged power of trade unions. The Northern Territory on the whole has one of the best industrial relations records in Australia but that does not prevent constant criticism of all the trade unions and workers generally. We have found that, in relation to the policing of federal awards, even the Northern Territory government's own tender board is reluctant to enforce the conditions of its tender agreements over the provision of services. To quote an example, one of our biggest bugbears is in relation to cleaning contractors. The Territory is a large consumer of cleaning contracting and we have raised with the tender board over time the fact that it should be policing the provisions in its tender agreements about award conditions. The tender board's response has been that that is not its responsibility and that it is there to obtain the best service possible for the government. What that has meant in fact is condoning in a de facto way breaches of federal awards and that is an unusual situation for governments to be in.

We would be very sceptical about the creation of an industrial relations system. I might also add that, despite comments to the contrary, the government, and for that matter other groups that have an interest, has been unable to indicate what is currently wrong with the present industrial relations system under which the Territory functions. There are broad criticisms that the system does not work but there is no detail of any of those. The Commonwealth is in the process of revising its industrial legislation which will overcome some of the problems. The High Court has extended the power of reinstatement. We say that, if there is a claim for a separate industrial relations system, then it has to be based on merit and there has to be substantial argument and there has been none.

I might also add that one of the preferred options is a state industrial relations system. That would mean the creation of an eighth industrial relations system in Australia. The government has said that it is opposed to a great deal of duplication and waste. A commission that is set up would have to include someone who was the equivalent of the president. In all states, that person has a salary and status of a Supreme Court judge. In fact, in places like New South Wales, the president has the status of the Chief Judge of the Court of Appeal. In the Commonwealth, the president of the commission has the same status as the Chief Judge of the Federal Court. That would involve considerable expense. You would also need a couple of commissioners and, so that it would be seen to be fair, there would need to be a former employer and a former trade union official. Thus, you would be duplicating a system whereas, in fact, the states have been trying to streamline their position. We believe that it is unnecessary.

Thirdly, much has been made of the fact that the Territory should have statehood on the basis of similar representation to that of the original states on the basis of fairness and equity. That would mean granting the Territory 12 Senators. Whilst we support job creation, we do not support the job creation of more politicians by politicians so that they can be filled by party officials and trade union officials who want to retire into the Senate. I will not bore you because I am sure you have read the legal argument. The reality is that the equality that was given to the original states was done by a great deal of horse trading at the federal conventions and was done quite simply to ensure there was a federation. If it had not been done, Tasmania and Western Australia would never have joined. With the greatest respect, despite what occurred in 1899 in relation to Western Australia and Tasmania, the Northern Territory in 1988 does not have the same clout. If you were to accept an argument that said we should have 12 Senators and 2 members of the House of Representatives, and given that we have 25 Legislative Assembly members, we would truly be the most overgoverned place in Australia. There are a great many other arguments but I do not intend to go into them here. We believe that this argument about equality is basically fatuous because equality here is arguing for more politicians. It is always worrying to people when politicians say that there should be more politicians. We do not support that proposition.

The position that we put to the ACTU summarises our position. I would certainly be interested in - and I have not heard - any submission or material, particularly in relation to industrial relations, that supports an argument that, if there was to be statehood, we should not keep the current system. If there are criticisms of the current system which supposedly dictate the creation of a new system, then I certainly have not heard them and I would be pleased, if they do exist, to actually be able to read them to determine that.

On the whole, we do not believe that statehood is warranted. In fact, with the greatest of respect, it is our view that statehood is a political phrase which has been seized on to cover a whole variety of sins and to be used as a rallying point. It is interesting to note that, if I remember correctly, the most recent polls commissioned in relation to this said that the majority of the people in the Territory did not support statehood. I think that is a salient point in any consideration. In broad brush terms, that is our position in relation to statehood. We do not believe that it is a good idea.

To make it clear, I might state that our position is not politically motivated in any party political sense. Our position is based on what we believe is best for our members in the Northern Territory. It is our view that, in no way or shape, can it

be said that statehood would be good for the ordinary Territory worker, the ordinary person who earns between $15 000 and $19 000 and who is a member of ours within the Northern Territory whether he or she works in the public sector or the private sector. If it could be shown that it would be of benefit, we would reconsider our position.

We do not believe that, in any of the material that has been provided and even in the preliminary documents that this committee has issued, there has been any closely argued position that justifies moving to statehood on an economic basis. The arguments are that we will gain control of the land and that we will gain control of mineral royalties. If what is being said by the proponents of statehood is that, if we get control of uranium mining, that money will solve our economic problems, then somebody cannot add up. With the greatest respect, the amount that would come to a Territory state in royalties from uranium mining would not be a solution to our economic problems. I think that anyone, even people inexperienced in economic matters, will see that. We do not see that, among your published deliberations to date or in any of the discussions by proponents of statehood, it can be shown that the ordinary person will be better off. The then Chief Minister, Mr Everingham, said that it probably would not cost more than the price of a can of beer. We think that, even apart from inflation, the price of a can of beer would escalate very greatly under statehood. We think that would be unwise and that it would simply impose a great deal of financial hardship on ordinary people in the Territory, the majority of whom are in no position to continue to bear very high imposts of state taxes simply to keep a state administration afloat.

Mr HARRIS: Peter, could I start by thanking you for putting your union's position. However, I think that you are missing the point to some degree because this committee is not a committee that is opposing or supporting statehood. It is a committee that is looking at putting in place a constitution. In order to put in place a constitution that we believe would be accepted by the people of the Territory, it is necessary for all groups throughout the community to have their say. The comments that you made in relation to government activities are highly provocative to me and we have had meetings on occasion where those issues have been raised. You said that you oppose statehood at this time which means that you should be looking at the development of a constitution and putting forward your views in relation to industrial relations. Those are the issues that we want to hear about, not whether a government of the day can run the place and that it should not do this or it should not do that. Those sorts of matters can be argued out in the community if you want to put those views.

In relation to the cuts made to Territory funding, you know those cuts were simply imposed on the Territory and that the major part of states' funding comes from the Commonwealth government. Our terms of reference indicate that we require equality with the states. That is what our particular task is. The existing states may have a larger tax base but they also have to provide a great many more services to their communities. When we talk about Senate numbers and the number of politicians, I agree that there are too damn many of them. However, the reality is that, if we are to obtain equality, then it is a numbers game and we have to look at moving in that direction. Thus, I make those comments initially.

You mentioned that you have been to see Sir John Moore. Has your union made a submission to him? You are aware that the government is examining the whole matter of industrial relations and is aiming to come up with a paper that can be put before the community along with a whole range of other papers.

Mr TULLGREN: No, Mr Chairman, we have not made a specific submission to Sir John Moore although he is aware of this submission. We have made a number of comments to him.

To take up an issue which you raised, I would respectfully disagree that we have missed the point. I think we have approached the operation of this committee from another angle. We are aware of the terms of reference that you are looking at drafting a constitution. Our view is that the drafting of a constitution is predicated on something happening and, in this case, it would be statehood. Obviously, you are not going to draft a constitution and potentially have a constitutional convention if, at the end of the day, you are going to say, 'Well, that was a nice exercise and we have finished'. In our view, what the committee should be doing, instead of looking merely at the question of the drafting of a constitution or the establishment of a constitutional convention, is examining what statehood means. I think that, as a select committee of the parliament of the Northern Territory, you have a responsibility to make an assessment and I do not believe it is contrary to your terms of reference to do that. You could say: 'Whilst we are charged to do this, we can do it but we question whether, in the total balance, statehood is a good idea'. That encompasses all that we have said.

The Trades and Labor Council is to make a submission to you that talks about the protection of human rights in a constitution. We support all of those things. If it came to that, we would make a lengthy submission. However, to use an analogy, it is said that Nero fiddled while Rome burned. I think that this committee has been asked to create the fiddle that can be played while the Territory burns because it would be giving the people the basis on which to move towards

statehood when all examination reveals nothing to really show that the Territory should become a state. I know that there is a long history of neglect by the Commonwealth. In his speech, the minister referred to home rule in Ireland. I know that McCarthy is probably an Irish name but home rule meant something entirely different to the Irish and I do not think that Territorians can be put in the same position.

Thus, I submit that we are not ignoring your terms of reference. What we are asking is that you consider whether in fact you should be recommending something to do with statehood without there being a proper examination of statehood. In relation to the move for a new state in northern New South Wales in the 1960s and in relation to proposals for other new states, the practice in the past has been to establish royal commissions. The terms of reference of those commissions - and I include also the federal royal commission established in the 1930s in relation to the creation of new states - charged them to examine economic viability, social impact etc. Your committee is not charged specifically with examining any of those things. Our union believes that it is incumbent on you to carry out an examination of those matters because it is no good creating a wonderfully democratic and utilitarian constitution if what it is going to be imposed on is a vast area with a declining population and a narrowing economic base. It may have the most brilliant constitution but quite literally be bankrupt or exceedingly poor. It may end up being mendicant like Tasmania was in the 1920s and the 1930s.

I think that is an unwise proposition for the committee to pursue without testing empirically the arguments about whether the Territory can afford statehood and the question of equality of representation in the Senate. As I said, the equality occurred because of a deal that was stuck in the 1890s. The Territory is not in the same position now. In all the documents that you read, you find reference to equality of representation in the Senate but no examination of why that occurred or of the fact that there was considerable opposition to it in the conventions from states such as New South Wales and Victoria. Eventually, practicalities prevailed.

I do not believe that people should make broad statements about statehood being a good thing. We can't pay for it later. We need to be able to prove that we can pay for it now. The existing trouble that the Northern Territory government has with its finances would not get any better as a result of statehood. They have the potential to become worse. Let's not beat around the bush, Senator Walsh thinks that this is the most expensive place in Australia and, if the system of government were to change to a state, he would feel far less restrained than he is now to simply go after the state of the Northern Territory or whatever, just as he goes after the other states. I have lived here for 8½ years and, when I was first appointed, I was told I was being sentenced for 25 years. I am not sure whether that will come true or not, but I have a stake. I do not want to live in a place which basically has a governmental system that it cannot afford to maintain. The union represents its members and many of our members have lived here for as long as you and your family have, Mr Chairman. We believe that you should go back a couple of steps and make an assessment. If you then believe that we should be a state, you could then proceed with drafting a constitution. This really is putting the cart before the horse.

Mr HARRIS: As I said, I do not agree with your thoughts in relation to the matter of statehood. I think that Territorians are part of Australia. We need to have a say in what is going on and we need to be treated the same as other parts of Australia. What we want to look at are your concerns. The politics of whether or not we can afford statehood or the benefits that we would derive from it are issues that can be fought out in the open arena. This is a committee of the parliament which is looking at developing a constitution. I am on record, and I have commented here, that personally I would have preferred to have gone about it the other way: to have discussed the issue of statehood and then decided whether or not to have a committee. The situation is that a committee has been formed to examine the development of the constitution and we will do everything in our power to ensure that we obtain comments. Whether they are aggressive comments towards the government of the day or whatever, I will still retain my cool.

Mr TULLGREN: I wasn't attempting to be unnecessarily provocative, but I was being honest with the committee about what we believe is the position.

Mr HARRIS: But, again, you could question whether we believe or whether it is certain individuals or whatever. Do other members have any comments?

Mr SMITH: I guess I too should respond to some of the general comments that Peter has made. It is my view and the committee's view that we have a fairly strict charter and that is to look at the constitutional questions. The questions about our attitudes to statehood have been adequately indicated elsewhere. I agree with the chairman that probably this is not an appropriate place to pursue those in any depth. However, I am intrigued by your comments about the costs of funding statehood. Quite clearly, this is one of the key factors in the general statehood debate. In your view, what are the costs of funding statehood?

Mr TULLGREN: Take the example of the industrial relations system. If you set up a separate system, that has a cost for which you would have to pay. The states have a great many powers where they are required to meet many of those costs themselves. Despite the fact that the states receive a great deal of their income through the tax-sharing arrangements with the Commonwealth, they also provide a great deal of their own revenue basically by the introduction of a vast host of state taxes. For instance, all the states levy land tax to varying degrees. The Territory does not levy the land tax although it was said last year that that was being considered. Land tax, high taxes on fuel, duty on cigarettes and a great variety of taxes and charges are the means by which the states help to fund part of their operations. All of the states are able to do that to varying degrees because either they have large populations such as the south-eastern states or they have a fairly good economic base. Even Queensland, which for many years was considered principally as a mining and rural state, has a manufacturing and service base which has developed and continues to develop and it can afford to tax that base. Also, Queensland has the most regulated form of primary industry in Australia. There are more rules and regulations in that non-socialist state than there are in most Iron Curtain countries in relation to their agriculture. That is not a comment that I make, but a comment that has been made in the Queensland parliament in respect of the marketing of agricultural products.

The Territory does not have any of those bases. It also has a declining population. About 23% of its population is compromised of Aboriginals, a great many of whom are tribal Aboriginals who do not work as such and who do not produce income. You cannot tax people who do not produce anything. In no state is there, in effect, about 18% or 19% of the population from whom no tax is capable of being derived. The Northern Territory has got that problem. It has no basic economic situation from which it could levy taxes. Based on recent history, it will not be able to rely on the Commonwealth simply providing large amounts of money. If anything, it is moving towards reducing what it provides. What happens with the shortfall? We recall the outcry over the tourism marketing levy last year. That was a simple 2½% levy. What would happen if you introduced an 8% land tax in the Northern Territory? That would be politically unacceptable to a large part of at least the government's constituency.

You could introduce a whole variety of other taxes. We have some of the highest electricity charges in Australia now. Unless there were a marked decline in the cost of electricity as a result of the natural gas situation, all of those costs would increase. In NSW and Victoria, some of those costs are passed on to the manufacturing industry in order to ease the burden on the ordinary householders. You cannot do that here and therefore we would not enjoy the luxury of playing some of the nice double shuffles that exist in the southern states. When it comes to taxing, it is you and me and not industry that is taxed. You cannot levy the same sorts of taxes and duties on the mining companies because of the situation here. Many of them are self-contained in the sense that they generate their own power and control their own water and sewerage services. In other places, mining companies are reliant on electricity generated by the state and on state controlled water. On a simple examination of those things, there is not the economic base or the economic pool that politicians can tap into when they have to tax people

Mr SMITH: But you are operating on an assumption. You have slipped around what I asked you to prove. Your assumption is that statehood would involve extra costs. Let me try to narrow it down a bit. If statehood is to involve extra costs, that could be in 2 main areas. The first is in respect of transferred functions such as industrial relations, control over lands and national parks etc and the second is your belief that the Commonwealth would hit us even harder when we did not have the protected status of a territory. In your view, it would be in both.

Mr TULLGREN: The cost of transferred functions would not necessarily be an enormous impost. I am not in a position to know what it would cost if the Territory got control of national parks. Perhaps if you took the figure that it now costs the Commonwealth, you could apply that. There is a current discussion about Commonwealth/state financial relationships. Both the Treasurer and the Minister for Finance have made it clear that states have to be more responsible in relation to expenditure and in relation to their own income raising. What we have seen in the past couple of years, through the Loans Council and so on, is the federal government saying that the states will receive so much money and will be responsible for their own activities and, if they want to spend more, they can do so. The federal government is reducing its financial commitment to the states as part its long-term economic policy.

The Territory will not fare any better by being a state. Some might say that it does not fare too well now. I think that is probably true but, based on what I have read and on union discussions with the Commonwealth in relation to many of these matters, I do not believe that the Territory would get any joy out of the Commonwealth. The prognosis is that it will be worse not better and it will not remain static.

Mr SMITH: Worse for the Territory or worse for all the states?

Mr TULLGREN: Probably worse for all the states and the Territory, but remember you are talking about becoming a state. The result would be that you would be totally in the same position as New South Wales or Queensland or anywhere else. Unless there is a major change of heart by the federal government, things will get a lot worse. I would submit that, even if the Labor government disappeared tomorrow in Canberra and there was a coalition government, based on many of their stated economic policies, the Territory would not fare substantially better. I know there are promises about a number of things and the Territory might get a railway or a couple of one-off projects but there is nothing in the coalition's economic policy that indicates that states will get a substantially better deal than they get now under a Labor government. The Territory would be walking into all of that.

Mr HARRIS: Peter, whether we like it or not, we will have to pay. The taxes that you are saying are around the corner are a fact of life already. What we are concerned about is that we do not have the clout where it counts and the federal government can do what it likes. It does not matter which political persuasion it is, it can kick us to death. If we had the numbers and a member on the Loans Council - and we do not have a member on that at the moment - and there are a number of other areas in which we can become involved, that clout can come into play. We can play politics and say that it will cost this or that and therefore we are not interested. We can have those arguments. As Terry said, we are trying to work towards developing a constitution. Involved in that is whether the state has other options in relation to a single industrial system. That is what we want to hear. If we can hear your views on what should be put in the constitution in relation to that matter, we can take them away and examine them. We can still argue the pros and cons of statehood. I make it quite clear that the decision to move to statehood will be made by the people. We are not going to foist anything on the people. That would not succeed; it has to come from the people.

Mr SETTER: Peter, as the chairman rightly pointed out earlier, the charter of this committee is to consider the development of the constitution as opposed to whether or not we should move statehood, although I do take your point that, at some time in the future, the eventual result of all of this will be a push or otherwise for statehood. You spent a fair amount of your submission talking about industrial relations and the perception of your union with regard to those matters. I would like you to be aware that, at this time, the committee does not have a position on industrial relations. It is not a matter that we have discussed in any detail at all. As was mentioned earlier, Sir John Moore is in Darwin at the moment taking submissions on the very issue of what the Northern Territory's position should be in the event of statehood. At some time, we will have access to his report and we will discuss it as a committee and perhaps develop a position or optional positions. That is where we are at in relation to industrial relations matters.

In reference to a conference on statehood sponsored by the Law Society last year, you said that a professor addressed that conference ...

Mr TULLGREN: Dr Gerritsen.

Mr SETTER: ... and he made the comment that the Northern Territory was flying on a parallel with Queensland.

Mr TULLGREN: No. I am sorry if I misled you. He presented a paper about the economics of statehood and he used a parallel argument as to the way Queensland has developed and has been treated in relation to its funding by the Commonwealth. As I understood his paper, he was saying it is possible to use the way Queensland has been treated as a model for the Northern Territory. It was not a detailed exposition. He commented that this or that had happened and it might be possible to do this or that.

Mr SETTER: He was using that as an example of what our position is or is likely to be? I take it that he was suggesting that we could develop the same approach in responding to or coping with the Commonwealth's decisions.

Mr TULLGREN: To put it fairly bluntly, basically he was saying that the Territory could use the same system to try to screw as much money out of the Commonwealth as Queensland has managed to do over a number of years. He floated that as an option. He did not say that was the preferred option, but he said that it is something that could or should be considered.

Mr SETTER: With regard to statehood, it is my personal opinion that, if we do achieve that level of constitutional development, we would know the rules, at least in broad terms. As a territory of the Commonwealth at the moment, it can do as it will with us from time to time because we do not have that sort of constitutional protection that the states currently have. Thus, I personally see that there is some advantage there. I take your point that our funding would be basically on exactly the same basis as that of the states, apart from special grants for certain projects etc. Nevertheless, I believe that, if

we know the rules, and the same rules apply to everybody else, we can adjust our financial position to fit in with that. At the moment, as history has told us over the last few years, our position changes from one year to the next.

Mr TULLGREN: I have always found that an interesting argument in relation to this. The union approaches it this way. Materially, a person in the Northern Territory is not treated any differently from a person in New South Wales. He has the same rights to education and health care, he has a local government structure and he has the same rights to buy and sell a house or a car. The only difference that we see is that the Commonwealth government reserves to itself powers over industrial relations, the control of uranium mining and uranium export, Aboriginal land rights and some control over national parks. As a result of the High Court decision in the Franklin dam case, the Commonwealth has power that it can exercise over the preservation of large parts of Tasmania and, under that decision, because of its international treaty obligations, the Commonwealth could exercise that power here, in Queensland, in South Australia. It will possibly do it in relation to Tasmania again.

I cannot see where the rules are any different. Financially, as I understand the way the federal government approaches this, when the annual pilgrimage is made to the Loans Council, it is like opening up the flap of a tent in a snow storm. You walk out and you do not know what is there. The states do not know and neither does the Territory. That will not change. In in relation to Aboriginal land rights, I cannot see that the Commonwealth would cede that power to the Territory. It may. For instance, New South Wales has limited land rights legislation and so does Victoria.

In nearly every material respect, people in the Territory are no better or worse off than people in the southern states. I came from New South Wales and, when I came here, I was no better off in New South Wales than I was in the Northern Territory or vice versa. On behalf of the union, I cannot see where there is major discrimination. Because of the way the High Court has interpreted the Australian Constitution, the Commonwealth has wider constitutional power now than it had 5 years ago and that will not change. How would statehood protect us from that situation? I really cannot see that there is a major disadvantage.

Mr SMITH: Peter, can I ask you a specific question about the industrial relations function? I take your union's point that it does not want to change the system. As I understand the system, industrial relations in the Northern Territory essentially fall within the aegis of the Conciliation and Arbitration Commission.

Mr TULLGREN: That is right.

Mr SMITH: Let us make the assumption that, at some future time, we will have statehood. At present, as I understand it, the commission sets up a Northern Territory panel. Is that correct?

Mr TULLGREN: It puts the Northern Territory into one of its panels because it operates on a panel system. Excluding certain industries and the public service, the Northern Territory is put into a panel. The former are picked up elsewhere.

Mr SMITH: If statehood were granted, would your union have a problem if the Conciliation and Arbitration Commission set up a separate Northern Territory panel whose members would be appointed by means of consultation between the Commonwealth and Northern Territory governments?

Mr TULLGREN: By that, do you mean that existing commissioners of the Conciliation and Arbitration Commission would be moved into a specific panel?

Mr SMITH: No. There would be particular commissioners appointed jointly by the Commonwealth and the Northern Territory as the Northern Territory panel of the Conciliation and Arbitration Commission.

Mr TULLGREN: Potentially no. As you may be aware, when a member is appointed to the federal commission, it is a tripartite appointment. There has to be broad agreement by the government, the employers and the trade unions on the appointment of members. Firstly, that would have to occur. Secondly, the members would have to hold federal commissions. As you are aware, all members of the Conciliation and Arbitration Commission receive their commission from the Governor-General. The panel would have to be a panel of the Conciliation and Arbitration Commission. It would deal with the Northern Territory but it would apply commission decisions in relation to national wages, precedents and all the other matters. Potentially, if those conditions were met, there would potentially be no problem. However, I cannot speak for other unions. Remember there are some industries such as the maritime industry which appear in their own panels. Uranium mining appears in a separate panel because of its national importance. Printing appears in a separate panel and there are a couple of others. However, as far as we are concerned, potentially, we would have no objection to that.

Mr SMITH: What would be the attitude to bringing all those other industries into a Northern Territory panel?

Mr TULLGREN: We cannot speak on behalf of the other unions.

Mr SMITH: What is your personal point of view, without prejudice?

Mr TULLGREN: As a purely personal point of view without prejudice that cannot be held against me at any time in the future, I think that it would be applicable in some cases and not applicable in others. For instance, the maritime industry is a national industry and its standards are nationally set. You could not excise it and start making decisions about what went on in the Territory, purely on a Territory basis. There are probably a couple of others in the same circumstance but, on the whole, my personal opinion is that there is probably a good argument for doing that, bearing in mind that most awards here have a nexus with a federal parent award which has application throughout Australia. I do not see that it would be a big problem apart from one or two specific examples.

Mr SMITH: Like the maritime industry and the wharfies.

Mr TULLGREN: Yes.

Mr SMITH: I do not think a Northern Territory panel would like to handle the Waterside Workers Federation award anyway.

Mr TULLGREN: That's probably mutual. I don't know about that.

Mr HARRIS: Peter, the committee would like a detailed submission on where your union stands in respect of the industrial relations aspect. I take all the points you have raised but we really would like to have some expert views and advice in respect of these matters. Would you consider preparing a submission for us?

Mr TULLGREN: Yes. I could certainly do that. Despite our reservations, we would consider preparing a submission on what should be in a state constitution as well. Even though there is a fundamental disagreement between ourselves and the select committee on the way that should proceed, we would certainly seek to do that on both of those matters.

Mr HARRIS: That is good. If there are no further questions, I thank you, Peter, for attending.

The hearing closed.