

PUBLIC MEETING

MILIKAPITI — Thursday 11 May 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)

Mr B. Ede (Deputy Chairman)

Mr C. Firmin

Mr W. Lanhupuy

Mr D. Leo

Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)

Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Kevin DOOLAN

Mr Patrick HEENAN

Mr Robert TIPUNGWUTI

Mr Peter SIMONS

Mr Stan TIPILOURA

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

ISSUED: 4 October 1989.

Mr DOOLAN: I would like to thank the committee for coming over today to give us the opportunity to sit down and discuss the proposed state constitution. There has been some confusion about the constitution and statehood and basically the reason why we have asked the committee over is so that it can explain the whole situation to us.

Mr HATTON: Thanks very much Kevin.

We are very glad to have this chance to meet with you and talk about what is happening because there has been a bit of confusion around the Territory about what is going on. It has been a very good exercise for us to move around the Territory during the last couple of months, explaining what is happening to communities in the north, south, east and west, and telling people why it is important for them to be part of this exercise.

Our committee is called the Select Committee on Constitutional Development. It is a unique committee of the Assembly because it has equal representation from both the CLP and the ALP, with 3 members from each. This book gives the names of the committee members together with their photographs. The reason for this equal representation is that this is one of those rare instances in which both sides of politics are working together towards a common objective and not becoming involved in party politics. Both parties believe in achieving a constitution for the Northern Territory. Of course,

that is not to say that there may not be differences of opinion between the parties when we start getting down to matters of detail. Both sides, however, agree that we should be working towards a single aim as Territorians, which is to write down a very special people's law.

This law is not the normal sort of law. This one is written by and owned by the people. It is a law which sits above the government and tells the government what it can and cannot do. It says how you go about electing a government; who has the right to vote; who has the right to stand for parliament; what the parliament does; what the courts do; what the Administrator or Governor can do; what sort of rights are so important and fundamental that no government should be allowed to muck around with them. The constitution is what contains that law.

Another page of the book sets out the terms of reference of this committee. It talks about the job we are doing. At this stage, we are informing people about the process of drafting a constitution and telling them about the need for input. There has been a lot of talk around the Territory about statehood and you know that I have been one of those saying that we should become a state. Others are saying the same thing but some people are uncomfortable with the idea that we should become a state now. Some people think that we are not ready yet. Some people do not understand what it means and they are nervous about it. Other people just do not want it at all.

I am not asking you today whether you are for or against statehood. That is not the question. Not only that, you cannot even ask the question about whether you want to become a state until you know what you want the Northern Territory to be like in the future. How do you want it to go? How do you want our society to be set up? Until you know what you want, you cannot even think about becoming a state. What is a state? What sort of state do you want? I do not know. That is what the job of this committee is about. We want to get the first process done properly so that people are agreed on what they want, so that the whole community can say: 'That is what we want. That is how we want this place to work. That is how we want Aboriginal and non-Aboriginal people to be able to work and live together in mutual respect and equality, together with the Chinese, the Greeks and everybody else in the Territory. We want to get together and work side by side as equals, with respect for each other's cultures, languages and laws but without clashing all the time'. That is what we have to try to work through in writing this law.

This law will be a people's law, a law which says where the people want to go. The government will then have to stay on that road. It might wander around on the road or go backwards and forwards a bit but it has to keep going down that road. It cannot go shooting off over here or shooting off over there. It has to stay on the path set by the people. That has never happened before because people in the Territory have never been asked to set that path before. It is new. It is a way you can influence the future for the generations to come, it is a way of making this place something that you can be proud of and that you can be proud to leave to your children. That is the job that we have in front of us.

When you have done that job, you can start talking about whether you want the Territory to become a state, how many Senators you want, how the finances should be structured and so forth. Until this job is done, you cannot even start to talk about those things. Do not get this confused with statehood. Certainly, if you do this job, you have taken a step down the road to statehood. At least it gets you in a position where you can say yes or no to statehood. You cannot even do that yet.

The other thing I ask everyone to accept is that the Northern Territory will become a state at some stage. We may be ready now or we may not be. It may happen in 5 years, 10 or 20 years but, one day in the future, the Northern Territory will become a state. We just do not know when. While we have the time, let us work on this job and get it done properly so that we can create the foundations and set the path for the future of the Territory with or without statehood.

The first part of that job is for people to gain an understanding of what a constitution is. Explaining that is part of this committee's job. We are telling them what a constitution is and why it is so important to become involved in creating our constitution. We are encouraging people to start thinking about the issues and talking about them. We are encouraging people to look at some of the printed material we have, such as this book, which I call a starter's kit. It gives you a few ideas and a few questions to think about. When you have read it and thought about some of the issues it raises, you might like to go into things in more depth, and the second book lets you do that. We spent about 3 years preparing it and it is called: A Discussion Paper on a Proposed New State Constitution for the Northern Territory. It contains many different ideas. We have looked at constitutions in the West Indies, Canada, the United States, Africa and around Australia. All sorts of different ideas have come up and we have set them down in the book. They relate to things like how the parliament is elected, how the government is set up and so on. The book gives different approaches to these things and arguments for and against. Take it and read it, a section at a time.

Here is a section about who should have the right to vote. It discusses various points of view. Read it and have a think about it so that you can say: 'I reckon that is the way to do it'. Another section asks whether the parliament should have a fixed term. Do you reckon 4 years is the right amount of time for a parliament to run or should it be 6 years or 3 years? Should it be fixed term? Should it have to go to an election at a specific date or should the government have a choice as it does now, or is there some other possibility?

The people can make the laws which will decide such things. This is the first time this has happened here; it is a new experience for the Northern Territory. In fact, it is pretty much a new experience in Australia. It is a chance that will not come again. It is a unique moment in Australia's history and it will create history. It will make the future. It will never happen again in this country. It has not happened for 100 years and this will finish it. When the job is finished it will complete the making of Australia as a nation. It is our job and the responsibility of this generation to work on that.

The books give some ideas but there may be some things we have not thought of and which come to your minds. That is why we want you to think about the ideas and talk about them in this community and in other communities nearby. We would like you to share ideas, discuss them, and come up with any ideas which you think might be better.

We will come back later this year or early next year. In the meantime, if there is something you are not sure about or would like to know more about, ring us up. Contact our executive officer and ask for more information. We will send the information or, if you want someone to visit you to discuss things, we will send someone over to talk so that you have an opportunity to develop your ideas and discuss things fully so that, when we come back, you will be able to say: 'Right. This is what we think'. Put your ideas down. All the other communities are going to do the same thing. They will put their ideas down.

The job of the committee will then be to collect all the ideas and to write a draft constitution. That is not the constitution itself. The draft will contain what we believe the community is saying. We will get the general feeling but we will not write the constitution. Do not trust the politicians to write the constitution. The states did and look what happened. Things are not very good for Aboriginal people in states like Queensland, Western Australia and South Australia. Their rights are not protected because the constitutions were written 100 years ago and the people who wrote them did not bother to ask Aboriginal people what should go in them. They never involved the people, but those constitutions are still in force 100 years later.

Mr DOOLAN: They have not been changed?

Mr HATTON: No, not in those sorts of places. Once a constitution is in place, it is very hard to change. That is why you have to go to great lengths to get it right in the first place. Because that did not happen in some places, those places have all sorts of problems. We have a chance to learn from other people's mistakes and get it right here. We cannot do that, however, if we sit in the corner and let someone else do the work.

Mr DOOLAN: It has to come from the people.

Mr HATTON: That is right. The people have to get involved. Otherwise another mob will do it and you will find yourselves saying, in 5 years or so: 'I didn't know about that. Why didn't they ask me?' Well, we are asking you now. We are asking you to get involved.

Mr HEENAN: We see a lot about the statehood campaign on Imparja Television.

Mr HATTON: Those are the advertisements about writing a constitution, which is the law I have been talking about.

Mr SETTER: Not statehood.

Mr HEENAN: I have another question.

Mr HATTON: Before we go on to questions, I will just finish explaining the whole process.

After this committee has written a draft based on the information we have collected from the whole community, a constitutional convention will be formed. It will be made up of representatives of people from all over the Territory. They will form a big drafting committee. They will have to sit down and go through the work we have done. The constitutional convention will go through the submissions this committee has received, the ideas of this committee, and the draft which

we write. The convention will decide whether or not what this committee has done is the right thing or needs to be changed. It will decide whether our draft properly reflects what the people are saying. Perhaps there will be some areas in which different people have different points of view. The convention will have to find a solution in such cases, through negotiation, discussion and debate, so that the constitution provides answers to different needs amongst all the people in the Territory. The convention will bring people together to sort things out. Sometimes there will have to be a lot of talking and a lot of listening to arrive at something which satisfies everybody.

When that job is done, the convention will have written a proposed constitution. That then has to be voted on by the people. If they reject it, it will have to go back and be sorted out until, eventually, the people say yes in a vote. When that happens, but not before, the constitution will be law. Getting to that stage will take a lot of time, patience and perseverance. However, it is the way of ensuring that the end product is what the people want. That constitution, that law, will be the one which governs the government. It is like the boss of the government. That law is the means by which the people have power over the government and that the government takes the direction which the people want. That is why this is such an important job.

You know that there have been all sorts of arguments and problems in the Territory in relation to land rights and sacred sites, and there are arguments about all sorts of other things. The miners are fighting against the pastoralists and so on. Perhaps, if we do this job properly and people spend enough time talking to each other and explaining things so that everybody understands the point of view of the other people, we will achieve mutual understanding, respect and a united society. That is why the process of developing this constitution is as important as the final result. People need to understand what they are trying to achieve as a people and, again, that is why you have to be part of it. That is what we are trying to achieve.

Mr TIPUNGWUTI: Just a question. This thing that we are talking about, does it affect our Land Rights Act?

Mr HATTON: It can do. The constitution can be written in such a way that it affects land rights. It depends on what the people want to put in it. Whilst it does not affect the Land Rights Act as such, if people feel that land rights are of vital importance to them, and that they cannot trust the government not to take those rights away, they can create a constitutional guarantee which protects land rights. In other words, the government is under a law which prevents it from taking land rights away. Right?

Mr TIPUNGWUTI: This concerns us.

Mr HATTON: You can do that.

Mr EDE: Steve, can I just say a few things from the Labor viewpoint?

Mr HATTON: Yes, it would be appropriate.

Mr EDE: A lot of people have asked why members of the Labor Party are on this committee. What Steve said is quite correct. People are worried about things like land rights and sacred sites and how they are going to protect their land and their culture. They are frightened that this might be a trick and that, if people go along with it, they will be told that they have agreed to statehood and that they have agreed to this government looking after land rights. People are suspicious and worried because land rights is so important. The reason that I am on this committee is because I know that it is possible, even at the federal level, for a government to decide that land rights were not popular any more or needed to be changed. If such a government started to interfere, it could take away land rights. A government in Canberra has the power to do that.

Mr TIPUNGWUTI: It is the government which always has final say.

Mr EDE: This is what we are saying. We are saying that this constitution could be a backstop. I would like to have it that way. I would like land rights to be part of the law from Canberra and also in our constitution. If things went bad in Canberra and some mob chucked out land rights under that law, we could say that we are operating under our constitution which protects land rights. If that happened, the Northern Territory government would not be able to change land rights. It would have to change the constitution first and that means it would have to have a referendum to find out the opinion of the people. That is why we have to get Aboriginal people involved in making this constitution, so that it is strong on land rights. If Aboriginal people do not get involved, it will not be very strong. Some white fellows will argue for it and people like myself and Stan will argue for it, but we need everybody in there saying: 'Hang on. These are the important things about land rights, the basic principles. We must hold on to our land, our tradition and our law, and the constitution must be

strong about that'.

Mr TIPUNGWUTI: We have to work both ways, your ways and our ways.

Mr EDE: Exactly. And that is what people down my place have been saying to me. They have been saying: 'Our law goes all the way back to the Dreamtime, for tens of thousands of years. That law comes down to us over all that time and we look after it now and hand it on, no changing, nothing. It goes on that way forever'.

Mr TIPUNGWUTI: We do not want to see our culture die out.

Mr EDE: That is right. People do not want to have the white fellow law which keeps changing all the time. They say it makes them go this way and that way. They want to have the white fellow law running alongside the Aboriginal law. We white fellows do not have the same way of making law as you have. Our only way is through a constitution. It is our way of putting down all the things that are very important and have to be in our law.

Mr HATTON: The things that do not change.

Mr EDE: The things we do not want to be changing.

Mr DOOLAN: Is now the time to start talking about issues like land rights?

Mr HATTON: If you want to.

Mr DOOLAN: There is confusion and I think that is fault of the media to a certain extent. It also seems that the land councils are putting out pamphlets which appear to be opposing the idea.

Mr SETTER: They do not seem to want to talk to us.

Mr DOOLAN: This is where there is confusion. Why don't they want to negotiate? That is what it is all about - negotiating and coming to an agreement.

Mr HATTON: We are trying to meet with the land councils and involve them in this process.

Mr DOOLAN: Why won't they become involved, Steve?

Mr HATTON: I do not know. I have not talked to them.

Mr EDE: I have tried to talk to them. To be fair, I think that the only thing holding them back from becoming involved in this process is the concern that people might believe that that is an indication that they are taking part in discussions about statehood and the possibility of control over land rights moving away from Canberra.

Mr DOOLAN: But if it becomes part of the constitution, it can be guaranteed and protected even if the Territory does become a state.

Mr HATTON: That is exactly right.

Mr EDE: Maybe the land councils just want to take it slowly. We definitely have to talk to them and try to get them involved. We have to get the land councils and other Aboriginal organisations involved, together with the people who live out bush and in the towns. They have good ideas about how things could be legally locked in. They have lawyers who have been working on that Land Rights Act for years and years and they can sit down and say: 'Okay. How can we get the right principles in? Which are the ones? How do we have to write it? How do we ensure that the things we want cannot be changed without a 75% majority'?

Mr HATTON: But you have to convince other people of that too.

Mr EDE: Of course. But if the land councils are involved and are talking about these things, together with the people from out bush, that will make the case much stronger. However, if they stay outside the process and just throw rocks on the roof, that will not achieve anything. We do not want to be saying: 'We nearly got what we wanted. We would have got it if they had been involved and given us a hand'.

Mr TIPUNGWUTI: I asked that question, Mr Chairman, because a lot of people do not know what people are talking about right now.

Mr HATTON: That is why we are coming around and trying to explain.

Mr SETTER: That is right. We are not even trying to force you to make a decision.

Mr TIPUNGWUTI: No, we do not make a decision yet.

Mr HATTON: We are saying: 'Please start thinking about it'.

Mr TIPUNGWUTI: We have to look to both ways, your ways and our ways. That is what the law is for.

Mr HATTON: We have to do the same thing. We have to look at our way and your way and together we have to work out how we are going to put them side by side so they do not fight each other.

Mr TIPUNGWUTI: That is right. That is what we are there for.

Mr HATTON: That is right. We are both there for the same purpose.

Mr EDE: We might get to the stage of voting in 5 years time. After this committee has finished and all the other work has been done, people might say at a referendum: 'It is nearly right but not quite. We are not really happy and we will vote no'. People have been here for thousands of years. They will be here for thousands of years to come. It does not matter if it takes a while; we have to get it right.

Mr TIPUNGWUTI: You have to think about the people of the future, not just people living now.

Mr HATTON: That is right.

Mr EDE: We cannot just be greedy and say that we want our names on the bottom of this law. We have to think about all the people who are going to live under this law.

MR HATTON: That is why it is important.

Mr TIPUNGWUTI: We are talking about generations and generations to come.

Mr HATTON: Understand this law. It does not take any rights away from any person. All it can do is give you rights. It cannot take anything you have now. It can only give things to you. That is what a constitution is about.

Mr EDE: It can only give them to you ...

Mr HATTON: It takes rights away from government and gives them to people. That is what it does. It puts a limit on the government. Brian Ede says that it is like having a crazy dog that keeps biting people. You put a rope around its neck and tie it to a tree so that, although it can run around that tree as much as it likes, the rope stops it from going too far. The constitution is like a rope around the neck of the government. It can run around on the end of that rope but it cannot go beyond it. That is what the people do when they make a constitution. It can only give you rights; it cannot take them away from you.

Right now, you have no guarantees of anything within the Northern Territory. We do not have a constitution. The federal government has one and the states have them. We do not have one because Australia is what they call a federation of states. We are outside the federation and we do not get any protections under the Australian Constitution either. Just by changing an act of parliament, or just amending a regulation under an act of parliament, the federal government could wipe out the entire Northern Territory health system. That does not even have to be debated in the parliament. By repealing an act of parliament, the federal government could take away any form of government in the Northern Territory. By changing another law, they can take away your right to vote on anything.

Mr EDE: All of of our votes. All of us.

Mr HATTON: Yes, it applies to anybody's right to vote. You do not even have a guarantee of your right to vote because

we are a territory. If things changed politically in Sydney and Melbourne and people down there became really anti-land rights, a party could campaign on a platform of getting rid of land rights. If that party was elected, it could get rid of land rights just by repealing an act of parliament. It could send us right back to the welfare days. It has the power. I do not believe that any federal government would do that but it certainly has the power. It has the power because you do not have any guaranteed rights.

Mr DOOLAN: So the control factor in our situation would be to have our own constitution with the protection of human rights as part of it.

Mr HATTON: Locked in.

Mr SIMONS: Would this constitution have to duplicate things that are in the federal constitution?

Mr HATTON: No. Picking up the constitutional rights of the federal constitution is a separate step which is finally completed when you become a state. In the meantime, as far as the Northern Territory is concerned, the important thing is for people to at least have the guaranteed constitutional rights which they want. The second question only arises with statehood.

Mr EDE: We could put those rights in a constitution and we could ask the federal government to allow us to basically operate under that constitution even before statehood.

Mr HATTON: Yes, it could do that by changing the Self-Government Act to a constitution act.

Mr EDE: At that stage, land rights could be in the constitution but it would not apply because land rights would still be covered by the federal Land Rights Act until we became a state. You have to take into account what Steve said, which is that a constitution will not take rights away. You do not get rights unless you ask for them and fight for them to be in the constitution. Land rights are one example but there are lots of others. People here have heard of the International Declaration of Human Rights, which covers all sorts of rights which you might want to talk about.

Mr HATTON: Freedom of speech, freedom to practice your own religion.

Mr DOOLAN: Freedom of information.

Mr EDE: You can talk about people's rights to the sorts of things that provide for good health, and rights to education. You may want to include those sorts of things in the constitution. No other Australian constitution has those rights but that does not mean that we cannot have them here if people believe in them enough and are strong enough to ask for them, to keep fighting for them and to explain why they want them to people who say no.

Mr HATTON: We are talking about those aspects that are really very much at the core of things, the rights which are so important that you say: 'No government should ever be allowed to muck around with this'. When you identify those rights, you can lock them up in the constitution so that they are protected from the government.

Mr SIMONS: Can you put things in that are different from things which apply under the federal Constitution? For example, if the Northern Territory decided that only people over the age of 25 could vote, could we put that in our constitution?

Mr HATTON: In respect of state elections, yes.

Mr FIRMIN: But you could not do it in respect of federal elections.

Mr SIMONS: Just because something is in the federal Constitution, that does not stop us from doing something different in our constitution.

Mr HATTON: You could make people over the age of 12 eligible to vote for state elections if you wanted to.

Mr EDE: But they still could not vote for federal elections.

Mr HATTON: Yes, they could only vote in state elections. You set the rules. Can migrants who have not become naturalised Australian citizens vote in elections, or should there be a residential qualification within the Northern Territory

before people are eligible to vote?

Mr FIRMIN: They must have lived here at least 6 months.

Mr HATTON: If you arrived last week should you be eligible to vote next week for the government? Some people say that people should have to live here for at least 6 or 12 months in order to find out what is going on. You write those sorts of laws into the constitution so that you can say: 'Okay, that is who has the right to vote'.

Mr FIRMIN: Should somebody who has been sentenced to a jail term of longer than 5 years have the right to vote? Should people who are criminally insane have the right to vote?

Mr HATTON: Should a person with a criminal record be eligible to stand for parliament?

Mr TIPUNGWUTI: This is the one we have to talk about.

Mr HATTON: Yes. All these sort of things.

Mr TIPUNGWUTI: This is the one. One more question, Mr Chairman. What about this local government council? How does that fit in?

Mr HATTON: You can write that sort of thing in. You can make your constitution say that there is a right to local government or community government.

Mr TIPUNGWUTI: That is why I asked that question.

Mr HATTON: You can put it in but you have to be clear about whether you are saying that people must have it or that they can have it. See?

Mr TIPUNGWUTI: But there are only about 4 or 5 places with local government now. You know, the place up in ...

Mr HATTON: That is the thing you have to talk about. Right? You can ...

Mr EDE: Let me just interrupt. Steve, I think you are missing the point of what is being said. Robert, you seem to be saying that only some places have local government now.

Mr TIPUNGWUTI: That is right. There are 3 in the islands, and Lajamanu ..

Mr DOOLAN: Some don't want it.

Mr EDE: The constitution could refer to another form of local government too. It does not necessarily mean that you have to accept community government.

Mr TIPUNGWUTI: That is right.

Mr EDE: It could be written so as to say that people have a right to have some form of local government if they wish. That form might be completely different to community government. It could apply under another sort of association.

Mr TIPUNGWUTI: I raise that point because this local government has a different constitution altogether.

Mr HATTON: And you argued and discussed and negotiated to get that together, didn't you.

Mr TIPUNGWUTI: That is right.

Mr DOOLAN: That is what we are doing now.

Mr HATTON: It is the same sort of process.

Mr TIPUNGWUTI: We have to discuss all of those things. That is my argument.

Mr DOOLAN: We were talking earlier about provision within the constitution to protect ongoing circumstances such as

we have at the moment in areas like health, education, provision of essential services, and being able to have the money necessary to provide these facilities at a local level. Those things need to be guaranteed on a continuing basis after the constitution is completed and the NT becomes a state.

Mr SETTER: Yes. A lot of those services are already provided by the Northern Territory government.

Mr SIMONS: What about health services here? Is that a federal responsibility?

Mr HATTON: No, Northern Territory.

Mr SETTER: Education and health.

Mr HATTON: Some independent health services are funded by the Commonwealth, which confuses the whole exercise.

Mr DOOLAN: Freedom of information, Steve?

Mr HATTON: It is an issue that could be dealt under the constitution or, as occurs everywhere else, through legislation. Some places are against it, as you know.

Mr DOOLAN: I am talking about the right for people in the street to know where the taxpayers' funds are being spent.

Mr HATTON: You mean public accountability for finances.

Mr SETTER: The parliament has a Public Accounts Committee, of which Brian and I are members.

Mr HATTON: I do not want to say that you should do this or you should do that. I am being very careful not to do that. What I can say is that you have the right to include things if you can convince everybody else in the Northern Territory that they are appropriate. Right? The only thing you cannot do is step outside the framework of the Australian Constitution. For example, you cannot declare the Northern Territory a republic. You have to have the Queen and then the state because that is the way it is in Australia. Within those basic rules, however, you can set the Northern Territory up the way the people want it set up.

We have a system of what we call responsible government, in which the parliament is responsible to the people and the government is responsible to the parliament. That is the Westminster system. The head of the majority party becomes the Chief Minister or Premier and picks his Cabinet from within his party or parliament, thus forming a government. Another form of government is called executive government. The head of government is elected separately, as occurs in the case of the President of the United States. The parliament is elected separately and the head of government has the right to choose a ministry from wherever he wishes, from inside or outside the parliament. The members of government do not necessarily have to be politicians. That system is called executive government. In the USA, the Secretary of State is appointed by the President and, when the President goes, he goes. The President simply chooses the person whom he believes is the best person for the job.

You need to write special rules about how the executive government relates, because the government is responsible directly to the people and the parliament is responsible to the people. You have to create the balance of power between the 2 of them, what are called the checks and balances which govern the relationship between the executive, the legislature and the judiciary.

There are different ways of going about this. We do not just have to do things the way they have always been done in Australia, although most people understand that and I think it is the way to go. All these options are discussed in the booklet.

You have the opportunity to consider how you want to set up a process of democracy. Take it step by step. Do not try to put the whole picture together in one go. Take it a little bit at a time. Ask yourselves who should be eligible to stand for election, who should have the right to vote, and so on. Pick up each point, one after the other, and bit by bit by bit you will fill in the jigsaw puzzle. At the end of that process you can ask: 'Does that picture look right?' If it does, you say: 'Well, that is what I think'. Then you have the answers to all the questions. Because you have talked them all through, you understand why you think that way.

Mr EDE: That is why this book is quite good. It has sections setting out the options in a whole range of areas including voting, entrenchment, executive governments and so on. There are some areas where we need much more detail, of course, such as Aboriginal rights and human rights. We need to develop some more ideas in those areas. To be frank, though, we were hoping that the land councils would come in on those areas and make some suggestions about how things could be done, so that we would have some more meaty material in the book.

Mr DOOLAN: Is it likely that the land councils will have a change of attitude and enter in to negotiations on this issue?

Mr HATTON: We are trying to meet with not just the executive but the whole land council. We want to meet all the councillors so that we can talk directly to them. Perhaps, if all the communities tell the land council that it should talk to us, they might be able to make it do so. The land councils are supposed to be responsible to the people. People could go and make them do it.

Mr DOOLAN: Have you had dealings with the Tiwi Land Council at all?

Mr HATTON: No, not yet. I do not think that it has any philosophical objection to what we are doing.

Mr TIPUNGWUTI: (Inaudible)

Mr DOOLAN: Discussion. That is basically what it is all about. Being prepared to sit down and talk about it.

Mr HATTON: We are really just urging people to have their say so that what is done will reflect the wishes and desires of all communities. We are telling people to look after their own interests in this process.

Mr EDE: There is a very good reason for that. Let us say that Aboriginal people got involved in the process and tried very hard to get things worked out the way they wanted them worked out. At the end of all that, it could be decided that particular things need a two-thirds majority to be included in the constitution. Aboriginal people might not have the numbers to stop something happening if there is a two-thirds majority in favour of it. However, if Aboriginal people had been heavily involved in the negotiations, they would be in a position, when people were starting to talk about statehood, to take their case to Canberra and the other states and to say: 'If there is going to be statehood, first of all we want some more work done on this particular aspect of our constitution'. Aboriginal people in that situation would get a lot more support if the federal government could see that they had tried their hardest to have the constitution formed the way they wanted it. There would be a strong chance that the federal government would say: 'Before there is statehood, these concerns must be looked at again'.

Mr FIRMIN: I think you would find that the Territory government would say the same thing.

Mr EDE: I would hope so. I would hope that the Territory government would say do that but, if it did not, I think other governments would. The other possibility is that people say, 'No, bugger it. It is too hard and we are not interested. We do not want to talk about it'. If that happens and the whole process goes ahead, in 5 years time when matters are coming to a head and those people suddenly realise they want input, the general feeling may be: 'Look, you had your chance to be involved and you did not want to do it'. Under those circumstances, change will be a lot harder to negotiate.

Mr SETTER: I think it is important to understand, though, that at the end of the day everybody is not going to get everything that they want in the constitution. People want all sort of different things and it is impossible to accommodate everybody's wishes.

Mr DOOLAN: As far as the Tiwi are concerned and, I believe, Aboriginal people in general, the main issue would be protection of land.

Mr SETTER: Yes, of course.

Mr DOOLAN: What if there was too much opposition to land rights from mining interests, the pastoral industry, and people in general in the Territory?

Mr HATTON: I do not think the opposition is to land rights as such. In the mining context, for example, the people of Nhulunbuy said: 'Look, we do not mind people having land rights but we want the right to drive to our home. We want access'. Is it unfair to ask for that? No. But people in Nhulunbuy have been fighting for it for 10 years. They want to be

able to drive to their home without having to ask permission. Those are the sorts of things that concern people. It is not a constitutional issue because the constitution could simply say, in respect of land rights, that that is your land and nobody can take it away from you. That is certainly not the same as saying that the Land Rights Act is perfect. It is not necessary to put the whole of that act into the constitution and say that it should never be changed.

Can you say that the administration of the land councils will be perfect and should never be changed, that their powers should always stay the same? Are you going to say that the next generation cannot touch such things? You want to give people the right to say, in the future: Hey, maybe we have developed further. Maybe the role of the land council should change now and this land trust should be able to make the decision'. If you put things in the constitution, it is very hard to change them.

Mr EDE: What we could do ...

Mr HATTON: There is also the question of how much you put into the constitution.

Mr EDE: It is possible to have different requirements relating to different aspects of land rights and some of those would be better in an act of parliament than in the constitution. For example, some decisions in relation to controls over land might require a 75% majority whilst other less important decisions might require only a 50% majority. Matters such as the auditing of land council financial returns and so forth would not even need to be covered in the constitution. The constitution could even require that, in the case of legislation pertaining to certain matters, a three-quarters or two-thirds majority of members might be necessary, or the legislation might have to remain before the House for 6 months.

Mr HATTON: These are Brian's ideas. They are not necessarily the views of the committee.

Mr EDE: I am not saying that this is what will happen, nor even that this is what I think should be done. I am just trying to present a few ideas so that people can talk about possibilities and see how they fit into their way of thinking.

Mr TIPUNGWUTI: All right, I have another question to the Chair. These Tiwi Islands are our land but I think the government forgets about sea closures. How are we going about that in this constitution?

Mr HATTON: You have 2 problems there. You can certainly talk about sea closures in the Northern Territory although you know that there are big fights in relation to that. Secondly, a lot of that water belongs to the Commonwealth and therefore comes under the Commonwealth Constitution. Once you go more than 3 km offshore ...

Mr FIRMIN: No. It is 2 in relation to land rights, and 3 for the Commonwealth.

Mr HATTON: Yes, something like that.

Mr NICHOLSON: 3 nautical miles.

Mr HATTON: 3 nautical miles. After you get 3 miles offshore, it is all Commonwealth water.

Mr TIPUNGWUTI: Our concern is from the water mark to 2 km. That is what we are concerned about.

Mr FIRMIN: But you have that already.

Mr TIPUNGWUTI: I do not think so.

Mr FIRMIN: In part you have. These are the sorts of things which, you may find, the white community feels very upset about. We are talking about the right to close off waterways.

Mr TIPUNGWUTI: Everybody might be upset about it but it is a free home.

Mr FIRMIN: You do not understand. I am saying that, at some stage or other, you have to come to grips with the question of whether you really want to always be in conflict over that sort of arrangement. It may be or it may not be, I do not know.

Mr HATTON: You can only deal with these things if you sit down around a table and talk about them.

Mr TIPUNGWUTI: If we are talking about this constitution, that would be in too.

Mr HATTON: There is a right to talk about it in relation to the constitution. It can be talked about in the constitution.

Mr TIPUNGWUTI: It would have to be. We have to talk about a lot of things in this law.

Mr HATTON: There will have to be quite a process of talking. I can foresee some horrible arguments. I am sure that you can see them coming now. People on one side will be saying this and those on the other will be saying that and at first they will be fighting, just like they are fighting now. But if we can get people together and talking, so that you can explain to him ...

Mr TIPUNGWUTI: ... to anybody

Mr HATTON: ... or whoever it might be, why a particular thing is so important to you, and if you can get him to understand that, and he can also explain his point of view to you, maybe the 2 of you can find a halfway point so that you both get what you want.

Mr TIPUNGWUTI: A bit of privacy.

Mr HATTON: And a bit of understanding. If you get a bit of understanding between people, that is how respect grows, isn't it. The process of talking, arguing and trying to sort things out could develop the understanding and respect which we need to make us into one community even though we have different cultures, different religions and different ways. We need to understand what is important to the other person, why they have to have things a particular way. Then people can say: 'That is your way and this is my way. You understand my way. We can walk along side by side and not push each other out of the way all the time'.

Mr TIPUNGWUTI: You have to work as a team.

Mr HATTON: That is right. You have to work hard to get that but it is worth getting, isn't it.

Mr TIPUNGWUTI: Anyway, Mr Chairman, I have no more questions. All my questions have been answered.

Mr HATTON: We have lots of questions but you can think about them later.

Mr TIPUNGWUTI: Probably land rights.

Mr HATTON: It is all in there, in the book.

Mr TIPUNGWUTI: Yes, no time to talk about that here.

Mr HATTON: Yes, it will take time.

Mr DOOLAN: So there are no time limits on statehood or the development of the constitution.

Mr HATTON: No. We have to set this up properly.

Mr DOOLAN: How will this process go ahead? Who will do the draft?

Mr HATTON: This committee will do the first draft. We have to make recommendations to the Legislative Assembly on the formation of a constitutional convention. We are also looking for submissions on how that should be put together, what groups should be represented, how big it should be and so on. There is another paper which sets out some ideas about that. That is only some ideas and there could be others.

Mr EDE: That first draft will not be anything like specific in relation to issues. It will be very fuzzy because there is no way in the world that this committee will be able to come to agreement on fundamental issues that are being discussed.

Mr HATTON: We may well put 2 or 3 different options.

Mr EDE: We may not even specify whether there were majority or minority views on these things. We may simply say

that these are issues which the constitutional convention needs to consider. Ultimately, it is the people who will have to make the decisions about these things.

Mr HATTON: If you believe this, you can write it this way. If you believe that, you can write it that way - and so on.

Mr TIPUNGWUTI: There are a lot of ways you can do it.

Mr HATTON: That is right. That is our job. After we make our recommendations to parliament, the parliament says: 'Yes, that is good. We accept your recommendations'. We then set up a convention. Perhaps by the end of next year we might be just about ready to put that convention together. Okay?

Mr SETTER: We are going to come back and talk to you again, probably early next year. By then, you will have had an opportunity to talk about this and to put some ideas together.

Mr HATTON: In the meantime, you can get a lawyer or anyone to come across and explain different things.

Mr HEENAN: Excuse me, Mr Chairman. I just want to ask one question. If we get statehood in the future, would all the Aboriginal communities suffer a loss of Commonwealth funding?

Mr FIRMIN: No, it would not change.

Mr HEENAN: Commonwealth funding for Aboriginal people is the same all over Australia. People in all states have the same rights to funding.

Mr SIMONS: We were talking to people from Western Australia just recently and they have been just sort of plonked onto the CDEP. They get no Commonwealth funding whatsoever.

Mr DOOLAN: For the provision of essential services.

Mr HATTON: Essential services are provided by the Northern Territory government, not the Commonwealth. That is Northern Territory funding now.

Mr DOOLAN: So that particular state does not provide those services.

Mr HATTON: Yes. The problem is that the state is not doing the job. In the Northern Territory, we provide funds for essential services.

Several persons speaking at once.

Mr HATTON: The Northern Territory government provides funds for essential services such as power, water, sewerage, roads, barge landings, airports and so on. They are funded under what we call the Aboriginal Essential Services Program. It is a Territory government program, not a federal program.

Mr DOOLAN: Do any of the states have the same sort of program?

Mr HATTON: I do not know.

Mr FIRMIN: If they have, it does not operate to the same extent as ours.

Mr EDE: They all do it.

Mr HATTON: They probably do. I do not know.

Mr TIPUNGWUTI: They do have it. They have it all over Australia. It has a different name in each state.

Mr HATTON: Anyway, it is a state function. It is not a Commonwealth function.

Mr DOOLAN: Once we become a state and our constitution is finalised, what power does the federal government have to say that particular parts of our constitution are not appropriate and should not apply?

Mr HATTON: Once we become a state, it cannot touch it.

Mr EDE: Hang on. That is not absolutely clear.

Mr HATTON: The Commonwealth has a say in the formation of our constitution because we are still a Territory. However, it would take a very brave government to change something which had been approved by the people. If the constitution is in place at the time we become a state, our reading of section 126 of the federal Constitution is that the state constitution can only be changed in accordance with its own rules for the manner of change. The federal government would not be able to change that. At present, Mr Nicholson is working on a discussion paper which covers the technical aspects of that.

Mr EDE: There are 2 ways of becoming a state, by a law of the federal government or by an amendment to the national Constitution. In the latter case, there has to be a national referendum with all the states agreeing to it. If statehood were granted through a national referendum, it seems that any attempt by the federal government to change our constitution would have to come about in the same way. Some people have put it to me that, if statehood is granted through an act of parliament, the federal government may continue to have some powers relating to our constitution. Its hands may not be completely tied.

Mr HATTON: You should understand this has never happened before in Australia. A new state has never been created in this context before and some aspects of the federal Constitution have never been tested. We might be in and out of the High Court of Australia 20 times trying to work out what the Australian Constitution means in the sections relating to the formation of a new state.

Mr DOOLAN: I know that they were created a long time ago but there are constitutions for each state.

Mr HATTON: Yes, but they were in existence prior to federation, when the states were still colonies. The federal government has never touched them.

Mr DOOLAN: Well, how can they

Mr HATTON: The states did it themselves. It was nothing to do with the federal government.

Mr TIPUNGWUTI: I have one more question to the Chair. What about things that might change? What about change in this constitution?

Mr HATTON: That is the beauty of this one. You can write the constitution so that it can only be changed by a referendum of the people, just as you can write rules which apply to the amendment of the constitution of a club or a community government. Remember last year, when you had to vote in a referendum on proposed changes to the federal constitution? People said no to the proposed changes. The federal government could not make the changes it wanted. You can do the same thing with this constitution. That is one matter on which I will make a comment about what we have to do. You have to make this constitution in such a way that the government cannot change it. Only the people should be able to change it.

Mr TIPUNGWUTI: Why I asked that question is because we have to know exactly which way we are going, which way we are heading.

Mr DOOLAN: So it is a long way away. In the meantime, what happens if there is a change of government in Canberra and the new government has the attitude that land rights should not be in existence? What powers have we got now? None.

Mr FIRMIN: We have spoken about this before and the interesting aspect is that, although there has been some conflict between the CLP government and land councils, that has not been manifest in recent years. There is support for land rights from the CLP government. It is in our platform that we support it anyway.

Mr SETTER: That is right, it is.

Mr FIRMIN: There are some minor disagreements in respect to, as I said earlier, land management problems.

Mr DOOLAN: Is this why the land claims that have been put up have been opposed by the CLP? Is that basically because of land management problems and access?

Mr HATTON: I should deal with this. I will. The Land Rights Act says that, if you are the traditional owner of an area of unalienated Crown land, you can claim that land. If you walk in and say that you are the traditional owner of that country and are claiming it, the first thing that has to happen is that there has to be a test in relation to your claim that you are the traditional owner. Do you know the stories of the land? What is your history? What gives you the right to say that you are the traditional owner? It might be someone else. So we have to test to make sure that we are talking to the right person.

Mr TIPUNGWUTI: You are quite right there.

UNIDENTIFIED: Look at Wagait.

Mr HATTON: There is not just Wagait. Look at that the Lake Amadeus one.

Mr TIPUNGWUTI: It is happening right today.

Mr EDE: I want a right of reply after this. I think we are starting to get political here. I do not know whether we want that. We could certainly debate what is being said now.

Mr HATTON: Okay, but the point I am making ...

Mr EDE: If you have to talk about it, we can have an argument. I am quite happy to sit here and debate land rights all night, all morning and all week.

Mr HATTON: All right. In answering the question, I will say that there have been disputes about whether particular areas should be claimable. I am talking about public purpose lands, national parks and so forth. Also, to be absolutely honest, there have been cases in the past when the Northern Territory government opposed land claims just as a matter of principle. It was habit. However, there are still sometimes good reasons for the government to be involved in testing claims and I believe that is what the government is doing now rather than just opposing the idea of land rights.

Mr EDE: My argument is that we have a judge's associate whose job is to ensure that those matters are dealt with properly. I do not like to see what has happened in places like Tennant Creek where the debate over the Warumungu Land Claim was drawn out for years and years for blatant political purposes. That is my argument about the way the Northern Territory government has gone on about land rights over the years but I really do not think that this is the time to talk about such things. I think we agree that, in future, we should put that behind us.

Mr HATTON: That is one thing we do agree on.

Mr FIRMIN: The question concerned what would happen if the federal government changed. My view is that that would not make any difference because the Territory government would support land rights.

Mr SETTER: I think it is also important to realise that it is most unlikely that any federal government based on the existing parties would change the present situation in respect of land rights. You have to bear in mind that it was a Liberal government which originally granted land rights in 1976.

Mr HATTON: No one wants to take land rights away.

Mr SETTER: The coalition will not take it away. It introduced it.

Mr HATTON: There is debate about whether it should be covered under a federal law or a Northern Territory law but not on the issue of whether or not land rights should exist.

Mr SIMONS: Don't you think that it is the principle of land rights which is the cause of all the arguments?

Mr SETTER: No, not at all. The Country Liberal party supports land rights. It is in our platform in black and white.

Mr HATTON: All parties do.

Mr TIPUNGWUTI: That answers my question, Mr Chairman. I have no other questions.

Mr DOOLAN: We have received all this printed material and gone through it briefly.

Mr HATTON: We have some more copies for you too.

Mr DOOLAN: We propose to go through all of it in detail, very slowly, with the council and as many people as possible, with the intention of then getting something in writing to the committee. Would that be in order?

Mr HATTON: Excellent.

Mr TIPILOURA: You need to get the people involved too.

Mr DOOLAN: Yes, absolutely. Council meetings and community meetings.

Mr TIPILOURA: It will not happen overnight. Just take your time and bring it up now and then.

Mr SETTER: And we can come back, Kevin. Once we have received your submission and considered it, we will come back and talk to you about it.

Mr HATTON: Or, for that matter, if something comes up in the meantime.

Mr TIPUNGWUTI: We need to talk about our different ideas in the community.

Mr EDE: We need to get your ideas. When we were down in the centre of Australia, people were asking: 'What about that mob up in Arnhem Land? What do they reckon about this?' We need to send your ideas down there and get there ideas up here.

Mr TIPUNGWUTI: This is why I am saying that every community will have a different opinion.

Mr EDE: We are finding that a lot are the same. Everybody wants to know what everybody else is thinking. They are saying: 'We are all in this together and we all want to be saying the same thing'.

Mr DOOLAN: This is a very important issue. Although the Tiwi Land Council has not, the other land councils have shown some opposition to discussion. I think that we, as communities, have to go back to the land councils and say: 'Look, be prepared to at least sit down and discuss it. There is no harm in that. It will be of benefit in the long term'.

Mr TIPILOURA: There is no harm in talking.

Mr TIPUNGWUTI: We ought to be prepared to talk about it. The NLC has not even talked to this community about it.

Mr HATTON: It has not bothered to talk to us. The land councils say that they know what we are doing but they have not even asked us.

Mr DOOLAN: You have to look at identities. Maybe the problem is with individuals within the land council executive. The idea of going to the whole land council is a good one.

Mr HATTON: Yes, not just the executive.

Mr TIPUNGWUTI: Discuss it with them.

Mr HATTON: So all the representatives are there.

Mr TIPUNGWUTI: Everybody, not just the the executive.

Mr SETTER: No, we should talk to the whole council.

Mr HEENAN: I think everybody should get together in one place and discuss it.

Mr HATTON: So you could get the view of the Tiwi people. That is a good idea.

Mr DOOLAN: An opportunity is coming up. The land council has ...

Mr TIPUNGWUTI: A couple of its representatives could sit down with our community members.

Mr HATTON: They could spend a day or 2 there.

Mr DOOLAN: The Tiwi Land Council recognises that a lot of the decision-making is not getting through to the grassroots level of the people in the community. To counteract that, it proposes to have a couple of meetings a year which involve not only the land council members but all the people in important positions, so that they can get together and discuss issues like this. I think that will provide an important opportunity.

Mr TIPUNGWUTI: (inaudible).

Mr HATTON: I think that covers the issues pretty well for now. Thanks for having us along.

Mr DOOLAN: Thanks very much. Tonight has certainly opened my eyes. It has been interesting to hear the various points of view. We would like to thank the committee for coming over. It is greatly appreciated and we look forward to further discussions on the issue.

Mr HATTON: It is always a great pleasure to come over here.