

## PUBLIC MEETING

**MATARANKA — Thursday 16 March 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 Des FISHLOCK

Mr W. MUNUMA

Mr T. WORTHINGTON-AYRE

Mr Jimmy ASHLEY

Mr Lindsay JOSHUA

Mr Wilfred PONTO

Mr George WULKI

Mr Mark DAVIDSON

Ms Wendy CLARK

**Also present:**

Ms Sandra FISHLOCK

Mr Mick ASHLEY

Mr Mark WELLINGTON

Mr Nayingi DAYLIGHT

Mr Pongi MUNYNGUNN

Mr Jacob GAGAEW

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

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Mr HATTON: Ladies and gentlemen, if I could have your attention please. Thank you for coming along this morning. It being a work day and all the rest of it, it throws you out a bit but we are very appreciative of you coming here to give us a chance to speak with you. If I could introduce myself, I am Steve Hatton. I am the Chairman of this Northern Territory Legislative Assembly committee. It is called the Select Committee on Constitutional Development. There are 6 of us on this committee and

you will see in the back of that booklet you have got all the members of the committee shown there with our photos. It is a unique committee in the Assembly because it is the only committee we have got that has got the same numbers of ALP and CLP. It has got 3 ALP and 3 CLP members. That is because what we are talking about is not a matter that is a fight between Labor and the CLP. It is a bipartisan issue. I have with me 2 of the committee members today - Wesley Lanhupuy, the member for Arnhem, and Rick Setter, the member for Jingili - and we are going around the Northern Territory this next couple of months trying to get people to start thinking about what we think is one of the most important things that will ever be confronting the Northern Territory.

Before we do that, I would like to make one thing clear. We are not going around saying to you or asking you, 'Do you think we should become a state or not become a state?' That is not the question we are dealing with. There is a lot of arguments about whether we should be a state today or whether we should be a state in 5 years or 10 years or 20 years time. Some people think it is too soon and some people think it should be later. What we all must accept is that, one day, the Northern Territory will become a state. Whether it is next year or in 5 years or 10 years or in 20 years, one day the Northern Territory will be a state. But before we can even think about that, we need to sit down as a community and say: 'Okay, what sort of a society do we want the Northern Territory to be? What do we want it to be like?' And you do that through writing a constitution. That is where you set out the framework, the rules, that lead to the direction the Northern Territory as a society is going to go: what rights do you have, what responsibilities do you have, what sort of a parliament do you have? And you build all of that into your constitution.

Many communities, like Mataranka, have moved to become a community government. Before you could even think about that, the first thing you had to work out is how you wanted it to operate and write a set of rules around it, to write your community government constitution. The same thing applies with the Northern Territory. And only after we have done all that can we even think about the other steps of becoming a state. We have got to get our rules right first. We can only do that if we involve all the people of the Northern Territory - that is, Aboriginal and non-Aboriginal - and write a people's law that applies for everybody so we can work out how we are going to live and work together in the future. And that is what we are working at. We are going around now saying that this process is happening. We want you as communities to think about it, discuss it among yourselves so that, when you are in a position to give us your views, either in writing or when we come back next time and you have had a chance to think about some of the issues, and say: 'We think this or we think that or we think something else'. We can then go away and do the first part of 3 steps.

Our job first is to prepare what we call a recommended draft constitution. We will take that to the Legislative Assembly. We are going to try and get that ready by April next year. Wesley will have a talk in a minute too, okay?

UNIDENTIFIED: You speaking too hard. Speaking too hard for some people here.

Mr HATTON: Speaking too hard. Okay. I will slow it down a bit too.

We are doing 3 things. Once we have prepared that, we also want to form a committee of Northern Territory people. There might be 50, 60, 70 people on that committee from representatives all over the Territory, of all different people and their job will be to take our work and talk it through and maybe change it or accept it or whatever and then, when they have finished their job, that recommended constitution will then go to a vote for all the Northern Territory people to accept or reject. That is 3 steps. We are just at stage 1. We are just trying to find out what the community thinks, get all the information and prepare a first recommendation on what should go in the constitution and a second suggestion on who should make up that committee, that convention of people. So we are looking for views on 2 things: (1) what do you think should go in a constitution; and (2) who do you think should look at our work and say they like it or do not like it and how do we set that up? It is not going to happen quickly. It is going to take a lot of time and effort and work. There are going to be a lot of hard questions to be talked through. If we do not start now, we will never get the job done. That is really what it amounts to.

Bob, I just open up like that if I can. Wesley, perhaps you want to say a few words.

Mr LANHUPUY: Thanks Steve. Like Steve said, this committee is going around to a lot of the communities throughout the Northern Territory talking to Yolngu mob and balandas to try and get you mob to start thinking about this book. And this book, we hope, will one day tell us the parliament you people want in the local communities. There are a lot of things in it. It talks about powers to the people who make law for us, powers to the people in parliament and powers about representation for you people, who you want to go to Canberra for you. This paper here tells you the basic things that we are talking about or what we want from people throughout the Northern Territory.

Like Steve said, we are going to do it in 3 stages. One is what we are doing now. We are going around to as many communities as we can to get views of what you see may be important for our constitution for the Territory. Number 2 is that we hope to get as many people from the Northern Territory to form a big convention where the Aboriginal people have representatives - the Europeans, the pastoralists, the women's side - everyone will be there, will come together and have a look at some of the laws

that we think should make up our constitution. And once that is done and everyone agrees about certain things in this constitution, then it goes back to the people of the Territory and you take a vote on it - whether to say yes or no for it. And the most important thing that I think most of us should realise is the fact that, one of these days, we will have statehood. That is important because there is a feeling in the government at the moment and in both parties that we should have our own statehood where we could control our own lives. That is why this committee is going around to ask you people about your views that we can put in this book. I think it is important that what we are doing now is talking to you, at least getting the community to think about it so you can have some ideas that, when we come back next time, you can then put to the committee what your views are or your community's views are. It is important that we get as many people as possible talking to us about it.

Mr HATTON: We will start talking in a minute. If I can get Mr Rick Setter to say a couple of words too, then we all start talking, we find out, just talk.

(Unidentified people speaking in an Aboriginal language).

Mr SETTER: This committee has been in place now for about 3 years and an awful lot of work has already been done because, as a committee, we have sat down on many many occasions and discussed the issue of the development of the constitution and you will find that this booklet here, which is a discussion paper on proposed new state constitution for the Northern Territory, is the result of those many hours of discussions. And it is an options paper and, if you read through that, you will find that there are a whole range of proposals put forward and, in some cases, there are different options. You know, you could either do it this way or that way or perhaps another way. But that is for the constitutional convention to eventually decide. We are now going through the phase of meeting with communities, discussing it with communities and receiving feedback and some input. I would recommend to everybody that they read through that booklet because it really sets out, perhaps in some ways technical terms, what we are all about. We have got to think about things like, for example, what sort of parliament we want. Do we want just a single parliament or do we want an Upper House as well - in other words, a Lower House and an Upper House? We need to think about the type of judiciary that we require - judges and magistrates and people like that - and what their relationship is going to be to the parliament and to the government. We need to talk about the executive of the government - for example, the type of ministry that we would like to see - and how local government and community government fits into that scenario. There is a whole range of issues like what protection is there going to be for Aboriginal people in the constitution. Aboriginal people make up close to 25% of the population of the Northern Territory and so their interests have to be addressed. There are things like human rights and a whole range of other issues. Bear in mind that the last state constitution that was put together in this country was something like 80 or 90 years ago, close to 90 years ago. 100 years ago, Steve said. So circumstances have changed dramatically in that time and so it is a whole new ball game.

Ms FISHLOCK: Which state was that?

Mr HATTON: The last state was probably Tasmania or Western Australia.

Mr SETTER: Tasmania it would have been.

Mr HATTON: They were actually colonial constitutions.

Mr SETTER: So if you think back 3 or 4 years, when the hype was about of 'let's move to statehood very quickly', the reality is when you sit down and think about and work it out, it is not an easy process at all. It is a very complex matter. Whilst governments could legislate very quickly - for example, the federal government could legislate tomorrow to create a state in the Northern Territory - there is no point in doing that unless that move has the support of the majority of Northern Territory people and that those people have had the opportunity to have some input into that whole process. And that is what this all about - coming to meet with the communities, talking to people, receiving the input which we will go back and consider and, as Steve pointed out, we will move to a constitutional convention at some time in the next 12 months or so when all of these options will be considered and, from that, will flow the development of a full constitution for the Northern Territory. Today, you are part of that consultative process.

Mr HATTON: Thanks Rick. Perhaps the easy way is that, if you have got any questions, you throw them at us. It is better if we talk about anything that is in your mind. Actually we will just start talking about some of the things here and you ask questions about what we are doing and how we go about it. What we would really like is for you to go back to your community, sit down and talk and think through it in your own community and then, later on, you come and tell us about it or when we go out to see you and you tell us what you have been thinking. It takes time. It is going to take a lot of talk, we know that.

Mr WORTHINGTON-AYRE: Mr Hatton, what is the number of inhabitants in all the Northern Territory now?

Mr HATTON: About 175 000 people.

Mr WORTHINGTON-AYRE: 175 000. What percentage of those would be Aborigines?

Mr HATTON: About 22%.

Mr WORTHINGTON-AYRE: 22% is Aboriginal and what of the federal constitutional requirements for the number of inhabitants of the Northern Territory to become a state?

Mr HATTON: To become a state? It is irrelevant. It does not matter.

Mr WORTHINGTON-AYRE: The way is quite clear in all your studies for the Northern Territory to form a written constitution?

Mr HATTON: There is no population limitation.

Mr WORTHINGTON-AYRE: What are the federal conditions that are holding it up.

Mr HATTON: What are the federal limitations?

Mr WORTHINGTON-AYRE: Limitations on the Territory?

Mr HATTON: About writing a constitution? It is an unknown factor. We are really walking in the dark. We are walking into unknown country in this whole process. It has never happened before in Australia. There are no rules - are there, Graham? - about us writing a constitution. We have got to make rules up ourselves as a community. Somehow we have got to work as a community through this. We are not even certain that we have the power under the Self-Government Act.

Mr WORTHINGTON-AYRE: Is there any number limits?

Mr HATTON: No.

Mr WORTHINGTON-AYRE: So the way is quite clear.

Mr HATTON: Yes. Population size is irrelevant. It does not matter.

Mr WORTHINGTON-AYRE: You have got to have a name for a state and a Governor.

Mr HATTON: Yes. It is up to the Northern Territory people to decide that.

Mr WORTHINGTON-AYRE: Put it together. The one thing that is required is to write it in a coherent legal wording.

Mr HATTON: Yes.

Mr WORTHINGTON-AYRE: Ah, the way is clear then. That should pretty well soon come together.

Mr HATTON: Well that is why it took us 3 years to produce that and that really is only the summary. Graham Nicholson, the man next to you, is our lawyer. He has done all the constitutional research and thinking to help us out. It was a book that thick when he did analysis of not only the Australian constitutions but looked all around the world at what is going on in constitutions and put all the ideas together. Then, we worked through as a committee and came up with this or that or something else. People all had different ideas. Questions that get asked are ones such as: 'Should there be a bill of rights like they have in America?'

Mr WORTHINGTON-AYRE: What about the White Australia Policy?

Mr HATTON: Yes. Well that is national. That is not Northern Territory.

Mr WORTHINGTON-AYRE: Yes, but that should be an important and essential part of the Northern Territory's constitution. I think so.

Mr HATTON: Well, we cannot write something into our constitution that is against the federal Constitution. That is the one limit we have got.

Mr WORTHINGTON-AYRE: You have got the voting rights.

Mr HATTON: Yes, but you are limited. The Australian Constitution is there and then the state constitution is set. For example,

we cannot do away with royalty.

Mr WORTHINGTON-AYRE: That is what I was going to say.

Mr HATTON: We cannot do that because the Australian constitution says we have got a monarchical system. We are going to have to have a Governor and all that. There are those limits.

Mr WORTHINGTON-AYRE: You have got to have a church base to support the ...

Mr HATTON: As a community, we can work out whether we want to write in there things like freedom of religion.

Mr WORTHINGTON-AYRE: In the recent referendum, freedom of religion was rejected.

Mr HATTON: Some people think it is good to write them into the constitutions; other people think it is actually bad for you to do that. It might in fact limit your rights by writing them in. What was that case you told us about in Canada? They wrote into the Canadian constitution a law that said you cannot discriminate on the grounds of race or sex or age. Which is good law, right? But then a 35-year-old man went up on a carnal knowledge charge and he got off because it was against the constitution to be prosecuted because that was discriminating on the grounds of age. And that is the problem with writing them into the constitutions.

Mr WORTHINGTON-AYRE: What about the example of the recent American elections? Some of that is relevant to what is taken aboard. In the Bush campaign, they put up a big advertising campaign. They pointedly put the question to the USA English inhabitants that there was this contender for the presidency, where his family was born and so forth, indicating that the White House would be occupied by a foreign-born President in the predominantly English-American USA. That became a big factor in getting President Bush elected, the same as in Canada.

Mr HATTON: You cannot write things into a constitution that is going to change dirty politics.

Mr WORTHINGTON-AYRE: Well you can. What about the ...

Mr HATTON: The only way you can change that is with your vote.

Mr WORTHINGTON-AYRE: Of course, your vote. Yes. But what about Australia as a republic. With all due respect, the present Queen is a fully accepted person by myself in every way, and her family, but the delicate and unpleasant reality is that her marriage into half-caste foreigners and sitting on the throne of England and wearing the crown of England by half-cast foreign heir apparent is not acceptable to Australians.

Mr HATTON: Can I just say this. There are questions that affect the whole of Australia like should we become a republic or remain a monarchical system. There are questions like that. There are big questions that cover the whole of Australia. Now what we are saying is that those questions for the whole of Australia should be dealt with by the whole of Australia. We are looking at things that affect the Northern Territory within that. Now we must look at it like that or we will never get anywhere. I cannot change the national scene, or not as much as I would want to. But, understand this, what I want for the Northern Territory - and I am not talking now in my job as Chairman of the committee - is that we are the same as other Australians. I do not want any differences. I do not know why I should have less rights than other Australians. That is me as a person. I step back into my role as chairman of the committee.

Mr WORTHINGTON-AYRE: Well Australians in the majority have got to base all their laws on the predominantly reasonable purity of the English, British subject.

Mr HATTON: I am sorry. I am not going to continue a debate about ...

Mr WORTHINGTON-AYRE: There are not any bars in the way of putting the constitution together. That is the main thing, isn't it?

Mr HATTON: No. Except that you cannot go outside the Australian constitution. That is the point.

Mr NICHOLSON: Mick Ashley is the chairman of the Aboriginal community and he wants to say something about the rights of Aboriginal people in transient camps.

Mr ASHLEY: My name is Mick Ashley. (Inaudible) I want more house built up there and more Aboriginals ... live in the transient camp.

Mr HATTON: In the transient camp.

Mr ASHLEY: I want everything can be sent, all them houses, not them 2 houses, repair the 2 houses, close its toilets. Put a new one.

Mr HATTON: How many people are in the transient camp?

Mr ASHLEY: Mostly they keep coming in, going, coming and going.

Mr HATTON: Any one time. What 50 people?

Mr ASHLEY: People coming in and going.

Mr HATTON: About 100?

Mr ASHLEY: That is why I need more houses to keep all them sick people.

Mr HATTON: What we will do after we finish this meeting, perhaps through Wesley, Rick and myself, we can talk with you and go and have a look and talk to the council and just see what is happening and take that back to the minister. Okay?

Mr JOSHUA: My name is Joshua. I am from Numbulwar. We got it now. We got 4 statements right. (Speaks in an Aboriginal language) We do not want anybody to go to sacred sites. We can talk here human rights and Aboriginal rights. We have got a law there, we can always stand up for our rights. Am I right?

Mr HATTON: Yes.

Mr JOSHUA: We do not like anybody coming in our reserve and ruin our sacred sites.

Mr HATTON: No one is trying to. No one wants to.

Mr HATTON: I think that you are worried about this new sacred sites law. Is that what you are talking about? Mr JOSHUA: I am sore about that.

Mr HATTON: There are 2 things. One is that it is different from what I am talking about today but I am not going to go away from what you are asking because I know that it is worrying some people. What the Northern Territory government is saying is not that they want to damage your sacred sites. What they are saying is there are different ways to protect them. And what they say is that we want to make the law so that, if somebody wants to go into country, not land rights land but on other land, and they might be a developer or miner, and we say it is law that they must go and talk to the man who has responsibility for the sites, the old man, the Aboriginal man. They must get his permission and he says he can go there or not to go there. So you do not have to tell all about the story of the site but you say, 'You go this way and not that way to avoid it', like they did with the pipeline. Remember when they came through and did not ask you about the site. They said, 'You come this way or that way', and they talked to the Aboriginal people, the law men and they worked through it .

Mr PONTO: Excuse me, can I ask one question? This new government will have separate councils. They told me that. Have you got an idea about that?

Mr HATTON: The different land councils?

Mr PONTO: A separate land council.

Mr HATTON: Yes.

Mr PONTO: We never vote for that... (inaudible) ... all them children at Hodgson Downs. Like Canberra for the old council. All those land councils.

Mr HATTON: That is the issue about the land councils, is it?

Mr WULKI: (Speaking an Aboriginal language).

Mr LANHUPUY: That is Aboriginal land council business. It is a business for you. Blackfella business. You have got to fix that one up and have big talks around the whole area.

Mr WORTHINGTON-AYRE: Mr Hatton, did you hear anything that happened with the Mataranka land ...

Mr HATTON: No, I have not.

Mr LANHUPUY: The reason why we are going around is to talk about this paper here.

Mr WORTHINGTON-AYRE: Are they talking about the Mataranka land council?

Mr HATTON: No, they are talking about the break away land councils.

Mr LANHUPUY: The land council business is for us to look at later on.

Mr WORTHINGTON-AYRE: Has anyone thought of a new name?

Mr HATTON: I would have thought the state of the Northern Territory. I do not want to change its name and I do not see any reason why we should.

Mr WORTHINGTON-AYRE: How about the Northern Territory.

Mr HATTON: Why not?

Mr SETTER: Most people feel the same way.

Mr HATTON: If people think it is good enough to call their state New South Wales or Queensland, why not the Northern Territory?

Ms FISHLOCK: If we leave it as the Northern Territory, it would save us an enormous amount of money on letterheads.

Mr HATTON: That is right.

I think the land council business is a separate thing and that is something you have got to talk out.

Mr JOSHUA: Different boundary like Australia. They have got a false boundary, you know. They come here and talk to blackfellow - what do we think about this new thing that has come up? If we are happy about our state, our Territory, good luck with the people in the Territory. That is it. Well if people are against, that is the finish.

Mr HATTON: But you have got to talk, haven't you?

Mr JOSHUA: Yes, that is right. Excuse me, we are aware of this in Mataranka area.

Mr HATTON: There are many many questions that we have got to talk about. That book, if you look in there, it asks a lot of questions too.

Mr JOSHUA: There is so much big English in that book.

Mr HATTON: Well, that is where we come out and we talk like this. We get Wesley to come out and talk in your communities, or myself or other people to come and talk. If you want information, if you want answers to questions, you can write and ask us or ring us up and we get talking. Then, you talk amongst yourselves. You say: 'I like this or I do not like that or whatever'. You tell us so that we can then take what all the different people are telling us. Mr JOSHUA: Yes, we are aware of this. As I said, eastern Arnhem, we are aware of this statehood. We know that this is going to come one day. It is going to happen one day.

Mr HATTON: So we may as well think about it. One thing that is important when we do think about it. We all sort of think about things from ourselves, don't we? We think, 'I like this for me'. But, in the end, we must think that, okay, there are all sorts of different people in the Northern Territory and what we have to think towards is something that is going to be okay for everyone - black and white, everyone.

Mr WORTHINGTON-AYRE: I was listening to Chief Minister Perron on the television the other day about those conditions that he requires from the federal ...

Mr HATTON: If I can pick that up because it is important to a lot of people. There are 2 things going on side by side and they are not in conflict. The Chief Minister is saying there are powers that the Northern Territory does not have that the states have and he is looking to get those transferred across to the Northern Territory by amending the Self-Government Act, but we would

still be a territory. That is sort of phasing powers across. The different things that he has raised, you have heard about them and talked about them. He is negotiating with the federal government for that now. Even if we get all the powers in the Self-Government Act, the same as the states have got, it would not make us a state. We still would not have the protection of the Australian Constitution as a state.

We would be still in the situation where, at the whim of the federal government - right now it is technically possible for the federal government, by amending one line in a regulation under a federal act of parliament, for example, to wipe out the entire Northern Territory education system. That is not guaranteed. They could, by a repealing act of parliament, remove all government and your rights to vote on anything for the Northern Territory. You do not have your rights entrenched constitutionally. You can only get that by becoming a state. That is the shift in constitutional rights rather than - I will use an example. It is like when you are a child, your parents tell you that you can do this and you can do that and they guide you and help you. You come into adolescence and they start giving you a bit more freedom. You start to think and act for yourself but the parents are still there to guide you. Then, you step into adulthood and you stand on your own feet and you run your own life.

It is the same thing in going from where we were into self-government and into statehood. You are not going to get more money and you are not going to have less money but you are going to have a right to decide on your own future, the same as everybody else in this country.

Mr WORTHINGTON-AYRE: The Northern Territory people have got a right here.

Mr HATTON: Yes. That is right. That is a really important step to take. Let us think about it and make sure everyone takes the opportunity to have a say on those sorts of things.

Mr WORTHINGTON-AYRE: It only needs a bit of cooperation all round.

Mr HATTON: If people can sit and talk together like we are now and we can do that throughout the Territory, it will start to ...

Ms FISHLOCK: What is the federal government's feelings about the Northern Territory becoming a state.

Mr HATTON: Non-committal. Would that be a fair description?

(Inaudible sotto voce conversation).

Mr JOSHUA: I am sorry ...

Mr HATTON: No, that is all right. Do you want to grab one of these books?

I think non-committal is the best description. They are saying that, if the Northern Territory people say that they want to become a state, then okay they will move that way. But, until they are satisfied that it is something that the Territory people want, they will just sit back. It is up to the Territory people to say that we want to now move to become a state. The Territory people will not do that until they know what they are going to walk into.

Mr JOSHUA: Steve, if we do one day become a state, will we still be under Commonwealth control or what?

Mr HATTON: The Commonwealth government will still have power, the same as it does everywhere else in Australia. But, it will not have any more than it has elsewhere in Australia. The federal government is still there. The federal government still has power in New South Wales and Queensland, doesn't it?

Mr JOSHUA: I am just wondering.

Mr HATTON: But they have more power here than they have got in Queensland and we are saying that they should have the same and not more.

Mr JOSHUA: Maybe Bob Hawke will come over here and sit in the Territory land and probably run the whole show here. I was wondering who is going to have the power.

Mr HATTON: You. The Territory people. That is what we are saying.

Mr JOSHUA: Yes.

Mr SETTER: Through your elected representatives.



Mr JOSHUA: A lot of people worry. A lot of old people worry too.

Mr HATTON: There is a lot of concern, I know. People are nervous about it. Yolgnu people do not really trust the Northern Territory government too much. They sit around saying: 'Hey, what is going to happen?' There have been a lot of wrong things said. It has frightened people and they are worried that their land is going to be taken away from them for one thing, aren't they?

Mr JOSHUA: It is not the land.

Mr HATTON: Well, it is not going to be but we know that is what people think.

Mr JOSHUA: Your policy, I am pretty sure is going to happen one day. We have got to think about where we are going to get on that. ... Inaudible ... (Speaks an Aboriginal language).

Mr HATTON: Well, how do you make sure you have got the rights?.

Mr SETTER: What we believe or what I believe is that it is better for Northern Territory people to be making their own decisions about their own destiny here in the Territory so that you have got input and everybody has got input through their elected representatives like Wesley. It is much better to have it that way than having people in Canberra making decisions on our behalf, people who live down there and who do not understand.

Mr HATTON: They are bossing you around.

Mr SETTER: It is much better that we make the decisions here.

Mr WULKI: This is just too bad when you look at it.

(Speaks in an Aboriginal language).

Mr HATTON: You read that book. That talks about it.

Mr LANHUPUY: If you understand that there is other people out there who do not ...

Mr WULKI: (Speaks in an Aboriginal language).

Mr LANHUPUY: Talk about it so that when we come back next ...

Mr HATTON: Take the other books too. Get the other books and look at all the different things. There are many things.

Mr WORTHINGTON-AYRE: Who are the persons preparing to write it now, to put a constitution together.

Mr HATTON: It will be our committee initially. Mr Nicholson there is our major legal adviser and, if he thinks he needs further legal advice, he goes and hires it outside. But, that is where our writing will be done by us after we complete this process. We are not just asking what do you think should go into it now. We are also asking you how you think we should put together this constitutional convention of Territory people. That is like a giant drafting committee. We want your views on that too. How do you make sure it is representative?

Mr WORTHINGTON-AYRE: For the Houses and the governorship, there are no bounds. It is just a matter of putting the writing together now.

Mr HATTON: If you want more detail on that, you get this book. This deals with all of those sorts of issues.

Mr WORTHINGTON-AYRE: Have you got any of those?

Mr HATTON: Yes. They deal in more detail with the sort of issues you are raising - things like what you can do and what you cannot do, what the limitations of the Australia Act and the Federal Constitution are and where you have got a choice.

Mr WORTHINGTON-AYRE: You have got to have it word perfect?

Mr HATTON: We would like to think that we could have it spot on first go, but I do not think we will.

Mr WORTHINGTON-AYRE: Reasonably enough.

Mr DAVIDSON: From state to state, how much do the constitutions vary.

Mr HATTON: Graham, do you want to deal with that?

Mr DAVIDSON: Obviously because of our demography - we have our population build up - we have got a different story to write down. But, how much do the states differ?

Mr NICHOLSON: The state constitutions were all made essentially in the 19th century and they are all very similar. The committee's view is that they are not appropriate ... (Inaudible).

Mr DAVIDSON: So we are going to be sort of setting a precedent, a new line to take?

Mr HATTON: Yes.

Mr LANHUPUY: Like Steve said earlier, there has not been a constitution for over 100 years.

Mr HATTON: There have been a lot of changes in community attitudes in that period.

Mr SETTER: That is right and that is why we are going through this exercise. It would be simple enough to use the other state constitutions as a basis - you just extract from them and write one very quickly. I mean you could do that easily. This is more complex because of the fact that it is 100 years since they were written.

Mr DAVIDSON: How much interest is there from the other states in this statehood. I mean Premiers and ...

Mr HATTON: I have spoken to most of the Premiers over the last 2 or 3 years about it. There is an interest in the subject but very much people recognise that, at this stage, it is a matter for the Territory people to come to grips with. Everyone accepts that it is going to happen one day. The question they ask is when, not if. They have got past the if; it is now when. That is everywhere. They will certainly have an interest - not in this process - but they will have an interest when it comes to things like powers and representation. That is when they will look at their own vested interests in that debate then.

Mr SETTER: I believe that, at the moment, they do not have a great interest in it at all because they are too busy looking after their own backyards. But, I think, in the future, when we come with a firm proposal, that this is what we would like to do, that is when they will be interested.

Mr HATTON: The question of money is one that goes through everyone's mind and scares everyone.

Mr DAVIDSON: Yes. My main concern is if, once it is set up and there is this constitution and that is the law, and then, all of a sudden, 5 years later, you say: 'Oh dear, we should not have done that. We should not have had that clause in there'. To change a constitution is a big process.

Mr HATTON: You have got to write in the rules on how you change it. That is one of the rules you write in.

Mr DAVIDSON: Right.

Mr HATTON: Your amendment provisions are part of what you write into your constitution. It has got to have the capacity to be changed. Mr DAVIDSON: Oh, for sure. It has to be able to be changed, but the process of changing it ...

Mr HATTON: I do not believe the Territory people would accept what happens in most of the states. The constitutions are actually acts of parliament and they amend them by just amending the act through the state parliament.

Mr DAVIDSON: But then, will our constitution be more up to date than those 100 years old?

Mr HATTON: Yes, we should be a lot more up to date.

Mr DAVIDSON: Are they?

Mr HATTON: No, they have not been.

Ms CLARK: If there is a referendum, the yes question never wins anyway.

Mr HATTON: It does. Australians are very conservative and they will not go along with a change unless they understand it and, if they understand it, only if they agree with it - particularly something that is as basic and important as a constitution. Now the

same thing will apply for us when we are trying to write one for the first time. People are not going to accept it until they have really come to grips with it. That is why I think we have got an obligation to spend a lot of time and effort like this going around and introducing the topic, talking it through and guiding people to understand it, and drawing information properly.

Mr DAVIDSON: I think the big plus for it that I can see at the moment is the fact that both the major political powers have got together. It is not just the CLP saying, 'All right, this is the constitution that we will make up'. Obviously, when it was made up 100 years ago, there was one set body and all thinking the same sort of thing. When referendums come up, you have one party saying, 'Vote no on this one', and the other one saying, 'Vote yes'. Obviously, you confuse the people and that is where people say, 'If in doubt, say no'. Perhaps, this being a joint venture, there is going to be less likelihood of that sort of conflict coming on later.

Mr HATTON: We hope so.

Mr DAVIDSON: Well, we hope so. Yes.

Mr HATTON: The issues are too important to be getting caught up in party politics. That is what it comes down to.

Mr WORTHINGTON-AYRE: Would there be any taxation changes?

Mr HATTON: No. On the issue of statehood, I can say categorically that there would be no increased taxes and no new taxes as a consequence of statehood. I am not going to say taxes will never increase. Death and taxes are always with us and that is a fact of life. But, it will not be because of statehood, and I will tell you why. What you do not realise is that, today, we are funded and we are paying taxes as if we were a state. The Memorandum of Understanding on the special arrangements for self-government stopped on 1 July last year. From that time, our money came from the same pot of money as all the states'. Our share of it was calculated by the same body, the Grants Commission, using the same formulas, the same assessment methods as they did for the states. There are no special deals.

We already have in place a parliament and elected members. We already have in place the full infrastructure of a public service, public administration. We already have the judicial court system in place throughout the Territory - we have got all of the infrastructure on the ground now. All the taxes and charges now are in line with the sort of taxes that are being charged elsewhere in Australia. We have already accepted or have been given all the responsibilities financially of a state. What we do not have is all the rights.

Mr WORTHINGTON-AYRE: All we need now is some brains trust to put it into ...

Mr HATTON: There is no money argument over statehood. That is one of the great fallacies of the whole debate. If you think of it, it is all there, isn't it?

Mr SETTER: Apart from those several powers that Marshall Perron is now asking to be transferred to the Northern Territory, we are effectively operating as a state.

Mr DAVIDSON: But we work under the federal Constitution.

Mr SETTER: Yes, but we do not have the same rights.

Mr HATTON: If we could sort out with the federal government, for example, how to handle the transfer of the industrial relations power - it is a very complex one - and that was transferred across, it would be sensible to do it as a staged transfer of functions because it would give the whole of our infrastructure time to adjust to handle that, without it all hitting in one go. So, you can phase in the transfer of powers, phase in those functions, and it would give the time to adjust your submissions and your calculations for the Grants Commission to obtain the necessary funding to do that, to cope with that. You phase those in. You make a constitutional shift at some stage, at the appropriate time, and then your rights are protected. Then, you look at the issues of representation.

Mr MUNUMA: (Inaudible).

Mr HATTON: It is not going to be quick.

Mr LANHUPUY: We have not got a definite time for the constitution to be finalised or for this work to be finished. What we are asking is for people to talk about it and see if it is all right with you mob what time we should have this constitution. Then, we will have it. There is no time frame for it.

Mr JOSHUA: (speaking in an Aboriginal language).

Mr HATTON: We think the process, if it goes smoothly, you are looking at about 3 years to produce a constitution.

Mr JOSHUA: Excuse me.

Mr HATTON: If it goes smoothly.

Mr WORTHINGTON-AYRE: Mr Hatton, what sort of opening preamble would you have to adopt? Something like the constitution of 1901?

Mr HATTON: That is one of the questions that we are asking you.

Mr WORTHINGTON-AYRE: Would we follow that?

Mr HATTON: There is a range of issues that have been raised.

Mr WORTHINGTON-AYRE: Do you follow that constitution?

Mr HATTON: Or something similar. It is possible to put a preamble in. That is one of the questions that we are asking communities to think about.

One question that was raised, and it is brought up in the discussion book, is should there be something in the preamble that recognises the special place that Aboriginal people have, should there be some constitutional recognition of Aboriginal people's prior occupation? I mean it is a question that has been asked. Should that be recognised in a constitution of the Northern Territory? That would be the first one in Australia to actually recognise the special indigenous place of Aboriginal people.

Another question that has been asked is whether there should be some entrenchment of land rights in that constitution. And there are all sorts of arguments for and against that, but it is being asked. You have to sit and you have to think about it and come forward with views on what is acceptable and what is unacceptable and how you deal with these questions. They are there; you cannot ignore them.

Mr WORTHINGTON-AYRE: As long as it looks like it is coming together. If you have the brains trust concentrating on it, it must come to together.

Mr HATTON: That is right.

Mr DAVIDSON: Let us say, for example, that all goes well and 3 years is up and there it is. How does everyone vote on that, on whether they like it or don't like it? I mean you are not going to hand out a constitution to every Territorian, are you?

Mr HATTON: You probably would send a copy of the proposed constitution and some discussion documents, like they do with a referendum, the for and against arguments or whatever, to every voter.

Mr DAVIDSON: But surely the ...

Mr HATTON: I do not know. I have not thought through the mechanics of how you run the referendum, but I would imagine you would go to that extent and there would be a public education program of exactly what it means, almost like a campaign. At that stage, we would be going all out to sell the constitution to the people.

Mr DAVIDSON: You have got both parties backing this constitution and there should not be really any need for the people of the Territory to vote against it if it has been formed by communities. How do they suppose a 'No, do not vote for this' when everyone said, 'Yes, this is it', because they formed it?

Mr HATTON: If we do our job really well, we will get to that situation, but there is no guarantee we are going to get to that situation.

Mr SETTER: I think that is being very idealistic from the point of view that the reality is that, at the end of the day, there would be some people who would disagree.

Mr HATTON: There would be vested interests groups out there that will oppose it. It may not be the 2 major political parties, but there could well be vested interest groups in the community who might be opposed to it, like last night.

Mr WORTHINGTON-AYRE: You have got to have all the proper basic ideals. You cannot do without them.

Mr HATTON: What we are saying to you is - I think just from our discussion now you can see this - that this process is going to go ahead and it is something that is going to affect all of our lives. And not just our lives, it will affect our children's lives and our grandchildren's lives and it is something that is really worth while thinking about, talking about, making sure you get involved in.

It is not frighteningly complicated. The questions can be brought down to simple specific issues that you can address, but you must start to think about those things, develop a viewpoint. Do you think there should be an Upper House? Do you think that the ministers should be appointed from amongst the elected members? Or would you like to see what they do in America where they can appoint somebody who is not an elected member as a minister and be responsible to the legislature? You have got that opportunity to think those things through, to create the society you want for yourself and for your children. Can we find a way that we can get Aboriginal and non-Aboriginal people working out a common path to the future where we can live together in mutual respect. That is part of it too.

Mr WORTHINGTON-AYRE: On that point, would the full-blood Aboriginals prefer to migrate while they have got the opportunity and make a permanent, small state of the Arnhem Land area for full-blood Aboriginals from all sources, certainly in the Top End, rather than increasing our tax ... (Inaudible) ... Wouldn't they rather be on their own?

Mr HATTON: Well, the people are here. Ask them.

Mr JOSHUA: Yes, ask me that. We did not make that rule and it is you people that made that rule.

Mr MUNUMA: Yes, that Arnhem Land. That is for blackfellas. The Territory is for everybody, black and white.

Mr WORTHINGTON-AYRE: Yes, but you cannot ignore the fact that - what is it now 170 000?

Mr JOSHUA: You asked the question.

Mr WORTHINGTON-AYRE: 140 000 white ...

Mr HATTON: You asked them a question, let them have a chance to answer it.

Mr WORTHINGTON-AYRE: Would you rather live on your own?

Mr JOSHUA: Yes, why don't you just leave Arnhem Land as it is.

Mr WORTHINGTON-AYRE: Would you go there and live?

Mr JOSHUA: I am there.

Mr HATTON: He lives at Numbulwar.

Mr JOSHUA: That is right. Numbulwar is in Arnhem Land. Out on the Gulf.

Mr HATTON: Can you accept the reality of this?

Mr WORTHINGTON-AYRE: I do not think - listen what is your name again?

Mr JOSHUA: Joshua. My name is Joshua.

Tom, you see Aboriginal people did not make that rule that you have got to have a permit to enter Arnhem Land. We didn't make that rule. You people made the rule.

Mr WORTHINGTON-AYRE: But that is a good rule for you. It keeps the white man away from you.

Mr JOSHUA: We didn't make that rule. You made that rule.

Mr WORTHINGTON-AYRE: But do you want that? Do you want to live on your own?

Mr JOSHUA: Just leave us in peace. ...(Inaudible)... That's all I got. I am independent. That is Arnhem Land there. That is why we are living there.

Mr WORTHINGTON-AYRE: And you are satisfied with that?

Mr JOSHUA: Yes.

Mr HATTON: But you have really got to come to grips with the fact that you are talking to a man and that is his home country.

Mr WORTHINGTON-AYRE: Well, he is satisfied.

Mr HATTON: Yes, he comes from Numbulwar. That is his home country. If you are talking to a Pitjantjatjara man, he does not want to go to Arnhem Land. And they do not want the Pitjantjatjara man going up there either.

Mr JOSHUA: (Inaudible).

Mr HATTON: They are full blood.

Mr WORTHINGTON-AYRE: (Inaudible).

Mr HATTON: Yes, but the reality is that Aboriginal people have got their own country in different parts of the Territory. That is their homeland country. The reality is that, in the Northern Territory today and in the future, there is going to be Aboriginal people and there is going to be white people and there is going to be yellow people and brown people.

Mr WORTHINGTON-AYRE: There are too many.

Mr JOSHUA: (Inaudible).

Mr HATTON: We are going to have to learn to live together.

Mr JOSHUA: Tom, one day this Arnhem Land, won't be Arnhem Land. In the the future time that is going to happen one day. It won't be Arnhem Land anymore.

(Indecipherable exchanges).

Mr HATTON: And I say to you, what do you want to do with the land?

(Indecipherable exchanges).

Mr JOSHUA: I am proud of what I am and that is it. We should live together as human beings.

Mr HATTON: Which one is your country?

Mr JOSHUA: It is not the colour, mate. You cut me and I cut you and the blood is still red blood.

Mr WORTHINGTON-AYRE: But the white people are committed to making their sacred sites a paying proposition for the white man.

Mr HATTON: Look the reality is that you are not going to gather up all the Aboriginal people and put them into some place and say, 'That is your state and you can do your own thing and we will all live over here'. That is not going to happen.

Mr WORTHINGTON-AYRE: But, in large measure ...

Mr HATTON: But, I don't think Aboriginal people want that either.

Mr JOSHUA: I believe we just live together as brothers. Why not? Largely, it is not the colour. Not my colour.

Mr HATTON: The more we talk to each other, the more chance we have got of getting of that.

Mr JOSHUA: The more you do things together, the more you will eventually get a balance.

(Indecipherable exchanges).

Mr JOSHUA: Your friends over there, my friends over there. You sit there but I sit here now ...

Mr WORTHINGTON-AYRE: It would be better for the Aboriginal to go their own way

Mr JOSHUA: We should live together as brothers.

Mr HATTON: But that is assuming they want to. I need to answer this question as it is important. I think a lot of Europeans think the Aboriginal people just want to go their own way. What I think Aboriginal people want is for us to stop pushing them and allow them to develop at their own pace, not to stop development. They do not want to live separately from everybody else.

Mr WORTHINGTON-AYRE: Australia has 16 million inhabitants now. The estimated maximum of the holding ground for the resources of Australia in another 200 years is a maximum of 116 million. We do not want 50% of those to be all foreigners.

Mr HATTON: On that argument, we are all foreigners. I would not take that line too long if I were you.

Mr WORTHINGTON-AYRE: Yes, I would hold firmly to that. That all foreigners must be restricted to 15%.

Mr HATTON: Well, what do you call a foreigner?

Mr WORTHINGTON-AYRE: Well, genetically ...

Mr HATTON: A non-Anglo-Saxon?

Mr WORTHINGTON-AYRE: The White Australia policy is the type. The English islanders, what are now called France, Germany, Holland, the Poles, the white Russians - they are all the one genetic ...

Mr HATTON: Caucasian.

Mr WORTHINGTON-AYRE: Yes, whatever it is. The general whole group are one genetic colour.

Mr HATTON: You are excluding Mediterraneans.

Mr WORTHINGTON-AYRE: If you go 1000 miles away, you go into the Chinese. If you go the other way, you have got the negroes.

Mr HATTON: I have got to say, and I will be very clear about it, I absolutely and totally disagree with every thought process you are involved in in that discussion. I think the colour and genetic background of people is an absolute irrelevance. It is past history and it will never be the future history of Australia while I have got a say in it.

Mr WORTHINGTON-AYRE: Well, I won't vote for it.

Mr HATTON: And that is fine. You do not have to. If that is how you think, then I would rather that you did not vote.

Mr WORTHINGTON-AYRE: I mean the White Australia Policy must be kept. All foreigners within 15% ...

Mr HATTON: Well, I am sorry. I do not agree with you.

Mr WORTHINGTON-AYRE: That is what I vote for. The party that sticks closest to the White Australia Policy is what I vote for.

Mr HATTON: Okay, well you will not vote for me then.

Mr WORTHINGTON-AYRE: You might change your mind.

Mr HATTON: No way.

(Indecipherable contribution by someone called Bill).

Mr HATTON: I do not agree with the White Australia Policy. I do not agree with it. We have got a Territory that has got - it is history, it is here, we are all here. Some Aboriginal people ask why the white people don't go. They are not going to go. And, similarly, the Asian people are here. We have got to learn to develop a society where we can all live together comfortably and make it a better place.

(Indecipherable comments).

Mr HATTON: Has anyone any other questions?

Ms FISHLOCK: Is it automatically assumed that it would be a Westminster type model that we would be looking at?

Mr HATTON: No, it does not so long as you maintain the basic monarchical system of parliament. I think most of us are of the view that we would probably prefer to keep the Westminster-style Cabinet government system. But, I do not believe there is a requirement under the Constitution. Graham?

Mr WORTHINGTON-AYRE: What is John Howard's idea on one Australia?

Mr HATTON: Graham, could you perhaps clarify this. The Constitution of Australia does not say that you must have a Westminster-type system of parliament, does it? Other than that you must have a monarchical system?

Mr NICHOLSON: I do not think so but I heard Professor Lumb say that he thinks it does. So there is even a difference in that but I don't think he is right. Really the only controlling factor is whether the Commonwealth ... (Inaudible).

Mr HATTON: Certainly the question was asked in here - for example, the external appointment of ministers.

Mr NICHOLSON: Professor Lumb is a fairly conservative person who is committed to the Westminster system. Well, there is no single Westminster system anyhow.

Mr SETTER: That is indeed correct.

Mr HATTON: Please understand that this has never been done before in Australia. It is probable that it will not happen again. We will probably be in and out of the High Court of Australia 10 or 20 times in the process, getting the judges and lawyers - lawyers will make a lot of money - to work out how to interpret those clauses in the federal constitution that have never been used before. What does it mean?

UNIDENTIFIED: We have to have an orderly balance of payments.

Mr HATTON: Well, we have got that. Well, we have. But, I am not going to get into a financial debate because that is nothing to do with statehood.

Mr DAVIDSON: Just looking at this page 15 here, what rights do the people of Australia have to say that they can ...

Mr HATTON: You will find there are 2. There is a separate booklet which you will find a bit more interesting than that one. It is called 'Options for the Grant of Statehood' and deals with that process. There are 2 alternative ways, it appears, that you can create a new state. One is by amending the Australian Constitution under section 128 - like the referendum that happened last year - to amend the Constitution to include the Northern Territory. And that requires a national referendum. There is another way, under section 121 of the Constitution, whereby the parliament of Australia can accept new states on such terms and conditions that it deems appropriate. And that is the recommended course of action that we take, but we are saying the terms and conditions are equality. So, that only requires a federal parliamentary decision to make us a state. To go the section 128 referendum way, they still have to make a decision and pass an act of parliament to put it as a referendum to the people. So, in one, you have to get the decision of the federal parliament and, in the other, you have to get the decision of the federal parliament and the people of Australia. Given the example of last year, you know why we are saying take 121.

Mr DAVIDSON: As far as getting our views over, is that on a local council level or only when you people come down?

Mr HATTON: We would be happy to take written submissions. We will be coming back again to take verbal submissions. We are looking for any avenues we can to get feedback even from an individual person who thinks that he has got a particular viewpoint he wants to bring forward. We really are trying to say to the community of the Northern Territory: think about it, talk about it, have your say.

Mr WORTHINGTON-AYRE: What are the main terms again that are required? Of the Commonwealth agreement.

Mr HATTON: It is an agreement by the federal parliament, of both Houses. They don't meet jointly, do they, on the subject? It is like a normal act of parliament. It has the effect of making us a state, a constitutional state.

Mr NICHOLSON: What we have suggested is that there should be agreement between the Territory government and the Commonwealth and that gets incorporated in ...



Mr HATTON: Yes, We want to have a say in what goes into that act of parliament. We want to agree to it.

UNIDENTIFIED (Bill): We told them about the Northern Land Council. I want all them people over there, the toilet facilities ...(Indecipherable).

Mr HATTON: When we finish this meeting, we will go and have a talk about your problems there. We will do that after this meeting. I am not going to talk about new houses at this meeting. I am not even a minister now. But we can hear what you have got to say and go and talk to the government. Used to be.

UNIDENTIFIED: ... with Terry Smith.

Mr HATTON: ALP. Wesley is a member of the ALP.

Mr WORTHINGTON-AYRE: What does Terry Smith think about the statehood matter?

Mr HATTON: It is joint. We are working bipartisan on this. This process has the support of both the Labor Party and the CLP. Everyone is in it.

Mr DAVIDSON: See, that is what I was saying before, Tom. Both parties are in on it together so it can only be a good thing.

Mr WORTHINGTON-AYRE: It can only be good, yes.

Mr HATTON: We also have some other publications. The best thing we could do is perhaps work through the community council here. You could also liaise with the other communities around here, if that is suitable. I would be interested in supplying some of these other background information, options papers, as they come out so that people can find out some of the other issues. There is one here on an important issue that I know everyone is interested in - land matters. That deals with land rights, national parks and all those sort of issues. There is one here specially on national parks and another one specially on mining, minerals and energy. And they are just options papers and discussion papers. There is the one here on the ways to go about making a state. There is one here on this constitutional convention and different ways of doing that and this one here, of course, which says a lot more on things in there. If you have got something in here and would like to know more about that, you will find it in there. So one can lead you into the other.

We have had a fairly interesting discussion this morning. Perhaps we might call the formal meeting to a close unless somebody has anything he particularly wants to say. I formally declare this session closed.