

## PUBLIC HEARING

**KATHERINE— Wednesday 19 July 1995**

PRESENT: —

**Committee:**

Mrs M. Hickey (Deputy Chairman)

Mr T. Baldwin

Mr P. Mitchell

Mr W. Lanhupuy

**Officers assisting the committee:**

Mr R. Gray (Executive Officer)

Mr G. Nicholson (Legal Adviser)

**Appearing before the Committee:**

Ms Sandra Rew

Mr Jim Forscutt

Ms Dawn Cholsh

Mr Mick Peirce

Ms Joanne Lee

Ms June Tapp

NOTE: This is an edited transcript.

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**Final Edited Version**

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Mrs HICKEY: Good afternoon. I am glad to see some people from Katherine attending this meeting. I am Maggie Hickey. As the Deputy Chair of the Sessional Committee on Constitutional Development, I am chairing this session in the absence of our Chair, Steve Hatton. On my right are: Tim Baldwin, member for Victoria River; Phil Mitchell, member for Millner; and Wesley Lanhupuy, member for Arnhem. This is a bipartisan committee with 3 members from the Labor Party and 3 members from the Country Liberal Party. The 2 members who are not here today are: John Bailey, the Labor member for Wanguri, and Steve Hatton. We have tripped around from Alice Springs up to here and we will be holding a public hearing in Darwin as well.

This committee started as a select committee in 1986 and has operated under various guises since that time. Its terms of reference are basically to prepare the groundwork for a constitution for the Northern Territory, to investigate issues preceding the grant of statehood, and to make recommendations to the Northern Territory government. In fact, this is about preparing ourselves to become the seventh state of Australia. During those years, a great deal of research has been done. The committee has produced a number of papers, which you can see over there, as well as holding many public hearings, both in municipal centres and remote communities.

Whilst that work will continue, at this juncture we have prepared an exposure draft. This, if you like, is a draft for a new

constitution for the Northern Territory. This is the document that we are seeking to particularly interest people in. Really, it is a precursor to the committee taking a draft constitution to the Northern Territory parliament with recommendations as to how we should now proceed.

We have set ourselves a timetable, according to which a constitutional convention would be formed in 1996. That convention will be comprised mainly of elected Territorians. At the moment, we intend to recommend to the parliament that there be a mixture of elected and nominated representatives on that constitutional convention. We are saying that 75% should be elected, about 50 people, from 10 electorates. We are looking at multi-member electorates. The remaining 25% will be from people who represent particular interest groups. We have suggested that such groups might include land councils, Aboriginal organisations and town councils, but that is still up in the air. We seek and welcome suggestions from members of the public so that, when the convention is formed, it will be as broadly representative as possible.

We will give to the convention all of the papers that have been prepared by the committee over the years. However, it is really up to that convention to determine what it does. If it wanted to, it could throw out this document altogether and start again. But we think that this will probably be a framework for consideration by the convention.

The exposure draft that we have at the moment contains several parts. The committee was specifically charged to undertake consideration of the legislative powers, the executive powers and the judicial powers that we want to see incorporated into a constitution for the Northern Territory. The document contains suggestions and drafts for those areas. We have also included some rather contentious issues such as land rights and recognition of customary Aboriginal law, as starting points for people to decide whether and how such matters should be covered in the document. A bill of rights is something else to be considered, as is local government. I know that there are people here today who are particularly interested in that aspect. We have prepared a discussion paper, Discussion Paper No 9, on Constitutional Recognition of Local Government. Although it has not yet been written up in the exposure draft, it will certainly be considered in this document once it is completed.

We have also looked at the way in which we would entrench a constitution. For example, will we have a constitution that can only be changed by referendum? We have also looked at whether we would also incorporate some items in the constitution under organic law. That is something that is new to Australia. It happens in PNG and people might be aware of that. An organic law can only be changed by a special majority of parliament, not just 50% plus one. It can only be changed by a significant majority, which would include government and opposition members under most circumstances. That would be a special strengthening of laws.

We are considering issues such as Aboriginal land rights to be addressed by organic laws because, clearly, if we want a constitution that the vast majority of Territorians are happy with, there has to be that consideration of issues that are of importance to the 25% of our population which is Aboriginal. There is no doubt that Aboriginal people are not going to accept a constitution that does not give due recognition and proper protection to the interests that they hold.

Obviously, we would expect that statehood would bring all of the powers that other states have. That would include patriation of the Land Rights Act. That is not to say, however, that some aspects may not be changed in discussion and agreement as a constitution is formulated. There are some issues within this exposure draft that may be of interest to people in that regard.

The document contains explanations and footnotes. Items that correspond to clauses in a normal law are accompanied by explanatory notes which state the intent of the clause in plain English. The notes also make reference to any discussion papers that might have led to the inclusion of that particular clause.

The committee has worked very hard to reach agreement on as much as it can. It is a bipartisan committee. We are all committed to supporting a constitutional paper ready for constitutional development and we are all committed to taking that to the federal parliament with a bid for statehood. There is no doubt about that. We are all firmly committed to that. Of course, there are differences within that context. Some of them are philosophical differences and some of them are political differences.

In some cases, you will see in this paper that several options are offered. For example, we currently have 25 single-member electorates. Some people feel that a different sort of system might be appropriate for the Northern Territory, such as the Hare-Clarke multi-member electorate system that operates in Tasmania. Three options for electorate systems are flagged in the document.

Of course, when the constitutional convention is formed, it is free to do whatever it wishes with that. It can change it if it wishes, it can make other suggestions or develop new options. The sky is the limit, I suppose. You can do whatever you like with it once it gets to the convention. We have just put in all of the issues we feel are pertinent, that have been brought to us in discussions, negotiations and submissions.

Things like citizen-initiated referenda are of interest to many people. There is a discussion paper on that. All of that documentation and research has been undertaken by the hard-working people on my left, together with our constitutional lawyer Graham Nicholson. All of that work is encompassed in these papers.

If people bring up other issues between now and December, we will certainly be looking closely at them. By December, we hope to have a form of a document that can be presented to Parliament. We will then work very hard over the Christmas break to prepare the final document. However, up until that time, we would welcome submissions from the public. In fact, we desperately need and want them.

I should also say that, in formulation of the convention, we believe that 75% of its members should be elected. I think it is very important at this stage for people in the Northern Territory to think about whether they, somebody that they know, or a particular representative group, should be involved in that constitutional convention. We hope that this will belong to the people of the Northern Territory. It is an opportunity that very few people will ever have in their lifetime.

This is probably a once-only event for us in the Territory to be part of making history, to be part of saying how we want our state to be governed, what sort of laws we want to operate under, what type of government we want to have, and what powers we want our government and our judiciary to have. It is an opportunity for people to get involved. Of course, if you do not get involved, you will end up with something that other people have formulated. I believe that a very important part of our role at the moment is to engender interest among Territorians and encourage people to become involved and informed.

Now I am only the ring-in chairman on this occasion, so I would just like to ask my colleagues if they have other things to add before throwing the floor open.

Mr BALDWIN: Perhaps I might just mention that, as part of our program for educating and involving the public, we have developed a display that has been going around with the show circuit. We have people staffing the display, which has been very successful at the Alice Springs and Tennant Creek shows. It is here again in Katherine and it will be moving on to Darwin. Its main theme and thrust is to try and engender some interest in this whole process. It is time now that Territorians became involved as individuals, as groups, as local councils and what have you. I would urge everybody to take the opportunity to have a look at this show stand, to pick up some of the material that is available, and to read it and have some input by way of written or verbal submissions.

Mr MITCHELL: I just want to stress that this whole thing is a bipartisan effort. The whole document is set up specifically as a framework, I suppose. I just want to stress that, if people are thinking that they do not like it or whatever, they have plenty of time to discuss it. Even if there are some questions you might think of after today, don't be shy about coming back in a couple of weeks time to throw questions to the committee. We will try to address them. I think that covers what I want to say.

Mrs HICKEY: Another thing I might mention are some questions that have been put to the committee as it has gone about its work over the years. I know that some of the people who have been working on the show stand have been asked similar questions, such as: 'Why should we become a state? What difference will it make? Will it cost us more or less?' Our view is that it will not make any difference in terms of cost and the way we obtain our finances.

It will make a difference to some of the things that we do not have now. In a way we are in the hands of the federal government, whatever its political persuasion. We exist because of the federal government but, more or less with a shrug of the head, they can obliterate us. We are not equal with people in other states. We do not have equality and that is really what we are after. We are after equality with all of the other states so that we can run our own affairs knowing that we are able to do so without any thought that the federal government can make changes to us without our desire. That is an important aspect.

Other important issues include the repatriation of land rights and what we do with our national parks. Of course, the federal government looks after some of those at the moment, such as Kakadu. We would see those coming back in under our ordinance. Industrial relations is another one, although we would probably continue to use the federal industrial

relations mechanism. However, industrial relations would then come back to us as Territorians.

I know that Jim Forscutt at least has some questions so I will throw the floor open now.

Mr MITCHELL: Just before we continue, could I ask that people identify themselves when they address us, for the Hansard record.

Ms REW: How does the committee fit into the convention?

Mrs HICKEY: I can explain that by saying that we currently envisage, and intend to recommend to parliament, that the six members of the Sessional Committee on Constitutional Development, plus the Chief Minister and the Leader of the Opposition, should be members of the constitutional convention. In other words, they should be some of the appointed members of the convention together with those other people I mentioned before, who might be nominated to the convention by particular organisations.

Ms REW: Are their votes equal?

Mrs HICKEY: Yes, I believe that they will be. Of course, this is only a recommendation. However, I would imagine that all members of the convention would have equal votes. At the moment, as things stand, the Chief Minister and the Leader of the Opposition are able to sit in on this committee's deliberations. They do not have voting rights, however. Only the six committee members have voting rights at the moment. Once they became part of the convention, I would imagine that they would have voting rights.

Mr MITCHELL: Under the recommendation, there would be 16 or 17 nominated positions apart from the committee, the Chief Minister and the Leader of the Opposition. Those could include people from the aged and the youth sectors of the population and others such as Aboriginal organisations, local government and ethnic groups.

Mrs HICKEY: Those are our suggestions anyway. We may not have covered the field. There may be other interested groups, such as the disabled. They may decide that that is a particularly strong lobby group that they would like to see represented on a constitutional convention. Women may decide that they would like representation as a group. The field is open at the moment. As Tim rightly said, the show stand is excellent. We are hoping that it will continue to engender interest leading to more submissions from people.

Mr FORSCUTT: I am here as an individual rather than representing the local government of Katherine. I have some questions and concerns in relation to your Discussion Paper No 9 on the Constitutional Recognition of Local Government. I am wondering if I could take this opportunity to pose these questions to you.

Mrs HICKEY: Certainly.

Mr FORSCUTT: Thank you for the opportunity. Madam Chairman, if I could just say so, this is a new piece of draft legislation which has not been out for very long. The opportunity for us to have a good look at it and make comments later on is much appreciated.

I would refer you firstly to page 5 of my copy of the paper. It relates to interpretation. It says: 'It is theoretically open to particular Aboriginal communities in the Territory to seek greater local control through the formation of a local government municipality under the Local Government Act. So far this has not occurred. It is doubtful that this existing form of local government in the Northern Territory is an appropriate structure to implement Aboriginal self-determination'. I do not believe that that is a true statement. In fact, I think it is quite the opposite.

My other role as president of local government, as you can appreciate, has enabled me to see, particularly in the last 3 years, the local government structures that have been put into place to service and assist Aboriginal communities. The change in overall living standards in those communities and their participation in self-determination has just left me for dead. It has exceeded all our expectations. I see it more and more every time I move around the Territory, particularly among the Aboriginal communities. I am talking about those because that is what that particular section actually relates to. I am saying that that form of local government is really beneficial and that it is a self-determining structure. I would suggest that the committee look very strongly at that.

I have a copy of 'Local Government in the Northern Territory', a paper that was delivered by the then minister, Steve

Hatton, to the IULA ASPAC Conference in Darwin last year. For your information, IULA stands for the International Union of Local Authorities in South-East Asia. 28 members attended that meeting in Darwin, which represented a third of the world's population. We are not talking chicken feed, to coin a phrase. We are talking big time. In that paper, he says: 'Local government is arguably the Territory's fastest growing industry'. He says that it is not growth in government for its own sake. He talks about other functions which may include social security and agency banking. He says that these communities are doing all that. He advocates: 'It is the Northern Territory's vision that small, remote and Aboriginal communities will develop appropriate, effective and efficient local government as a focus for self-management and self-determination'. They are his words, not mine, but they are fully supported. It is mainly in this area that I wanted to talk to the committee.

The other question I need to pose to you is: 'What is local government in the Northern Territory?' References within much of the Sessional Committee on Constitutional Development's material talk about states. In your opening address this morning, you have said that we are a territory not a state and, as has been said before, the constitution of Australia does not apply to us. Sometimes I question whether we should keep paying taxes until we get that fair representation we hear so much about.

Local government in the Northern Territory is very young. That is indicative of some of the areas we have talked about, particularly with the community councils and associations. It even applies to municipal councils. This council in Katherine was only initially formed in 1978 at the same time as self-government for the Northern Territory. That is where you people are coming from. I think, before we pose too many questions and discuss too many issues, we need to go back and look at the powers of local government in the Northern Territory.

Here are a couple of quick examples. We do not have control of town planning responsibilities or building control. In all of those areas, those devolved powers have not been handed down. Let us face it. I believe that legislation is generally set out to give local government the responsibility to provide for the peace, order and good government of its district. I mean, that is what we are elected for. Along with that come all the social implications we are expected to get involved with. I think we need to find out what is local government in the Northern Territory, where we see it fitting in the proposed constitution and what its actual role will be. I think that has to be ascertained. Madam Chair, most of these little stickers relate to the Aboriginal aspect, and my belief that local government plays a major role.

We talk about Aboriginal culture. Of course, we have Wesley here from the electorate. As a traditional person, he knows what that means. As a long-term resident, I have major concerns. We hear politicians saying: 'Let us look at putting in Aboriginal culture'. I would like that defined also. What are you talking about in Aboriginal culture?

It is very important to realise that, among traditional Aboriginal people right around Australia, the cultures are all different. You know that and I know it. The cultural aspects need to be defined so that we ordinary people can understand what is being said. If you want an indication, we might talk about traditional ways of chasing kangaroos and all that. Those things have changed. In my opinion, culture has evolved. I believe that we should be looking at the 1995 version, the culture as it pertains today rather than 200 years ago. I think we would be causing a very big rift, not just in the Aboriginal community but in the wider community, if we did not define what we are talking about in terms of those cultures.

If I may, I would like to make some comment in relation to the Royal Commission into Aboriginal Deaths in Custody. I am sorry that I only got this the other day. I have only had a quick look at it. It has been in the news again quite a lot during the last few days. I would like to quote a determination by Mr Wootton. It is in the recommendations of the Royal Commission. As it relates to how we should deal with these Aboriginal problems in general society. He says: and I quote, 'For Australia, as for other countries, the problem is to reconcile demand for the recognition of special Aboriginal status and rights within existing institutional arrangements'. unquote. That seems to be lost in the general discussions which take place among people out there in the community as a whole. I would say again, from a personal point of view, that it creates social division. Let us just clarify what is meant by these sorts of things. Again, it comes back to your cultural law and the general law of the land.

Do you want the letter from Steve Hatton? It is nothing really important but it actually clarifies the position in relation to the recognition of small communities.

Mrs HICKEY: Yes, we will take that on. Thank you, Jim.

Mr FORSCUTT: Madam Chair, I would like to make a couple more quick comments. First of all, there is the matter of the

Australian republic. I think it is a fait accompli that we will get there. My question is: 'What comes first, the chicken or the egg?' Does the republic come first or do we get statehood? It will be interesting to follow those developments.

I would like some more discussion in relation to the question of a Northern Territory bill of rights. Does the committee have a general thrust in relation to a bill of rights? What are you laughing at?

Mr BALDWIN: We have been asking ourselves the same question.

Mr FORSCUTT: It is an issue that is being talked about out there, in terms of whether we need it or not. That is the question that is being posed and I would like the opportunity to talk about that some more. That is all I have to say at this stage.

Mrs HICKEY: Thank you, Jim.

You raised the question of local government, and what it is. I think you are also looking for some definitions in relation to Aboriginal culture. I guess customary law is what we are looking at, more particularly.

Your comments are very valid. One of the reasons why local government does not appear in the exposure draft exposure at present is probably the fact that it is a matter requiring a lot more discussion and thought. In addition to your questions about what it is, we would certainly welcome some of your thoughts about that too. Whether they are municipal authorities or Aboriginal community government councils or associations, local governments are very important to the equation here. That is the grass roots level of government. Tim and I have both been involved in local government, as you know. I think that we really do need to nail some of those issues down. I thank you for your comments on that. We will take them on board in terms of what we are doing with this.

In relation to the question of customary law, I would agree that it is an evolving culture, not a dead one. We have been discussing how we should entrench customary law. At the moment, our view is that it should be given the same sort of status as common law. If you look down the list, you have your entrenched constitution, your organic laws and your legislative functions. Those can change. As you say, they are not set in concrete. They do change and evolve. You do not want to be saddled for ever more with something that is inappropriate for everybody, something that can only be changed by a complicated process such as a referendum. That is why we wish to give it recognition as something that does exist within the Northern Territory and is used within discrete groups. However, it is not something that will become unwieldy.

You also raised the question of the Australian Republic in relation to the Northern Territory as the seventh state. An interesting poll was conducted on that issue. 80% of respondents supported the Northern Territory becoming a state. They also supported the concept that that should happen first. It can happen at either stage but we believe that would be a logical conclusion. We are aiming to have adopted a constitution prior to the grant of statehood. We are working towards the year 2001 for adoption of our constitution and for statehood.

Mr FORSCUTT: I have a quick question which relates to that. Are you talking about Senate representation? Will the Northern Territory constitution address that? How do you resolve those matters?

Mrs HICKEY: Some other members of the committee might have views on that. Perhaps Tim would like to say something about it.

Mr BALDWIN: I think that is something that we would negotiate with the federal government and other states at the time.

Mr FORSCUTT: So it will not become part of this.

Madam Chair, I did notice in here that you wanted some feedback on Aboriginal and traditional areas where there is local government. One of my member associations now has a problem because buildings have been built on traditional Aboriginal land. The Northern Land Council is now considering charging rent to that local government, for the land on which the buildings have been constructed. It is traditional land in another sense. I am just suggesting to the committee that there are some concerns out there which need to be resolved.

Mrs HICKEY: That is one of the issues that we canvass in the exposure draft. Steve talked about it at the last meeting.

Mr FORSCUTT: Yes, I have seen it in there. I mentioned it because I have actually come across it. There is some concern

as it involves ...

Mr BALDWIN: Can I just ask you a question? Looking at local government on a holistic basis, whether it is municipal or community government, where do you see it fitting in the new constitution for the Northern Territory?

Mr FORSCUTT: In what role, or where would I see it sitting?

Mr BALDWIN: How would you see it entrenched? What parts of it would be entrenched? I mean we could just generally say that, in the constitution ...

Mr FORSCUTT: I think we need to define it first, Tim.

Mr BALDWIN: Given that we need to do that ...

Mr FORSCUTT: Then we entrench it as a right.

Mr BALDWIN: As a right. We do not just recognise ...

Mr FORSCUTT: No. I think it has to be a right.

Mr BALDWIN: A right for all people to have local government.

Mr FORSCUTT: Yes. It relates to discussions that you and I have had before. Do we incorporate the whole of the Northern Territory as a local government area, for rating purposes and financial assistance grant funding? It is a big issue.

Mr BALDWIN: Would it mean that, under the new constitution, the state government would not have the right to take away local government?

Mr FORSCUTT: That is right.

Mrs HICKEY: What about the situation in which a local government finds itself in a difficult situation?

Mr FORSCUTT: Most definitely, there should then be a period or a given area for that council to explain itself. If it cannot do so, I would think that the government or the minister would have a right to intercede. I do not have a problem with that if the council is proven to be in default.

Mrs HICKEY: Those are the issues that we need to draw out.

Mr BALDWIN: They are some of the things that we are tackling. If we just make a general statement that local government is recognised and entrenched in the constitution, how far do we go with that entrenchment?

Mr FORSCUTT: Does it become another tier of government in its own right?

Mr BALDWIN: It is anyway.

Mr FORSCUTT: It isn't. That is the point. It is governed by legislation.

Mr BALDWIN: Do you know whether the Local Government Association of the Northern Territory will be putting another hat on you?

Mr FORSCUTT: I spoke to my executive officer today. I will give him a quick briefing on what has come out of here today, and ask him to have a look at it.

Mr BALDWIN: I would like to see it as an agenda item for your next major meeting.

Mr FORSCUTT: The Chief Minister is coming to our AGM to talk about statehood. In that context, LGANT may be able to develop a position paper.

Mr BALDWIN: The committee is yet to come to grips with the bill of rights. I think we will find that our views are pretty diverse in relation to that, so by all means have your say about it.

Mr FORSCUTT: Thank you.

Mrs HICKEY: Does anybody else have questions or comments?

As Tim said, the issue of the bill of rights is thorny. There is not only the question of what, if any, aspects should be incorporated into a constitution. It really does come down to deeply held philosophical views. Of course, they can be very divided. If any of that was included in an exposure draft, it would be presented as a range of options. That is what we have done to date. Rather than agonise endlessly, we have acknowledged that there will be some issues on which we would never agree. I suppose that is why we have different political parties in the first place. We present the options to people, indicating that we have considered them, and we leave it to the constitutional convention to actually make the hard decisions at the end of the day.

It is interesting. I know that Tim likes us to make some decisions, and that is a good thing. Many of us want to hedge our bets a bit, I suppose. Of course, at the end of the day the constitutional convention will have to make those sorts of decisions. We are trying to do as much of the groundwork as we can beforehand.

Mr BALDWIN: However, the whole thing will come back to people like yourselves.

Ms CHOLSH: Madam Chairman, I do not have any submissions to make. I came as a resident of Katherine to get information about something which I did not know anything about. I saw the advertisement in the paper and it said that you were taking submissions. I did not have any material to work on so I am pleased that there is material here. Your summary gave some enlightenment about that. I was also going to suggest that the show would be a good place but you have covered that one. You must have found that out already. In every place you have been to, you have been preceding the show.

If I understand correctly, you hope to have about 70 people on a constitutional convention. Is that right?

Mrs HICKEY: Yes. 75% of the convention will be elected and the balance will be nominated. Members of the committee will also be part of the convention.

Ms CHOLSH: I may have missed something, but do you mean that there would be information and publicity before you came to that point?

Mrs HICKEY: Very much so. Obviously, we will have to be involved in a very large scale election exercise. There will be 10 electorates, each electing 5 members. We will divide the Territory up in that way so interest groups in the community can put forward candidates for election. These elections will be held in the same way as Territory elections. As a precursor to that, it is obviously important that a lot more information goes out to people in terms of what it is all about.

In a way, it is a pity that the show has come after our public meetings. I know that, in the towns we have visited so far, a great deal of interest has been generated through the show stand. Probably, the best timing for these meetings would have been almost directly after the show. Politicians being politicians, they follow the shows and then disperse. We could not get people together to do that. There will, however, be more public meetings and public hearings. We are coming to Katherine again in November. We will certainly be upping the ante with advertising and public promotion. Otherwise, we will not get nominations for the constitutional convention.

Ms CHOLSH: No, you are not. That information and publicity is needed. For example, I asked several people whether they were coming this evening. They are physically unable to do so because they are at the show. It is already in final preparation.

Mrs HICKEY: Yes, that is right. As you can imagine, it is very difficult. During the 10 years of the committee's existence, we have visited all of the urban centres and many Aboriginal communities. You can never get a good time for everybody. That is the sad fact of the matter. Some people prefer daytime meetings and some people prefer something at about this time.

We have been as thorough as possible in covering the areas. For example, because we have found it very difficult to get Aboriginal representation, we approached the ATSIC regional councils this year. Those councils are generally made up of people representing particular areas. Some of the people from the more remote areas come to a central point for those



meetings. We get an opportunity to see them on their turf in their meetings. We do try very hard.

We also respond to local requests. For instance, if a local group or Katherine as a community makes a request for more information on the general issues or particular issues, committee members or our executive officer will make themselves available.

Ms CHOLSH: Thank you.

Mr MITCHELL: Dawn, to follow up the comments Maggie made about the committee's activities over the years, it has basically taken 9 years to reach this point. Many hearings have taken place and a lot of information has been gathered. That has been noted and considered, and the lawyers have been involved. We have finally come up with a clear statement. We have reached a stage at which we are really pushing it to the public and getting as many people involved as possible. During the next 12 months, you will see a lot more advertising and so forth. We will be back for more hearings and we hope that today's hearing will be the start of spreading a wider awareness.

Ms CHOLSH: You said that the committee would make people available to speak at small gatherings. It could be a local church group or a committee of interest of some description.

Mrs HICKEY: Yes. Because this is a bipartisan committee, we have members from up and down the track. Although we do not have a member from Alice Springs, Tim is a resident of Katherine. So you have a member of the committee here. Your local members also have information. Certainly, we welcome public requests for meetings and we will certainly make ourselves available to attend.

Ms CHOLSH: Thank you. Something struck me in relation to Jim Forscutt's comments. In terms of local government as a right, does that mean that 3 or 4 people in some remote community suddenly have the right to form a local government? It is a ludicrous thought.

Mr MITCHELL: It depends on your definition of local government.

Ms CHOLSH: That is what I mean. It seems rather a contradiction.

Mr MITCHELL: There are a lot of small outstations in Arnhem Land in particular and just about all over the Territory. There are groups exactly like you are talking about. However, they link in with another bigger group nearby. Several outstations become part of a larger community which might have local government.

Mr BALDWIN: Although the point may not have been made very clearly, I think the first step is to recognise local government in the constitution, full stop. At the moment, there is no constitutional recognition of local government. Having come from local government, I know that you tend to feel a little bit feeble about what your powers and rights are within the layers of government within Australia. Even at the national level, it is not recognised.

Ms CHOLSH: That is different to a bill of rights, however, which was where the mention of local government came in.

Mr MITCHELL: We should not forget that it has been nearly 100 years since the constitution has been worked through like this. We are all in a position to have a brand new, state-of-the-art constitution. That is why so many new things are coming into it.

Mr FORSCUTT: Madam Chair, while Phil was responding to Dawn's question, I wondered whether a referendum of the people of the Northern Territory will have to be held at some stage. What sort of time frame would you be looking at for that to occur? That is what I was on about.

Mrs HICKEY: Jim, we intend to form the constitutional convention next year, 1996. We are looking to put something before the people in 1997-98. The way in which we frame the referendum will be important. Will it be a simple yes or no? Will we divide the constitution into different sections so that people can vote on particular aspects? For example, if we used this document and asked people to tick a box indicating yes or no for each clause, we could end up with a real mish mash. We would need to have broad areas which were set up for people to say yes or no - for example, the broad concept of a constitution. Then there could be options for a yes or a no. For instance, do we want a bill of rights?

The federal government would have 2 possible approaches. It could put the matter to a referendum of the Australian

people or it could pass an act of parliament. We would favour the latter approach because it is much more straightforward. However, we have plenty of people to convince in that regard. The federal government has to be convinced that the people of the Northern Territory want statehood and are ready to take it. We really do need the tacit support of the other states. Whilst they do not necessarily have to be involved directly because the federal government can pass an act, there is no doubt that their support will count a great deal toward our bid for statehood.

Mr BALDWIN: The task of the convention, Jim, will be to produce a constitution that will then go to the people at a referendum.

Mr FORSCUTT: In that time frame. 1998, was it?

Mr BALDWIN: Yes.

Mr PEIRCE: I have 2 questions. Firstly, could you elaborate a little on the processes that you see as determining who might be elected to the constitutional convention. What are the ways in which you have tried to ensure that there will be a balance of views in constructing a Northern Territory constitution? Secondly, do the committee's terms of reference cover the question of whether statehood and a constitution are the best way to go, or has the committee considered that? Another idea, which has been mooted for some time, is the possibility of regionalising areas of Australia according to their economic and population base rather than according to arbitrary lines on a map. Has the committee considered whether or not it is better to remain a territory? Have points for and against those sort of things been published for the general public to get a handle on?

Mrs HICKEY: Thank you, Mick.

Your first question relates to the multi-member electorates and the way in which we will elect a constitutional convention. The committee's current recommendation to the parliament - and it is only a recommendation - is that 75% of the convention be elected from 10 electorates, each providing 5 members. We hope that the multi-member electorates will provide broad representation from those areas. It will not be just be one person representing one region. Hopefully that will provide broad representation. Again, of course, that very much depends on who puts their hand up for election.

That is why this process is very important. We want to make sure that there is interest from all of the representative groups that consider themselves to be people who should be making decisions on this sort of matter in the Northern Territory. From that we go to the nominated members from groups such as the young, the old, Aboriginal, non-Aboriginal, ethnic bodies and people with particular interests such as business, pastoralists, unions, women's issues and so forth. That is how we hope to bring about a convention that will be as broadly representative of Northern Territory people as we can make it. That is the basis of the recommendation that we will be putting to the Northern Territory parliament, which will make a decision on whether to adopt the mix that we are suggesting. Obviously, at some stage we have to make some rules under which we can operate the convention. That deals with that aspect.

You also raised the issue of the committee's terms of reference. The committee is required to report and make recommendations to the Legislative Assembly on a constitution for the new state, as such, and the principles upon which it should be drawn. This includes legislative powers, executive powers and so forth, and the issues, conditions and procedures pertinent to the entry of the Northern Territory into the federation as a new state, together with such other constitutional and legal matters as may be referred to it by ministers from time to time. In short, the committee is not considering anything but a constitution for a new state. The issue of regional government, or regionalisation on a community of interest basis, is not covered by this committee's terms of reference.

Ms LEE: Just getting back to the composition of the convention, will you be holding the elections for the people first and then choosing who the nominated people should be, or just hoping that it is all going to work out?

Mrs HICKEY: We have to debate it in parliament because we will have to actually name the organisations from which we wish to get nominees. In a way, we hope to have it right at the point when the parliament actually lists those nominated parties. Obviously, in doing that, we would have to seek agreement from the nominated groups that they see the exercise as valid and intend to participate.

For instance, the land councils could say: 'We do not see themselves as having a voice because our constituents are constituents of the Northern Territory. We would prefer to see them nominate people from within the elected members. We would perhaps prefer ATSIC or some other Aboriginal body, or independent health organisations, to have a nominee'.

We still have to discuss those sorts of issues because parliament will want to know what homework has been done by the committee rather than just whistling up a list of people.

Mr BALDWIN: It will be debated and determined prior to any vote.

Mrs HICKEY: Yes.

Mr MITCHELL: On a broader scale, every one of the 25 members will probably have to canvass his or her own electorate to get as much feedback as possible so that the issues can be properly debated in parliament. Hopefully we will come up with the right mix.

Mrs HICKEY: I would imagine that we would be providing some sort of suggested list and calling for comments and further submissions on that. This comes back to the very valid point that was made earlier in relation to dissemination of information. Unless we do that properly, we will not get broad representation from Territorians.

Mr PEIRCE: Earlier on you raised some of the problems within this particular committee in relation to the bill of rights. I think you used the words: 'on a philosophical basis'. Just as a matter of interest to myself and other people here, is there a philosophical problem within the committee, which will obviously carry over into the convention to some extent, with enshrining the rights of the individual as against enshrining the rights of the collective man or woman? Is that the problem? Or does the problem centre on the enshrining of a bill of rights in a constitution, as in the American constitution?

Mrs HICKEY: I will have a go at answering that. I think it probably revolves around the business of whether one should enshrine a bill of rights in the constitution when we know that circumstances and views change over the years. We might find that we end up with entrenchment of rights that are no longer valid or pertinent. That is one issue.

Mr BALDWIN: Perhaps more important is the issue of what happens if, in entrenching individual rights, you leave some rights out. Does that mean that they are not rights? That is the problem. Once you start listing things, it is the ones that you do not list that cause the problem. That is the philosophical point you reach. The question then becomes: do we need it or should we leave it alone and continue it as common law? It is a crunch issue.

Mr MITCHELL: Enshrining it in the constitution.

M BALDWIN: You have to keep in mind that anything you put in the constitution has to be changed by way of referendum. Once it is there, as we know from national referenda, it is very difficult to change. In some cases, the less you say the better.

Ms CHOLSH: If there was a clash of opinions or values in relation to a state constitution, and the federal constitution did not have a bill of rights, what would happen? If the federal constitution had no bill of rights, would we be able to have one?

Mrs HICKEY: I think so, if it does not clash and we are not at odds with the federal constitution. If we were trying to entrench something that is not considered in a de facto sense to be a right for all Australians, I think the federal government would be telling us to go back to the drafting table. I guess everything that we put into our constitution has to meld with the Australian constitution. That does not mean that we cannot have more in our constitution.

Tim was right. When you put things into a bill of rights, what you leave out becomes important. For instance, if you put in a whole range of rights but left out freedom from slavery, does that mean by definition that the Northern Territory would endorse, at any time, under any circumstances, some form of slavery?

Ms LEE: It has been suggested that there may be a clash between providing a right to free speech and enacting racial vilification legislation.

Mrs HICKEY: Yes, that is a very valid example - freedom of speech as opposed to racial vilification or anti-discrimination. We have anti-discrimination legislation already.

Ms LEE: Whatever the federal government decides would take precedence.

Mrs HICKEY: Because they will ultimately decide whether or not we get statehood, we are in their hands to that extent,.

Mr BALDWIN: They are not going to agree to everything that conflicts with the federal constitution.

Mrs HICKEY: Our laws have to be in conformity with Commonwealth law. We cannot differ markedly.

Mr FORSCUTT: Following on from that, which law supersedes the other? Does the anti-discrimination act overshadow the racial vilification act? Which act really is the pertinent one if you start talking about that? For example, if I were to stand up and speak rancorously against some colour, creed or ethnic group, I might be taken to court. In relation to your comment, Maggie, in terms of a bill of rights, would rights of free speech override the racial vilification act or not? Where does it all end? You do not have to answer it, but it seems to leave the area open to many questions. Perhaps we have too many acts.

Mrs HICKEY: Yes, absolutely. That is right.

Mr FORSCUTT: There are 7 judges on the High Court but we will not go into that.

Mrs HICKEY: None of us are lawyers. We quail about it.

Mr MITCHELL: Another interesting point, which many people do not realise, is that the states originally created the federal constitution. On the federal scene 100 years ago, the states gave us what we have today.

Mr FORSCUTT: Quite clearly, the constitution of Australia does not apply to the Northern Territory.

Mrs HICKEY: Well, we are all subject to it.

Mr BALDWIN: The constitution applies to all federal acts and we are covered by a federal act.

Mr GRAY: Madam Chairman, if I might comment on that, we are a Territory of the Commonwealth. The Commonwealth has full plenary power over the Territory. That is the main thing. We are a creature of the Commonwealth

Mr FORSCUTT: I am talking about the constitution as we know it in Australia. My question is: it does not apply to the Northern Territory, does it?

Mr GRAY: Yes, the territories are covered by section 122.

Mrs HICKEY: What we are seeking is a home-grown constitution for our own state.

Mr FORSCUTT: I was going to say that section 100 of the federal constitution refers to all rivers and waters, and absolute rights over conservation and irrigation.

Brief comments by Mr Forscutt and others at this point were inaudible on the recording of proceedings.

Ms TAPP: Can individuals nominate or do you have to be nominated by a group?

Mrs HICKEY: Individuals would presumably stand for election and become part of the 75% of elected members.

Ms TAPP: So it is like a local election, like running for the council.

Mrs HICKEY: It is like the Senate system. If you win 17.5% or 17.66% of the vote in a multi-member electorate, you would be elected. Steve mentioned this at the last meeting.

Mr BALDWIN: Keep it in mind that there would only be 10 electorates across the Northern Territory. The electorates would be much bigger than those we represent.

Mrs HICKEY: In fact, it is 16.66% of the vote. If you can attract such a vote, you will be elected to the convention.

Ms CHOLSH: Has the committee considered whether voting will be compulsory in all electorates?

Mrs HICKEY: Voting is compulsory in the Northern Territory so I imagine that it would apply to this as well.

Ms TAPP: Who decides on the boundaries of the electorates? Have you been through all this?

Mr BALDWIN: We have dodged that issue. What we have said is that there should be 10 electorates.

Mrs HICKEY: We might leave that with the people who draw up electoral boundaries. We might charge them with it.

Mr MITCHELL: It will be done along the lines of population in particular areas.

Mr GRAY: Madam Chairman, those particular issues will be left for the Legislative Assembly to debate and legislate on. No doubt the Electoral Commission will be charged with developing the boundaries.

Mrs HICKEY: If there are no further questions or comments at this point, I will close this meeting with a heartfelt thank you to people for their attendance, their comments and their questions. It has been a very worthwhile session from our point of view. We hope that you will come along to the November session. We also encourage you to look at the show display, including the video which provides a synopsis of what has occurred so far, and the print material. We would urge people to take copies of the discussion papers which are here, and to have a look at them.. Finally, we repeat our invitation. If specific groups would like the committee to attend meetings, we would be more than happy to do so. Thank you.