



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

Reference: Federal implications of statehood for the Northern Territory

TUESDAY, 14 NOVEMBER 2006

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Tuesday, 14 November 2006

Members: Mr Slipper (*Chairman*), Mr Murphy (*Deputy Chair*), Mr Michael Ferguson, Mrs Hull, Mr Kerr, Mr Melham, Ms Panopoulos, Ms Roxon, Mr Secker and Mr Tollner

Members in attendance: Mr Slipper and Mr Tollner

Terms of reference for the inquiry:

To inquire into and report on:

The question of Northern Territory statehood, focusing on:

1. recent developments in the Northern Territory on the question of statehood, including any proposals to advance statehood; and
2. emerging issues which may have implications for federal arrangements.

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Committee met at 10.38 am

CHAIRMAN (Mr Slipper)—I declare open this meeting of the House of Representatives Standing Committee on Legal and Constitutional Affairs. I apologise for the delayed commencement of the hearing. We wanted to give as many people as possible the chance to arrive. I welcome everyone to this seminar into aspects of Northern Territory statehood. Mrs Betty Pearce, a local Indigenous elder, is going to welcome us to country. She is going to formally welcome us to this wonderful part of Australia.

Mrs Pearce—I only knew about this five minutes ago! Lhere Artepe is the successful native title claimant over the municipality of Alice Springs. Lhere Artepe consists of the Irlpme people—I belong to the Irlpme group; Pat Miller, the assistant administrator, is part of the Mparnte group; and Pat Dodds is a member of the Antulye group. We make up the Lhere Artepe Aboriginal Corporation. Lhere means creek; Artepe means back—not the spine so much as the back. Our country is Lhere Irlpme. In Alice Springs it is Lhere Mparnte and on the Undoolya site it is Lhere Antulye. The Todd River goes through the township of Alice Springs. We thought we would name it Lhere Artepe, meaning that the creek is the backbone of the town.

I will not keep you long because we are going to get into the statehood thing. I really feel strongly about Northern Territory going into statehood; that is one of the reasons I am here. I have been a bit uptight for the last 18 months because we seem to have stood still, but it looks as though we are coming back up again. I think statehood for the Northern Territory is really great. Of course, we could not call it the Territory anymore, and I am sure a lot of people will be upset over dropping the ‘territory’ bit. But when you are a territory you are not a state and you cannot make your decisions. My big concern is the nuclear waste dump. One of the identified waste dump places is on our country, on the Irlpme people’s country. Had we been a state maybe we would have been as strong as the South Australian people who said, ‘No, keep it away from the territory.’ I do not know what we are going to do about it. We will be going down fighting anyway, regardless of what happens.

Having said that, I would like, on behalf of the Lhere Artepe native title holders, to welcome you all to this country and to this land. Let’s hope that we have a successful, positive meeting so that we are really aiming at statehood.

CHAIRMAN—Thank you very much, Betty. At the outset I would like to recognise Mrs Pat Miller, who is the deputy of the Administrator of the Northern Territory. Thank you very much, Pat, for coming along wearing your deputy’s hat today. I know you would probably be here wearing one of your many other hats were you not acting as deputy today. The other member of our committee is the man who is probably responsible for this federal inquiry into Northern Territory statehood, and that is Mr David Tollner, the member for Solomon—not quite the member for this part of Australia, but certainly one of the two Northern Territory members. I also recognise one of our speakers, the Hon. Warren Snowdon, who is your local member. I will formally welcome the other speakers shortly.

I think Betty rather nicely outlined the challenges and some of the reasons that the Northern Territory might be interested in moving towards becoming a state of the Commonwealth of Australia. On behalf of the committee, we are very pleased to be here. We do not come with any preconceived notions. We do not bring a prescribed set of instructions from the Attorney-

General. But the only way, it seems to me—as someone from outside the Territory, as someone from Queensland—that you are going to achieve statehood is if there is a sense of community consensus, a sense of depoliticisation of this process and a sense of being prepared to move ahead as a community, regardless of politics, to look at the future.

Governments come and governments go. Personally I hope that the federal government does not go for a while, but governments at all levels in a democracy change—and that is the way it should be. It might be that one party is in office today in the Territory and another party could be in office tomorrow, but the issue of statehood is something that should unite Territorians. But there is no point, as we found out in 1998, in seeking to move forward unless there is an adequate level of consensus. That is why the House of Representatives Standing Committee on Legal and Constitutional Affairs has been requested by the Attorney-General, Philip Ruddock, to have this inquiry into statehood and to come to the Northern Territory. The committee felt it was important not just to go to Darwin but to also come to Central Australia, to Alice Springs, because if we are going to get a feeling for what people are saying throughout the Territory then we have got to go to all parts of the Territory for this purpose.

We really want to gain an insight into what you think about statehood. This seminar is part of our inquiry into the federal implications of statehood for the Northern Territory. Some people would say, ‘Well, what is the House of Representatives Standing Committee on Legal and Constitutional Affairs?’ I think we would all agree that it is a mouthful, but the purpose of this committee is to carry out inquiries into matters referred to it by ministers of the Australian government, and the minister we principally deal with is the Attorney-General.

Our inquiry is to focus on recent developments in the Northern Territory on the question of statehood, including any proposals to advance statehood and emerging issues which may have implications for federal arrangements. We are not here to promote any particular approaches. We see this as an exploratory exercise. We want to explore issues with you. We want to know what ranges of views there are in the Northern Territory on the issue of statehood, and of course there are a whole range of matters that are relevant to the relationship between the Territory, as a potential new state of the Commonwealth of Australia, and the Australian government. I suppose, given the stalling of the process in 1998, we are interested to know what the Territory has been doing since that time to advance the process.

It is pretty clear that the issue of statehood raises a whole range of complex matters that need to be considered. These may include, but are not limited to, issues such as the future status of Commonwealth land in the Northern Territory and Aboriginal land rights, Commonwealth constitutional matters, representation of the new state in the federal parliament—whether you should get more or fewer representatives in the Australian parliament; most people would say more—the future status of Commonwealth legislation currently applying to the Northern Territory, the future control of industrial relations and financial relations between the new state and the Commonwealth, most importantly mineral and uranium resource issues, and the future ownership and management of Commonwealth national parks and marine protected areas.

No doubt there will be a range of views on all of those issues. In the discussion period, you may wish to give us your views on those issues or, indeed, any other issues that are relevant to federal implications of Northern Territory statehood. Many issues will clearly have to be worked through by Territorians alone, but obviously if the Territory is to become a state under the

Australian Constitution then there is a very important role for the Australian government to play in legislating for this to occur. I am aware that there is some level of sensitivity to what some in the Territory see as being interference in domestic Territory affairs. Betty highlighted the issue of the nuclear waste dump.

The federal government has certain powers in relation to the Territory that it does not have in relation to a state. In fact, in my prior manifestation as Parliamentary Secretary—in a sense, deputy minister—to the Minister for Finance and Administration, I had to issue the resumption notices gazetting the nuclear waste dump in South Australia. I was the unsuccessful defendant when I was rolled by superior courts. In the Territory at the present time that is not an issue, but I can understand that it is certainly a problem. We had the euthanasia laws bill which overturned the Northern Territory legislation in relation to euthanasia, and that would not have been able to happen if it were a state. No doubt these are matters that you will consider. Down the track, statehood matters will require detailed discussions and negotiations between the Territory and Australian governments in the lead-up to any change.

At this stage I want to record my thanks to all of you for being prepared to come along and participate. Some will be participating as principal speakers and will address the committee shortly. I—in fact, the whole committee—was really encouraged by the very strong response to the invitations we issued. There is a high level of expertise and experience held by seminar participants appearing both here today and in the next two days in Darwin. Over the next couple of days, the committee will have the privilege of hearing from a range of key stakeholders in the Territory, including Aboriginal service providers, land councils, current and former Territory and federal parliamentarians, senior public servants, university professors, current and former Supreme Court justices, union and commerce representatives, and other community organisations. The contributions of all participants will be a valuable resource for our inquiry. David Tollner and I, as members of the committee, are looking forward to listening to the presentations today and engaging in discussions on statehood. No doubt many of these discussions will be lively.

I would also at this stage like to thank the member for Arnhem, Ms Barbara McCarthy MLA, who is the chairman of the Northern Territory Legislative Assembly's Legal and Constitutional Affairs Committee and co-chairman of the Northern Territory Statehood Steering Committee. I know that Barbara is passionate about statehood. I have had discussions with her. I would like to thank other members of both of those committees for taking the time to attend the seminar today. Barbara has something else on at the moment but I gather that she and members of her committees will be here later in the morning.

Just before I sit down and invite our speakers to commence, I thought I might run through how the seminar will proceed today. Our principal speakers for the morning and afternoon components of the seminar will be invited to address the committee for about 10 minutes each, followed by questions from the committee. In this case the committee consists of Mr David Tollner and me. After both sets of speakers, we will open a wider range of discussion with other invited seminar participants. Part of the reason for this is something to do with the archaic committee structure. I should not say that, should I, but there has to be a process that is followed. Later in the afternoon, members of the public will have the opportunity to contribute to the discussion. So there is an intention to include and not exclude. We want to get as much

information as we can. All participants and members of the public will be welcome to attend and observe the other sessions of the seminar in both Alice Springs and Darwin.

To conclude, I am very honoured to be here to officially open this seminar and also to chair it. I am confident that discussions over the next three days will be stimulating and enlightening, given the calibre of the participants and the nature of the topics on the agenda. I therefore formally declare open this inquiry and this seminar by the House of Representatives Standing Committee on Legal and Constitutional Affairs. We will now move to the first session of the seminar.

[10.51 am]

SNOWDON, The Hon. Warren, Member for Lingiari, Commonwealth Parliament

KILGARIFF, Mr Bernard Francis, Private capacity

LIDDLE, Mr John, Male Health Coordinator, Central Australian Aboriginal Congress

MOWBRAY, Dr Martin, Research and Policy Officer, Central Australian Aboriginal Congress

CHAIRMAN—I would like to officially welcome the Hon. Warren Snowdon MP, who is the local member; Mr Bernie Kilgariff, who is a former CLP senator for the Northern Territory; Mr John Liddle, who is Male Health Coordinator of the Central Australian Aboriginal Congress; and also Dr Martin Mowbray, who has given us a submission which the committee will receive formally later on. Dr Mowbray may give us some assistance but I gather he is not speaking as a formal part of the proceedings.

The title of the first segment is ‘The future status of Commonwealth land in the Northern Territory and Aboriginal land rights’. We do not require people giving evidence to swear an oath. We have some cells under Parliament House which apparently are now used for storing stationery but if people do not tell the truth the parliament has the ability to lock them up. But we do not think—in the spirit of cooperativeness in relation to statehood—that would create a very good impression in the local media! So we are not asking you to swear on oath, but what you say is being recorded for the *Hansard* record as part of the proceedings of the Australian parliament. I now invite the Hon. Warren Snowdon MP, member for Lingiari, to address the seminar.

Mr Snowdon—Firstly, I will not take up too much time because, as a member of the parliament, I think that rather than talk it is far better I listen to what other people have to say. I will make a number of observations which I think are relevant before passing on to Bernie. While I note the topic for this morning’s discussion, I think it is relevant to at least cast our minds back to why we are not a state already, and to the powers that exist within the Commonwealth parliament to assist or impede, obstruct or help, in the Territory becoming a state. I say that because of a couple of things that have been mentioned already.

You will all know—and, if you do not know, you will know it in a minute—that the section of the Constitution which provides for the admission of new states is section 121. That reads as follows:

The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

The issue of representation is something which will be hotly discussed, no doubt, in the broader community dialogue, but it is clear that we have an issue, because all of the foundation states are guaranteed minimum representation in the House of Representatives and in the Senate. Under

the Constitution, they all have equivalent representation in the Senate. That of course will be a crunch issue for us here in the Northern Territory. The issue of whether or not we should have 12 senators, as is currently the situation for every other state, is something which will be the cause of some discussion. Not the least of the reasons for that will be that the ACT, which is another territory, has the same representation as the Northern Territory. In the event that the Northern Territory were to become a state, there would be a significant argument from the people of the ACT about us being overrepresented and them being underrepresented if we were to be given additional senators and they were not. So there is that aspect to it.

Significantly, also, there is the question of why the parliament would not agree to us having 12 senators. In my view, that is very unlikely—in fact, almost impossible to contemplate—for a whole range of reasons, not the least of which are the power relationships that exist across the parliament. The nature of the Senate has changed. The Senate was established as a states rights institution. It is no longer a states rights institution; it is part of the general cut and thrust and balance of discussion that happens across the parliament. When issues go to the Senate, they are not debated on the basis of whether or not they impact on a particular state or territory; they are based on the interests that are reflected in the political make-up of the Senate itself at any particular time. So its nature has changed.

To convince the Senate—that is, the other states across Australia—that we should have additional senators, we will go to questions like: what will that mean for the balance of power and the responsibilities that currently exist in the Senate? An intense political dialogue and discussion will take place. I am not confident that under those circumstances we would get the result which we would ideally like if we were to become a state.

Secondly, the question I think we should ask is: what does it mean to be a state? Again, we need to go back to the foundation of the Constitution and look at how the Constitution is constructed for every other state. We are not a state. We have only been given self-governing rights since 1978. It is theoretically possible that, should the federal parliament agree to us becoming a state, they could simply transplant the existing self-government legislation to make us a state. As Peter Slipper pointed out, there have been a couple of recent instances where the Commonwealth has sought to impose its will upon the people of the Northern Territory, not the least of which is in the area of waste disposal and also in the area of euthanasia. It is very clear that, at least under the current arrangements, the current government sees it as appropriate to intervene from time to time in the affairs of the Northern Territory as it sees fit.

For us to become a state with equivalent rights to the other states would require the federal government to guarantee to the people of the Northern Territory that we would have the same rights as people in other states—that is, they would not intervene and override our laws in the way they have seen fit to do over the last decade. We have to ask whether or not that is the intention. Would that be the intention of the current conservative government? I think that is a very open question. There has only been intervention in the affairs of the Northern Territory in that way since the Howard government was elected in 1996.

That is a political issue which needs to be contemplated. I know that our friends here from the government will want to discuss that issue with their friends in parliament and get guarantees that, if we were to become a state, we would have equivalent rights to other states. It would have to be guaranteed by any framework or act of parliament that was passed. Under the current

political circumstances, I do not see that as being likely. Nevertheless, I am not saying it should not be what should be achieved because, if we were to become a state, we would want equivalence with other states. I put the marker down that that would mean that there would be one group of people in Australia who would remain different—although we would all be different in a sense because at any point in time the Commonwealth would have the power to change the way in which we were incorporated. The bottom line is that if we were to become a state there would be one group of Australians, the people who live in the ACT—who are numerically far superior to us—who would be represented differently. I think that is a question which would need to be discussed in the public discourse.

I also want to point out two other issues which I think we need to contemplate. The first is the power of the administrator. The administrator sits as the head of the executive council as the governors and Governor-General do for the state and federal parliaments, but he does not have the same power or responsibilities because, even if he were to sign off on legislation, section 9 of the Northern Territory (Self-Government) Act provides for the Governor-General to make another decision at a subsequent time to override Northern Territory law or to prevent it being implemented. That does not exist for any other state or territory. The position of the administrator in equivalence to the status of governors and the Governor-General would also need to be contemplated. As far as I am aware, that is not a matter which has been discussed—certainly not in the public domain. Of course, theoretically, the administrator, although appointed by the Governor-General, reports to the federal minister, unlike any other governor—and the Governor-General certainly—and not to the Prime Minister.

The other issue I think we need to contemplate—and this is the purpose of this morning's discussion—is the future status of Commonwealth land in the Northern Territory and Aboriginal land rights. Those of us who were around here in 1998 know that the reason for the failure of the question then was the attempt by the then government to bring on two questions in the Northern Territory. One was about whether or not we should become a state and the other asked us to agree to a constitution. That was resisted—properly, I think—by the people of the Northern Territory and, principally, by Indigenous Territorians because they saw their rights being directly threatened and undermined. Those of us who were around here during that period may have been fortunate enough to have attended the convention which was held by Aboriginal Territorians, principally from Central Australia, at Kalkaringi between 17 and 20 August 1998. That produced a statement which outlined in part their concerns but also what they required if they were to be supportive of any future quest for statehood.

I think there is the rub. Whilst I noticed the data in this article refers to surveys which were done apparently during the course of the shows around the Northern Territory, it is not a valid survey. It is an indication of people's interest, but it is hardly what you would call statistically valid. It might be a good indication of the general support that the community might have for the question of whether or not we should become a state, but that is a very easy question to answer. Had Shane Stone asked that question in 1998, we would have got a positive yes. But he did not, and there is the rub, because we need to assure the people that their rights and their interests will be guaranteed and not undermined by any approach to any new constitutional arrangements. Remembering also that, at the end, they will have to be approved by the federal parliament. Whatever we agree on in the Northern Territory must ultimately be agreed by the parliament. It is a dual process and it will take a long time to eventuate.

But, in the context of those issues, it is not a simple question—for example, the future of Commonwealth parks in the Northern Territory. The Commonwealth has two principal parks in the Northern Territory—Kakadu and Uluru—but both of those parks are not Commonwealth land; they are not owned by the Commonwealth. Those parks are leased to the Commonwealth by their Aboriginal traditional owners. So it is not up to the Commonwealth or the Northern Territory government to say whether or not those lands should be incorporated into any future land of the Northern Territory; it is up to the people who own them. That title is inalienable.

I can recall the discussion and public furore around the issue of Uluru. Those of us who were here in the mid-eighties and fortunate enough to attend the celebration of the handover will recall the public debate around that time. Now that that debate has been more or less settled, the real question ought to be whether or not, at some future time, traditional owners would feel comfortable allowing some other agents to run the park on their behalf or on behalf of the Australian community. After all, these are national parks for all Australians—and that is the point that was made by traditional owners at the time. I remember the speech made by Yami Lester at the handover. He pointed to the rock and said: ‘Look, it is still there. It has not been taken away anywhere. It is still there and we want it for all Australians.’

We have to understand and accept that Indigenous Australians in the Northern Territory have rights which have to be properly recognised. If we are to become a state, those rights need to be incorporated within the framework of the discussion and not overridden or undermined. If they are overridden or undermined, we will not become a state—at least in my view—because I doubt if the Commonwealth parliament would agree to imposing terms and conditions on the people of the Northern Territory which a large proportion of them would not support. Therein, around the original discussion, I think it is fair to say that the majority of opposition to the original proposals came from Indigenous Territorians because they saw their rights being undermined. That is something we need to understand and reflect upon.

There is also the question of the guarantee of access to services. What does statehood mean? Equivalence in statutory terms and in terms of overall rights is one thing, but accepting that there are people who would regard themselves as having been left out of the equation in terms of access to services over the whole period since self-government is something we also need to contemplate. We need to be able to guarantee all our citizens equivalence in terms of citizenship rights such as access to health, education and employment opportunities, while recognising their rights as a community—in this case Indigenous Territorians—and recognising their rights as groups of people who might have different sets of laws and structures in terms of their own cultural priorities.

This will be a lively discussion over a long period. I have been in the parliament for approaching 18 years. In the last 10 years I would have had people come up to me on not more than five or six occasions to raise the question of statehood. It has not been their top priority. It is an issue for them. When you ask them, ‘Do you think we should become a state?’ they say, ‘Yes, because we have had our rights undermined by the way the federal parliament has acted.’ Asking them that question causes them to respond in that way but, apart from that, I do not recall any major drivers for people wanting to talk to me about statehood. So those of us who have an interest in our becoming a state need to understand that the dialogue needs to be much higher on the public agenda.

CHAIRMAN—Thank you. I now invite Mr Kilgariff to address the seminar.

Mr Kilgariff—I have been in the Territory for quite a few years, actually—I think 76 years—and only six years as a member of a state. In my many years in the Territory, it just so happened, I think at times by chance, that I came into politics, but that is another story. The question of statehood, particularly a few years ago, was very much alive. The people in those days—I am speaking of several years ago—abhorred the fact, for example, that they had to obey Canberra, that they had to obey the government of the day, where seven people in charge of departments under a minister who sat in Canberra should hear and on so many occasions ignore the people of the Territory.

I refer to the 7-6 treatment. There were seven people who were nominated by the federal government—members of departments, not elected—to these poor unfortunate six people. They would not have thought they were unfortunate, because they had a duty to perform in front of the people of the Territory. But they were six elected people who put forward the case for the Northern Territory. More often than not, they failed, and this was called the 7-6 treatment. It was very harsh. The people of the Territory very quickly after that had a means of continually fighting for more acceptance for the Northern Territory. It was a slow process, and I am not going to spell that out now—it takes up my time—but the information is available as to how, gradually, step by step, the people of the Northern Territory had some little more say.

But the fact still remains today, despite responsible self-government as was achieved, as Warren said, a few years ago. The fact is that if we are a state and the federal government can say what it wishes—and that is the case—responsible self-government does not go very far. I have always said to people: ‘Don’t get too carried away with the fact that we have got responsible self-government.’ It is responsible self-government as long as we are nice people and we agree with people who tell us what we should do and what we should say. I do not think they would tell us what we should eat, but they went a bloody long way. That has continued on to this day.

I am a very solid supporter and have been involved in most moves for the people of the Territory being recognised as are people of the states. We have not achieved that. But now the question comes, and I hear Warren with his comments. I thought his run-down was very good. I certainly agree with a lot of his comments—I think most people would. I think we need to have a more careful look at the situation in relation to one or two of those issues that will come out later.

Do we have to prove now to the people of Australia that we are in a position to show that we—forgive me laughing—are loyal citizens of Australia? Of course we are loyal bloody citizens of Australia, but we do not want to be second-hand citizens and be told what to do! When our cousins—family too—from down south come up and eat and drink with us and whatever, I must say they do rub it in a little bit. But do not let us get carried away with petty things. This is a very serious matter that comes before us. I congratulate the people who have brought about this discussion today, because in my years in the Northern Territory I have felt that we are slipping back into a decline. I believe a lot of people have felt that too. I believe the fact is that some people feel: ‘Oh, for God’s sake! Do I have to live in this atmosphere when I want it to be a freer Australia?’ They may leave.

What has the Territory done? You may look at the political environment of the Territory these days, where the legislative assembly has done its utmost to bring about the wishes of what they believe to be the majority of people. Of course, it is just commonsense that you cannot have everyone agreeing with you. Industry development has taken place in the Territory in the areas of mining, pastoral and tourism as well as other things like coastal significance, rail and aircraft. But let us look at mining. This is what concerns me. We are getting into a very difficult situation because we are a territory. I spread the line of interest more so when I say the Territory must be a part of or at least understand globalisation and what it is all about. We may not have any say in globalisation at present but we have to see what the effects of globalisation on Australia are, particularly the Territory, which perhaps has no say in these various matters of globalisation.

I will start with uranium. Isn't it a strange thing that some of the world's most needed energy matter—and it is probably becoming more so—comes from a territory of Australia, the Northern Territory? From the Northern Territory uranium goes to many parts of the world, many nations of the world. In a global situation many now look at uranium as a most necessary thing, and it is available—under certain conditions—in the Northern Territory. Is it my imagination—maybe a little—but I see uranium could be a very vast matter in the world. They want energy where it comes from: it is quite likely they want energy that will come from the Northern Territory. It is now.

What do they say? 'How strong is Australia in this regard?' All of these people are seeking this valuable item, uranium, and they want to know how strong Australia is. Australia says: 'We're a free country. We've got the right to say yes or no.' But how strong do the other nations of the world see Australia when uranium is mined in just a territory? In this day, the sale of uranium is a doubtful situation because there can be fights over uranium extraction in the Territory. Does this show a particular weakness in Australia with regard to this matter?

I am particularly interested in defence. Like so many other young fellows, I was in the last war, in the infantry. I came to appreciate what freedom was all about, as I still do now. I look forward to the Territory becoming a state so that it can have as much say as possible within the Federation of Australia in matters of defence, coastal significance and how we deal with our neighbours—who are not very far from us; they live very close to us. How do our neighbours look at us? Only yesterday, what I think was called the Lombok treaty between Australia and Indonesia was signed. That spells out many things and can now be held as being most important. I must say that there has to be more said about this matter of a state being close to its neighbours. I want to say, too, that I believe that in the North and in outback Australia that we have close partnerships with the top end of Western Australia and North Queensland. There is a common relationship in that we are people who are very similar. I am not suggesting that we are going to break away, but I say that the Territory becoming a state will increase the status of the people of the North, the people of the Centre, the people of the outback.

There are many things to be said, so I say to you now that, in becoming the state of the Northern Territory, I see no quarrel—far from it. I believe that there are so many reasons yet to be brought out as to why we should not be a state. In closing, I table some articles that I think should be on record. Particularly, I admire the courage of Aboriginal speaker Rosalie Kunoth-Monks, who has spoken in the last week to the desert media on how she sees the Aboriginal people, their position and where they are going. She pleads that they quit the path to cultural suicide and being victims. That is most important. I believe the statehood has to be made up of

people who think alike, act alike and, as much as possible, are in unification. I ask everyone to heed what Rosalie Kunoth-Monks has said. Thank you.

Mr Liddle—Before I start, I would like to say that I am very honoured to be alongside Bernie Kilgariff at this table.

Mr Kilgariff—The Liddle family is a good mob.

Mr Liddle—Good on you, Bernie.

CHAIRMAN—I think I must know now who John's brother is.

Mr Liddle—Oh, right. Either I am getting old or my mate Warren Snowdon is getting old, but I agree with half of the things he said. He asked some things, such as: 'What does it mean to be a state?' I think that a lot of Territorians have not actually looked at that question. Warren said some other things, such as: 'Those of us who were here at that time,' and 'Statehood is not a top priority.' They are a couple of things that might come out a bit later on. Not many people actually agree with Warren most of the time, but he is our member. I would like to give you a bit of background of who I am, and Bernie can nod or shake his head. My family has been involved in Aboriginal affairs and other businesses in Central Australia for many, many years. Over the last, say, 30-odd years, we have been involved in Aboriginal affairs, tourism, mining—everything you can think of.

During that time we saw lots of changes in the way the Territory actually moves. There has been a complete change of population. There are hardly any old families like the Kilgariffs left in town any more. If you go to a party, introduce yourself and say where you were born, it is almost a novelty to tell people that you were born in Alice Springs or in the Territory. I will go on from that. I actually represent Congress here today. We are the local Aboriginal health service here in Alice Springs. I will launch into the presentation and will be happy to field some questions later on.

Congress prepared a detailed submission on statehood. This short presentation indicates a range of our concerns and proposals about the Territory government's approach to statehood. In 1998, as Warren mentioned earlier, the referendum on statehood saw a majority of voters saying no. The loss of the referendum was partly due to the Aboriginal vote. In 2003 the local government renewed its campaign. It appointed a steering committee to be the prime messenger in selling the statehood concept. Clearly the Statehood Steering Committee's prime role is in public relations to promote statehood. The promotion process is largely about calming fears and talking up statehood.

A review of the steering committee's 25 fact sheets shows that it is not about open consultation and swapping ideas. Other than the status quo, alternatives to statehood are unacknowledged. Congress expects that any proposal for a new state will be agreed with Aboriginal people. A fully informed and resourced negotiations process is required. Principles about Aboriginal self-determination—which is a good old word that we hear less about nowadays—include recognition of Aboriginal law; protection of land rights, sacred sites, human rights and the right to health; freedom from discrimination; and equal access to essential services

and infrastructure, including appropriate education. Those aspects should be embedded in a new state constitution.

The unique selling point: the government's current sales pitch relies heavily on the notion of 'Territoryism'—that is, the idea that Territorians are unique and different, with a special Territory lifestyle. The image is that we are all laid-back, ever so relaxed, and love our lax laws. Some of us might think about the change in speed limits. That is something that might come up later on. The Statehood Steering Committee's communications strategy centres on identification of a unique selling point: statehood means equality, or without statehood Territorians remain second-class citizens.

Two examples of the promotional hype used to sell statehood in this way are: statehood would make all people in the Northern Territory equal to those living in the other states; it is only by becoming a state that Territorians can achieve equality with other Australians. This sort of hype is very cynical and overlooks the gross imbalance in status and power between Aboriginals and non-Aboriginals. Congress wishes to see balance and sincerity in the public education process. The use of marketing gimmicks is not appropriate. Unless it shows that statehood will deal with the inequalities between Aboriginal people and other Australians, the government should drop suggestions that statehood will mean that all people will become equal.

The projected minimalist model for a new state: the claim that statehood would make us all equal is even more cynical when we consider that it is not promising any changes that would affect our day-to-day lives. The only changes envisaged in the promotional material concern matters like the number of representatives in Canberra and not the structure of the government. Do not worry—as part of its mission to dispel fears, a key theme in the steering committee's propaganda is that, apart from gaining additional constitutional rights, changes will be minimal. One of the fact sheets says that statehood should not cost Territorians a cent extra. Another assures us that statehood will not impact on an exciting way of life. The topic of one fact sheet is 'statehood: what does it mean for me?' It mentions nothing at all that will have any impact on everyday life. Congress's view is that the minimalist business-as-usual model of statehood currently being promoted can do nothing to improve the circumstances of Aboriginal people. Congress urges a different approach. Rather than saying that no-one should worry, the government should show how statehood can make a real difference to Aboriginal wellbeing.

This new model can be a key element in the Northern Territory government's plan for dealing with Aboriginal disadvantage. The problem with the minimalist approach? The NT is different. The minimal change model overlooks the fact that the NT is so demographically unique that a very different model of government and political representation is needed. The NT population is generally thought of as 30 per cent Aboriginal. Bernie's daughter, the mayor of Alice Springs, says that Alice Springs might be 50 per cent Aboriginal in another few years. So that is just touching on something.

This Territory is so different from the states that a different model of representation is needed. But the difference is even greater. Point-in-time population figures do not say anything about how long people stay in the Territory, and their degree of belonging or stakeholding to the Territory. The Aboriginal population is long term. The non-Aboriginal population is relatively transient.

Short-term residents are likely to have quite different interests in the Territory and its future than the permanent citizens. The Territory's non-Aboriginal population is exceptionally mobile. The head of the Treasury reports that 70 per cent of the Territory's population is subject to incredible churn. She also states that interstate migration occurs almost entirely in the non-Aboriginal population. The NT's population turnover is vastly more than any other state. Between 1996 and 2001 gross moves were equal to 89 per cent of the NT population, and 5.6 times the Australian average. This, and a lot more data, indicate that Aboriginal people are a majority of the long-term citizens and stakeholders. Unlike non-Aborigines, they are nearly all born here and they do not go away to retire.

It should be noted that non-Aborigines also dominate Territory politics and policy making. Politicians and policy makers are also largely migratory. Congress urges political representation and influence that reflects the Territory's unique and sharply divided population structure. Congress's view is that only long-term residents should vote in the referendum. The same rule should apply to the establishment of a constitution. A future electoral system should also ensure that transient Australian voters do not have the disproportionate influence they now enjoy.

In relation to political exclusion, if Aboriginal people are to gain a degree of political influence that matches their long-term stake in the NT, two types of benefit are possible. The first benefit follows from the increased capacity of Aboriginal people to direct public resources in directions that will improve their health and wellbeing. This would be through better health, education and welfare services, and employment opportunities and other measures directed at reducing exclusion and institutional racism.

The second type of benefit, though obviously related, concerns social status. With a more inclusive political system the social status of Aboriginal people is likely to increase along with a sense of control over their destinies. There is a great deal of evidence to show that this also affects health and wellbeing. Congress wants to see new governmental arrangements directed at ensuring the inclusion of Aboriginal people in the Northern Territory.

A new constitution should guarantee equitable services and enshrine the rights and responsibilities of all citizens to fully participate in the social, political and economic life of the country. Public agencies should be required to exercise all possible measures, including appropriately enforced laws, to reduce inequalities between Aboriginal and non-Aboriginal people. Congress urges that the present statehood consultative process be substantially broadened to identify and fully consider more fitting future governmental arrangements.

Lastly, alternatives to statehood should be actively explored and discussed along with the case for statehood. Only with this can there be fully informed consent through a referendum. Thank you for the opportunity to make this brief presentation. I urge you all to read Congress's full submission and we look forward to your response. Thank you very much.

CHAIRMAN—Warren, Bernie and John, thank you very much. I will ask a couple of questions and then I will invite David Tollner to ask some questions of our speakers. Firstly, John, could you tell us in about one minute something about the Central Australian Aboriginal Congress—what you do, the area you cover, how many people you represent?

Mr Liddle—We tell the world that we are one of the oldest Aboriginal health organisations in Australia. We have just had our 32nd birthday. We basically look after the people of Central Australia. We call it Central Australia because Alice Springs is a regional centre for basically three states. We get people coming to Alice Springs for lots of different reasons. Most Aboriginal people who come from those areas actually present to us at some stage for medical treatment or some of the other services that we deliver. I specifically deal with men's health. We see a lot of men who come in. We offer other types of services: childcare services, social and emotional wellbeing and a specific women's health service. Off the top of my head, that is about all. We employ about 100 people. Most of the funding comes from Commonwealth departments. We get some from the Territory government but it is not as much as we would like. We basically deal with everyone who comes through our door—anyone who is Aboriginal is entitled to come through and use the services. We do not turn anyone away—whether they are non-Aboriginal or not.

CHAIRMAN—That gives me a pretty good idea. To what extent would you consider that the views that you have expressed on behalf of the Congress would represent the views of Indigenous Territorians? If they do represent the views of Indigenous Territorians, it seems to me that the wish list that you outlined would make it impossible for the rest of the Territory to support that model and that you would kill statehood stone dead.

Mr Liddle—I think statehood is a thing that most Aboriginal people are not aware of. I was at the statehood conference that Warren spoke about. At that conference there were a lot of Aboriginal people from most Aboriginal communities in the Northern Territory. Unless people are actively involved in 'politics', they are passive recipients of those decisions. Aboriginal people are supposed to be maybe 30 per cent of the population, depending on who you speak to. If you spoke to the majority of them, they would say, 'Statehood—what's that?'

CHAIRMAN—It seems to me that you are suggesting that there ought to be two categories of people on the electoral roll: those who are long-term residents and those who are short-term residents—almost as though there should be a concept of Territory citizenship. Whereas in Australia of course we have the principle that you can live anywhere in the country for a month and you get on the electoral roll if you are an Australian citizen. Would either of the other two participants like to comment on that concept?

Mr Liddle—Could I just say one thing. In the Territory at the moment eight per cent of our workforce is in the military service. That means that eight per cent of our workforce is transient. They are here for a very short time—maybe two to three years. They just do their term and then transfer somewhere else. Because the Territory has many government departments and short-term contracts for people in all fields of employment, lots of those people are here for only a short time. I feel that it would not be fair for those people to make the decision on whether the Territory becomes a state and then go home to where they actually come from. People like Bernie and me are here for the rest of our lives, and most Aboriginal people are the same.

CHAIRMAN—But not Warren!

Mr Liddle—I don't know about him!

Mr Snowdon—I have been here 30 bloody years—I might as well stay a little longer!

CHAIRMAN—You would find that a lot of service personnel would be posted to RAAF Amberley or to Richmond and they would come from other parts of the country. Are you saying that they should not be able to vote in the places to which they happen to be posted because they are only there for a short period?

Mr Liddle—I think they are only here for a short time.

CHAIRMAN—Okay. Warren raised what I thought was an interesting concept of what a state was. I have to say I have often wondered why people are pushing statehood so hard when the concept of the sovereignty of a state is not what it was 60 or 70 years ago because of the growth of the power of the government in Canberra. Do you see statehood, given the fact that the states are not as influential as they once were, as being as important now, Bernie, to the Territory as maybe it once was? In other words, is it worth the angst?

Mr Kilgariff—The first thing is: what category am I going to be as a 76-year-old? That is supposed to be a light-hearted comment. What category am I as a 76-year-old; what system am I going to be in? Remember this, too: the responsibility for the good welfare and the good wellbeing of the Aboriginal people is truly and should be held within the financial structure of our Australian government. There should be no fears there. Are you suggesting, Chairman, that the strength of the states is being lost because of the more dominant situation of the federal government?

CHAIRMAN—What I am saying is that the concept of being a state to me personally does not seem as important as it may have been when the states had more authority than they now have. But that is only a personal view.

Mr Kilgariff—I do not believe that the strength or power of the six states has been eroded away by the federal government under the present structure of federalism. The situation is that there is much to be gained from joining the six and being a member of the states. Naturally, in the turmoil and the pressure of living in these days, no matter where you look, there have to be contentious situations. Whether we like it or not we have federalism. This is always a continuing argument about the states and the federal government—those wanting more and those wanting to contain them more. I for one would be most happy to join as a state, because I believe we would have the ability to get what we want, as the states have—there are the various systems set down in finance and whatever. But to answer your question, while we have a strong system of government with the states within the federal system and with our elected representatives, I do not see that there is anything to fear for the Territory in this regard.

CHAIRMAN—Thanks. This is my last question before I invite Mr Tollner to make a contribution. I listened carefully to what Warren said. In all the time he has been in parliament people have raised statehood with him on five or six occasions. If there is that level of apathy in the Territory, you can imagine the apathy in the rest of the country. What is being said at this seminar is quite important insofar as it indicates that Territorians themselves are going to have to sort out what they want before they come to the federal government, because unless you can sort it out, it is obviously going to die again. Warren, do you genuinely see it being likely that there is going to be sufficient consensus in the Territory for something to come forward that everyone can vote for?

Mr Snowden—Not in the short term. I refer to one point that Bernie made. This morning we saw a High Court judgement which endorsed the Commonwealth's use of the corporations power to take over industrial relations across the country. There is a prime example of where the central government is seeking to give itself more power. We have seen that with this current government since 1996. So I do not think we should be surprised—

CHAIRMAN—And the previous government also.

Mr Snowden—With the dams case—absolutely. I do not think we should get away from the fact that federal governments these days are more inclined, whatever political hue they are, to try to give themselves more power.

CHAIRMAN—That is a fair comment.

Mr Snowden—If you look at section 51 of the Constitution, which sets out 39 subsections of what the Commonwealth's powers are, and other sections talk about the states and their constitutions, what is clear is that over time the Commonwealth has given itself more responsibility as a result of making decisions which have been endorsed by the courts.

CHAIRMAN—That is a point I was making earlier.

Mr Snowden—So the relevance of statehood in the context of that discussion is something which, as I think you have rightly pointed out, needs to be part of the general debate. In terms of the community generally, though, I think there is a lot to be said for understanding where John is coming from in terms of the churn element of the Northern Territory population. I do not know what the figure is, but I suspect the population is turning over about 25 to 30 per cent every three years. If that is the case, then we have got a lot of short-term residents who, in the case of a referendum on statehood, are going to make the decision for the future of the rest of us when they are only here for a short time. That is the relevance of John's discussion. We need to contemplate how we manage that discussion. Is it fair for people who are clearly only going to be here for a short time to be in a position where they can determine the long-term future of the rest of us? I think that is a moot point. I do not have a strong view one way or the other, but I think it is an issue which needs to be talked through and it is right for John to raise it.

How we—the rest of us, that is—see ourselves within the broader context, though, is a different point. This is not an easy question. If I got in front of 100 people and said, 'Put your hand up if you think we should become a state,' without actually explaining what I mean, most of them would put their hand up, because they think we should be a state because they think we are being done over by a whole range of other people. But if you asked them, 'What should statehood mean to the Northern Territory; how should statehood be designed for the Northern Territory?' most would not have a clue—would not have one clue. And if you said to them, 'What material difference will it make if the Northern Territory becomes a state in terms of its financial arrangements?' they could not give you an answer. In fact, the answer is nil. The fact is the Northern Territory budget gets 80 per cent of its revenue from Commonwealth sources. That will not change. The significant issues about the financial relationships have been dealt with since self-government, so those things are going to be bubbling along as it is. But the more important question as to the role of Indigenous people and how we guarantee their rights and access to services, which is something I referred to in the beginning, is something on which a

dialogue needs to happen. It has not happened. Until it does happen, I think we are fooling ourselves.

CHAIRMAN—At this stage I would like to welcome Ms Barbara McCarthy, who I thanked for her assistance earlier, and Mr Len Kiely, MLA, who are participants shortly.

Mr TOLLNER—Following on from the point you made, Warren, from what people say the Territory has a 30 per cent Indigenous population. I think in your electorate, Warren, it is probably nearing 50 per cent Indigenous people, and they have a big stake in any future state. I think it was pretty obvious to most people at the last Territory referendum that, almost en masse, Aboriginal people were opposed to statehood. I think the feeling was that they were concerned about a whole range of issues but, in the main, what would occur with the Aboriginal land rights act and whether that would be patriated to a future Northern Territory state government. Given the fact that 50 per cent of the Territory land mass is Aboriginal land, one can understand they had concerns over that. Warren, can you speak for the Labor Party as to whether or not they have a position one way or the other on Aboriginal land rights in the future state of the Northern Territory? Would it be administered by the new Northern Territory state government or is the Labor Party's view that that should continue to be administered by Canberra?

Mr Snowdon—The first observation I make is that I would not make that decision until I had had the dialogue or discussion and negotiated with Aboriginal people. I am not going to assume what Aboriginal people want or think; and if I were to, then I would be properly berated for doing so. The fact is—and I think John has made the point—that until we sit down around the table and negotiate outcomes with Indigenous Australians we do not have a position.

Mr TOLLNER—All right. Let me rephrase that. Warren, you have been in the job for 18 years now. You have had significant dialogue with Indigenous people. Statehood has been on the agenda for quite some time. Surely you must have had some discussions as to what their view is.

Mr Snowdon—Have you read the Kalkaringi Statement?

Mr TOLLNER—Not yet, no.

Mr Snowdon—Well, you should have because it is very clear. I am happy to table this copy which I got off the net yesterday. That will explain to you some of the issues which Indigenous people have in relation to statehood. Until those and other issues are addressed, I do not think any of us are in a position to determine what the outcome ought to be in relation to land rights or any other matter relating to Indigenous Australians. I just make this point. I talk to a lot of people around the bush and, whatever failings there might be with the current federal government—and there are a lot; you may disagree—

Mr TOLLNER—That is debatable.

Mr Snowdon—You think there are a few too, I note. Let us assume there are some failings. We have unusual historical circumstances at the moment where the Senate and the House of Representatives are both controlled by the same party. That is an unusual circumstance, certainly since the late sixties-early seventies. What does that tell us? I used to be an opponent of the Senate. I used to call for the abolition of the Senate. I now think the Senate provides one of the

only real checks and balances in Australian public life. One of the things about the land rights act which came up during the course of this discussion, which was had in the late nineties, was that Aboriginal people knew that while the Senate was configured the way it was then—that is, it was controlled by the opposition parties—there was no likelihood of any changes to the land rights act, which Aboriginal people do not want. So, as a failsafe, it provided a mechanism for people to see that their rights were being protected, even though there were amendments to the land rights act, in times previous, agreed to by both houses of the parliament.

We have to sit down around the table and ask people: how do you regard your interests best being served? How do we guarantee with you your rights being preserved? How do we make sure that into the future we can guarantee your rights will not be trampled on? If that means that, ultimately, Aboriginal people say that we can set up a framework, a set of conditions or a set of circumstances which provide absolute guarantees within the framework and the constitution of the Northern Territory, then that is a possibility. But I will just go back to my original point: under whatever circumstances we might agree on in the Northern Territory, ultimately the people who will make the decision about what goes into the constitution, whether we might believe it or not, are going to be the people who sit in the federal parliament because, ultimately, they will be the ones responsible for voting as to whether or not we should become a state. So it is not just a dialogue between us; it is dialogue with the broader Australian community.

Mr Kilgariff—I would like to comment on that—with a question, really. Surely it must be agreeable, no matter what happens, that there is proper communication with the Aboriginal people. The Aboriginal people have the right to be properly advised—I do not think this has happened much in the past. But, then again, it is a difficult question: when are we going to get a failsafe situation where the Aboriginal people are told, without fear or favour, or pressure, so that they completely understand the situation and are not led up the garden path?

Mr Snowden—Dave, I will not tell you what I think because, until I have had that dialogue, I do not have a position.

Mr TOLLNER—I suppose this seminar is trying to flesh out some of the views that people may have, one way or the other. John, do you have anything to add?

Mr Liddle—Just think about these figures: 30 per cent of the Northern Territory population is Aboriginal and 15 per cent of the non-Aboriginal population of the Territory moves out every year—that is, 15 out of 100. Next time you are at the airport you will see another 15 per cent coming in to replace the first lot of 15 per cent. Five years ago, one-third of the non-Aboriginal population of the Territory were not here—and they are the people who would vote with us long-term Territorians, both black and white, on whether we have a state or not. I do not think that is fair.

Mr Kilgariff—I hear what you are saying, but we hear so much these days that Aboriginal people are coming from interstate in considerable numbers. Doesn't this water down your argument? I believe you are making a very good point, but is this fact not watered down by the number of people who are coming in from Queensland, Western Australia and other places and, for instance, crowding out Alice Springs?

Mr Liddle—I appreciate your comments, but I do not think it would. I think everyone who is a newcomer would have to be considered the same. We would have to find a benchmark on whether my mate here qualifies as a long-term Territorians or not—I have been trying to get rid of him for years, but he won't go! There needs to be some rational thinking about this. We cannot allow people who have been here for five minutes to make the decision for us. It is just not fair. If we go to the airport now, I am sure we would find 15 per cent coming in to replace the 15 per cent who left this morning. We have a very high turnover in the Northern Territory and we have to be very conscious of that.

Mr TOLLNER—Do you have a solution for it, John?

Mr Liddle—I think it can be worked on. We need to talk to people like you and Mr Snowdon. We have long-term Territorians throughout the Territory—Aboriginal and non-Aboriginal people and every ethnic group in the world live in the Northern Territory. Some of those people are very long-term Territorians and very proud of it. Let us get them altogether. We have to live here together. Let us approach this in a rational manner. Let us not just say, 'You out and you out.' We all live here. Let us be one.

Mr Kilgariff—What do you think the answer is, then?

Mr Liddle—Off the top of my head, I would say 20 years at least. As I said, five years ago, when the original statehood debate took place, one-third of the non-Aboriginal population of the Northern Territory was not here. That is scary, and we need to be very conscious of that.

Mr Kilgariff—I do not want to punish this point, but I once again refer to all these people who are coming across the border now.

Mr Liddle—Sorry, I did not answer you with that one.

Mr Kilgariff—That is okay. We are concerned. Are you afraid of the watering down of the Aboriginal people of the Northern Territory by the influx of others who have much more definite ideas in different ways?

Mr Liddle—I think there are ways of coming to terms with that, Bernie. These people would be enrolled in their states, I suspect, unless they enrol here with the Electoral Commission. Maybe we can look at that. I am also a member of Lhere Artepe, and I want to see these people stay where they come from. I want them to go home and stay home, let me tell you that. I had better not say anymore or I will get crucified.

Mr Kilgariff—It is interesting.

CHAIRMAN—I blew in yesterday and I am blowing out today.

Mr Liddle—At least you are not going to vote on whether or not we get a state.

Mr TOLLNER—He will. That is the point.

Mr Liddle—But not in the Territory.

Mr TOLLNER—Bernie, you made a point about uranium mining and how in favour of it you are. You are probably aware that up until just a few months ago the current Northern Territory Labor government were vehemently opposed to uranium mining. It is actually the Commonwealth that supports it. Did you support the Commonwealth's decision to look at more uranium mines in the Territory or were you supportive of the Northern Territory government's opposition to it?

Mr Kilgariff—The fact is that there is so much uranium in the Northern Territory and so little in the world that, under conditions, we have to supply those people, with the intention of assisting them with their energy problems.

Mr TOLLNER—The point I am making, Bernie, is that if we were a state now that decision could not be made; that uranium would stay in the ground.

CHAIRMAN—Other than from the three mines.

Mr TOLLNER—Yes.

Mr Snowden—That is not strictly correct. It is only correct if we have the same rights as other states, and there is no guarantee that we are going to have the same rights as other states. We do not have them at the moment. Section 69(4) of the Northern Territory (Self-Government) Act provides the Commonwealth with rights over uranium.

Mr TOLLNER—Yes, but the point I am making, Warren, is that if we were a state with the rights of other states we would have the right to veto more uranium mining.

Mr Snowden—That is true.

Mr TOLLNER—That flies in the face of Bernie's argument that we would be mining more uranium. To me that is not a reason to be a state; it is a reason not to be a state if you are arguing that we could be exporting more uranium.

Mr Kilgariff—My answer is that, looking at the global nature that exists now, we would supply uranium. I would be one of those who would vote for the exporting of uranium to other countries. I suppose that is the point I am getting to. I believe we will be in a very difficult and dangerous situation as far as defence is concerned if we sit on this hoard of uranium so that other countries cannot use it. They could become desperate.

CHAIRMAN—It is always possible that a grant of statehood could be made subject to a reservation over uranium. I think that was what Warren was highlighting. I have to say also that I can understand people who are opposed to uranium mining but I have never really understood the logic of saying that it is morally okay to get it from three mines but it is not okay to get it from others. I cannot understand that.

Mr Kilgariff—Too true.

CHAIRMAN—Having said that, are there any other questions?

Mr TOLLNER—I will leave it at that.

CHAIRMAN—Thank you very much. We have Barbara, Loraine and Len appearing later as part of a group discussion. Because they were not here at this morning's discussion it is probably a bit unfair to ask you to comment on what was said earlier. With your agreement, I propose to invite everyone here to join us for lunch outside, and then we can have the afternoon session. Barbara, Loraine and Len will be able to comment on this afternoon's session and on anything else that may have been covered this morning. Is there a consensus on that?

Mr Kilgariff—Yes.

Proceedings suspended from 12.05 pm to 1.05 pm

WEEPERS, Ms Jayne Maree, Senior Policy Officer, Central Land Council

HAYES, Mr Paul, Principal Legal Officer, Indigenous Land Corporation

McPHERSON, Ms Shirley, Chairperson, Indigenous Land Corporation

CHAIRMAN—Welcome. Thank you very much for joining us again for this afternoon's session. I earlier welcomed Ms McCarthy MLA and Mr Kiely MLA, and I now welcome Mrs Loraine Braham MLA, who will all be joining us to be part of the group discussion a little bit later. This morning we heard from the Hon. Warren Snowdon, former Senator Bernie Kilgariff and Mr John Liddle on the topics of the future status of Commonwealth land in the Northern Territory and Aboriginal land rights, although I must say that the topics did range slightly wider. I imagine that will probably happen with all of our sessions.

I also welcome two people representing the Indonesian-Australian youth forum. The young lady is from Yogyakarta and the gentleman is from Banda Aceh. They are spending a month in the Northern Territory—part of the time in Darwin and part of the time in Alice Springs. Warren has been kind enough to have them as sort of interns or at least has been shepherding them through this part of the Territory. I think that is very good and welcome. We send Australians over to Indonesia, and I think that the relationship our two countries have is very important. I think that having person-to-person exchanges is the best way of making sure that that important relationship is appreciated by people on both sides of a very narrow strip of water. So, on behalf of all us, I welcome you to this seminar.

In this afternoon's session we have Ms Shirley McPherson, Chairperson of the Indigenous Land Corporation, who is accompanied by the only other gentleman in a suit—he told me it is obvious he is from down south!—and that is Mr Paul Hayes, who is the ILC's Principal Legal Officer. We also have Ms Jayne Weepers, the policy officer of the Central Land Council. We do not require people to give evidence under oath, but this is a hearing of the committee in addition to being a seminar. We have Hansard recording these proceedings, and they are proceedings of the Australian parliament. Anything you say is protected by parliamentary privilege, so I do not want you to go overboard but this is one of those rare opportunities in which you can say what you want to and people cannot come after you. Could each of the speakers talk for about 10 minutes. Then we will hear from David Tollner, another member of the committee, who is the member for Solomon and who is based in Darwin. As I said earlier, Warren Snowdon is here today but he is not up here with the committee because he is not actually a member of the committee. It is not that it is a Liberal/Labor thing, because this is a bipartisan committee, but Warren appeared before us this morning. Could you kick off, Shirley, with 10 minutes on the topics of the future status of Commonwealth land in the Northern Territory and Aboriginal land rights. If you want to range slightly more widely, which I suspect you may, feel free to do so.

Ms McPherson—Thank you. I have a prepared document so if I run out of time it can be tabled. Mr Chairman, I thank you and your committee for the opportunity to give a brief update on the important work being conducted in the Northern Territory by the Indigenous Land Corporation as part of your inquiry into Northern Territory statehood. I am a Ngatjumay woman

from Western Australia, just north of the 26th parallel, and I take this opportunity to recognise the Arrernte people, the traditional owners of the land we are meeting on today.

As Chairperson of the Indigenous Land Corporation I would like to make it clear that the board has no position on Territory statehood as this is rightly the decision for Territorians to make for themselves. It is the significant economic development impact of the work by the Indigenous Land Corporation in the Northern Territory and the flow-on into enterprise development, employment, training and job creation that I would like to focus on today. The ILC contends that much of the work that it is carrying on in the Northern Territory is cutting edge and helping to boost Indigenous and therefore, through flow-on, mainstream economic development, job creation, employment and training. Should Territorians decide to move towards statehood, the work the ILC is doing will be critically important in underpinning a sustainable economic base that would be needed to support that process.

Indigenous-held land, as we have heard before, now amounts to about 40 per cent of all land in the Northern Territory. The ILC plays a major role in economic development in the Territory, as was mentioned before, and contributes many millions of dollars to support sustainable, land based economic development in the Territory. In recognition of this role, as Chairman of the ILC, I sit on the Northern Territory government's Indigenous Economic Development Task Force. This is a high-level task force. Reflecting the importance of its role, the task force is unique in that it reports directly to the Northern Territory government. The task force has an ambitious vision for the Northern Territory, and that is to achieve economic parity between non-Indigenous and Indigenous Territorians by 2020. To do that, 2,000 jobs a year on average must be created for the next 10 years. This kind of commitment to the future of the Northern Territory has also been adopted by the Indigenous Land Corporation.

In the last 12 months the ILC board has taken a more interventionist or strategic approach to improve its ability to create economic opportunities on Indigenous land. The ILC board identified that there were strategic land acquisition and land management opportunities capable of delivering significant benefits for Indigenous people which were not emerging through the ILC's existing application based process. To address this the board has made provision in the National Indigenous Land Strategy, known as NILS, in addition to considering land acquisition and land management applications submitted to it, for the ILC to initiate strategic land acquisitions and undertake strategic land management activities, provided appropriate criteria are met. As an extension to this approach, the ILC board has directed that the pastoral and tourism industries will be priorities in terms of economic activity over the next three to five years. This has set the direction for the ILC in creating economic opportunities.

The ILC has underpinned this strategic approach by significantly increasing its efforts to boost pastoral activity on Indigenous-held land, particularly in the Northern Territory. This includes support to both ILC purchased and other Indigenous-held properties. The Indigenous Pastoral Program is an excellent example of initiatives undertaken by the ILC to strategically boost pastoral activity in the Territory. The ILC, the Northern Territory government and the Northern and Central land councils have jointly funded what is known as the Indigenous Pastoral Program, IPP. IPP was originally established between the ILC, the Northern Territory government and the Northern and Central land councils to sustainably increase the level of pastoral production on Indigenous-held land and increase the level of Indigenous employment in the pastoral industry through training and employment. From its inception in 2003, the program

has seen an increase of 27,000 head of cattle on Indigenous-held land and more than 14,500 square kilometres of land under improved management in terms of fire, feral animal and weeds control.

Specific training programs have also delivered significant outcomes for Indigenous peoples. For example, a pre-employment training program, which was run at Elliott on the Barkly Tableland during the years 2004-05 and 2005-06, resulted in 28 young Indigenous people going through the course, with 22 graduating. Nineteen have now been placed in full-time employment within the mainstream pastoral industry. In addition to this, in this region over 80 Indigenous company directors have completed or are undertaking corporate governance training. The total funding under this program for the previous three years was \$4.42 million, of which the ILC contributed \$1.45 billion. This year, in February, the ILC board approved a further \$2.685 million to extend this program for another five years to the year 2011.

CHAIRMAN—Excuse me, Shirley, I do not mean to interrupt, but I was wondering if you could focus your comments on statehood and on the topics we have got currently before the seminar.

Ms McPherson—Okay. I will skip over some things. What I am trying to say is that in the last five years there has been a significant jump in collaboration and partnership between the Northern Territory government and the Indigenous Land Corporation in areas I have mentioned, such as the pastoral industry, the tourism industry and in eradication of feral donkeys, camels and horses. The flow-on effect from this is that there has been permanent employment and training for Indigenous people and opportunities for them to be trained up in areas of environmental protection of their own country, so much so that in the eastern part of the Territory we have supplied funding for an organisation that trains up Yolngu people to maintain and protect their borders of their country, particularly in the gulf. When we are talking about rangers, we have been providing funds for that as well.

Talking about statehood, from a Commonwealth government point of view, we believe that there would be no immediate effect in the relationship that we have with the government at the time. All we see is that we have been one of the major Commonwealth agencies that has embraced the direction of the Northern Territory government as it is at the moment and we suspect that that will continue into the future. From our point of view, we see that this is just an increasing of our current partnerships and developing further partnerships.

One partnership which did not exist before that has developed in the last 12 months is with the Northern Territory Cattlemen's Association. That has never happened before. If you turn back the clock 40 years, Indigenous people, the Cattlemen's Association, the Northern Territory government and the federal government were at loggerheads. That is why we had the walkout at Wave Hill and other places. Today it is very significant that we are all sitting around the table planning a future direction for the whole pastoral industry. This is not only happening in the pastoral industry. As I mentioned, it is in the tourism industry, and I am sure it could overlap into others. As I said, it is up to the Territorians to decide on statehood, but from a government agency point of view we believe that our work would just continue.

CHAIRMAN—Thank you very much, Shirley.

Mr Hayes—I would like to add one comment. I am a legal officer involved in putting together a lot of the legal documentation that underpins these collaborative arrangements. The specific thing about the Northern Territory is the land rights act—that is the Commonwealth act that was spoken about earlier today—and, if possible, patriation in the event of statehood. I realise that was a—

CHAIRMAN—‘Patriation’ as opposed to ‘repatriation’.

Mr Hayes—It is not a repatriation. That is correct. I was corrected on that point the other day. It is a patriation that is a proposal. There was controversy in the last referendum as to what would happen. I imagine it would still be a live issue, as was highlighted this morning. We would be keen to ensure that the arrangements in place by which land councils have been established would be preserved in some form or another, because we have found the land council structures, regardless of the politics of it all, very conducive to having effective bodies to deal with representing Aboriginal interests. That has been a problem in other areas of the country where we try to put large, big-picture collaborative arrangements in place, but it has been a lot more conducive to being able to do that in the Territory and to build on that by getting agreements with the NT government, NT Cattlemen’s Association and the like. We would hope that, regardless of what happened with the legislation, the good bits about the legislation would be preserved and would survive statehood if that were to happen.

CHAIRMAN—Thank you, Paul. Ms Weepers?

Ms Weepers—Firstly, I would like to acknowledge the traditional owners, the Arrernte people, and to apologise on behalf of the Director and the Chairman of the CLC, the Central Land Council. We have a council meeting on down at Apatula in the next couple of days, so unfortunately they are tied up with that. The CLC welcomes this opportunity to address committee members and members of the public and, I guess, to provide a perspective on some issues which are very critical to the land council and to the land council’s constituents.

It is very important—and I am sure this morning’s session assisted—to set the historical, social and political context for statehood discussions. The committee may already be familiar with the work of the Combined Aboriginal Nations of Central Australia, a loose group that brought together over 800 Aboriginal people from this region to discuss constitutional matters. We would like to table the Kalkaringi Statement and the Indigenous Constitutional Strategy for the members of the committee. The work that was done prior to the 1998 referendum is set out in these documents. Many commentators agree that the strong Aboriginal ‘no’ vote played a significant role in the defeat of the 1998 referendum. We should not forget, of course, that Aboriginal people constitute just under 30 per cent of the Territory’s population, and it is fast growing. History has already clearly shown that Aboriginal people in Central Australia have opposed and probably will oppose any move towards statehood unless they are confident that existing rights are protected and that new rights and aspirations are progressed. It is the land council’s view that the satisfactory negotiation and resolution of key issues of importance to Aboriginal people is really a precondition to statehood becoming a reality in the Northern Territory. Later in this very brief talk, I will come to the issue of the process that is used to discuss constitutional development matters.

The land council does recognise that the grant of statehood and the drafting of a fresh constitution could be an absolutely unique opportunity to achieve legal, constitutional and policy change in favour of Aboriginal people and their interests, and, given the demographics of the Territory, the prospect of achieving far-reaching change through this process is better in the Territory than in any other jurisdiction. In order to build upon the excellent work in these two documents, the CLC has commenced a detailed internal examination of three key areas of interest for Aboriginal people in our region. Those are the protection of the land rights act, the right to self-government and the recognition of customary law—those being three significant areas discussed in these documents that the council feels need more detailed work.

Given the topic of today's seminar, I am going to focus solely on the implications of statehood for the Aboriginal Land Rights (Northern Territory) Act 1976. From now on, I will just call it the land rights act. It does not really need saying, but I will quickly say that obviously the land rights act is the high-water mark in land rights legislation in Australia. It was the first time Australia recognised traditional decision-making processes in relation to land and put the concept of inalienable freehold title into law. For the land council and its constituents, protecting these rights and interests is a critical issue in the move towards statehood. The legislation has recently been amended by the Commonwealth parliament, but key features remain—which I will not go into, because I am sure this goes slightly over 10 minutes. However, the sorts of features we are talking about are recognition of traditional decision making, the principle of informed consent and several other things.

We all know, I presume, that just under 50 per cent of the Territory is now held by Aboriginal people as inalienable freehold title. Country Liberal Party governments of the eighties and nineties made no secret about the fact that a major aspect of gaining statehood was wresting control from the Commonwealth over issues such as Aboriginal land rights and control of Uluru-Kata Tjuta National Park and Kakadu National Park. Patriation of the land rights act to the NT has been the stated goal of successive Territory governments over that time.

A variety of factors make the land council and its constituents extremely wary, to say the least, of any moves to patriate the Land Rights Act as part of statehood. These factors could be summarised as: the generally adversarial and hostile approach taken to the act and land councils by successive Territory governments; the unicameral nature of the Territory parliament; the difficulty of sustaining majority support for Indigenous rights within the wider electorate in the face of sustained campaigns to the contrary; the risk of comparatively little national and international attention on proposed amendments, compared with the current situation with the federal parliament; the nonapplication to state laws of some key guarantees entrenched in the Commonwealth Constitution, such as just terms and freedom of religion; and the issue that we are about to come to which is the question mark over the capacity for effective entrenchment of state constitutional provisions.

The Kalkaringi and Batchelor statements clearly state that the Land Rights Act should remain as Commonwealth law administered by the Commonwealth. This is the current position of the Central Land Council. However, having said that, the CLC appreciates that, as Commonwealth law, the land rights act is still vulnerable to changes that have been neither sought nor supported by traditional owners, particularly when a Commonwealth government enjoys majorities in both houses of parliament. In fact, the recent suite of changes to the land rights act contains several amendments specifically not supported by the land council or its constituents.

In order to best advise Aboriginal people in Central Australia, the CLC has initiated an internal project to investigate the best options for protecting the land rights. This includes interrogating the full consequences of support for the status quo—that is, Commonwealth legislation administered by the Commonwealth—as opposed to patriation options. We have been doing our best to compare these different options and to look at the vulnerabilities of the land rights act and how rights of interest can be best protected. To allay fears that a patriated land rights act would simply be amended by the Legislative Assembly, it has been suggested in previous work done in the Territory on constitutional matters that key aspects of the land rights act could be entrenched in a new state constitution. This means that the land rights act could not simply be amended by a majority in the Legislative Assembly. Instead, proposed changes could only be made following a more demanding procedure known as a manner and form restriction. Different options have been canvassed, including the entrenchment of key features of the land rights act into the new constitution itself and the prospect of the land rights act being granted superior status over an ordinary act. This means it could only be amended following a special parliamentary procedure.

The land council has sought the assistance of a team of constitutional lawyers and experts to provide an analysis of the level of protection offered by these and other options for protecting the land rights act. It became quickly apparent that the vulnerability of the land rights act to later state or Commonwealth law which may be inconsistent with the land rights act would depend upon the legal status of and the ultimate source of legal authority for the new NT state constitution—that is, the answers to the specific questions regarding the land rights act lie mostly in the general principles of constitutional law surrounding the addition of a new state to the Federation.

There are two different pathways to statehood. Legally, the Northern Territory can become a state through a national referendum of all Australian voters conducted under section 128 of the Commonwealth Constitution or it can become a state by law passed through both houses of the Commonwealth parliament under section 121 of the Constitution. The path to statehood necessarily involves either one of these two options. The choice that the Northern Territory and Australian governments make between these two options is likely to have a significant impact on how powerful a document a new state constitution can be. If the new state constitution comes into being because it is backed by a national referendum then there is little doubt that, legally, whatever that constitution says goes. If a new state constitution says it has overriding legal effect into the future in the Northern Territory then a section 128 referendum will clinch the deal and ensure that is the case. Things that appear in the NT state constitution will override inconsistent laws passed by simple majority in the NT Legislative Assembly. This would be because the constitution would derive its authority from a higher source than that backed by the assembly's laws. However, if things head down the section 121 path—that is, a Commonwealth law rather than a national referendum—then there are real question marks about how far the new state constitution could go in laying down binding rules for the future in the Northern Territory.

Our research and advice suggests that, even if a new state constitution was created by Commonwealth law under section 121 of the Commonwealth Constitution, it may not be able to operate with paramount force within that new state. This means that later laws of the NT assembly which are inconsistent with the earlier law—that is, the constitution—would prevail. Whilst certain aspects of such a constitution may be protected by imposing a manner and form provision on future parliaments, our research suggests that only a limited range of things can probably be protected in a state constitution in this way.

We do not have time today—and, I can assure you, nor do I have the expertise—to go any further into issues around manner and form entrenchment. Suffice to say that the Central Land Council set out to find robust legal mechanisms for entrenchment in state constitutions. We set out to investigate the best possible alternative that could be constructed to the status quo—that is, the land rights act as Commonwealth law administered by the Commonwealth. The findings from our investigation so far are that on orthodox legal thinking those robust legal mechanisms for entrenchment in a new state constitution are extremely thin on the ground.

While this provides only a snapshot of the work the CLC has been undertaking, I think it is clear that the issues are complex, entangled and require considerable expertise in constitutional law. On this project the land council was very fortunate to secure the advice and assistance of Sean Brennan, from the Gilbert and Tobin Centre of Public Law at the University of New South Wales, and the input of a number of other constitutional experts. I thank them for their work today. I have certainly drawn on it to make this presentation. It has become clear that every significant issue contained in these previous documents would benefit from a similar detailed and expert examination. Unfortunately, this is a very big task well outside the reach of the land council unless specific resources are provided.

In wrapping up, this leads me nicely to a very important issue, the issue not so much of the outcome of the statehood discussion but the process of constitutional development. Our advice is that the process of constitutional development and preparing for statehood is very significant not just in preparing the population for a referendum but also in a legal sense. The legal and political choices made by the NT in going about this process may influence the way the High Court interprets the words it finds in a new state constitutional document—that is, if the new constitution can legitimately make strong claims to being the outcome of a deliberative drafting process with the imprimatur of the Northern Territory community, then the High Court may be more reluctant to say a particular device for entrenching particular values or principles is invalid.

If there was a long-term process, if issues were worked through in a deliberative and detailed way, if there is evidence of a popular mandate and popular participation, then for obvious reasons the High Court may be more inclined to give the text of that document its full-blooded meaning, even if it stretches legal interpretation a little. If matters relating to the new Territory constitution—if there is to be one—were to end up in the High Court then it is likely that the constitutional development process, including the process by which Aboriginal participation and consent were obtained, would be closely scrutinised.

Legally, and certainly politically, there are compelling reasons to fully involve Aboriginal people and their representative organisations in the constitutional development process. To ensure that rights are protected and new opportunities are realised, a two-step process is required. Firstly, appropriate resources should be provided to Aboriginal organisations to ensure that research and, most importantly, community consultation and consent are undertaken. Secondly, the Northern Territory government should commence the negotiation of a framework agreement on key Indigenous constitutional matters. This negotiation process should not be confused with the consultation process which treats Aboriginal people as simply interested stakeholders. It is difficult to imagine that the majority of the Aboriginal population in Central Australia would view the move towards statehood in a favourable light without such a process.

CHAIRMAN—Thank you very much. It seems to me that there is a bit of a conundrum. From what we heard from John Liddle this morning and from what we hear from you and from Paul, I think, and Shirley, it seems that Indigenous people will only accept statehood with certain extra protections, certain changes, certain entrenchments or certain enhancements. And yet, if that is pushed too far, the non-Indigenous community will say they prefer to remain a territory without all of what they would see as those encumbrances on how they operate democratically. I am looking forward to Barbara's view on this later on, but do you see that this conundrum could well mean that statehood could fall in a heap because it is too hard: Indigenous people want this, the non-Indigenous people are not prepared to have that, and the result is that the status quo will continue to reign supreme?

Ms Weepers—There are a couple of things. Firstly, it has been quite a few years since the previous process and there has not been a particularly detailed or thorough reworking of the issues with Aboriginal people in Central Australia. So their current view, I suppose, is based on what we know today. It is quite clear that Aboriginal people, and the CLC and its constituents, would be missing a very significant opportunity if they agreed to a move towards statehood that did not protect existing rights and also look to the future and move forward on some issues that have been long-held aspirations. Those are issues around recognition of customary law, citizenship entitlements in the way financial affairs are conducted in the Territory and the right to self-government. Those sorts of issues are clearly stated, and I think the past referendum showed very clearly that Aboriginal people understand the opportunity and the issues that are at stake. I would go so far as to say that it would be very difficult to gain their support without securing those issues.

CHAIRMAN—Taking my chairman's hat off and putting on my hat as a member of the House of Representatives representing the Liberal Party, the major party in government, I found it somewhat interesting that Indigenous associations would apparently prefer or have more trust in an Australian federal parliament controlled by the Liberal Party in both houses than in a Northern Territory government which I think on any objective assessment probably has substantial Indigenous involvement at all levels. I did find that quaint, and from the Liberal Party's point of view probably heartening and a little surprising. You trust us more than you trust them.

Ms Weepers—This speech touches on it only slightly, which is just to say that there are some protections in the Commonwealth system that are not offered in the Territory system. For example, at least there are two houses of parliament. The fact that the government has control of both at the moment has created an interesting scenario, but historically there have been significantly greater protections offered by Commonwealth regimes.

CHAIRMAN—What you are suggesting is that without the changes that you or your constituency would like to see the 'no' vote that was there in 1998 is still there?

Ms Weepers—Firstly I should say that no-one has tested that, and the Territory government may choose to test it—

CHAIRMAN—You are saying Indigenous people would not accept statehood without this, this, this and this.

Ms Weepers—That is right.

CHAIRMAN—So you are saying that if you had a referendum like 1998 then, all other things being equal, the ‘no’ vote that was there in 1998 is probably still there?

Ms Weepers—I would imagine so. The documents are very clear, and certainly land council members and constituents are extremely clear about what is at stake in the move towards statehood—the land rights act being one of those. Unless there is a good-faith process which manages to ensure that those rights and interests will not be diminished, one would have to say that you would be foolish to agree to such a move.

CHAIRMAN—You would not be confident leaving those rights for determination by the parliament representing the people of the Northern Territory to be determined in accordance with the processes of democracy in the Northern Territory parliament?

Ms Weepers—These documents set out a number of broader political issues, which I have not gone into today, around political representation and issues of good government. Since this time there has obviously been a change of government and some of those things are slowly being put in place. The reason we are continuing with our work on statehood is that there are some changed factors since 1998, and Aboriginal people may well have different views from the views they had then. However, our information—and certainly the information from the Central Land Council itself—is that those issues remain crucial benchmarks.

CHAIRMAN—And I would be correct in assuming that your councillors have some involvement with Ms McCarthy’s committee, or either of her committees, as part of an ongoing process?

Ms Weepers—That is right. We have got a representative on the Statehood Steering Committee.

CHAIRMAN—While I did pass land law I cannot profess to be an expert on land law as relating to Indigenous people. You mentioned inalienable freehold land. My understanding is that it is somewhat different from ordinary freehold land insofar as it cannot be disposed of. Is that correct?

Ms Weepers—That is right. It can be leased and the lease on it can be used to secure a mortgage.

CHAIRMAN—But it cannot be sold as freehold land?

Ms Weepers—That is right.

CHAIRMAN—Do you think that Indigenous people ought to be given the same rights as other Australians to, for instance, sell some of their land if they wanted to use the money they derived from that for other positive things to benefit Indigenous people? All of us have the flexibility to sell something we own. We get a certain amount of money from the sale and we can establish an enterprise. Sometimes land might be a symbol but it does not actually put food on the table.

Ms Weepers—I would be happy to forward the land council's submission on those issues, but to put it simply: the reason the land rights act is high-water mark land rights legislation is that it recognises traditional decision-making processes and it sets in place a form of communal title which reflects that traditional decision making where the rights of individuals are balanced by the rights of the group. What you can do as an individual as part of the traditional owner group is get a lease for Aboriginal land and you can secure a mortgage for that lease. In that context you could choose to get a mortgage to own your own home if that is what you want.

CHAIRMAN—I may not have made myself entirely clear. What I meant was: should the Indigenous community making a decision in a traditional way as a community be able to make a decision to sell the freehold land? Should that be permitted if the community in a traditional way makes this collective traditional decision that certain land is excess to their current needs and they want to sell it for development or whatever and they want to use the money they get from that for some other purpose to benefit Indigenous people? Should there be that flexibility that is not currently there?

Ms Weepers—No. The Central Land Council's position is that inalienable freehold title should remain in place. The issues around flexibility have been looked at in the context of the land rights act and they came down to reworking some of the provisions around the ability to secure a mortgage in order to be clear that you can secure a mortgage for a lease on Aboriginal land.

CHAIRMAN—Doesn't that mean that you have got close to 50 per cent of the Territory locked up and not able to be adequately used?

Ms Weepers—No, it does not.

Mr TOLLNER—In relation to traditional decision making, I take it that when you are talking about Aboriginal land you are talking about land councils—is that right?

Ms Weepers—No. Land councils are the administrative body put in place to administer certain aspects of the land rights act. The traditional decision making comes from Aboriginal law, and there are other people in the room better qualified to talk to you about that than I am.

Mr TOLLNER—The land councils are obviously councils of people. Where are those people derived from? How do they become CLC councillors?

Ms Weepers—They are nominated by their communities at elections every three years. Traditional landowners make up the councils. There are 90 of them.

Mr TOLLNER—Who determines who is a traditional landowner?

Ms Weepers—It depends. There are different processes under the act. Essentially, take land that needs to go through a land claim process. You would be aware that there are lengthy court proceedings which end up in a finding about who is a traditional owner and perhaps who is not. But for the purposes of nomination to the Central Land Council, groups of Aboriginal people make their own decisions about who should be nominated to the council and therefore they are making their own decisions about who are traditional owners.

Mr TOLLNER—So traditional owners are not necessarily on the council, or they are?

Ms Weepers—They are traditional owners of somewhere in the region—

Mr TOLLNER—Who have been nominated by a community.

Ms Weepers—That is right.

Mr TOLLNER—So there is not an election process as such; it is by nomination from a community. Does the AEC or some other body get involved in that election process?

Ms Weepers—The process of electing the 90 members is not an AEC process. However, once we have a council the AEC comes to conduct elections for the positions of chairman and deputy chair.

Mr TOLLNER—What percentage of Indigenous people in your lands are deemed to be traditional owners?

Ms Weepers—I would not be able to answer that.

Mr TOLLNER—Would it be 50 per cent or 80 per cent?

Ms Weepers—It is a difficult question, because Aboriginal people are traditional owners of somewhere. Are you asking me how many of the people that live in Central Australia are traditional owners of a portion of land in Central Australia? Is that what you are asking?

Mr TOLLNER—The term ‘traditional owner’ has certain legal connotations so that must designate a particular person. I am wondering what percentage of the Aboriginal population are deemed to be traditional owners by law.

Ms Weepers—I do not know. Under the land rights act, the land councils have responsibilities for traditional owners and Aboriginal people. As such, we have a constituency that is approximately 18,000 Aboriginal people, and we work with all of them.

Mr TOLLNER—What I am trying to work out is who you represent.

Ms Weepers—I have just told you.

Mr TOLLNER—So there are 18,000 traditional owners!

Ms Weepers—It should be relatively clear now, so that is great, isn’t it? That is a step forward.

Mr TOLLNER—I am still a little lost as to how the CLC is elected. Is it people living in a community who determine—

Ms Weepers—You could equally talk to the minister for indigenous affairs. The process is set out. We have ministerial guidelines for which places are represented on the council. There are 90 members. If we want to put new members on, we have to seek the approval of the minister. The process for nomination and the process for election are either set out very clearly in the land rights act or done through a series of guidelines that are set out by the minister. It is not a big secret.

Mr TOLLNER—The reason that I am asking these questions is this. I am looking at the general principles of the Kalkaringi Statement which a number of people have alluded to. Principle No. 2 states:

That we will withhold our consent until there are good faith negotiations between the Northern Territory Government and the freely chosen representatives of the Aboriginal peoples ...

It does not say ‘freely elected representatives’; it says ‘freely chosen people’. I am wondering who the chosen ones are.

Ms Weepers—If there were good-faith negotiations for a framework agreement, the Territory government would sit on one side and Aboriginal people would sit on the other and there would need to be a process whereby Aboriginal people would work out who should be sitting on the other side of that agreement. I think this makes it very clear that if there were to be such a process Aboriginal people would need to make that decision as to who would be able to represent them. It does not mean that it would necessarily be a land council or a congress or an existing organisation making it; there may well be a different process.

The other thing that I guess you are trying to point to is an issue around democratic elections versus traditional decision making. They are not the same thing. This is an Indigenous document, and they have quite clearly chosen not to put ‘elected’; they have put ‘chosen’ because there are different criteria and different arrangements for choosing representatives.

CHAIRMAN—I can see what you are saying. You were not necessarily looking at an election whereby every Indigenous person would be able to participate in a vote for those Indigenous representatives to discuss this matter with the Northern Territory government. You are suggesting that they could be chosen in some way but not necessarily by a majority of Indigenous people.

Ms Weepers—Other people may have views on this, but I am simply saying that it does not have to be an elected process. In fact, Aboriginal people in the Central Land Council region would mostly choose not to use elections as a process for choosing their nominated leaders, spokespeople or representatives. They are two quite different systems.

CHAIRMAN—Do they find that they do want to have a say or do they prefer to leave their say to somebody else? What is the rationale behind it, Jayne? I am trying to comprehend what you are saying here.

Mr Hayes—I gather these are processes that they CLC are anticipating might happen in the future. I was just going to use an analogy. It might be like if the federal government had

appointed people to a constitutional referendum on whether we should become a republic. That would be a good analogy.

Mr TOLLNER—The point of the matter is that the federal government is an elected body. Similarly, the Northern Territory government is an elected body. It can say that it passed an election test in that the majority of the population supported its election. There might be some of us who disagree that they are the right people or the wrong people, but they have been through an election process. I cannot see that there is any election process that has ever taken place with the CLC or any of the other land councils. It may well be from the chosen few who elect their chairman. I am just trying to understand why it is that all Aboriginal people are not included in a vote for these positions.

Ms Weepers—All I am trying to explain to you, which you clearly do not quite understand, is that the democratic electoral system is not the same in this region as traditional decision making. They are completely different processes. You may choose to have an elected system. CLC constituents often choose to make their decisions using a quite different system, which clearly you do not understand, but you could possibly pursue it in other ways.

CHAIRMAN—I do not know that it is a question of not understanding; I think it is a question of a difference of opinion. Thank you very much for that and for your participation.

[1.55 pm]

BRAHAM, Mrs Loraine, Member for Braiting, and Member, Legal and Constitutional Affairs Committee, Northern Territory Legislative Assembly; and Member, Northern Territory Statehood Steering Committee

HAYES, Mr Paul, Principal Legal Officer, Indigenous Land Corporation

KIELY, Mr Len, Member for Sanderson, and Member, Legal and Constitutional Affairs Committee, Northern Territory Legislative Assembly

KILGARIFF, Mr Bernard Francis, Private capacity

LIDDLE, Mr John, Male Health Coordinator, Central Australian Aboriginal Congress

McCARTHY, Ms Barbara, Member for Arnhem, and Chair, Legal and Constitutional Affairs Committee, Northern Territory Legislative Assembly; and Chair, Northern Territory Statehood Steering Committee

McPHERSON, Ms Shirley, Chairperson, Indigenous Land Corporation

MOWBRAY, Dr Martin, Research and Policy Officer, Central Australian Aboriginal Congress

SNOWDON, The Hon. Warren, Member for Lingiari, Commonwealth Parliament

WEEPERS, Ms Jayne Maree, Senior Policy Officer, Central Land Council

CHAIRMAN—We are now going to have a general discussion with everyone who has been involved already today and also with Barbara, Loraine and Len from the Legislative Assembly. Most of us have had a bit of a go already today, so maybe it is up to Barbara, Loraine and Len to make a general contribution. Maybe you could cross-examine us on the committee, or the others, or generally just state your own views, which probably is the most important thing at this point in time so that we get on the record where your committee stands on the issues at hand.

Ms McCarthy—Firstly, I would certainly like to recognise the Arrernte people of Central Australia and Alice Springs. It is always a pleasure to come to Central Australia. It has very fond memories for me. One of the issues I would like to canvass a little bit more, to follow on from what Jayne Weepers was trying to explain earlier, is that there clearly is a difference between the democratic processes of federal, state and territory governments in the election of political members of parliament as opposed to cultural and traditional views of seniority of elders. If I could speak perhaps a little more personally with regard to the Yanyuwa, Garrawa, Mara and Gudanji peoples of the Gulf Country, the process that has been followed for thousands of years is the understanding of what we call jungkayi, which means the policeman or protector of country and law, and ngimarringki, which is the owner of that country and law. Under the gulf people's understanding, jungkayi and ngimarringki is the form of law and it is under that status

that individual members are nominated to the Northern Land Council. That is just to help clarify that understanding, further what Jayne said in her explanation.

CHAIRMAN—And more generally in relation to the topics at hand?

Ms McCarthy—I would like to just put on the record that I have been the chair of the Statehood Steering Committee and the Legal and Constitutional Standing Committee for the past six to eight weeks, so there is quite a lot of documentation for me to canvass and cover. But in terms of this inquiry, the Statehood Steering Committee welcomes certainly the views being canvassed right across the Northern Territory, not only through your inquiry, Mr Chairman, but also generally to the Statehood Steering Committee. In the past 12 to 18 months the Statehood Steering Committee has been at particular events right across the Northern Territory in order to be able to get a feel—and only a feel or an indication; it is not a thorough canvassing of statistics—of how people think about statehood. The committee has been able to canvass just the fact that people are very keen to move towards statehood, but then the serious questions still remain: in what form and how would it differ? It will certainly differ from the previous process.

I caught the tail end of John Liddle this morning and other speakers in terms of the Aboriginal needs, and I am acutely aware of that. I think one of the things that I certainly bring to my position as chair is a thorough understanding of the need to have translation and language as an essential part of the information gathering and also as part of Aboriginal participation in any constitutional convention that should occur in the lead-up to statehood.

CHAIRMAN—What proportion of Indigenous people in the Territory would be insufficiently fluent in English to need a translation?

Mr Snowden—Of what? Of a document like this?

CHAIRMAN—My understanding—correct me if I am wrong—was that Barbara said that as part of this education process you would need translation. I suppose I am asking: how big is the constituency who would require translation?

Ms McCarthy—We have the Aboriginal Interpreter Service here in the Northern Territory and we have roughly 100 languages in the Northern Territory that are translated for the court system, the health system and the education system. That gives you a pretty good and clear indication of the impact and what we need in terms of translation.

CHAIRMAN—But how many people would need to use that service?

Ms McCarthy—I do not have the figure on me, but I am happy to get the figure for Darwin for you.

Dr Mowbray—I have one figure that would help: over 60 per cent of the Aboriginal population in the Northern Territory do not speak English in their own homes.

CHAIRMAN—Is that so? Is that broadly what others of you think would be correct?

Ms McCarthy—It is a large percentage, and I am happy to get those figures from the Aboriginal Interpreter Service for your committee.

Mrs Braham—Low literacy rates come into it as well.

CHAIRMAN—That is a problem across the country.

Mrs Braham—Yes, but it is very much so here in the Territory.

CHAIRMAN—That would be your experience, Bernie?

Mr Kilgariff—I am still not too sure if I have got the picture as to whether a CLP person can speak as an authority—

CHAIRMAN—CLP or CLC?

Mr Kilgariff—CLC. I'd better leave the other mob out! Can the person in authority as a CLC member speak on behalf of the people, without reference to the people?

Ms Weepers—Are you asking about members of the actual council?

Mr Kilgariff—Yes.

Ms Weepers—No. In some senses it is not dissimilar—although the processes are different—to other boards you might be part of where the 90 members of council come together, as they are doing in the next couple of days, and issues of importance and policy for the organisation are discussed and a position arrived at. Then if you are a member of the council that is a position you would be able to speak about. Does that make sense to you, Bernie? So the council is a policy making forum, in essence, and members of the council can put forward that policy position. Certainly the chairman is authorised to speak on behalf of the council.

Mr Snowden—What needs to be understood is that the land council itself cannot make any decisions about the use or otherwise of Aboriginal land without traditional owners agreeing. Democracy has got nothing to do with it. It is about people whose land is being exploited or potentially developed having the right to say yes or no on what might happen.

Mr TOLLNER—Can traditional owners make a decision to have something occur on their traditional lands in opposition to what the CLC says? Does their local decision override the decision of the CLC?

Mr Snowden—The CLC does not make decisions about the use of Aboriginal land without the consent of traditional owners. Traditional owners instruct the land council.

Ms Weepers—The council has no power to make a decision about land based matters.

Mr Snowden—That is right.

Mr TOLLNER—So they cannot override a traditional owner's decision?

Ms McCarthy—No.

Mr Snowden—The notion of informed consent is at the centre of this. It means that if there is a proposal to develop their land or if they desire to develop their land, the land council is bound to ascertain that the Aboriginal people have given their informed consent for the development. That is what they are required to do by law. It is not a question of the land council sitting up and making decisions about how people should use their land. That does not happen.

Mrs Braham—I was Speaker of the House when we had the last Territory referendum on statehood and was a strong supporter so obviously I was fairly involved in the promotion of it.

CHAIRMAN—Are you still a supporter?

Mrs Braham—Yes, because I feel as though the Territory has progressed for over 30 years. We have not stopped where we were at self-government; we have progressed under both governments, and I think we will continue to do so. What are we not doing that other states are doing? We are looking after our people. Political decisions always vary from state to state and from government to government, but I do not see that we have been held back by the fact that we have just had self-government.

CHAIRMAN—In practice?

Mrs Braham—Yes. At the time of the Kalkaringi Statement and the meeting you had, there was not a very healthy political climate for statehood among Aboriginal people. That is eight years or more ago now. Would you see that perhaps if you did the exercise again under the current climate you might get a more positive outcome? I noticed you were raising a lot of hypotheticals about constitutional law. I am not quite sure whether we have had any determination on those since the CLC presented them to our committee and I would not want to get bogged down in these hypothetical constitutional issues. Has there been a change of will out there? Have the people had a chance to discuss it and do they need more education and more information flow? I would hate to think that the same attitude that occurred then was prevalent today. I hope there has been a shift.

Ms Weepers—I think you have said the key thing, which is that there needs to be a great deal more education, discussion and active research, because the issues are very complex. If that does not happen to the degree that it needs to across remote communities in the whole region then the default position will probably be a no. If things have moved politically, if there have been different commitments and people do not know about them or do not feel confident that things have been protected and that things have moved forward, then I strongly imagine that the default position would be no.

Mrs Braham—I would suggest to you that things may have changed because Aboriginal people move on. There are different representatives on the CLC, a different climate out there and different government policies. I hope that we could research that and see if there is still that very negative attitude—which I hope the CLC would not be promoting. I hope that they start educating Aboriginal people so they know there are benefits for them in going along with this.

CHAIRMAN—Barbara, do you have a comment on what Loraine just said?

Ms McCarthy—I will not comment on what Loraine said but I would like to ask Jayne Weepers a question just to pursue that point. If there is a sense that the discussions and the appropriate process is not occurring, what advice would you give to the Statehood Steering Committee and the legal and constitutional standing committee that are here?

Ms Weepers—I think there is a difference between the general public education process and the process that the land council has asked for, which is a process of enabling Aboriginal people, perhaps through their existing organisations, to undertake the research that they want to undertake, and then being able to sit across the table and negotiate over some of the rights that they want protected in the constitution. I think it is not a question of the land council having a view about statehood per se. The view is about what will happen to existing rights and what opportunities can be grasped in a move towards statehood. Unless some of those issues are actually guaranteed, then people—in the non-Aboriginal population as well, I imagine—may well be nervous about moving forward.

The process that we see is that there would be some resourcing for Indigenous people and organisations to undertake their own work and consultation around these issues. They would then be able to come and sit down with the Territory government and negotiate over some of those issues, which is slightly different to the statehood committee process.

Ms McCarthy—Do you mean resourcing within the councils and organisations for that information to get out there on the ground?

Ms Weepers—Yes, and some independent research. The sort of question that we have looked at, only in relation to the land rights act, is really very complex. Certainly every topic in these documents has 1,001 things that you could look at in relation to constitutional development over which Aboriginal people may want their own advice. I am certainly not saying that land council wants to be the organisation that does all of that; I am simply saying that independent advice would, I think, be very useful and would mean that Aboriginal people could sit at a table and negotiate over the issues.

Mr TOLLNER—Barbara, I want to ask you about information that is getting out. I notice in this article in the *Centralian Advocate*—I do not know whether you have had a chance to have a look at it, but it was left on our desks this morning—it talks a bit about your survey. It says:

But the survey also revealed the 85 per cent of respondents wanted to know the proposed terms and conditions before they would agree on a model.

What I am interested to know is: in that vein, what efforts has your committee made to find out what the will of the Commonwealth is? Have you approached the Prime Minister, for instance? Have you approached members and senators of the Commonwealth to determine what the Commonwealth perceives would be the outcome of a grant of statehood? Would the Commonwealth expect that the Aboriginal land rights act would be patriated? Would the Commonwealth give in to demands that we have equal Senate and House of Representatives representation along the same lines as the other states? Has the committee made any attempts to talk with the Commonwealth in that regard?

Ms McCarthy—In the past six to eight weeks, again, there have been changes in the Northern Territory government. The Chief Minister has appointed a minister for statehood. Sid Stirling is the Minister for Statehood here in the Northern Territory. He has written to the federal Attorney-General and, along with the shadow minister, Terry Mills, the plan is that they will actually meet with him. I know that Sid Stirling has written a letter and requested the opposition shadow to go with him—

Mr TOLLNER—Has the committee done anything, or have you just left it for the minister?

Ms McCarthy—It was prior to my time, Mr Tollner, but I am happy to just check with—

Mrs Braham—I think the whole question for the committee that has been working at the moment is really to gauge what sort of feeling there is in the Northern Territory, and one of the steps that we had to decide upon was to find out exactly where we stand with the Commonwealth and also, on certain topics, what they would expect. So, in a way, I was hoping that you would come and tell us what you felt the Commonwealth feels about some of these issues that have been raised so we get a feeling of what the Commonwealth actually expects—or what we can expect of the Commonwealth. So we are in part of that negotiation at the moment.

CHAIRMAN—But when you look at what was achieved pre-1998, with the then Chief Minister—I think it was Mr Stone; was it?—

Mrs Braham—Mr Stone.

CHAIRMAN—obtaining certain support from the Prime Minister for statehood on 1 January 2001—a very important symbolic date—it just seems that maybe the whole argument has slid back so far from that time.

Mrs Braham—It did. Politically, we were hurt. There were a lot of mistakes made, and everyone acknowledges that. But I think the point is that we had sort of decided: ‘Okay, we will put that away; that is over and done with. It is time we moved on and, perhaps—why not?—look at it now.’ I think that is what is important—that we have to stop dwelling on the past. I guess, in a way, Jayne, that is what I was saying to you: that came out of the past, when the political climate was not very healthy, so let us move on and see where people stand.

Mr Kiely—I joined the LCAC in 2001 and was on it until 2004. However, I have not been a member of the statehood committee. Back in about 2002, an effort was really made and the Chief Minister came out and stated her government’s desire to get statehood back on the agenda. The political hurdle that I think Mrs Braham refers to is the political hurdle of the CLP, which just about ruptured over the statehood issue. It went into a bit of a tailspin. I think you could pick the point where the referendum went down as one of the watersheds in the good fortunes of the CLP.

We in government certainly did not want to go down that path and we wanted to make it a bipartisan approach. We wanted to be inclusive and not make the same mistakes or take the same path as the previous government. Certainly, the Kalkaringi document pointed out where the countrymen thought that they were getting short thrift out of the whole deal.

In around 2003 I think it was, when I was on the committee—I have been off it for some 18-odd months but I am back here now—we were having a look at just what we had done as a government to address issues in the Kalkaringi document. I think we have addressed quite a number, although not all and it has been some three years since I have looked at that document so I cannot really go through the whole list. Things like mandatory sentencing were on there. We got rid of that, five minutes in. When we came in we said sorry, straight up.

We are all Territorians and that is how we want it to be. We want to make this inclusive. The committee and the push for statehood are now bipartisan and we are working hard towards that. I must say when we look at things like the uranium issue—and the uranium dump issue particularly—we are trying to stick up for all Territorians. We do not want to see a dump down in Alice.

CHAIRMAN—I am told it is a facility, a repository, a store or a depository, not a dump.

Mr Kiely—You can have whatever term you like, but I was very disappointed that the independent members of the CLP, the independent party down there—who in my view had as much power as Brian Harradine had in his day—did not vote against having that nuclear facility in the Territory. I think that was a bit of an indictment against the Territory party, that they should not cross the floor.

Mrs Braham—I think we are getting off the track.

Mr Kiely—No. We are talking about statehood, the issues here and who is going to be representing us. And we are talking about the chairman saying, ‘Isn’t it ironic that the CLC should be thinking that the Liberal Party in power is much better than the Labor Party with six Indigenous members?’ I think that was a historic perspective on when the Senate was there to help moderate. That is not the case now and I think it has clearly shown that absolute power can be used against you.

Mr TOLLNER—Do you think they would be happy to patriate the Lands Rights Act to a Labor government or the Territory?

Mr Kiely—Dave, I am saying the people can vote and if people do not want a nuclear mine or nuclear energy, and if they do not like the Labor Party policy on—

Mr TOLLNER—Well, let us just—

Mr Kiely—Hang on, I have got the floor. If Territorians do not like the policies of the Labor Party they can vote us out and they can put in whatever party they want.

Mrs Braham—That is not what we are arguing about.

Mr Kiely—It is not a matter of Labor, Liberal or the CLP.

Mrs Braham—We are supposed to have a tripartisan approach to this.

Mr Kiely—That is what I am saying: the statehood push that we have got on now is all about being bipartisan or tripartisan or whatever. It is not about whether Labor or the CLP is in power. We want to get statehood so that whatever political party wins at the next election, they will carry on the good work and look after all Territorians. So it is not a matter of this being Labor's statehood or the CLP's statehood.

Mrs Braham—Exactly.

Mr Kiely—This is statehood for the Territory. That is why I get a bit antsy when I hear Dave ask whether Labor would do this or that. We are not going to be here forever. We do not expect to be here forever. But we want the Territory as a state to be here forever and that is what we are aiming for.

CHAIRMAN—If I could correct you on one thing: David Tollner in the House of Representatives does not have quite the same say as Brian Harradine did because—

Mr Kiely—No, but Nigel Scullion does.

CHAIRMAN—Not quite.

Ms McCarthy—I want to finish on Mr Tollner's question when he was asking about the relationship with the Commonwealth. Could I finish there and say that it is an expectation of the Statehood Steering Committee that the dialogue is government to government.

Mrs Braham—I was disappointed you cut Shirley off when she was telling us about the good things the ILC is doing.

CHAIRMAN—I was not trying to undermine what they were doing; I was trying to focus her 10 minutes on statehood.

Mrs Braham—I was hoping she would get to the point and tell the people in the audience, a lot of whom are from Alice Springs, about a traineeship for young pastoral boys out at Old Mans Land south of Alice Springs at Owen Springs. I wanted her to let us know whether that is going to go ahead. That is something we have been looking at for a while.

Ms McPherson—I am not familiar with that one. We have had a couple of groups being trained here in Alice Springs. I met up with a group last year. I know that quite a few of those are working in full-time employment. I will take that on notice and get back to you.

Mr TOLLNER—How does that relate to statehood?

Mrs Braham—It is all about employment for Aboriginal people. If we are going to get the confidence of Aboriginal people in statehood then they have to see some future, some potential for their children. I personally do not want to see Aboriginal people standing still and marking time in the one spot. They have to look ahead, and that is what the ILC is giving them the opportunity to do. It is important to get across to them that these programs will continue under statehood. I would hate to think that people had the idea that some of the good initiatives that we have will suddenly stop. That is what we do not want. That is why I am trying to tie it in. Let us

say to Aboriginal people that there are benefits for them, there are good programs out there. They may become economically independent or their children may have that as part of the process so they should not be frightened of statehood. That is where I am coming from.

CHAIRMAN—One thing that will kill statehood is if it becomes excessively party politicised. We all recognise that and I worry a bit about that. I hope that all of us—not just in this room but more generally in the community—restrain our partisan political instincts. None of us would like to leave a legacy which meant that in 100 years time we are still talking about possible statehood for the Northern Territory.

Mrs Braham—You can see that already within this group here it has become a bit party political. It is always going to be hard to avoid that and to move on.

CHAIRMAN—You are sounding independent, Loraine, although they tell me that once you were party political as well. As much as I would like to have this go on all afternoon, we have about five or 10 minutes more for the focus to be on Barbara, Loraine and Len. I would then like to use the remaining 15 to 20 minutes to get some input from others in the room. Would any of the three members of parliament like to make a further contribution at this point or ask any questions? Do you feel you have said enough, Barbara?

Ms McCarthy—I am happy to see whether anyone would like to ask us any questions. You are the people we also need to hear from.

Mrs Braham—I would like to ask Warren whether he supports statehood.

Mr Snowdon—I support statehood. But that is largely irrelevant, in my view.

Mrs Braham—It is important that you do.

Mr Snowdon—I support the concept of us becoming a state but I do not know what I am supporting yet because I have not seen it. That is the bottom line. People will put their hands up to say they will support the idea of the Northern Territory becoming a state but they need to know the detail of what they are expected to support. That is the problem.

Mr Liddle—For those who were not here this morning, I basically said that I would not like to see short-term Territorians making a big decision like this on our behalf. The Territory has a population of very transient people. I think 15 per cent of our total population go out at the airport every day and another 15 per cent come in to replace those. Aboriginal people are long-term residents of here. Most of us are going to die here. We all vow to go away every time it is 40 degrees in Alice Springs but not many of us leave for too long, if at all.

The guts of what I spoke about this morning is: let us find a way to make it fair and equitable for the long-term Territorians of any racial background. I was sitting next to Bernie and I said: 'It's great that I'm sitting alongside you. I know that you're a long-term Territorian. Your family stops here, and we are going to be here for the rest of our lives.' Let's only let people who are going to be here for a long time or have been here for a long time vote on this issue.

Mr Snowdon—You're out!

Mr Liddle—I think that you are a long-term Territorian, like this guy. We want to get rid of him, but he will not go!

CHAIRMAN—In your vision, who would be in and who would be out?

Mr Liddle—We would have to work that out. We would most probably have to think of a time.

Mr TOLLNER—I see your logic there, although I feel that it would be a bit difficult to put into practice. When I came to the Territory—

Mr Liddle—How long have you been here?

Mr TOLLNER—almost 20 years ago, I came up—

Mr Liddle—You might just scrape in.

Mr TOLLNER—for a six-month period. But I have been here for so long now that I am raising my children here. I would like to have my grandchildren here.

Mr Liddle—That is good.

Mr TOLLNER—But you will find people who have been here for two years who say, ‘Jeez, I love this bloody joint, I’m going to stay here, I’m going to raise my children here and I want their children to stay here.’

Mr Liddle—What about these other mob that are leaving every day?

Mr TOLLNER—That is true. But the point is that if somebody makes a commitment to stay in the place for a long period of time—

Mr Liddle—We need to stick to that issue.

Mrs Braham—I came here in 1962, so I am long term and I am committed. But when I came from Victoria I lost rights as an Australian citizen.

CHAIRMAN—You are committed where?

Mr TOLLNER—She is committed to the Territory.

Mrs Braham—I came to the Territory in 1962. I lost rights as an Australian citizen, and I have not had them for 44 years. I do not have the same rights as my family in Victoria, just by coming and making the Territory home. It is not just Aboriginal people who are being affected; other people in the Territory have been affected by the fact that we are not a state. We should remember that. This is not just about Aboriginal people; let us not get bogged down in that. It is about all people who call themselves Territorians.

Mr Kiely—The minute you jump on that roll, you suffer a disadvantage.

Mrs Braham—Yes.

Mr Liddle—I made the point of saying ‘of all ethnic backgrounds’. There are people in Alice Springs of all racial backgrounds who have grown up with me. They are still here, and I do not think that they are ever going to leave.

CHAIRMAN—It is a question as to whether you require three months residence, six months residence, 12 months residence—

Mr Liddle—I do not think that they qualify. I would consider them to be short-term Territorians, and I do not think that they should expect a vote on such an issue.

Mr TOLLNER—Should a person who has been in Alice Springs for 35 years as a public servant and who is going to retire next week from the Public Service and move to Tasmania—

Mr Liddle—And that happens every day.

Mr TOLLNER—have a say on us being a state as opposed to the bloke who has been here for two weeks and intends to spend the rest of his life here?

Mr Liddle—I think that he should. He would qualify on the basis of being a long-term resident.

Mr TOLLNER—But what about the bloke who wants to spend the rest of his life here?

Mr Liddle—I want to try to make sure that five-minute Territorians who come to this place and think that they know all about the Territory—and they do not—do not get to vote on this issue.

CHAIRMAN—So anyone who has been here more than five minutes? Is that what you are saying?

Mr Liddle—You know what I mean. I can elaborate if you wish.

CHAIRMAN—There is probably no point in pursuing that further. We hear what you are saying.

Mr Liddle—It is a big issue.

CHAIRMAN—It is noted in the record. Does anyone want to say anything else before I invite more general contributions?

Ms McCarthy—John also raised some of the issues about the style and the information that is getting out there. As I asked Jayne, I would like some advice from you and congress and John on that interaction process.

Mr Liddle—We have a presentation, which we presented here today. I have some things in the room here; we would be happy to pass some on to you. We would also be happy to speak on an individual basis with you guys, if that is what you wish. We would be very happy to do that.

CHAIRMAN—That would obviously necessitate the construction of a special electoral roll for voting on a referendum.

Mr Liddle—I do not think that it needs to be special. I am sure that with the computer technology that we have that they can identify what time we went to the toilet last.

CHAIRMAN—That would be a worry.

Mr Liddle—We were talking about this over lunch. I am sure we could find out what year people enrolled. That should be able to determine how old you are and how long you have been in a certain electorate and how long in the Territory. I am sure that the Electoral Commission can do that, or the ABS or whoever they are.

Mr Kiely—I would like to say that it is clear to the members of the LCAC and, I would say, to a vast section of the community that statehood is not going to come quickly. It is something we are really working all the way through. From the parliamentary committee's point of view it is bipartisan. We are trying our best to keep politics out of this. I think that to date, from a Territory point of view, we really have, so we will keep on with that.

CHAIRMAN—Thank you very much. I would like to invite members of the general public to participate and to ask a question of either David or me, members of the parliamentary committee, our other panellists or members of the Territory parliament.

Mr Turner—I am Mr Turner.

CHAIRMAN—What is your Christian name?

Mr Turner—There are traditional people here, so I cannot say my first name. I have been listening today in a very interested way to the people on the Northern Territory committee for the statehood. Keep up the good work. But there is one thing that I want to bring up. I listened to the constitutional lawyers up there, and two things strike me. Firstly, to solve the problem of the Kalkaringi statement, let us make a treaty with the first nations of the Territory; and, secondly, to cover everyone's rights, let us make a bill of rights. Interestingly enough, we have two Liberal people up there—I am not being nasty. They are ready to do a treaty with a country north of us but they do not want to do a treaty with the first nations of our families. Until you get off your bums and make a treaty that will cover all the problems of the Indigenous people we are going to go nowhere.

As for statehood, I was one of those who sat on the fence when the two questions were asked. I can tell you now—and I have been involved with this since way back; I keep on eye on this all the way through—that, until you talk to the people in the bush and get the proper things out there, no-one is going to vote for it. You have to go right out there. You are only sitting here in Alice Springs and Darwin, but there is Tennant Creek, Yuendumu, Santa Teresa—big communities—Titjikala; I can keep going. Until you go out and do what Barbara said, you will

get it voted down again. The issue of statehood has been brought up. It has to be that that protects our Indigenous rights, and that is why I talk about the treaty; do not be frightened of it. The Labor government were going to bring it in, and they fell to pieces. If you are going to be genuine about statehood, go for it. Stop politicising it, especially when you talk about other little funny things. When you talk about choosing—and my old people in the bush tell me to go and speak for them; that is good enough when they sit down. Don't you politicise our people, young man—all right? I get very angry about that. That is how it goes with our people. It is time you stopped politicising our people all the time. Be gone with it.

CHAIRMAN—Thank you, sir. Is there another contribution? Speak now or forever hold your peace.

Dr Mowbray—Can I make a point about the terms that have been used. There was a small exchange just a little while ago about whether something might be called a 'nuclear dump' or a 'nuclear repository', which reflects different points of view. There are a number of other words that have been used which also tend to have a meaning buried in them, and that means we ought to be conscious about what we are doing. I am not saying that people should not use them, but we should be conscious of their meaning. One is the word 'patriate'. Repatriation has gone but 'patriate' is still a loaded term as far as the Land Rights Act is concerned, because what 'patriate' means is 'give to the father'. It has the word 'father' buried in it. A much more neutral word might be 'transfer' or 'devolve responsibility' or something like that.

Another word that is more pertinent to the topic here today is the word 'Territorian'. John Little spent a lot of time explaining the difference between different types of people who are called Territorians, particularly between people who are here for the long term and those who, so to speak, are just passing through. When the term 'Territorian' is used to refer to them all, it hides what some people see as a very important difference. My personal view is that the term 'Territorian' should be used much more carefully and much more circumspectly, and when it is being used people ought to be conscious of what it is doing—that is, blurring the distinction between different types of people who live in the Northern Territory. That can be very important when it comes to issues like determining policies in respect of statehood.

Mr Kilgariff—When it comes to the length of time and all that sort of thing, should we just say that a Territorian is a person whose home is where his heart is?

CHAIRMAN—Like the territory is a state of mind.

Dr Mowbray—What about women, then?

CHAIRMAN—A statement is about to be made by the deputy to the administrator, presumably in her personal capacity.

Mrs Miller—As a private citizen, I would like to say that I have listened to much of the input here this morning and this afternoon, but I am yet to hear anybody talk about how the young people get told that we are looking towards statehood? In a few years time, whether you are aiming at 2007 or 2008, there will be more 18-year-olds who will be eligible to vote, and I do not see any real input being put into the education of the young people, either in the towns or in the outlying areas. As John said earlier, a lot of people from remote areas are currently moving

into the townships, and if you ask them what they thought about statehood they certainly would not have an opinion on it, but if you asked them what they thought about who is the next national hero for singing, or who is doing all the hip-hop and things like that, they would tell you. Following on from what Loraine is saying, I think that the educational process, as far as Indigenous people are concerned, is quite low in levels of literacy. We really have to get out and educate people as to exactly what statehood is about. That should be part of the process. It is all right for people of our generation to sit down and say what we think about it, but in a few years time it will be a much younger state to be addressed.

CHAIRMAN—In the last referendum, in 1998, I understand there was a substantial Indigenous vote against. I realise that there would be no accurate figures, but would there be an estimate that maybe 70 per cent of Indigenous people voted no and 30 per cent voted yes, or do you think it was even higher?

Dr Mowbray—Sixty-three per cent of the mobile booths were against it.

CHAIRMAN—Thank you.

Ms McCarthy—I will just respond to Mrs Miller. That is an important area and it is certainly something that the Statehood Steering Committee has been very aware of. In the last three to six months we have had a couple of people working with us on the Statehood Steering Committee to create a pathway with the Department of Education so that, as of February next year, there will be an educational rollout throughout primary schools across the Northern Territory. That is simply because the issue that Mrs Miller has raised is absolutely crucial to dealing with our youth. We see that the partnership with the department of education will be the way forward on that. I would certainly like to keep Mrs Miller informed on that.

Mr TOLLNER—What sort of education program will that be, Barbara—can you give us a bit of an idea?

Ms McCarthy—I can certainly find out more on that. At this stage it is still in the early negotiations and discussions with the Department of Education and with the deputy CEO. We will have perhaps a more informed answer to give you either tomorrow or Thursday.

CHAIRMAN—Are there any other comments anyone would like to make?

Mr Liddle—Can I just say one more thing? Yesterday I went down to the Mutitjulu community and had a meeting with the community.

CHAIRMAN—How far away from Alice Springs is it?

Mr Liddle—Uluru—500 kilometres. We were talking about restaffing the clinic and the community elders said, ‘We want our kids to go and work in that clinic.’ The administrator, who is appointed by ORAC, said, ‘What are their educational qualifications?’ The old ladies looked at the floor because those kids cannot read and write. We need to start further back than that and go through the process which Barbara was talking about. Those kids want the basic reading and writing—1, 2 3; that sort of stuff. Without that, they cannot understand what the hell statehood is about. That is what Bernie was saying just a while ago. We need to start lower than the grass

roots level, really, to try and pass that information on to these young kids. They are our next generation of Territorians—long-term Territorians.

CHAIRMAN—I think there seems to be consensus that there needs to be a proper education program and that maybe that was one of the faults of the 1998 attempt. Are there any other comments anyone else would like to make?

Mr Snowden—It is not just about schools; the fact is there are between 3,000 and 5,000 young people in the Northern Territory over the age of 13 who have been to primary school and do not go to school and do not get any access to any school. What is happening about those people? Despite the fact that we do not want to make this political, that is really the direct result of an abrogation of responsibility by a previous government—failing to provide education services. Until we accept the issues—

CHAIRMAN—Were there none or were they inadequate?

Mr Snowden—There were no high school services at all in any bush community across the Northern Territory until 2001.

CHAIRMAN—What about in the general media in the Territory; was there much education or attempted education?

Mr Snowden—Let me just finish this point because it goes to the Kalkaringi Statement. One of the issues in there is access to educational services. People want to make sure that, whatever system of government exists in the Northern Territory, the citizens of the Northern Territory have equal rights to access those sorts of facilities and infrastructure such as education and health services. To date, they do not. So do not be surprised that (1) there are low levels of literacy and (2) not only are there low levels of literacy but literacy in what sense? Being able to read and write is one thing; being able to understand concepts of governance is entirely different. So it is a very complicated issue. You cannot just produce a document, put it into a language and say you have therefore carried out your responsibility. You actually have to sit down and articulate with people, discuss with people, talk about concepts and actually educate them, if we are going to get a proper outcome to this process. So with all due respect to the committee, I hope they understand that it is far more than just putting out literature; it is a lot more to do with giving people—

Mrs Braham—Not many Aboriginal people could actually read that statement, the Kalkaringi Statement—very few.

Ms Weepers—But it was produced out of a meeting of 800 Aboriginal people.

Mrs Braham—But how many could actually read it? Very few.

Ms Weepers—That is precisely what Warren is saying. You need different methods.

Mrs Braham—I am not disagreeing with him. We think literacy education is something that we need to address, but we are also talking about statehood in a way that is at their level. Education programs for high school students in town have gone on, and I am quite sure that the

person who is working with the Statehood Steering Committee now—she is a very well-known Aboriginal lady—will produce documents that will be able to get the message across. We have to start, because we did not have that before. So let us not dwell on the negatives and all the things that happened in the past; let us all step forward and move on.

Mr TOLLNER—I have got nothing much more to add, Mr Chairman. One point is about a number of the people that I talk to—and I made this point over lunch. Once or twice a year people will come and see me with the specific purpose of saying, ‘When are we going to be a state?’ but it is far more prevalent that people come to me and say, ‘When is Australia going to get rid of the states?’ It seems that, whilst we here in the Territory are very keen to progress the issue of statehood, there are people all around the country who are very keen to progress the idea of abolishing the states. But apart from that little—

CHAIRMAN—Because the media is here today, I will not ask for your view on that! Are there any other comments? We are just about out of time.

Mr Snowden—Bernie said something earlier about Queensland and Western Australia. Maybe we should be really innovative and say, ‘Let’s just take the area to the west, Mount Isa to the west, Pilbara to the north, the Northern Territory, and make up a new state of Northern Australia. That would be an interesting development.

CHAIRMAN—That brings us to the end of the proceedings today. I would genuinely like to thank everyone for participating. I think the discussion has certainly been frank, open, lively and, I hope, productive. I have to say that, from an Australian government perspective, it is pretty clear that statehood will be going nowhere until the Territory sorts out what it wants. Once the Territory sorts out what it wants, it is then a question of negotiating with the Australian government on what the Australian government is prepared to give—what terms and conditions on representation and so on. From around the room at the moment, it seems that the Territory has got some distance to go before you can arrive at a position. With respect to any attempt to progress it until the Territory have arrived at what Territory people want—however you describe Territory people—it would seem that any move to statehood would be doomed, or deemed to follow the process of the previous attempt.

Thank you, Warren, as the local member, for being here. Thank you, David. Thank you, members of the Territory parliament. I think it really is important that, as much as possible, we de-party politicise this process, because if you want statehood to happen, if it becomes a party-political hot potato, it is certainly not going to go anywhere fast. Thank you very much. I will adjourn the proceedings now and the committee will resume at 9 a.m. tomorrow at the Northern Territory Parliament House. I would welcome anyone who happened to be up there to come along. We have got two days of proceedings there. Hopefully, at the end of this, we will all feel that it has been worthwhile. I personally have gained a lot from today. It has assisted my understanding, and I would hope that others feel the same way.

Resolved (on motion by **Mr Tollner**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 2.47 pm