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Official Committee Hansard

**HOUSE OF  
REPRESENTATIVES**

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL  
AFFAIRS

**Reference: Machinery of referendums**

THURSDAY, 29 OCTOBER 2009

CANBERRA

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**HOUSE OF REPRESENTATIVES**  
**STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**Thursday, 29 October 2009**

**Members:** Mr Dreyfus (*Chair*), Mr Slipper (*Deputy Chairman*), Mr Andrews, Mr Debus, Mr Georgiou, Mr Melham, Mrs Mirabella, Ms Neal, Mr Neumann and Mr Perrett

**Members in attendance:** Mr Dreyfus, Mr Melham, Mrs Mirabella, Ms Neal, Mr Neumann, Mr Perrett and Mr Slipper

**Terms of reference for the inquiry:**

To inquire into and report on:

1. The effectiveness of the Referendum (Machinery Provisions) Act 1984 in providing an appropriate framework for the conduct of referendums, with specific reference to:
  - a) Processes for preparing the Yes and No cases for referendum questions;
  - b) Provisions providing the public dissemination of the Yes and No cases; and
  - c) Limitations on the purposes for which money can be spent in relation to referendum questions;
2. Any amendments to the Referendum (Machinery Provisions) Act 1984 the Committee believes are required to provide an appropriate framework for the conduct of referendums;
3. Any other federal provisions relevant to terms 1 and 2 above, as the Committee considers appropriate.

**WITNESSES**

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**Committee met at 9.32 am****CAMERON, Mr Rodney MacArthur, Private capacity**

**CHAIR (Mr Dreyfus)**—I declare open this public hearing of the House of Representatives Standing Committee on Legal and Constitutional Affairs in the inquiry into the machinery of referendums. The hearing is open to the public and a transcript of what he said will be placed on the committee's website. I welcome everyone here today.

Welcome, Mr Cameron. The committee does not require you to speak under oath. You should understand that these hearings are formal proceedings of the Commonwealth parliament and giving false or misleading evidence may be regarded as a contempt of parliament. Did you want to say something generally about this topic?

**Mr Cameron**—Yes.

**CHAIR**—Then the committee will have some questions.

**Mr Cameron**—I have given it a little bit of thought in the few weeks since I was asked to come. I do not want to be a sort of killjoy at the outset—

**CHAIR**—Feel free.

**Mr Cameron**—but I must say that I think that the deliberations that this committee is having about both the machinery of referendums legislation and also the question of community engagement and communication, while no doubt very worthwhile, will count for very little though in the main game if the main game is trying to wheedle a yes vote out of a reluctant Australian electorate. I am sure that the committee will make a number of sensible and insightful recommendations about an anachronistic process but I am afraid that this is really only chipping away at the edges.

After the less than pleasurable experience of fighting 17 referendum campaigns since 1973, I have reached the following conclusion: there should not be yes and no cases at all, because no government should ever put a referendum to an increasingly sceptical electorate unless both sides of politics are committed to a yes vote and to all questions put, and there is a cast-iron agreement from the opposition to support—otherwise you can kiss goodbye to the chances of carrying the referendum, no matter how apparently innocuous the question is.

Thus, in my world there would not be a no case except perhaps one championed and funded by private interest groups. In a politically contested referendum, the no case will nearly always win, because referendums are decided not on the merits of the case, not on the rationality of the argument, but on ignorance, doubt, fear and emotion. If one side, the no side, is playing on fear and ignorance in the electorate then that side will nearly always win.

Indeed the very process of referendums is a very poor means of gauging public opinion on any matter. The archives of all the political market research companies are filled with opinion surveys that are hugely at variance with referendum outcomes. Despite the shortcomings of many polls and many pollsters, I believe that the result of a properly conducted survey of a few

thousand voters will be a more accurate representation of the community view than an actual referendum result of the entire electorate. This is because the pollster asks a very simple question, directly and in plain English. ‘Do you think the federal government and state governments should be able to refer powers to each other when they agree to do this?’ asks the pollster. ‘Do you think local government should be able to be directly funded by the federal government?’ ‘Well, of course they should be,’ say the punters, and the polls predict a 70 to 80 per cent yes vote. But the referendum result only a few days later gets only half this figure. So who is right here—the polls or the referendum result itself? I believe that the polls are—and I am often not a defender of polls.

I have been in this silly game myself. I told my client, the Australian Local Government Association, in 1988 that 80 per cent of the electorate supported the principle of direct funding of local government. Did I think that the referendum would pass: no way! I think we did well to get 34 per cent. Why was this? The main reason was that one side of politics found it politically opportune to oppose it even though it supported the principle. The second reason—almost as significant and I think a key to the unhappy history of the yes vote in Australian referendums—was that the electorate was not asked whether they supported direct funding of local government. Rather, they were given a pencil and several official pieces of paper with coats of arms, ushered into a cardboard box, and asked whether they supported an act to change the Constitution so as to allow something or other. No way am I supporting this important, official major change—thinks the voter—I thought it was about more money for my local council. Silly me. So my starting position is: do not have referendums at all, if opposed by the other side—

**CHAIR**—Thank you very much for your statement. We will return.

**Proceedings suspended from 9.38 am to 9.59 am**

**CHAIR**—I call the committee to order. I am sorry we were interrupted, Mr Cameron. You can continue your opening statement.

**Mr Cameron**—No, I think I have said enough.

**CHAIR**—Not at all. I was very interested in what you were saying, gloomy though it was.

**Mr Cameron**—I will try to be a bit more constructive!

**CHAIR**—If you have prepared something in writing, we can take that.

**Mr Cameron**—It’s only notes, but, yes—sure.

**CHAIR**—Thank you.

**Mr Cameron**—I made a few other notes about things that may come up.

**CHAIR**—If you can provide those to be secretariat, we will treat them as an exhibit.

**Mr Cameron**—Sure.

**CHAIR**—Given that we have been interrupted, perhaps you could sum up.

**Mr Cameron**—My perhaps heretical stance is that there is no point in having referendums if they are contested. There should not be yes/no cases. However, in the likelihood that that may not happen in the short term, I would be very happy to talk about some means of trying to increase the engagement and interest of the electorate. I could either do that or respond to your questions.

**CHAIR**—We will let some questions be asked because I think everyone is edgy that we might be called away again.

**Mr MELHAM**—There are two things that I wanted to raise with you, Mr Cameron. Firstly, let us go back to the republican debate and the form of the questions. I was amused by the debate that took place in that referendum on the republic about what the question should or should not be. I formed the view that most people do not read what they are ticking off anyway; it is yes or no. Even as someone who is pretty interested, I did not read the full question; I just went in and ticked. I am interested in how that sits with your views about the simplicity of questions. I think it is about an argument, or a debate, in the campaign as to whether you can get a simple message out, which I thought the monarchists did beautifully.

There is a second thing I would not mind finding out from you. In the same campaign I spoke against the preamble on a number of occasions, even in the caucus, but it was officially supported by both sides of politics. The only person who voted against it was Peter Andren, the Independent. It only got 39 per cent of the vote, yet that was something that allegedly had bipartisan support. Is that because the punters twigged to how bad a question it was?

**CHAIR**—You can ponder the answer, Mr Cameron. I am sorry, but we have got to go to another division in the chamber.

#### **Proceedings suspended from 10.02 am to 10.16 am**

**CHAIR**—I call the committee to order. Mr Cameron, you were on the point of responding to a question, the answer to which you have had a lot of time to consider!

**Mr Cameron**—I think, Mr Melham, you were asking about the question that was asked in the referendum. You were saying that you did not read it; you just went and ticked a box.

**Mr MELHAM**—Yes.

**Mr Cameron**—You, of course, are entirely atypical, because the electorate at large had not the slightest idea what the damn thing was all about. I have pulled out a highly confidential ANOP report for the yes case in 1999. This was written about three months before the referendum, at the beginning of the campaign but after substantial media, political and general coverage. I mean, we had been building up to this for some time. I will read out a few sentences. ‘Forty per cent of the general electorate and 50 per cent of those voters that we would call swinging or uncommitted voters, when told that there would be a referendum in a few months, had no idea what it was about. The most basic key terms—republic, president, head of state—were not understood at all by this percentage. The Constitutional Convention drew a complete

blank. There is no personal relevance or engagement in the issue. The model being proposed was unknown and, when explained, aroused hostility and suspicion on the notion that it was a political fix with politicians doing a deal.' All of this was taken considerable advantage of by the gentleman sitting behind me, Mr Flint. It goes on: 'The yes side had to perform a massive education and information campaign before it could even begin pushing some emotional buttons to persuade the voters to vote yes, and the hot buttons on the no side were many and easily aroused.'

The upshot of that was that the yes campaign had to be an education campaign as well, particularly because the government's absolutely disgraceful 'neutral' education campaign was anything but neutral. It was, in fact, helping the no vote considerably by suggesting to the voters that this was a major, dangerous thing to consider. So the poor old yes campaign, unloved as it was and with a model supported by few, had its work cut out.

**Mr MELHAM**—But it still got 46 per cent of the vote, whereas the preamble got 39 per cent when it supposedly had bipartisan support.

**Mr Cameron**—The preamble had become so mired in confusion and controversy. The no campaign was skilful and the preamble got lost in the wash. The electors said, 'What is this? I haven't the faintest idea what this is about, so I'll vote no.' You could make the same case for other apparently innocuous questions that have also received resounding no votes. The basic reason really has nothing to do with the substance of the question and everything to do with ignorance and fear of change.

**Mrs MIRABELLA**—I have a few questions. You said a minute ago that the government ran the line that this was a major dangerous campaign. I do not seem to recall that. Yes, I suppose there was an understanding that it was a major decision because it was changing the Constitution, but I do not recall the official government line being that this was dangerous.

**Mr Cameron**—Don't you remember the images of the so-called neutral campaign? It was coming up to a T intersection, and it got slower and slower, and they said: 'You've come to a really important choice point. Think long and hard about it. That way leads there; that way leads there.' The images conveyed to an electorate basically not terribly interested in the process were that this was something major; this was something dangerous—T intersections are always dangerous.

**Mrs MIRABELLA**—No, it did not say that this way was more dangerous than the other way, but it was a major decision. Some of us do believe that changing the Constitution in whatever capacity is a major thing.

**Mr Cameron**—Sure. It was a very important concept for the 'no' case to get across because 'the goodies' were saying: 'Look, this is a no-brainer. It's not really important. It's not really a major issue; it's just a simple matter.' The other side were saying quite the reverse. They have every right to say it, of course, but my point is that the government should not be helping to reinforce one side or another.

**Mrs MIRABELLA**—But, putting aside whatever the referendum question is, I would heavily contest the notion that saying that a constitutional change is not significant is really a

contradiction in itself, because why go ahead with it if it is not significant? The other thing that was interesting is that you referred to some of those questions posed three months before the election. You said that people really did not know what it was about, they were not familiar with the model, and the rest of it. Do you think part of the problem with referenda is just general political apathy? People do not care enough, as perhaps those who are involved in the political process and those who push for certain referendum questions do?

**Mr Cameron**—Yes, of course. I think we all must start at the fact that only a minority is ever going to get engaged. I suspect you have wrestled with the concept of engagement, and I think it is actually a bit of an elitist concept to assume that you are going to try and get most of the population engaged. You just will not. So I think at the starting point you have to say, ‘Well, our maximum engagement percentage is perhaps half the electorate.’ If we did not have compulsory voting in this country, that is all we would get out to vote. So, if we define engagement as trying to maximise the number within half the electorate, I think that would be our goal. There are ways that you could increase engagement. We do not do that very well. But I think I would lower my sights and accept the fact that, try as we might, we are not going to interest half the electorate.

**Mrs MIRABELLA**—It is a fundamental issue of democracy: do you respect the wishes of the majority no matter what your opinion may be about their level of knowledge or not? I think that is a key issue of discussion in the referendum. You will recall that after the result was clear there was a whole lot of acrimony, and much of it was directed at the Australian population: they were ignorant; they did not know what they were talking about—with which, of course, I would disagree.

**Mr Cameron**—Not ignorant; uninterested, and they have every right to be uninterested in constitutional change. I think we just have to accept the fact.

**Mrs MIRABELLA**—In your experience of 17 referenda, have you had the experience that, if there is nothing really that grabs people, if they do not see a practical reason for it, they just will not support it?

**Mr Cameron**—Yes. In any attempt to increase engagement, No. 1 is to demystify the process, No. 2 is to give it as long a time as possible and No. 3 is to try and make it relevant to ordinary people’s lives. If it is something about an esoteric tinkering with the Constitution, you will be battling to get any sort of engagement at all, but if you can try and relate it to how it is going to affect them—

**Mr PERRETT**—Could I add something to that. In terms of the discussion about being educated, if you look at the 1967 referendum, there were still one in 10 Australians who thought that Indigenous people should be classed as fauna. Everyone talks about the fact that 90 per cent of the population thought it was an important thing to change, but the reality is that still one in 10 said, ‘No, it is not important.’ I am not sure if it is that rump of no that will always be no—

**Mrs MIRABELLA**—Ten per cent—I mean—

**Mr Cameron**—I am not even sure that they were saying that. They may have not had the slightest idea what they were doing when they came to the ballot box, and it was always safer to write ‘no’.

**Ms NEAL**—Your view is obviously that unless there is unanimous support for a referendum it will not succeed. Does that mean we make practical changes to the way referenda are conducted, or do we leave the apparatus as it is and just never proceed unless everyone is in agreement?

**Mr Cameron**—Let us get back to the practical world and say that a government in its wisdom is nonetheless going to proceed with a referendum that may or may not be contested. What do we do to try and increase the engagement of at least half the population? I am a bit attracted to the notion of setting up some sort of semipermanent body—a referendum commission, if you want to be grandiose—which is going to represent the community and try and engage with it. This would be set up a long time in advance of the referendum—at least a year, probably more. You might appoint some people from community groups and from interest groups. You might have some sort of ballot system for the rest. Most of the government corporations and statutory authorities have community consultation boards or advisory groups which have various different methods of being selected, but most of them work pretty well. The ones I am associated with, the ABC and Australia Post, have consultative committees and, with varying degrees of success, they work. You could have a much larger and more established group, and perhaps the sole task of this group would be to come up with ways of getting short, relevant messages to the community. It might appoint community ambassadors. It might employ PR companies to get media interest.

**Mrs MIRABELLA**—Would this group be to obtain opinions from the public or to sell ideas to the public?

**Mr Cameron**—Ideally, it would be just selling a ‘yes’ case, because you are not going to have a referendum unless both sides agree. If you are selling both sides, your aim is to inform and educate the community as to the issues involved.

**Mrs MIRABELLA**—But really you are promoting one argument.

**Mr Cameron**—Ideally, you would be promoting the argument that both sides agree on. What I am trying to say is that the task is to try and get into the community by all forms of new technology. You do not want to be too prescriptive about this because things change so rapidly. You would not be using social network sites at the moment because it would be inappropriate and counterproductive, but in a couple of years it might not be. This committee would decide, using all the new technologies—twitter and mobile telephony—and they would be getting out little, short messages to the community and hopefully making it a bit of a water cooler conversation. The electoral office, I note, are—somewhat under the radar—collecting email addresses on a voluntary basis. I am sure they are guarding that with their life for fear that it is going to be used for nefarious purposes, but that is going to be an extraordinarily valuable communication channel in the future.

**CHAIR**—The commission came to a roundtable in Sydney and said that they were embarking on use of the internet.

**Mr Cameron**—They admitted it, did they?

**Ms NEAL**—They did.

**CHAIR**—We asked them for data about that and they provided some data, but it shows that as yet the number of internet originated enrolment forms is very low.

**Mr Cameron**—Yes. Well, they have not tried.

**CHAIR**—The overwhelming source of enrolment forms and change-of-address forms is hard copy which they have initiated by sending them out to voters.

**Mr Cameron**—Yes, they are not trying very hard to use it.

**Mr MELHAM**—That will change in the future because there have been some recommendations out of the Electoral Matters Committee that I think you will find all sides agree with in terms of updating the enrolments.

**Ms NEAL**—So essentially you are talking about an ad hoc committee that is formed for the purpose of promoting a particular concept at a referendum.

**Mr Cameron**—Yes.

**Ms NEAL**—But it will be disbanded once that is concluded. It would not be ongoing?

**Mr Cameron**—It might be. It depends on how enthusiastic government is about putting up referendums.

**CHAIR**—That is really the point, isn't it, Mr Cameron?

**Mr Cameron**—Yes.

**CHAIR**—We have such an infrequent occurrence of referendums.

**Mr Cameron**—We have these days.

**CHAIR**—It is 10 years since the last one, 11 years before that and 11 years before that, to go back to 1977. That is three lots in 30 years. This will be the first decade in which the Commonwealth has not had a referendum, unless we are extremely speedy about it. It has struck me that there is not much point set setting up a standing committee, which is why Ms Neal's question directed at whether or not it would be appropriate simply to set up for the purposes of a referendum might make more sense.

**Mr Cameron**—I remember one Prime Minister, followed by a particularly activist Attorney-General, who had the view that if we keep on giving them referendums it will help take the fear, mystery and ignorance out of it all. I strongly disagreed and said that the more practice you give them at voting no, the better they will be at doing so.

**CHAIR**—And that was the experience of the 1980s.

**Mr Cameron**—Yes. But governments in the future may again get enthused with the idea of constitutional change.

**Mrs MIRABELLA**—Can I ask a question? Sorry—have you finished, Ms Neal?

**Ms NEAL**—No, not really, but I was going to go to a different area. I was going to move on to communication. If it is on the same area—

**Mrs MIRABELLA**—Just backtracking a bit, if you have the cast-iron agreement of the opposition it works a little bit differently on the conservative side of politics because you do not have the strict party discipline that exists in the Labor Party. What I am saying is: you could never guarantee that there would not be one or two of us who may disagree with a particular question. Presumably, a referendum would still be doomed if you have a small group of politicians outside the agreement of the two major parties.

**Mr Cameron**—Not necessarily. If it is assumed that both sides basically agree, then undoubtedly there will be an interest group that will just crop up. But I would take the funding away. I would not fund that group.

**Mrs MIRABELLA**—Did you say not to fund them—in no case at all?

**Mr Cameron**—No.

**Mrs MIRABELLA**—That is pretty undemocratic.

**Mr Cameron**—But if both sides fundamentally agree and it is only some outriders, then you say, ‘Okay, you go and present your own case, by all means.’

**Mrs MIRABELLA**—Don’t you think that the Australian public would view that even more cynically—the Lib-Labs agree 100 per cent that this should happen and there is no political dissension?

**Mr Cameron**—It depends on how big the minority group is. But, in basic terms, if we are able to get both sides to support it—the republic referendum was de facto Liberal-Labor—

**Mrs MIRABELLA**—No, it was not.

**Mr Cameron**—There were some Liberals on the yes side but they kept a pretty low profile.

**Mrs MIRABELLA**—No, I was actually involved, Rod. More than three-quarters of Liberal members of parliament were on the yes side and they were very active.

**Mr MELHAM**—They just did not carry any weight or momentum.

**Mr Cameron**—I beg to differ. Whenever we tried to get a prominent Liberal to come up and do something, they quickly went to ground. It was a de facto Liberal-Labor thing—and that is okay; that is fine.

**Mrs MIRABELLA**—What about Andrew Robb, who set up Conservatives for an Australian Head of State, and the rest of it?

**CHAIR**—We will have to go to the last question from Ms Neal because I want to spend some time with Professor Flint as well.

**Ms NEAL**—I just have a question on the issue of communication. At the moment there is a requirement that we post to everyone, and to avoid that we seem to have to amend the mechanism. I personally think that posting a lengthy and generally unreadable document to everyone is a complete waste of money in achieving the outcome of getting a yes vote in a referendum. What is your view about that way of communicating?

**Mr Cameron**—I would have the document at the end of the line of communications rather than it being the first thing people ever hear about an issue. I would have that as a very short, pithy 200- or 300-word document which is designed for the lowest common denominator. The details can then be gained by those who are interested either online or in a bigger printed document to be sent on request. But I would have a short, pithy, well-designed, lowest common denominator brochure which summed up the case. I am a bit out of touch now, but I would have thought you would not get much change out of \$30 million having an addressed, mass mail-out.

**CHAIR**—You are not far off the mark, Mr Cameron. The cost in 1999 of the yes/no pamphlet was \$14.5 million. We asked the AEC and they provided us with an updated figure. It would be \$25 million if it were to be done today.

**Mr Cameron**—I am not convinced that an unaddressed document is five times less effective. I think it would cost only about a fifth or a sixth of that, at least on the figures from the Australia Post board. But I would not have all my eggs in this yes/no booklet. I have it at the end of a whole year's worth of communications that hopefully have gotten to the community, and it would be just a summary of the case.

**CHAIR**—Kerry Jones made that point to us eloquently when we are in Sydney. We were discussing the yes/no pamphlet used in the 1999 referendum, and she made the correct point that the pamphlet came at the end of what had been a pretty active public debate with masses of material being provided by lots of different sources.

Mr Cameron, I have to end the session. I am sorry that it was a bit shorter than we had hoped it would be because we are going to move to Professor Flint. Thank you very much for attending. The secretariat will send you a copy of the short transcript of the evidence that you have given, and you can liaise with them if there are any errors. I call Professor Flint. The suggestion was that I call Australians for Constitutional Monarchy, but there is only one here, so I am going to call Professor Flint.

[10.38 am]

**FLINT, Professor David Edward, National Convener, Australians for Constitutional Monarchy**

**CHAIR**—Welcome, Professor Flint. The committee does not require you to speak under oath, but, as these hearings are formal proceedings of the Commonwealth parliament, giving false or misleading evidence may be regarded as a contempt of parliament. Do you want to say something by way of opening? We have to finish at 11 am because both Mr Melham and I are required to attend another committee hearing.

**Prof. Flint**—Very briefly, we operate under a charter drafted by Justice Michael Kirby. We are the dominant monarchist group in the country, winning over 70 per cent of the vote in 1998 and being awarded with 80 per cent of the seats on the vote no committee. The other two went to independent republicans.

By way of beginning, we challenge the proposition that the rate of constitutional change in this country is too low. If we compare ourselves with the United States and exclude the first 10 amendments, which are really an intrinsic part of the US Constitution—otherwise, there would be no Union—our rate is almost the same over one century as the Americans over two centuries. Given the fact that most of the proposals to change emanate from the federal parliament, usually to expand federal power or to change the federal balance, the people's views on those are reasonably predictable.

We put in five submissions. The first one is the central one, and that is that the people are entitled to have the yes and no cases and to see those cases as approved by the representatives of the people. We do not think these should be substituted by, mediated by or even assisted by the views of people who purport to be impartial but who are not accountable to the people. We have other submissions in relation to public funding. While there is public funding for elections we think there should be public funding of the yes and no cases in referenda. We have views on the counting of the referendum results in accordance with the plain words, we say, of section 128, which are: 'a majority of electors voting'—and informal votes are certainly people voting. We approve of the framework of calling conventions. We think the template in 1998 worked superbly and, on questions of great moment or perhaps even as a standing matter, conventions are a very useful way of engaging the people, as they did in 1998.

Finally, we submit that the parliament should provide that, as the Constitution intended, the only way of consulting the people in relation to a vote on the Constitution should be under section 128. That is the process provided in the Constitution. The founding fathers were well aware of the difference between a Swiss style referendum and a French style plebiscite. They knew that the plebiscite was essentially a blank cheque plebiscite with no details; details are given after and not before the votes. What we fear most in relation to the plebiscite is that it invites the vote of no-confidence in one of the world's most successful constitutions without in any way guaranteeing that as a result the Constitution will change but instead possibly creating years of constitutional instability until the people finally vote in a referendum. Those are our submissions.

**CHAIR**—Thank you for the summary. First of all, I want to thank you and your group for the written submission and the supplementary written submission, both of which were very helpful, and to pick up on a quotation from Alfred Deakin. It is a particularly eloquent one. It is at paragraph 2.5 of your submission. You have quoted Alfred Deakin as saying in the House:

It is our duty, when we ask electors to vote for or against momentous proposals of this kind, to give them the best material we have in order that they may form an independent judgement.

Just picking up on that statement, would you accept that times have moved on a bit since 1912 in the means of communication that are available to government to communicate with the people?

**Prof. Flint**—Even I would concede that.

**CHAIR**—Right. On that basis, and picking up the sentiment that is being expressed there by Deakin as to the importance of providing as much good information to the people as possible, should we not be considering a least a wider range of means than is presently provided for in the machinery legislation?

**Prof. Flint**—It is appropriate to consult the people and to communicate with the people in other ways, as we do. We have so much advertising now. But essentially it is most important that the people know what their representatives say, that the people know that those who propose and those who oppose the referendum in this place have approved certain cases which go before the people. They are entitled to have that so that they may reflect on it. I was delighted by the statistics which the AEC provided which completely rebut Professor Williams' anecdotal evidence that his constitutional law class, while they were preparing for an examination, did not bother to read the yes/no case. That shows that 51 per cent of those who received the yes/no case read all of it or part of it, but more importantly—

**CHAIR**—I think that might be overstating it a little, Professor Flint. They said they had read at least a part.

**Prof. Flint**—Yes. Well, they are entitled to be selective in their reading.

**CHAIR**—Yes.

**Prof. Flint**—But, in addition, what the AEC disclosed was that in 2007, when was a massive use of the internet in this country, only five per cent of the people said that they followed the election on the internet. We use the internet for other purposes, but for politics we still go to the press, to television and to radio. If they have that document before them they can then exercise their right to reflect on what the no case says and what the yes case says, and I think they are entitled to that.

**CHAIR**—Can I try to focus this. You participated, and we thank you for that also, in the roundtable that we had in Sydney. What has been troubling me is that if we do not move away from the printed pamphlet which is presently provided for in the machinery provisions but add to the printed pamphlet by one or more of a range of means of communication that are now available to us, who is to decide? The reason I ask the question is that at present in the machinery provisions it is a kind of self-executing device where the parliament has prescribed a

single means of communication to the people by the government about the referendum—and that takes care of any dispute, because there is a single means. Further, the government is prohibited from spending any funds other than for the purposes of the pamphlet. The former Prime Minister decided in 1999 that that was an inadequate provision and passed special legislation for the purposes of the 1999 referendum which enabled the expenditure of a great deal more money and established different procedures. We are interested in, and our terms of reference call for us to be interested in, whether or not it is possible to devise not an ad hoc process, as was used in 1999, but something that might be a little bit more lasting. The procedure adopted in 1912 is still with us. My question is, really: can you think of a process which would both convey neutrality and independence and enable better communication?

**Prof. Flint**—I strongly believe that the adversarial process which we use in the courts is the way in which truth emerges. In fact, I took the liberty of quoting Milton. He said about truth:

Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?

There is a great advantage. It is the way our society works. We work that way in elections and in court cases, and that is the way that truth emerges in our process.

**CHAIR**—I am not so much concerned with the adversarial process. It is the technical means of communication that I am focusing on. Who is to make the decision? At the moment nobody makes the decision. We have the government authorised by an act of parliament to send out a pamphlet, and the words in the pamphlet are authorised by the members of the parliament, who voted yes or no. If we move away from that single means to a range of means, have you given any thought to how that might be governed?

**Prof. Flint**—Yes. We proposed in the submission that there be public funding of the two sides and that this be done in the way in which it was done in 1999. That would mean that the advertisements are supervised as to integrity and other matters by publicly established rules. That seemed to work very well in 1999. We suggest that it start with a financial basis, indexed from today, of \$1 per member of population. That would give sufficient funds to conduct a reasonable, abstemious advertising campaign.

**CHAIR**—So that is public funding for the campaign, and the process of sending out the pamphlet, which you recommend be retained, is another set of funding? I just want to make sure that is clear.

**Prof. Flint**—That is right.

**Mrs MIRABELLA**—A significant focus of the current government is social inclusion, and we know that certain sociodemographic groups and older people do not access new technology as much as Gen Y. In your experience, how important has the pamphlet authored by members of parliament been to groups who are more marginalised in terms of technology?

**Prof. Flint**—I think it is crucial. In those groups who are interested, there are still significant numbers of Australians who do not have the internet. There are numbers of Australians who do not go beyond AM and FM radio—and there are groups who still do not even go into FM radio. But they have their television sets and that is where they get their information from. Looking at

news sources, I cannot really imagine that Twitter and Facebook are going to be areas which are going to be terribly interested in the intricacies of a constitutional referendum. They may well be, but that will start anyway—people will send out tweets, I suppose, in relation to some referendum question if they want to, and there will be appropriate reactions to it. I do not think we should get too excited about that sort of thing. A crucial area has been talkback. Talkback does tend to attract the older voters. But that is an area where you do hear people talking, and they did refer in 1999 to the fact that they received that yes/no booklet.

**Mrs MIRABELLA**—We know that plebiscites have no legal standing as such. Why do you think they have been proposed over several years by various politicians as an alternative or a precursor to constitutional referendums?

**Prof. Flint**—If I were cruel, I would say—

**CHAIR**—Could I just interrupt. There are two questions there. Some people propose plebiscites as a precursor to a referendum, recognising the primacy of section 128 of the Constitution. Others propose a change to section 128 and, in that sense, are proposing plebiscites as an alternative. I am trying not to have the two questions conflated into one. So could you address both possibilities.

**Prof. Flint**—Taking the second question first: there has been an attempt to change section 128 under the Whitlam government. There was an attempt to reduce the number of states that you need, and of course that was rejected.

**CHAIR**—It failed.

**Prof. Flint**—I think any proposal to change 128 is doomed. I do not think it is even worth bothering. It is like the preamble; it is not worth trying. As to the other question, about the use of plebiscites, I suspect that there is an attempt to try and find the silver bullet which will overcome the natural resistance to change, and the idea of a plebiscite is obviously to soften up the population. The plebiscite will be written and designed, with the greatest of respect, by spin-doctors who will try and work out what is the most likely question which will get the right answer. If you go, for example, to the Quebecois referendum, it was something along the lines of, ‘Do you approve the arrangement between Quebec and Canada within the meaning of the agreement of such and such a date?’ When they did exit-polls, one third of the people who voted yes thought they were voting to stay in Canada it was so confusing. You can design a plebiscite question either to confuse or to drag in the maximum number of votes.

**CHAIR**—And who wrote that question?

**Prof. Flint**—The Parti Quebecois. It had no standing from a federal point of view and, since then, the Supreme Court, the High Court and the government have enacted a clarification act which requires that, for a referendum, as they call them, to have any status in Canada, it has to comply with certain criteria. That followed from an advisory opinion of the High Court.

**Mr NEUMANN**—Were the Parti Quebecois or the Liberals in power at the time?

**Prof. Flint**—The Parti Quebecois were in power in Quebec at the time, and of course that was their whole raison d’etre.

**Mrs MIRABELLA**—Some people say that providing people with information in the booklet, detailing the changes to the Constitution and outlining that this is actually a change to the Constitution is really inflating the actual importance of the issue and that people should be asked simpler questions that in their opinion reflect the essence of the change. What is your opinion about that?

**Prof. Flint**—The decision by the founders to insert such a provision in the Constitution, and also to require that the people approve of the Constitution separately, was a most advanced act—a very sophisticated act. Probably one of the most important things the people can do—more important than voting in an election—is to change the basic law. I am old enough to remember the Communist Party dissolution referendum, and that was one which excited the whole nation. I can remember people wearing badges—they were ‘Vote no’ badges; no-one wore ‘Vote yes’ badges—and I remember asking my father about that. It was something which galvanised the country. It was terribly important because it meant that the federal parliament could not only outlaw a political party but make it a criminal offence to belong to an otherwise legal party. Now that was a pretty big change—and the vote was taken not during just the Cold War; it was taken during a hot war in Korea when our troops were fighting—and the people exercised a certain degree of sophistication.

**Mrs MIRABELLA**—So are you saying that the fact that it was understood to be a change to the Constitution elevated the importance of the issue?

**Prof. Flint**—It was an important issue and it was rightly elevated because the High Court required that—

**CHAIR**—I was about to mention that you could add to the circumstances of that Communist Party referendum the fact that the High Court had given a spectacularly well-publicised and important decision in the year before the referendum, following on from a very lengthy hearing in the High Court which was very well reported itself. Even the arguments before the High Court were very well reported. That is an unusual situation—for an Australian referendum to be following on from a High Court decision.

Interestingly, if you want to go as far back as the 1946 referendum, it too followed on a High Court decision. That High Court decision, which ruled that the Commonwealth did not have needed powers in the health and pensions area, was a precursor to success in that referendum, I would suggest. So I would agree with you, Professor Flint, that the circumstances leading to a referendum are very important, and they are rather hard to create artificially.

**Prof. Flint**—Yes, and that 1946 referendum can be distinguished from other grants of power to the Commonwealth in that, until that High Court decision, the federal parliament had been giving pensions and exercising a power it assumed it had. So what the people were doing was confirming something that already existed, rather than granting a new power to the Commonwealth.

**Mr NEUMANN**—In terms of the notoriety of that, can you comment about the adequacy of the 14-day requirement about getting information to the people, because those cases that the chair was talking about were very well-publicised. The Communist Party dissolution issue was really hot, if you read the history books. I did not have the luxury of actually being there—

**Prof. Flint**—It is not a luxury!

**CHAIR**—I don't think Professor Flint was very old in 1951.

**Prof. Flint**—But it is not a luxury being my age!

**Mr NEUMANN**—I was not commenting on his age.

**CHAIR**—It was a comment, not a criticism.

**Prof. Flint**—I think it would be artificial if you were to send out the yes/no too early, but I think it had to do with the circumstances of 1946, and the Communist Party one, and also the republic referendum, because we had the convention, the daily broadcasts by the ABC, the reports in the newspapers, and the various things that the ARM got up to, the celebrities and the media—the media were campaigning heavily for it. That made it reasonably notorious.

**Mrs MIRABELLA**—As politicians, we try to save our pennies so that when there is an election we can send out as much personalised addressed mail to our constituents as possible. When you run out of money, I suppose you start sending householder distribution letters et cetera, the idea being that if something is personally addressed to you rather than just to the householder, you will open it. It has been suggested that one thing that could be done with the yes/no written case would be to send it to the householder instead of to individual people. What is your opinion?

**Prof. Flint**—I do not think that is a good idea, because the evidence that I have heard from people who are expert in these things is that something that is addressed to the householder tends to get thrown away or looked at by one person rather than by everybody, whereas, if you receive something addressed to you, you are more likely to look at it. It is worth spending that money for such an important thing, I think.

**CHAIR**—Because of the time, I am going to have to end the hearing. I thank you very much again, Professor Flint, for the written submission, which really does convey the position of your organisation. The secretariat will send you a copy of the transcript so that you can make any corrections that need to be made.

Resolved (on motion by **Mrs Mirabella**):

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 11.01 am**