



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

Reference: Machinery of referendums

THURSDAY, 5 NOVEMBER 2009

MELBOURNE

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

TO EXPEDITE DELIVERY, THIS TRANSCRIPT HAS NOT BEEN SUBEDITED

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

<http://www.aph.gov.au/hansard>

To search the parliamentary database, go to:

<http://parlinfo.aph.gov.au>

HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Thursday, 5 November 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 Andrews, Mrs Mirabella, Mr Neumann 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

APPLEBY, Ms Gabrielle, Lecturer, Law School, University of Adelaide	32
GALLIGAN, Prof. Brian John, Private capacity	46
HILLS, Mr Rodger, Executive Chairperson, Rethink Australia.....	15
PATMORE, Mr Glenn, Private capacity.....	63
PHILLIPS, Dr David Michael, National President, FamilyVoice Australia.....	25
SAUNDERS, Professor Cheryl Anne, Member, Centre for Comparative Constitutional Studies, Melbourne Law School, University of Melbourne	2
WILLIAMS, Ms Jennifer, Private capacity	55
WILLIAMS, Professor John, Professor of Law, Law School, University of Adelaide	32

Committee met at 9.06 am

ACTING CHAIRMAN (Mr Slipper)—In the absence of the chairman, I declare open this public hearing of the House of Representatives Standing Committee on Legal and Constitutional Affairs. This is the inquiry into the machinery of referenda. This hearing is open to the public and a transcript of what is said will be placed on the website of the committee. If anyone would like any further details about the inquiry or transcript please ask the committee secretariat staff here at the hearing. I welcome those who are present. I am sure our discussions will be informative.

[9.07 am]

SAUNDERS, Professor Cheryl Anne, Member, Centre for Comparative Constitutional Studies, Melbourne Law School, University of Melbourne

ACTING CHAIRMAN—Welcome. Although the committee does not require you to give evidence under oath, these hearings are formal proceedings of the Australian parliament and giving false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. Would you like to make a brief introductory statement before we turn the white light in the direction of your eyes and ask you some questions!

Prof. Saunders—Thank you, I would. I have been interested in the issues that are before the committee for a very long time and I was very pleased when I saw your terms of reference. I was involved for a very long time with the Australian Constitutional Convention that met between 1973 and 1985, I was Deputy Chair of the Constitutional Centenary Foundation for the decade of the 1990s and I was a member of the expert panel in connection with the 1999 referendums. I am also a constitutional scholar and I have done quite a lot of research on the history and practice of constitutional change in Australia and elsewhere. I would be happy to answer questions on any of those experiences.

My involvement in these issues over such a long period of time has caused me to reflect on why we have such apparent difficulty with the referendum in Australia. I think it is because the referendum adds an element of direct democracy to what otherwise is predominantly a highly adversarial system of representative democracy. The latter infuses our political culture and we have never really come to grips with the very different dynamics that a requirement for a referendum creates. That is reflected in the procedures that we use for the referendum and, by extension, in the outcomes. It explains, I think, why we have no established practice of involving people at the stage when a proposal for constitutional change is being developed. Typically, a proposal to change the Constitution is put to the parliament as a policy initiative by the government in the same way as any other legislation.

More importantly for present purposes, I think this explains our referendum procedures. In their present form, the primary aim of those procedures is to ensure that the positions of those supporting and opposing the proposal in the parliament are treated equally, and equality is equated with fairness. The primary aim is not to inform the voters. And these are two quite distinct goals: treating the various proponents of a proposal equally and helping the voters to understand a proposal. They are of course linked in the sense that informing the voters requires them to be given a sense of the pros and cons of a proposal, but merely offering pros and cons, especially in the extreme form produced by the yes and no cases, does not really help to inform. So I think that we need to adjust our procedures to the different form of decision making that a referendum represents, and I think there is some urgency about this.

In order to take the referendum seriously, we need to focus on the goal of informing voters about referendum proposals and, in some cases, involving them in the process of policy making at an earlier stage. Voters may or may not want to understand a referendum proposal—to put work into that—and that is fine; that is their right. But the procedures that we use should

encourage people to be interested in these matters and should assist them to understand if they are inclined to be so. The pamphlet that we presently distribute does little if anything to meet this goal.

I should say that I think that the distribution of the text of a proposed constitutional change is symbolically important. People should have access and the right to have easy access to the proposal on which they are being asked to vote, however difficult it may be to make your way through that proposal. But the arguments for or against, as prepared by or behalf of members of parliament, are highly adversarial and directed to winning the vote at any cost rather than to informing the public. I direct you, for example, to the proposal for four-year terms that was put forward in 1988. It had a very impenetrable yes/no case.

My final point on the question of the procedure we presently follow is that the pamphlet itself is delivered in a format that is completely outmoded as a means of communication. We would all be laughing at this pamphlet as a means of informing the people if the question were coming up in any other context. For knowledge to be made available effectively, we need to take advantage of a range of other media, and I am happy to talk about the experience of the Constitutional Centenary Foundation with the range of media that we might involve.

In conclusion, I would suggest the following: an independent body should be appointed to prepare and oversee the public information campaign in relation to each referendum. This information should include the pros and cons of a proposal but should not be limited to this. There is plenty of experience elsewhere in the world with preparing information for a referendum along those lines. I know you have been directed to various countries. Can I just add one to your list, which is New Zealand. When the New Zealanders had their several plebiscites on their electoral system in the early 1990s, they established an independent panel which I thought did a great job. They were quite critical of it, but I thought it did a good job and I have some of that literature here, if that would assist the committee.

Secondly, the text of the proposed change should be available as of right to each voter, together with perhaps a summary of the arguments for and against made in the parliament. I do not think that needs to be posted to every voter, but it needs to be made easily available—available online, perhaps, with an opportunity to request a copy and available in a range of public places.

Thirdly, if this were done properly, it might obviate the need for further public funding of the sides of the debate. I am very sceptical of the view that there are only two sides of a debate on a referendum proposal in any event, but it may be that in particular cases public funding of distinct sides would be useful either in the interests of fairness or in the interests of public information, and I think I would favour equal funding in such a case. In the case of some proposals for change, I think that procedures should be developed to enable people to be informed and preferably involved well before the referendum stage. Thank you.

ACTING CHAIRMAN—Does it concern you sometimes that the wording of the question on the ballot paper does not really adequately explain the constitutional change intended to be effected by that question?

Prof. Saunders—Yes, I think that the wording is an important issue as well.

ACTING CHAIRMAN—Are you suggesting that there should be an independent body which would put forward the cases in favour and against?

Prof. Saunders—No, I am suggesting that there should be an independent body that should help people to understand what the proposal that they are voting on is. That should include the varying views that there might be of it. So it should include the pros and cons, but it would not be an independent body preparing the yes/no case.

ACTING CHAIRMAN—So you still believe the yes/no case should go out?

Prof. Saunders—I do not think that the yes/no case helps to inform people. That is why I am saying that I think people should be entitled to the text and I think they should be entitled to understand what views were put forward in the parliament about the proposal, because the parliament after all is the body that has the responsibility of putting proposals for change to the people. I only thought of this recently as I was reflecting on what I might say to you, but I think I would favour the text of the proposal being accompanied by a summary of what members of parliament actually said about it in the parliament.

Mrs MIRABELLA—Isn't that just the yes/no case?

Prof. Saunders—No, I do not think so. I think the yes/no case is sharpened so as to have the maximum visual impact on voters. It might well be that the sorts of arguments you find on either side are the same, but in principle I would like the arguments put forward by the members of parliament to be summarised in that case.

ACTING CHAIRMAN—What about a situation like the 1967 referendum where there was no member of parliament prepared to oppose the question and thus there was no case distributed? Without looking at the particular subject matter under discussion at that time, it would seem to me not to be right that both sides of the argument are not put even if both sides were not expressed in the parliament. How do you feel about that?

Prof. Saunders—I think that the 1967 referendum makes my point quite well: that this is all about being fair to the views that are expressed in parliament rather than informing the voters. I agree that people should understand the pros and cons of a proposal of the kind there was in 1967, as in any other case.

ACTING CHAIRMAN—I presume there would be a lot of people who voted for that 1967 question who, given the interpretation of that result by the courts, might not vote for such a question again. I think people looked at it as giving Aborigines the right to vote or some vague notion of equality. From what I read, I do not really think that people believed that they were in fact moving the constitutional authority with respect to Indigenous people so overwhelmingly towards the Australian parliament.

Prof. Saunders—I guess that is one of the reasons why you did not get a no case or a no vote coming out of the parliament. Certainly I think that the arguments for and against that proposal and a proper analysis of that proposal should have been available to voters who wanted to really understand it. The case against that proposal might have taken a number of different forms, and this is why I am so sceptical about there being a single yes case and a single no case. People

have all sorts of different perspectives on these proposals. The point you are putting to me is that the proposal went too far and had more dramatic results than people might have expected.

ACTING CHAIRMAN—People did not know what they were voting for.

Prof. Saunders—They did not know what they were voting for, but there was a very respectable point of view at the time that the proposal did not go far enough. In a sense, it was a minimalist proposal, which is very Australian in a way—the idea of just removing those few words from the power—and that has led to some of the problems we are now encountering with it. Professor Geoffrey Sawyer took that view at the time and, had there been a proper debate on those issues, that might have come out in a public campaign.

ACTING CHAIRMAN—This is the last question I will ask before I invite my colleagues to ask questions. You said that you do not believe that receiving the yes/no case through the post is the best way of communication in 2009. Wouldn't you agree, though, that, even though the yes/no case might well be posted out, in any referendum campaign there are many other means of communication available to the proponents or opponents of a proposed change—the internet, radio, TV, Twitter and so on? The posting of the yes/no case should not be looked on as the only means of communication, but it is probably still an effective means, particularly for older people.

Prof. Saunders—I would be very doubtful that it is very helpful even for older people, but you may have research that shows differently, and you are the member of parliament, so you know what your constituents do.

ACTING CHAIRMAN—Nobody has a monopoly on good ideas and common sense.

Prof. Saunders—No. All of us run on a lot of anecdotal evidence in relation to the extent to which those pamphlets are even opened, much less read. I remember that in the wake of the 1999 referendum, which is the last one that we all followed on this matter, I heard that a lot of them were just dumped in the rubbish unopened. Leaving that aside, to go back to your point about other means of communication, of course there is and will be a huge amount of communication of other kinds going on. But this is the responsibility of the state—the public authority that is putting this proposal forward in the first place. It is our obligation to our own people to help them understand the proposal on which we not only enable them to vote but actually require them to vote. So I think we have an obligation to produce public information that assists people with that process and then, of course, to encourage the great welter of ordinary debate that will go on about it.

Mr ANDREWS—Just to pick up that last point, isn't the responsibility therefore to put the information into the hands of every Australian, whether or not they bother to or choose to read it or make use of it? Again, I am reliant upon anecdotal experience, but as members of parliament we try to put information into the hands of our constituents on a regular basis. To pick up the deputy chair's point, one thing I find is that a lot of elderly people rely upon what is posted out to them. For example, there is the pension guide we posted out. We were talking yesterday in my office about why we cannot just put this on the web, to which my staff said, 'If you do that, we know from the experience on other occasions that there are lots of people who, if it doesn't turn up, say, "Where's the printed copy of it in the mail?"'

Equally, I know from talking to my children and their friends that there are a lot of young people who do not read newspapers at all these days. Maybe they will pick up the mX on the public transport, but that is only a small proportion of them anyway. I suppose that what I am getting at is that there is no longer only one way in which we can communicate information to people. At the minimum, don't we still have an obligation to at least post some information to every known address, given that people are on the electoral roll? If they end up throwing it in the bin or whatever, so be it. That probably happens with a lot of other information they get which could be deemed worthy; I will not go to the extent of saying it happens to my pamphlets, but it might happen to information from the local council or whatever.

Prof. Saunders—I completely agree with you that there needs to be a different mode of communication for different segments of our community. That is completely the experience of the Constitutional Centenary Foundation: 'one size fits all' does not work. So if we have a real commitment to helping people understand then we need a number of different modes. If at the end of the day the judgment is made that we have a cohort of older people who are still more comfortable with print media delivered to their home then we should go with that as long as we have that cohort. I have no difficulty with that either. The question then comes back to: what do we mean by informing them? My position would be that, whether it is posted out or not and whatever media you choose to use to deliver the information, the yes/no case is not information; it is often quite extreme argument for and against a particular proposal. Before I came here this morning I searched for some old copies of the yes and no cases that I used to have on my shelf, and somehow they have disappeared, but my recollection is that with the proposal for four-year terms in 1988, which you might recall involved a fixed four-year term for both the House and the Senate, the yes and no cases directly contradicted each other. The yes case said, 'This won't affect the Senate,' and the no case said, 'This will destroy the Senate.' I remember looking at that and thinking, 'I can sort this out, but I'm a constitutional lawyer; I'm not sure that other people necessarily could.'

Mr ANDREWS—You have looked at overseas ways of putting information, and you said that there is not necessarily one yes or no approach to this. Should you have something like 10 or 12 reasons why you might vote for this proposition and 10 or 12 reasons why you might vote against it? How do you do it? With no disrespect to constitutional lawyers—and I think I studied under you, Professor Saunders, for a while—

Prof. Saunders—Did you?

Mr ANDREWS—At the end of the day this is a political contest about the nature of the polity in which we live, and therefore the idea that partisan argument should not be part of it seems to me—dare I say it?—to be a little elitist.

Prof. Saunders—You can say that but I do not think that is right. I think it is elitist to think that partisan argument needs to be all that there is to help people understand a proposal. To go back to what I said earlier, I think the pros and cons are important—and that will include partisan argument—but I also think that it is important to help people to understand a proposal, and that includes a whole lot of things including the way the system works now, how the proposal has been put forward, what the possible outcomes might be in the future and a whole range of different stuff.

Mr ANDREWS—If I understand what you are saying, it is not that we should remove the partisan argument—because that would probably be impossible, anyway—but that we should do something more.

Prof. Saunders—I think we should do much more.

Mr ANDREWS—Thank you.

Prof. Saunders—Can I just go back to your point about experience elsewhere. Of course a lot of other countries use the referendum in one way or another and everybody has slightly different procedures. I do not pretend to have made a comprehensive survey of what people do but in my experience most countries and most places that use the referendum do try to provide some general informative knowledge about it. I have spent some time in the past trying to understand exactly how the Swiss do it—because we adapted our referendum procedure from Switzerland—and, there, certainly an information package goes out from the state. The reason I mentioned New Zealand is that culturally we are a bit closer to them and I thought that that might be a somewhat more fruitful line for the committee to consider.

Mr ANDREWS—They are going to have another go next year, according to press reports, in terms of changing their voting system again.

Prof. Saunders—Are they? Whatever—leaving aside the actual proposal and the merits of that, the way in which they went about it in the nineties was interesting, I think.

Mr NEUMANN—Professor Saunders, you described the yes/no pamphlet as an outmoded means of communication. We have heard evidence that, according to the Electoral Commission, it could cost about \$25 million to distribute copies to every elector throughout Australia. Presuming there are some people who still do not want to use a credit card—who still use a passbook—and who may really value a yes/no pamphlet or a piece of political material distributed to them before they went to the polls, can you narrow down the other means, or what you described as the other ‘range of media’, that you think we should use.

Prof. Saunders—To come back to Mr Andrews’s point, which you are picking up, of course the cost is significant but at the end of the day if we decide to change the Constitution and we have a referendum procedure then it is our obligation to try and fuel it. If it is expensive, that is the system. If a certain group in the community need print copy then they should have it, as long as that need remains.

The other means that are around—I am sure the committee is familiar with them—include sorts of community meetings, where people can actually engage and discuss proposals, and using radio and television. Radio in particular, including talk-back questions on air, is very effective. There is also all the electronic media of various kinds. I have to confess I am not into twittering so I cannot comment on how effective that would be for this purpose but other electronic media would clearly be very useful. The Constitutional Centenary Foundation experimented with a range of these media. For example, we went on young people’s radio stations and answered questions on-air, which I think was very useful. We had a huge response to that sort of approach. These days, I am sure, you could do a lot more with interactive electronic means of helping people to understand a proposal.

Mr NEUMANN—I have just one more question. It relates to the 14-day requirement and the 2,000-word limit. I would like your comments in respect of both of those matters.

Prof. Saunders—I had forgotten about the 14-day requirement. Could you remind me about that.

Mr NEUMANN—The yes/no pamphlets must be submitted to electors no later than 14 days beforehand. I would have thought that the constitutional referenda in relation to the public was quite atypical in the sense that it was widely canvassed with the constitutional convention, but for a number of others, really for a lot of people, the first time they received any information about that or had any knowledge of a constitutional change was the yes/no pamphlet distributed no later than 14 days prior to the referendum. I am interested in hearing your comments on that but also your comments about the 2,000-word limit. I recall vividly a yes proposal where lines were across page after page. It was almost like they had run out of ideas or commentary or advocacy for that yes proposition. I am interested in hearing what you would say.

Prof. Saunders—I assume that the purpose of the 14-day requirement is that you do not get the pamphlet the day before, which would be even worse. It is consistent with my general proposition that I think that the earlier that people are engaged with these issues and have an opportunity to understand them the better, and 14 days is the absolute minimum. My hope would be that over time we would start developing procedures that would engage people much earlier—not necessarily by receiving stuff through the post but just involving people so that they can understand what it is all about. As for the 2,000 words, quite frankly, I do not care very much. I am much more interested in the form that this public information takes than in the length of it. However long it is, it needs to be presented attractively and in an intelligible way. The problem with the 1999 referendum, if that is the yes case you were referring to, it seems to me to be absolutely ridiculous if one side of the argument chose not to use its full 2,000 words and then put lines through the document. It just seems crazy, but that it is a presentational point, I assume.

Mr NEUMANN—As a republican and an advocate for it, I was appalled at the yes position.

Prof. Saunders—I think the 2,000 words or 500 words—whatever it is—are less important than having a clear aim for what we are trying to do with this and doing it effectively.

ACTING CHAIRMAN—Mrs Mirabella, who I suspect is not a republican!

Mrs MIRABELLA—You have said that, as far as possible, information that is provided to voters should be impartial, factual and objective. The problem with that surely is that what you may consider is factual and objective others may consider a position that takes one side or the other. How can you guarantee that people on the yes case or the no case will agree with this so-called ideal position of impartiality?

Prof. Saunders—There are a number of different ways of doing it. You could have an independent body, with people with different perspectives on that. That indeed was the way in which the expert committee operated in 1999. That was by no means a perfect process but, nevertheless, once you had people who came from different points of view on that committee,

they were able to actually jointly consider how the arguments could most fairly be put that would nevertheless be informative for the public. That is one way of doing it.

Mrs MIRABELLA—So that would necessarily rely on—

Prof. Saunders—Rational people?

Mrs MIRABELLA—No, I think that is a bit unfair. Just because you take one side or the other does not make you irrational.

Prof. Saunders—No, it does not. It is a question of the arguments you put forward.

Mrs MIRABELLA—That necessarily relies on the quality of the people involved, and you may not always get that. So there is a danger, is there not, that you may have a body that has the status of being neutral or independent but what it produces may not necessarily always be the case because it depends on the quality of individuals involved in a particular referendum question.

Prof. Saunders—Sure. Of course we should go to some lengths to put high-quality people on such bodies, but you could have some sort of process for initial scrutiny of the main thrust of the campaign, if you wanted. We could adapt the procedure that we use with the Electoral Commission for its boundary drawing exercise, for example. Once upon a time I am sure we would have fainted at the idea that you would have a body like that carrying out such a significant function, but we build in failsafe mechanisms.

Mrs MIRABELLA—But I think electoral boundaries are very different—

Prof. Saunders—Sure, and I am saying we adapt them.

Mrs MIRABELLA—to the more complex questions of constitutional change. When we get constitutional experts, and in fact judges, disagreeing on the meaning of certain provisions of the Constitution, certain implications of changing, it makes the concept of a so-called neutral body very difficult because there are always varied interpretations, does it not?

Prof. Saunders—I do not accept your proposition that all facts are going to be contested in this area.

Mrs MIRABELLA—I did not say all.

Prof. Saunders—Certainly certain perspectives will be contested, and I think whatever information we develop needs to state that fairly.

Mrs MIRABELLA—Why do you call the yes/no cases extreme?

Prof. Saunders—Because each of them is prepared in isolation from each other, as I understand it—in general, in any event—and they are directed to simply winning the vote. They are not directed to informing people at all.

Mrs MIRABELLA—There are several different processes. There is the process leading up to a referendum question, which could be years or could be months, where there is discussion and debate. Then there is the actual official yes/no pamphlet and, as we have seen from most recent referenda, then there is this explosion of discussion through various organisations, talkback radio, other forms of media, the internet et cetera. There is a big difference, is there not, between the general discussion of a particular section of the Constitution or a particular issue that arises out of our current Constitution and the discussion as to whether people should vote yes or no. I am concerned with the use of your language of ‘extreme’ because, at the end of the day, an actual referendum question requires people to say yes or no. So that is not really extreme; it is just part of our current constitutional mechanism.

Prof. Saunders—No, saying yes or no is not extreme; that is the way in which you vote. But whether you understand, whether you are casting an informed vote, depends on how much information you are given and what assistance we provide people to understand what is quite a complicated Constitution—I agree with you. But I remain of the view that, for the most part, the yes/no cases are extreme documents that do not help people to understand. They make the various protagonists feel satisfied, I am sure, but they do not help the voter to understand what they are voting about.

ACTING CHAIRMAN—Just on that point, when you have a constitutional change people can be quite passionate either in favour or in opposition to that change, and the republic referendum was clearly a prime example of that. In a democracy, with people who strongly believe, for instance, that the Constitution as it now is is the foundation of everything good in our society, do you see anything wrong with people doing whatever they need to do to try and get a majority of people to defeat that referendum question?

Prof. Saunders—In a democracy, of course people are entitled to put their views forward as passionately as possible. I do not know what we mean by ‘doing whatever they need to do’, which sounds like going quite a long way down the path, but nevertheless of course you expect these matters to be hard fought.

ACTING CHAIRMAN—In the sense of being a proponent of a particular argument.

Prof. Saunders—Sure, but my point is that in addition we need to help people to really understand and make up their own minds, if that is what we want to do particularly given that we are in other contexts quite often talking about the need for an engaged citizenry that understands the Constitution and does not just vote one way or another because they are persuaded by the political party stance.

Mr NEUMANN—Would you be happier, say, with a question being posted out to someone with a short summary of the argument, a reference to an internet site and a telephone number or something like that?

Prof. Saunders—Again going back to Mr Andrews’s point, if not everybody is comfortable going online, and I know at the moment that they are not, then we do need to provide other media that help them understand.

Mr NEUMANN—In that short summary the argument might take some of the heat out of the more adversarial approach.

Prof. Saunders—You are going back to my earlier point about the text and argument in parliament. I think that that needs to be available to people as a matter of right. My point is that they need more to help them actually understand, and that ‘more’ should be provided publicly as well as through the various organs of civil society.

Mrs MIRABELLA—There is always an issue with constitutional referenda. Would you agree that the problem with engaging the Australian public is that they are not really interested in the final points of constitutional debate?

Prof. Saunders—It depends what you mean by ‘the finer points of constitutional debate’ but I would certainly not agree that they are not really interested. I think we have a Constitution that is particularly difficult to understand because it is ageing and it has increasingly less relevance to the way in which our lives seem to work on a day-to-day basis, but my experience with the Constitutional Centenary Foundation was that, when you provided people with the means to understand the Constitution and the way it worked, very often they were very interested.

Mrs MIRABELLA—We are talking about a very small number of people. A very small number of Australians are politically engaged, and an even smaller number are engaged in debate on constitutional reform.

Prof. Saunders—Because we do nothing to engage them.

Mrs MIRABELLA—Would you agree with that statement?

Prof. Saunders—I would agree that that is the case at the moment.

Mrs MIRABELLA—Some would contend that part of the issue with that is that they do not see the need in a very practical sense to their everyday life. They do not see the practical need for changing the Constitution.

Prof. Saunders—Some would contend that, perhaps.

Mrs MIRABELLA—I am going to go back because I also made a note about the pamphlet. You said the pamphlet was outmoded. Yes, we do have all this additional media, and I am sure it will continue to develop by the time of the next referendum. But as a minimum don’t you think that it is only fair and equitable to have the old-fashioned version of a written pamphlet delivered?

Prof. Saunders—I have already responded to Mr Andrews on that point by saying that, if it is important for segment of our community that they receive information in hard print form, then we should do that. If it is important for segments of our community that they receive their information in other forms, we should do that.

Mrs MIRABELLA—I am trying to come up with a minimum form of communication and then things on top of that because I think it is important for the committee to try and get a clear picture. The easiest form of access is the written pamphlet, is it not?

Prof. Saunders—Well, easiest for whom? Easiest for a 20-year-old person who is used to operating with text?

Mrs MIRABELLA—Everyone gets it in their letterbox so it is there if they want to have a look at it. That is easier than taking a step to access information.

Prof. Saunders—Whether it is effective is another question. My concern is to effectively inform Australians about the proposals on which they are voting in a referendum. You say that we should use the print medium as a minimum. Sure, but that is to privilege, if you like, the segment of the community that we have decided may be effectively informed in that way. If the rest of the community is not effectively informed in that way, then it is our obligation to find some way of effectively informing.

Mrs MIRABELLA—It would not prevent us putting exactly the same information on the internet. I am sure there would be a website.

Prof. Saunders—I think we are going around in circles. I do not think that particular form of information is very informative anyway. There are two issues here: one is content and the other is mode of delivery. You have been talking about mode of delivery. I think we need to have a variety of different media that we use for the purposes of different segments of the community. Then there is the question of what is being delivered to them—in other words, the content of the information. I do not think that the yes/no case is effective. It may well be that, in one form or another, the arguments put forward on either side of the parliament need to be part of an information package, but I think it needs to be more generally informative.

Mrs MIRABELLA—So you are contending that the information you would put out would be more impartial than what politicians put out?

Prof. Saunders—I do not think that the information the politicians are putting out on the yes/no case is impartial—whatever else it might be, it is not impartial—and I think that the information I am proposing would be more effective to help people understand.

Mrs MIRABELLA—So you are contending that the information you would put out would be—

Prof. Saunders—It would not be me; it would be a body.

Mrs MIRABELLA—You do not know who is currently on that body and what their views are.

Prof. Saunders—Nobody is currently on that body; it does not exist.

Mrs MIRABELLA—But it is a pretty strong statement to make that a so-called neutral body would produce better quality information when you do not even know who would be on that body.

Prof. Saunders—My recommendation is that a range of people with different attributes, who can be trusted to prepare such material, should be put on that body. I do not think that is a particularly strong statement to make at all. I think it is a perfectly normal way of proceeding.

Mrs MIRABELLA—That would be a challenge.

Mr ANDREWS—If we had a body such as you are proposing, do you envisage that its membership would include one or a number of members of parliament from each side?

Prof. Saunders—I think that is a possibility, though I have not sat down to draw up the list. It is certainly a possibility that a member of parliament from each side, if there are only two sides of the debate, could be included.

ACTING CHAIRMAN—With respect to the pamphlets for the yes/no case, you admitted that, for a certain group in the community, that is probably a valuable means of communication. But because we would not know exactly who would benefit from that form of communication, I imagine you would not oppose a form of yes/no booklet being sent to every elector.

Prof. Saunders—Again, I think we need to distinguish between content and mode of communication. What we were saying earlier was that if there are particular segments of the community that would benefit from hard-copy print information then let us make that available.

ACTING CHAIRMAN—To everyone?

Prof. Saunders—If it is impossible to target it to that group—which is something that we might think about—then I guess it has to go to everyone or at least be made available in some form or other to everyone.

Mr NEUMANN—At the roundtable in Sydney on 14 October there was some discussion about who should oversee the process. You have talked about an independent body. I would like you to comment on the notion that the AEC might be involved in the preparation of that material. The AEC was very negative about that. I think most people accept that the Australian Electoral Commission is an extraordinarily fair and impartial body with a lot of integrity. We certainly do not have the experiences in Australia that they have in Afghanistan. No-one would compromise the standing and esteem of the AEC in Australia. So I presume you would say that the AEC is not the appropriate body, but I want to hear those words from your lips.

Prof. Saunders—The only reason I am laughing is that I have heard the AEC speak on this subject before. In about 1995 we had a roundtable—it might have been in the Commonwealth parliament—and the AEC were there. They were simply horrified at the idea that they might be involved in preparing substantive information about the referendum. They play a very significant role in our system of government. Given their qualms about it, I would be inclined to respect that and find another body that could be brought together for this sort of purpose and be equally respected.

If we go back to the New Zealand experience as an example: in the relatively simple and straightforward constitutional system that the New Zealanders have the ombudsman's office is a highly respected institution, and the New Zealanders had the ombudsman chairing their group in the early 1990s. I do not know whether they would do the same again. But it is that idea of finding someone who gathers general respect from across the spectrum and building a group around them.

Mr NEUMANN—My final question on the Constitution relates to the issue of what role states might play in the appointments to the independent body. If you accept that the Australian Constitution is a compromise, if there are different states, why else would we have no state having fewer than five members in the House of Representatives and why would the powers of the Commonwealth be enumerated in section 51? There are so many other provisions in the Constitution which seem to protect the role of states. I presume you think that the states, at least the premiers of the states, should be consulted in relation to the appointments to the independent body because so many referenda have pertained to states 'rights' as opposed to the powers of the Commonwealth.

Prof. Saunders—I had not thought of that, but it is a very good point. Our Constitution is not just a federal constitution; it is imbued with federalism. Almost every part of it, one way or another, is influenced by the fact that we have a federal system here. I think that is something that should be taken into account in constituting such a body, whether you would get any joy out of consulting particular Premiers or not I am not sure—maybe it would depend on the issue, and again I am not sure about that. But one thing I do think is that, in putting the body together and in seeking a range of perspectives, you should try to ensure that there is a reasonable geographical spread. For example, you would not want all members of that body to come from a particular state, particularly if the particular state was in the south-east corner of Australia.

Mrs MIRABELLA—Or you would not want all to have a particular point of view.

Prof. Saunders—No. By definition it is not a particular point of view, but I do think that the geographical spread that Mr Neumann has drawn attention to is an important point.

ACTING CHAIRMAN—Professor Saunders, we are out of time. Thank you very much for coming along; we do appreciate it. The secretariat will send you a copy of your evidence. If there are other thoughts that you would like to share with the committee, please send them to the secretariat.

[9.52 am]

HILLS, Mr Rodger, Executive Chairperson, Rethink Australia

ACTING CHAIRMAN—Welcome. Would you please state the capacity in which you appear before the committee today.

Mr Hills—I am appearing as the executive chairperson of Citizens Charter, which is running the Rethink Australia project. Rethink Australia is a national project.

ACTING CHAIRMAN—Would you, sir, like to make a brief opening statement of, say, five minutes? Then we can proceed to some questions. At this stage I should point out that, while we do not require you to give evidence under oath, these are proceedings of the parliament and that you are supposed to tell the truth. If you give false or misleading evidence, it could be considered a contempt of the parliament.

Mr Hills—I fully understand. I will give you a bit of background. The organisation has only just recently been incorporated and the mandate we have worked towards is to create a project called ‘Rethink Australia’, which is basically a national campaign to create constitutional reform within Australia, using methodologies that include participatory democracy, particularly the deliberative processes, citizen education and consultative public consultations.

Rethink Australia is designed as a program and a campaign to create constitutional reform within Australia, with the idea of either renewing the existing Constitution or—hopefully—possibly writing a new constitution. The idea is to reduce the current levels of plummeting voter enthusiasm for voting. There is a great deal of voter apathy and great deal of cynicism towards the whole political process which is becoming quite widespread. It is also quite well documented. One of the ways of reversing that is to engage citizens in the whole process. At the moment it is very difficult to engage citizens in processes which the Constitution does not allow them to have a part in. So Citizens Charter is trying to create a groundswell of support. It is also networking with organisations and appearing at these sorts of fora to try and make people aware that the Constitution works well but that it also could be improved. There are issues that could be discussed, that could be broadened. There are things that could be discussed by citizens in an informed way. The whole point of the exercise is—to recap what Professor Saunders was saying—to have an informed discussion about what is going on.

The campaign is going to be running a pilot in the next six months in one of the federal electorates, probably in New South Wales. The idea is to generate some groundswell and some media coverage before the next federal election so that issues to do with the Constitution can be raised. We would be leveraging off the political hype—if you want to call it that—at the time. Rather than going out with a massive advertising campaign to try and get people excited about the Constitution and how fantastic it is for them, we would try to bring that into the political arena.

As an organisation and also as a project, we felt it was very important to have an input into this particular hearing. We feel that even if the project does not get to its final goals, it is

important for the organisation to put forward processes which we think will improve the current situation—hence the submission. The submission is based on the idea of creating an informed process so that citizens can get a better idea of where they are going and why they are voting for what they are voting for.

ACTING CHAIRMAN—I would just like you to clarify: is your organisation particularly focused on process and the dissemination of information and improving public education, or are you an advocate for what seems to be a radically different Constitution? What you said, if I am not misquoting you, was: ‘hopefully a whole new constitution’. That is an incredibly ambitious aim.

Mr Hills—It is. The Rethink Australia program has two aims. One is civic education about what currently exists and what the circumstances are currently. The second is to open up the possibility of rewriting the Constitution as it stands now. We could perhaps improve it, bring in new thinking and new ideas, or if that cannot be done then there is the possibility of stepping outside that whole process and drafting a completely new one. Imagine if Australia had gone through 12 years of civil war and the Constitution was now defunct and the institutions of parliament had been trashed. You would then have to engage in a constitution-building process, which the UN and those sorts of bodies do on a regular basis.

ACTING CHAIRMAN—But you are not trying to advocate 12 years of civil war?

Mr Hills—I am not. I should not have used that example. I suppose it is a bad example. I am just saying that if Australia had had that situation we would be faced with having to write a new Constitution from the ground up. So what Rethink Australia is saying is: ‘Forget about a civil war. There is a possibility of either rewriting the existing Constitution or writing a new Constitution.’

ACTING CHAIRMAN—There are many people who believe the Constitution does not need to be substantially rewritten at all.

Mr Hills—Absolutely, and this is why we would actually go to the public and ask: ‘What do you want?’ The question we will be proposing to the public over the next six months is: ‘What do you think the Australian Constitution should have in it and what should be dropped?’ The idea is to put it to the public and ask: ‘Do you like the Constitution as it currently stands?’ It may be that people come back through the public consultation process and deliberations and say, ‘Everything is fine’. They may come back and say, ‘No, we want to change this. We want to change that’.

ACTING CHAIRMAN—The focus of this inquiry is not the substance of what is in the Constitution but rather machinery matters in relation to referenda. I make the observation that given the fact that you need a majority of people in a majority of states and a national majority, and given the fate of most referenda proposals put before the Australian people, it seems that your organisation would appear to be extraordinarily optimistic, or perhaps even unrealistic, in talking about possibly trashing what we have got and starting from a greenfield site.

Mr Hills—The whole idea of trashing it is not correct. What we are saying is that, from what we understand from polls and research, there seems to be an unmet need within the Australian

public to look at how we are governed across all levels, be it in health care, be it in education et cetera. That need is not necessarily being fulfilled by current government processes, so what we would say to Australians is, 'What do you think should happen? Should there be something in the Constitution to do, say, with health care? Should there be something to do with transport?'

Mrs MIRABELLA—So you have identified, through polls and research conducted by others, a perceived deficiency by the Australian population in how we are governed?

Mr Hills—I would say so, yes. The rules relating to how we are governed in the sense that—

Mrs MIRABELLA—The rules or how we are governed? You talked about health care.

Mr Hills—Both. If you look at, say, education—and this is getting off the whole submission—you see that education services and the whole legislation behind education, if you like, is coming from a parliamentary legislative process. The people have no standard with which to judge that against. So each time they are looking at Labor or Liberal policy there is no higher standard they can judge that policy against and say, 'Yes, it is meeting the standard' or 'It is not meeting the standard'.

Mrs MIRABELLA—Are you advocating constitutional reform as some partial way of fixing governmental deficiency?

Mr Hills—This is something that the people will have to decide. We are not advocating for one form of government, a different form of government or any form of government at all.

Mrs MIRABELLA—No, I did not say that. I am not talking about particular governments. You said earlier that there were deficiencies in the way we are governed.

Mr Hills—Yes, according to research.

Mrs MIRABELLA—Is your organisation seeking to improve that through constitutional change?

Mr Hills—Yes.

Mrs MIRABELLA—Right.

Mr NEUMANN—Mr Chairman, can we focus on the issues that are in the terms of reference?

ACTING CHAIRMAN—I am probably partially guilty because of something the witness said. I asked him what his ideal situation was.

Mr NEUMANN—Mr Hills, you make the case for a referendum advisory board, which you talked about.

Mr Hills—That is correct.

Mr NEUMANN—I would like you to expand on that. Who should be appointed or elected and by what methodology should that take place? Should any one of us be involved in that—a politician at state, federal or local level? Who would actually run that? Who would pay for it? Would it be publicly funded? Would there be private support for it? How would it operate? I presume that that body would inform the public and also oversee the process.

Mr Hills—That issue came up at the roundtable. I think George Williams was proposing that idea.

Mr NEUMANN—Yes. I would be interested to hear your thoughts on that, because we are concentrating on the machinery and the methodology by which referenda can be put forward to the Australian public.

Mr Hills—Our thoughts as an organisation are that that body should be as impartial as it possibly can. We do not believe that the parliament should necessarily pick or choose it. It should not necessarily be chosen by states. The logical people to determine who that body is would be the High Court, because the High Court has custodial interpretation, if you like, over the Constitution and how it is interpreted. The High Court is perceived to be not impartial but a custodian of constitutional values, if you like.

We felt that the High Court would be in the best position to be able to get a body together, and we have put it forward that the body would be put together as a deliberative process. You would pick citizens in the same way that you pick citizens for the citizens' parliament—that is, through a randomly selected process. Those citizens would come together and they would decide what was in the information package, what was in the information booklets, what technologies were used and who the experts were that they would get to write those different briefs. So then you have citizens gathered together, informed and there is much more democratic legitimacy in that process. You are not then getting partisan politics played where we need to get five people from Liberal and six from Labor and all that sort of stuff. It gets the advisory body to a large extent out of the political machinery but still allows the advisory body to then act and call witnesses and get the expertise needed to write the briefing papers.

Mr NEUMANN—Can I expand further on the role of the High Court and ask for your comments on this. Regardless of the merits of what Chief Justice Barwick did in 1975, regardless of whether it was constitutionally appropriate or otherwise, there was considerable criticism of his role in advising the then Governor-General about that issue. Fortunately we have moved on in terms of Australia's polity. But there was criticism that the Chief Justice had compromised his role. Also there are some really difficult constitutional issues with respect to the role of the High Court because bodies are struck down if they meld administrative and judicial roles, and so you are now melding the High Court's role with the parliament to determine issues concerning that. Are you concerned about the separation of powers and the constitutionality of what you are doing in itself, and sully or casting the High Court into a position where it is involved in the political process as opposed to actually taking a different role under the Constitution?

Mr Hills—For the record, yes, we are very concerned about making sure there is separation of powers. The reason that the High Court came to mind was the fact that when you get a deliberation together, it is almost like a citizens jury and so you are running a pseudo-legal

process. It made sense that that pseudo-legal process would be managed by the highest court in the land because even though a court is a judicial body, it is also administrative to a certain extent in interpreting what laws and what legislation is put before it. So it seemed logical to use the High Court as an organisation—not specific judges, but as an organisation—to oversee the gathering together of that body.

Mr NEUMANN—You are suggesting that the Chief Justice in consultation with his or her other judges actually picks people to be on the board?

Mr Hills—No, they do not pick people; it is a random selection. Out of Australia, they would do a random sample of Australians to pull those people together on to the body. They would not pick you or me or anybody else. They would look at a random sampling of Australians and say, ‘Okay, we need a body of 50 people or 20 people’—whatever the body was—and those people would be randomly sampled to come on to that jury.

Mr NEUMANN—Can you explain how that random sampling would be undertaken?

Mr Hills—It is done quite a bit. The AEC could handle that aspect because they have access to the electoral rolls to be able to contact people and get—not get people, but you contact people in the same way the citizens’ parliament was run, where you contacted people. Every fifth person on the electoral roll around Australia was contacted and asked, ‘Would you like to be part of this process?’

Mr NEUMANN—Do you not think that the High Court might object to your suggestion?

Mr Hills—They may. As I say, this is simply a proposal. This is simply a suggestion worth thinking about to try to look at how a body could be constituted and who would do it and look at a different alternative?

Mr ANDREWS—The difficulty I have with your proposal is this: isn’t this ultimately a political process in the end?

Mr Hills—Of course it is.

Mr ANDREWS—Then why wouldn’t a body constituted in the way you are proposing be infused by politics?

Mr Hills—It would be. Citizens are going to come with their own objectives and their own viewpoints.

Mr ANDREWS—So why would we put in place another system? It obviously has its inadequacies, but we have a political process now.

Mr Hills—I think I have made the political process in terms of running the yes/no argument fairly clear in the submission.

Mr ANDREWS—No, let me go back a step. The writing of the yes/no argument is a second issue.

Mr Hills—No, it is the whole issue. The body that we are talking about—

Mr ANDREWS—No. Can I just finish my remark. What I took it that we were discussing at the moment was how you select, elect or constitute the body by which this process of writing the yes/no argument is undertaken. At the moment we have a political process which does that, namely people who are elected by the Australian people to the federal parliament through that mechanism become the people who write the statement, right?

Mr Hills—Sure.

Mr ANDREWS—We can have an argument about the adequacy of that statement and whether it should be written according to certain parameters or not. For the moment, for the purpose of discussion, I just want to stay with the process of constituting the body. If, as you concede, anybody who constitutes it is going to be infused by politics, then why would we substitute or have an additional body for this purpose when we already have a body? Hypothetically, if there are inadequacies in the current writing of the argument, let us address that rather than create a new body.

Mr Hills—You are putting to me the idea that there is an existing body to write the yes/no arguments, but there is not an organisation to do that. The yes/no arguments are written by either the people who propose the bill or the people who oppose the bill.

Mr ANDREWS—The proponents and opponents of—

Mr Hills—That is not a body; that is basically a group of parliamentarians who have decided to put their voice behind the bill. That is not a constituted body.

Mr ANDREWS—But are you saying that we should have some standing body that is there for ever and a day?

Mr Hills—Not a standing body, but certainly one that comes together when there is an issue of constitutional reform.

Mr ANDREWS—And won't that then become the subject of political contest?

Mr Hills—Not if it is a random sampling of people because that whole process of random sampling is to get away from that whole politicising of experts on one side of the fence and politicians on the other and everyone fighting amongst themselves. The whole point of random sampling of citizens is to get not only a citizen's viewpoints, but to try to defuse that whole politicised bloc-voting mentality, if you like.

ACTING CHAIRMAN—But a random sampling of citizens could still come up with a skewed outcome.

Mr Hills—The way that we have presented it here is to say that that body has the role and has oversight of putting together the briefing paper.

ACTING CHAIRMAN—But, even though it might be randomly selected, you could well have everyone or most people of one view. That would be a very unbalanced body, even if it is randomly selected.

Mr Hills—It is possible. It is extremely numerically statistically unlikely, but it is possible.

Mr ANDREWS—But what is wrong with just allowing people to vote?

Mr Hills—The whole point of what we were saying in the submission is that the purpose of the yes/no argument should be to inform the public rather than just give them two arguments and say, ‘Off you go; vote for it.’ To get to informed voting, you need to have briefing material and substantiated context and understanding of what the issues are. To get to that, we are putting it to the committee that basically we need something like the National Issues Forum briefing papers, which have been around for 25 years. They are quite well designed and actually capture all of the arguments on both for and against sides; they look at pro and con arguments of those particular arguments as well. So they are capturing everything you could possibly capture from both sides anyway, even if they are very skewed towards the yes or towards the no. The idea is to put those sides together, and if the body that puts that together is mandated and told that it has to do this, it has to come up with a bipartisan briefing paper, then that is what it has to do, even if it is stacked politically with one group.

Mr ANDREWS—Wouldn’t a better way of doing what you are seeking to achieve be to have somebody who has an educational role about the Constitution on an ongoing basis—which there is to some extent now? There are school constitutional conventions and debates and things like that which educate young people about the constitution. It seems to me that what you are proposing would be better achieved by having that broad, ongoing education about the governance of Australia, including the role of the Constitution.

Mr Hills—Absolutely. We have no argument with you there. I think that is a fantastic idea, and that is something that we have actually put in the submission too. The idea of a controlling body or an advisory body to write this particular briefing paper or a briefing paper around the yes/no argument is part of a range of recommendations we make, one of which is that there should be more contact with the community. I know, listening to the comments of the AEC at the roundtable, they were very reluctant to get involved with the actual writing of particular articles. But I do not see that there is anything wrong with them actually starting to branch their network out towards the community to engage community organisations, to inform pubs, clubs and sporting organisations and to use those informal networks to actually broaden that whole exercise.

Mr NEUMANN—Can you comment on the 14-day requirement, the 2,000-word limit and the method by which we should communicate to the Australian public? You talk about seminars and community events, but can you be very precise about what you would recommend?

Mr Hills—Our recommendation is that it should go out to a minimum of six weeks. This is based on the idea that you have a very informative briefing paper or documents and other material. The formation of that briefing material will take longer because it is not just a simple yes/no argument and it is actually getting experts together on all the opinions. The actual compiling of that document will take longer and as a result, because there is much more

information about the yes/no issues, the public needs to have much more time to actually consider those, so we think that six weeks would be an adequate time. If it was longer than that people would put it on their shelves and forget about it, and by the time voting time came around or the election day came around those issues would possibly be lost in their minds. So six weeks we feel is adequate. The 2,000-word limit is something that should be scrapped. The document should be based on informing the public. If that means it has to be done in 10,000 words or in 200 words, that should be what is done. The 2,000-word limit, as far as we are concerned, is not the issue. That is actually putting a constraint on understanding. Sorry; what was the last question about?

Mr NEUMANN—It was about the methodology and the means by which communication with the Australian public takes place. Do you think we should retain the yes/no pamphlet and something else or scrap it and put something else in its place? How should we communicate to the Australian public the constitutional change proposed, the arguments for and against and the background to the proposition?

Mr Hills—We are fully in favour of keeping the pamphlet or some sort of briefing paper. Since 1984 people have generally only kept transactional mail, and they often bin what is not transactional. Even though there has been that trend, there is still a large proportion of the population that actually like to have things in the mail and like to read in detail what the issues are. For the younger population, the conversation before was about online, internet and Web 2. What we are advocating, though, is that we do not lock ourselves into specifically prescribing that it has to go on the internet or it has to go on Web 2, because the technology is changing so fast. A lot of people were saying at the roundtable everything has to be on Twitter, it has to be on Facebook and all that sort of stuff. If you start to look at the usage of those particular mediums and you go onto something called Google Insight you can track the amount of hits that people are getting for words like LinkedIn, and you will find that Twitter actually peaked about a year ago and is starting to go down in popularity. It is the same thing with MySpace, whereas Facebook is continuing. So not all Web 2 is the same and Web 2 in five years time is going to be quite different to Web 2 now, so prescribing a particular technology is a very bad idea. When the referendum is called the AEC should make the assessment at that particular time on what the best channels are for disseminating information.

Mr NEUMANN—I said at the roundtable that certain demographics get their political information concerning this sort of matter and other matters from more traditional means. I made a comment in relation to my 18-year-old daughter, who is on Facebook and all kinds of things, that when it comes to political information she reads the newspaper and watches *The 7.30 Report*. Would you consider that an accurate general comment? Do people who are politically engaged and want to get information actually read the newspaper, read the pamphlet or watch the TV? Do people, even young people, use more traditional means rather than Twitter, Facebook, MySpace et cetera?

Mr Hills—Absolutely. I think you will find that the trend with young people is that, whilst they might network socially with Twitter, Facebook and those particular networks, when they are actually looking for particular hardcore information about a particular subject that they want to know about they will go to traditional sources. So what we have advocated here is the same thing: that basically the core of the format should be the briefing paper posted to people and then the AEC would make an assessment of the available distribution channels at the time when the

referendum is called. The next one might not be called for the next 15 years, so at that stage you would have to make an assessment of what was available and say, 'Yes, broadcast networks and newspapers are still around; let's put some information in there.'

Mrs MIRABELLA—You mentioned that civic education is important. Are you familiar with the work that CEFA has done in schools?

Mr Hills—Yes, absolutely.

Mrs MIRABELLA—Would you consider that useful work?

Mr Hills—Absolutely.

Mrs MIRABELLA—And there is room for more of that to happen?

Mr Hills—Where I suppose Rethink Australia is different to CEFA is that CEFA is educating people about the existing Constitution. What Rethink Australia is saying to people is—

Mrs MIRABELLA—But surely there should be a starting point. It has been identified during previous referenda that people do not know enough about the Constitution. Would you agree with that?

Mr Hills—Sure, absolutely.

Mrs MIRABELLA—So a starting point for discussing changes to it would surely be knowing what currently exists. Wouldn't you agree?

Mr Hills—That is right.

Mrs MIRABELLA—It says here that you are a published author on constitutional matters. What have you published?

Mr Hills—There is a book called *The Consensus Artefact*. That has now been published for about two years. It came out in November 2007. It basically looks at constitutional reform processes.

Mrs MIRABELLA—What is your background?

Mr Hills—My background is as an architect. I studied industrial design and architecture at QUT. Through various different processes, I ended up writing a book, which took five years to write and involved a lot of research.

Mrs MIRABELLA—Thank you.

Mr Hills—The book is also available in the Parliamentary Library if you want to look it up there.

ACTING CHAIRMAN—We are out of time, but thank you very much for attending. If you would like to let us have any other information, feel free to contact the secretariat.

Mr Hills—Thank you.

Proceedings suspended from 10.22 am to 10.42 am

PHILLIPS, Dr David Michael, National President, FamilyVoice Australia

ACTING CHAIRMAN—I would like to welcome Dr David Phillips of FamilyVoice Australia and to thank him for being prepared to be flexible about the time at which he gives his evidence to us. Although the committee does not require you to give evidence under oath, you should understand that these hearings are formal proceedings of the Australian parliament and that giving false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. Would you like to make a brief opening statement of, say, five minutes and then we might proceed to some questions.

Dr Phillips—First of all I would like to express my appreciation for the opportunity to give evidence to you this morning. FamilyVoice Australia is a national organisation and we have supporters throughout Australia with branches in all five mainland states. FamilyVoice is a Christian organisation. We work with Christians across the denominational spectrum. FamilyVoice is also a politically neutral organisation with no connection with any political party. I wanted to make those things clear at the beginning. Our aim is to present a Christian perspective on current issues, particularly those affecting family, faith or freedom.

ACTING CHAIRMAN—So you are highly political but not party political.

Dr Phillips—We engage in current issues, yes, which are political policy issues. ‘Public policy’ is a good term for it. Under our ‘freedom’ heading we are concerned about, and defenders of, the Australian constitutional system—things like federalism, bicameralism, the role of the Crown and the separation of powers. We are proud of the Australian Constitution. Australia is one of the oldest constitutional democracies in the world. I believe it is the first constitution that was ever adopted by a referendum of the people and it is still one of only very few constitutions in Australia that can be changed only by referendum of the people. We believe that the Constitution was very wisely drawn by our founding fathers and that it protects Australia from undue concentration of power. History has borne this out. The Australian people have tended to reject proposals that concentrate more power in the federal government.

On the question before us today, referendum machinery, we want to make several points. Firstly, regarding the preparation of the yes/no case, we support the current arrangements. We believe the right and proper thing is for the yes and no cases to be prepared by the members of federal parliament who support the yes and no positions respectively. We believe it is imperative that the text of the proposed change be supplied to all electors in printed form. We are dealing not with plebiscites, which are vague propositions open to interpretation, but with referendums. With referendums, we are dealing with precise wording, and that needs to be put into the hands of the electors.

In terms of dissemination, we believe it is important to maintain the present system where printed documents containing the proposed changes and the yes and no cases are supplied to every elector in Australia. We would be happy to have that supplemented by the provision of the same information in digital form on the internet.

On the question of expenditure for campaigns, we think that should be addressed on a case by case basis. The arrangement in 1999 worked well, but we do not suggest that it be enshrined in the act as a regular thing for all referenda in the future; rather, it should be considered on the merits of the situation whenever a referendum is proposed.

I would like to add one additional matter. Sir David Smith raised some issues in his submission concerning the instructions or guidelines to scrutineers given by the Australian Electoral Commission in relation to what was considered to be a 'yes' or a 'no'. We agree with Sir David Smith that the guidelines seem to be unduly flexible. Section 24 of the act says that the voters are to place either the word 'yes' or the word 'no' in the appropriate place, and we believe that should be enforced much more strictly. If section 93(8) is undermining that then that needs to be clarified. Also section 41, which deals with spoilt ballot papers, is a protection against fraud. For someone to write 'no', cross it out and then write 'yes' to be accepted as a valid vote is opening the door to fraud because that could be done by somebody after the ballot was actually made. If someone does make a mistake, they should follow the standard procedure and return a spoilt ballot paper and be issued with a fresh one.

Either the Electoral Commission needs to be told that it got it wrong in the guidelines it issued to scrutineers last time and not to do it again—a wrap over the knuckles—or their interpretation can be deduced from the act, then the act should be amended to make sure that it does not happen in future. Thank you.

ACTING CHAIRMAN—I will just ask the secretariat if they could get me some information on the point that was just made with respect to the spoiling of ballot papers et cetera. Dr Phillips, are you a medical practitioner?

Dr Phillips—No. I am a research scientist. I have a PhD in physics. As for my professional career, I was employed by the Commonwealth government as a research scientist.

ACTING CHAIRMAN—Thank you. I notice that you support the retention of the yes/no cases. You said that the yes/no cases should be put together by those members of parliament who support the opposing views, as is currently the situation. In a circumstance where no member of parliament is voting against a proposal, do you think it is fair in the interests of a balanced debate to send out, as happened in 1967, just a yes case without the contrary point of view being articulated by someone?

Dr Phillips—That is something we have not considered. Can I take that on notice?

ACTING CHAIRMAN—I would appreciate that. Historically, when people voted for the 1967 referendum, they were voting to support some vague notion of equality for Aborigines. But when you look at how that constitutional change has subsequently been interpreted—there was a huge shift of constitutional responsibilities from the states to the Commonwealth—I suspect the electorate was not aware of that.

Dr Phillips—I am aware of that. It seems to me that the full implications of that change were not thought out at the time, and so that may be the result of a lack of a no case being addressed.

ACTING CHAIRMAN—You still support everyone receiving, in 2009, a booklet with the respective points of view?

Dr Phillips—We do.

ACTING CHAIRMAN—Of course, in this era there are many other means of communicating. You would say that that is all very well but you still believe that people, particularly those who may not have access to those other means of information, should receive something through the letter box.

Dr Phillips—I think it is standard practice—certainly in my experience—that any organisation which changes its constitution prepares written documentation in support of that change. I have been associated with a number of incorporated associations and companies. When proposals are being made for a constitutional change, in the life of any organisation, whether it is an association, a company—a public company or proprietary company—or Australia's Constitution, the question of changing a constitution is an important matter and it needs to be given due scrutiny. That is why I believe it is pretty standard practice across the board whenever such a thing is proposed in any context to provide details of the actual wording that is proposed to be changed and also some explanatory material for why the change is proposed and the possible implications of making that change. You can only really achieve that in detail by a printed document that can be supplemented in all sorts of other ways—in discussion and so on. We live in a society where there is free press and the internet, which is a democratic system of communication. So there are all sorts of other vehicles which can supplement that. But we believe the core requirement on the Commonwealth parliament should be to submit a printed yes and no case, with supporting reasons and the text to the electors.

ACTING CHAIRMAN—An earlier witness today, Professor Cheryl Saunders, was not particularly opposed to posting out the yes/no cases. She felt that, for some segments of the community, that would be a good thing and she was not opposed to everyone getting it. But she was strongly critical of the current way that these cases are put together. She says that they do not seek to inform people but rather they seek to argue people towards a particular outcome. Do you have a view on that?

Dr Phillips—Yes. The question facing every elector is to make a decision as to whether they will vote yes or whether they will vote no. So the appropriate material to supply to the electors is an attempt by those who want the elector to vote yes to provide a case for voting yes and those who want the voters to vote no to present a case for voting no. I am sure the media will pick up all sorts of additional comments and commentators and analyses and so on, but the material supplied to the voter should be aimed at helping them to understand the case for and against.

Mr NEUMANN—Do you think we could improve the quality of the material? For example, in the constitutional referendum, the yes case, with the cross-out page after page, looked like it had just a few words to say. Another example is the 'don't know, vote no' case, which seemed to be a trite but quite deceptive way to argue a case. What do you think about that? Could we improve that?

Dr Phillips—You are an MP sitting on your side of the desk. The responsibility rests with the members of the parliament of the day when the referendum is proposed. I really think it is up to

the members of parliament who take responsibility for the case to present the case in the way they think is best in the circumstances.

Mr NEUMANN—So you have no view one way or the other. You are not prepared to offer a view about the quality of the arguments you have seen historically?

Dr Phillips—Today's inquiry is really about process, and we support the process that the members of parliament should prepare the cases.

Mr NEUMANN—That is the point I was making—the process of the material that we get out.

Dr Phillips—I am sure every different set of MPs preparing the case would take a slightly different approach. If you appointed one group to do it you would get one result and with a different group you would get a different result.

ACTING CHAIRMAN—Could I just intrude here. I think Dr Phillips asked the secretariat whether the committee would mind if photographs were taken. Collectively we do not mind if photographs are taken. If someone wants to take photographs, Dr Phillips, that is fine by us.

Dr Phillips—Thank you very much for clarifying that.

Mr ANDREWS—I think you have already done that.

ACTING CHAIRMAN—In that case, my comments are retrospective. I was observing Dr Phillips. I did not see that happening.

Mr ANDREWS—They got your best side, Peter.

ACTING CHAIRMAN—I do not think there is one.

Mrs MIRABELLA—Have you had experience with previous referenda in disseminating information?

Dr Phillips—Yes. We were involved in both the 1988 referendum proposal and in the 1999 referendums.

Mrs MIRABELLA—How did you disseminate information?

Dr Phillips—We are part of what is generally called civil society, so we contribute to the overall debate in the community. We supply information to our members and supporters. In 1998 we would have done that in printed form; in 1999 we did that both in printed form and via email and such. We were involved and we provided our own slant on what the issues were.

Mrs MIRABELLA—Comments were made by previous witnesses that there should be a discussion leading up to the formal consideration of a referendum and that there should be additional material in addition to the yes and no cases. From my experience, there always has been, in living memory, discussion from various groups leading up to and during a referendum.

That is why I was interested to see whether your organisation had been involved in that broader discussion disseminating information.

Dr Phillips—We certainly were. There was a huge amount of information published in the daily newspapers prior to the 1988 referendum and prior to the 1999 referendum. So there was no shortage of material. I am sure it was also covered in public affairs programs on radio and television and probably covered on talkback radio. In terms of penetration of the voting public, all of the issues were canvassed very thoroughly from every conceivable point of view. That happens in civil society, as it should.

ACTING CHAIRMAN—How long has your organisation been around? Did it have a previous name?

Dr Phillips—Correct. Our organisation was previously known as Festival of Light Australia. We commenced in 1973 so we have been around for 36 years. We changed the name last year to Family Voice Australia in order to indicate more clearly our primary concerns. Thirty-six years ago, ‘Festival of Light’ seemed like a good name. It was coined by Malcolm Muggeridge earlier on in England for the nationwide Festival of Light. It had the connotations of ‘festival’, as something to celebrate, something positive, and ‘light’, as the way forward for the world—the light of Christ. So it had good connotations back in 1973. But, come the internet and the global community, if you do an internet search on ‘Festival of Light’, you will find the Hindu festival, Diwali; the Jewish festival, Hanukkah; and various civic festivals with fireworks displays. You will also find light fittings exhibited under the name ‘Festival of Light’.

So it had become very confusing in an internet world, and we decided that it was time to have a name which focuses on what we stand for. As I said earlier, we are primarily concerned with three policy areas: family—the traditional family, marriage and so on; faith—the Christian faith; and freedom—which are our democratic structures. We are a voice for these concerns within the civic arena, so we felt that FamilyVoice conveys much more directly in this age what we stand for.

Mr NEUMANN—You are in favour of retaining the limits with respect to expenditure?

Dr Phillips—Yes.

Mr NEUMANN—But in 1999 there needed to be amending legislation to provide additional funding for information advertising. Do you not think it would be more efficient if we got rid of the limits there and simply left it to the government of the day to determine that issue?

Dr Phillips—No. We think the legislation should provide for what is the essential, core responsibility of the federal parliament—namely, to provide the yes and no cases to every elector. We are not opposed to supplementary funding if there is bipartisan support for that—as there was in 1999—but we believe that should be addressed on a case-by-case basis.

Mr NEUMANN—Could you explain what additional methods of information dissemination you think would be appropriate in the circumstances in addition to the written yes and no pamphlet? If I were to give you control of the process for a referendum, what would you decide?

Would you say a written pamphlet with yes and no and get that out at least 14 days before? How long before would you get it out—a month? Two months? Three months? What would you do?

Dr Phillips—Not too long before; otherwise, you lose people’s attention. I think people primarily engage with an election process only two or three weeks out. So 14 days is probably adequate. There could be an argument for extending it to 21 days, but I would not go beyond that.

Mr NEUMANN—What methods would you disseminate in addition to the yes and no pamphlet?

Dr Phillips—I would make the same information available on the internet—in digital form, PDF or something—so that, if people wished to obtain the information in other ways, they could gain it over the internet. I think it is important to remember the role of civil society. Alexis de Tocqueville a century or two ago said that one of the great strengths he observed in the United States as distinct from France at the time was that in France everything tended to be controlled by the government, whereas in the United States there was a lot of activity of a civic nature with voluntary associations, free press and those sorts of things. I think we need to celebrate the role of civil society and the voluntary institutions, free press and so on. We should not expect the government to take responsibility for everything in life. That is the nature of a totalitarian regime. It is one that I hope we would run away from. I do not think we should be putting on government more responsibilities than are the core responsibilities, and we should allow civil society, the free press, commentators et cetera to supplement that with all the other kinds of information—which, I am sure, electors find valuable.

Mr NEUMANN—Radio and TV?

Dr Phillips—Yes.

Mr NEUMANN—Both?

Dr Phillips—Yes. There should be freedom to debate these issues on radio and TV.

Mr NEUMANN—Government-legislated advertising and information through TV and radio?

Dr Phillips—As I said earlier, the core requirement in the act should cover the essential core responsibility of providing a written document to every elector. If parliament, at the time of a referendum, considers that additional funding should be provided, as it did in 1999, then a special act can be passed to provide that supplementary information. If that is done, the way it was done in 1999 was an appropriate way of handling it—to appoint a ‘Yes’ committee and a ‘No’ committee, give them a bundle of dollars, \$7½ million in each case, and then give each of those two groups the responsibility for deciding how that \$7½ million was spent. They could spend that on printed material or on radio or TV advertising at the discretion of those two respective campaign committees.

Mrs MIRABELLA—You said earlier that at the most recent referendum you disseminated information to your members through conventional postal means and electronically. Why did

you consider it necessary to send out information through the conventional postal system in addition to electronically?

Dr Phillips—We have regular publications which we send to our members anyway, so our intention there was to include articles and information in those publications. We often include supplementary information with those publications, so—

Mrs MIRABELLA—What proportion of your membership would access your information only through the mail?

Dr Phillips—We have email addresses for a large proportion of our membership and we do send out material by email, so it depends. The big advantage of email is speed and low cost, so one can send out information very rapidly that way. In the context of a referendum, where issues are being debated and there is a time limit, email allows that to happen very quickly. We also have a website which we can put information on. People say to us that it is very easy to delete an email, and people may not look on websites, but, when they receive something in the letterbox which is printed, it is in their hands and is more convenient to read than something on a computer screen. They can sit wherever is convenient, read it on the bus and so on. It is horses for courses. There are advantages in the printed material because it has a substance about it and it has convenience about it. There is merit in email and electronic communications because of the wide and cheap dissemination.

ACTING CHAIRMAN—As there are no further questions, I thank you very much for appearing before the committee. If you would get back to the secretariat with the matter you undertook to provide additional information on as soon as you could, that would be greatly appreciated.

Dr Phillips—Thank you very much. May I take a photograph before I go?

ACTING CHAIRMAN—Does everybody have to be smiling?

[11.09 am]

APPLEBY, Ms Gabrielle, Lecturer, Law School, University of Adelaide

WILLIAMS, Professor John, Professor of Law, Law School, University of Adelaide

ACTING CHAIRMAN—Welcome. While the committee does not require you to give evidence under oath, I should point out that these are proceedings of the Australian parliament and any false or misleading evidence could be deemed to be a contempt of the parliament. Would one of you like to give a brief opening statement of, say, up to five minutes, and then we might proceed to some questions.

Prof. Williams—Thank you very much, Acting Chair, and I thank the committee for hearing us here today. I should also acknowledge my colleagues who have been involved in this: Gabrielle, obviously; Professor Lindell; Professor Rosemary Owens; Associate Professor Alex Reilly; and Mr Matthew Stubbs. We are encouraged by the committee's work in this area. This is an area that does need to be reconsidered, and we are pleased to see that an active committee is now looking at this question.

Our joint submission brings with it the experience of a number of colleagues. Professor Lindell, for instance, was involved in the 1988 constitutional commission, and my other colleagues and I have been involved in public law issues for a number of years. I guess our starting premise is that we think that this change to the act—in fact, all change—should start with a concept of deliberative democracy. That is, we should be maximising the public deliberation in any change and minimising the 'partisan deception'—the phrase that is sometimes used—in this process. What we are saying is that we do not wish to eliminate the adversarial or partisan discussion of any change. Rather we are suggesting that it should be regulated. When it comes in is the question that we are most concerned about.

Currently, as we know, partisanship, or the adversarial nature, is from the inception of the change to the polling day. Our view is that it should come in but it should be after there is some attempt to educate and inform the public of what the change is and the nature of its effect. As such, our proposal is one that you have probably heard before: there should be some independent, impartial and respected body. In our submission we sometimes note the AEC, or an AEC-type body. We understand the concerns of the AEC—we do not want to tarnish its reputation—but it should be something that has some sort of feel of that calibre. We can talk about how we would select that body and the means for doing it.

This body would create an information document that, firstly, contextualises the change that we are talking about. It would say why the change is being proposed and where it fits into the current system. That is one of the missing factors in what we see. Often change comes to people without an explanation of how the current system works. Secondly, it would explain the pros and cons of the proposal and note that there is debate. Often there is debate over change, but it should inform that debate and say that experts do in fact disagree, and that is not a bad thing. We believe the document should be the starting point for information. It should not be the last point of information, and my colleague will talk about that in a moment. One of the things that we are

all aware of is that there is just too much information in these things. So it will consolidate a starting point for information. Lastly on the point about the content, it will provide some quality control of some of the basic issues to help frame the debate and inform the debate.

I am happy to take questions, but I thought I would pass to my colleague, who will take up the question of mode, now that I have completed the content question.

Ms Appleby—Looking at the mode or method of the communication, which I think is quite different from the content of the document, our primary position would be that the printed material and the use of the postal service is maintained. We recognise that there is still a proportion of the population that would rely upon this material and find it informative. We also acknowledge that it will reach some voters and not others, and therefore other modes of communication must be considered. We acknowledge further that the distribution of printed material does cost a substantial amount, and that is something that the AEC has put forward in their submissions, but we would say a couple of things about this. First of all, we would say that this actually supports the reason why the material distributed in this manner must be impartial and educative and not consist of extreme partisan views. Secondly, constitutional referenda are important democratic processes and the government should not shy away from spending this sort of money on them.

The other point that we make about the mode, or method, of communication is that other media must be used. This could draw on the print media, particularly if you start using the electronic format. We would support the use of television and radio as well as the newer forms of media, including the internet, email, Facebook, Twitter and even YouTube. As educators in constitutional law at the University of Adelaide, John and I are increasingly aware of the extent to which young people—and also, more and more, the older generations—are accessing these media as their primary, if not sole, source of information.

The final point we would like to make about the mode, or method, is that we think it important that the act, and any amendments to the act, be robust enough to utilise emerging media. The act should not be stuck using the media that are currently available. Given that we know technology will evolve, the act should be able to evolve with it.

ACTING CHAIRMAN—Don't you think that is going to happen anyway? You say that a yes/no case paper should be sent out to everyone—and you are not the first person to suggest that. But as time goes on, obviously the proponents from one side or the other will clearly use whatever communication tools are available, and as new tools become available they will automatically be used.

Ms Appleby—I think that is right, but, if we are talking about an information document that is provided by the government, it should also be using those other forms of media and, pursuant to the legislation, not be distributed only through the postal service.

ACTING CHAIRMAN—The question I am coming to is: who will regulate the regulators? Professor Williams, you mentioned at the outset that maybe the AEC should be the body. But then you said that maybe it should not be the AEC because you do not want to tarnish it. Are you suggesting that an AEC-like body would tarnish its own image because it would find it impossible to put forward something that was so completely down the line? And if you do

support such a body—and I understand that you do—how on earth would you select it to make sure that it was neutral? Let us face it; subjectivity is a part of all of us.

Prof. Williams—Subjectivity is a part of all of us, but that is not the role that these people are trying to put forward—they are not trying to put a partisan view. There are ways of doing it. As Professor Saunders said this morning, the Ombudsman might be one person to coordinate this. There are also other ways of having ex officio positions. The Ombudsman is one. There is the Public Service Commissioner. In other words, there are other positions that are themselves independent. They could coordinate the formation of this body—and that could be by calling for nominations for it. There are government inquiries by government positions all the time. The people who ran the Constitutional Convention itself were distinguished representatives. Who do you want on this body? You obviously want somebody who can inform the body and do the job in a way that has the confidence of those involved. I do not think it is beyond our wit to get a body that is respected.

ACTING CHAIRMAN—So you are opposed to the current situation where members of parliament on both sides actually prepare the yes/no case?

Prof. Williams—That is correct. Our view is that politicians have a significant role in this and they will continue to have a significant role in this process. The question is: when do they come into that? What we want is a deliberative democracy. What we want is their role in it. Those are not the only views. As we know, in many different referendums we have seen different views held within the same parties. At the starting point, when there is a need to get credible, educative information out to the public, we do not believe the political process should be involved.

Mrs MIRABELLA—You say in your submission that the presentation of the yes/no arguments would also be regulated by the panel to ensure that the disparities between the presentation of the cases are reduced. What do you mean by that?

Prof. Williams—That is both content and mode.

Mrs MIRABELLA—Let us talk about content.

Prof. Williams—One of the real things about some of these events is the relevance question. Some of the information that is put forward in the yes/no cases is often of marginal relevance to the question that is being asked.

Mrs MIRABELLA—So this panel or committee would decide what is relevant?

Prof. Williams—There is a degree to which some of the relevancy questions can be left to a panel like this to determine.

Mrs MIRABELLA—I will repeat my question. Would this committee decide what information was relevant?

Prof. Williams—If, for instance, an amendment is put forward and the no case or the yes case says the sun will shine more strongly if you vote for this amendment to the Constitution, it is not clear to me that that is relevant.

Mrs MIRABELLA—I will ask my question again. Would this committee decide whether or not information was relevant enough to be included in the printed material?

Prof. Williams—Relevancy is a good question. I suspect—

Mrs MIRABELLA—You have said here that it is to ensure that disparities between the presentation of the cases are reduced, and you have talked about relevance. You have skirted around it. I want a yes or no answer. Will this committee decide what is relevant and what is not? You gave an extreme example of the sun shining, but for clarity and for the *Hansard* record, and for my own edification and to understand more clearly what you are saying, would this committee decide what was relevant and what was not?

Prof. Williams—I will answer this by saying they will produce the document. What is in or out, and presumably what is relevant or not, will be for this committee to decide.

Mrs MIRABELLA—So they would decide what is relevant?

Prof. Williams—They obviously would not put everything in there, so they will have to make a decision on—

Mrs MIRABELLA—So they will decide on what is relevant or not in the yes/no arguments?

Prof. Williams—They will decide what is relevant to go to the people on this issue.

Mrs MIRABELLA—So the answer is yes.

Ms Appleby—Could I also elaborate on that? We envisage that this document would be a starting point from which the adversarial and the partisan discussion would continue, and that the committee would not limit what was discussed at that point.

Mrs MIRABELLA—In the same way that we have always had discussion from academics, public interest groups and individuals out there in the lead up to, during and after a referendum question? That broader debate has existed, has it not?

Ms Appleby—Yes.

Mrs MIRABELLA—Why should political parties have a minimal role in the dissemination of official referendum material?

Prof. Williams—Because it is being done in the name of the state. That is one of the arguments.

Mrs MIRABELLA—No. It has the yes/no cases.

Prof. Williams—Only if you agree that a yes/no case should be put together. We are not suggesting that it should be a yes/no case that is put together. We are suggesting that it should be a discussion about why this change has come about, what the nature of the change is and what some of its possible effects may be. As we heard this morning, it may pick up some of those

things that are debated in parliament. It is a starting point with information. Once that document is released, as we know, the debate will take place.

Mrs MIRABELLA—Why would you be better at producing this document than the people who have been elected to make the laws of this country?

Prof. Williams—I did not say that I was producing it and I did not say that I was better than—

Mrs MIRABELLA—Why would academics or some group that is not accountable to anyone else—this so-called independent group—be superior at producing this information?

Prof. Williams—Let us take the AEC as an example. Why do we not allow the politicians who are elected to run the election?

Mrs MIRABELLA—I have asked you a question. Do not ask me a question back.

Prof. Williams—I am trying to answer your question by way of an analogy.

Mrs MIRABELLA—I want to know your opinion. Why would this group be better?

Prof. Williams—We can probably go on what we have seen. I think it is a reasonable assumption that some of the past yes/no cases did very little to educate the population. That is probably my starting point.

Mrs MIRABELLA—Okay. That is your opinion.

Ms Appleby—An important part is also education about the way in which the Constitution currently operates.

Mrs MIRABELLA—Are you familiar with the work of the Constitutional Education Fund Australia, or CEFA?

Prof. Williams—Yes, I am aware of its work. It is one body that does that work. CCF was another body that did that work and the AACL was another.

Mrs MIRABELLA—What came out of the last referendum was the need for more education. But education of the general public, whether during the school years or beyond that, is an ongoing process, is it not?

Prof. Williams—No doubt it is. Education in itself is an ongoing process, but we know that this is a moment in time when the Australian population have to decide to leave the Constitution as it is or to change it. I think we can privilege that moment of education in the run-up to that significant decision.

Mrs MIRABELLA—In your opinion from what you have said in the past, you are saying that you do not believe politicians should produce a yes/no case—it should not be a yes/no case; it should be just a general discussion.

Prof. Williams—No. First of all, take your politicians; they will have plenty of time to make the yes/no case. They will be making it, presumably, before the polling day and on the polling day itself. There will be plenty of opportunities for those who are currently very much involved in the public debate to continue to be involved in the public debate. What we are suggesting is that in the production of this document, which has an educative role in outlining what the current constitutional position is and what the change will mean, should not be privileged to the political process, which as we know—and the yes/no case has in the past—tries to maximise votes on both sides. And that is an appropriate thing to do, but not in that document.

Mrs MIRABELLA—At the end of the day people are going to have to vote ‘yes’ or ‘no’ anyway.

Ms Appleby—That is true.

Mrs MIRABELLA—There is no guarantee that with the discussion of what the proposed amendments will create, or what the impact of those will be, there will be a consensus on that. So why is the opinion of the people on that committee and the so-called position they reach analytically or intellectually superior to that which is produced by politicians. I cannot believe, and I will not believe for a minute, that every single constitutional law expert in Australia is of the same opinion—because they are not. So why are the differences between them superior to the differences between politicians who have produced these cases in the past?

Ms Appleby—The role of the committee or the panel will not be to put forward their view of how the Constitution is interpreted; it will be to put forward objectively—

Mrs MIRABELLA—But your colleague just said that this report would produce details and an explanation of how the referendum changes would impact. But there are different opinions—

Ms Appleby—And how they have been interpreted differently by different judges, academics and politicians. It is to put forward the current way in which the Constitution is thought to work in different ways.

Mrs MIRABELLA—But your colleague also said it would explain the impact of the constitutional changes.

Ms Appleby—And how different people may interpret that impact as well.

Mrs MIRABELLA—He did not say that. So why is that different to this committee doing it third hand, saying: ‘The yes case will say this, the no case will say that and these could be the different results of what they say.’ Why is that third-hand description better than having it first hand from the yes/no case themselves?

Prof. Williams—Because the yes/no case often sharpens the distinctions when they are not there.

Mrs MIRABELLA—But isn’t that a decision for people to make?

Prof. Williams—So we allow the people to respond in ways that may not be given the best opportunity to understand what the issue is. Let us take away 1999. Let's go for a 'cleaning up' sort of provision. Let's think about section 41 of the Constitution—the one that guarantees the right to vote, allegedly. We know why the provision is there. If we were to clean up the Constitution—and there are a lot of spent provisions in our Constitution—take section 41. The document that would be created would note that section 41 got in there because South Australian women had got the vote in 1895 and that that provision protected their right in 1895. Once the Commonwealth came into existence in 1901, whilst they maintained that right to vote they could not lose it at the Commonwealth level. In 1983 the High Court held that this was a spent provision. The only people who have a right to vote in this country are those who are 120 years old, and counting. That is a fact. There is not a lot of debate about that. That is a statement.

The yes/no case can follow at a later stage about whether we should never change the Constitution because that section may spring back into life, or something else. But there is a good example of who is going to make that case—who is going to speak out, what the context of that section is and how it is being seen in light of history. Then there is the information for the voter. Let the partisan debate break out about whether it should go 'yes' or 'no'. But what is wrong with giving that information.

Mrs MIRABELLA—You can give that impression. My concern is—and would you not agree—about your comments that 'often too much information is out there' and that 'quality control of some of the basic issues is needed'. Doesn't that come across as elitist and a limitation on freedom of speech and a bit of an insult to the intelligence of the Australian people to work out what is rubbish and what is not, like they do at a general election.

Prof. Williams—No; it does none of those things. What it says is that we do privilege documents; we privilege journals of records as against what we hear in the street. We require good journalism to be good journalism; we require good parliamentary committees to be good parliamentary committees. There is nothing wrong with saying that we privilege documents on the basis of their origin, their rigour of review, et cetera, so I have no problem with doing that. There is too much information out there. We said that this is a good starting point.

Mrs MIRABELLA—So should someone censor what filters through?

Prof. Williams—No. We are not asking to censor; we are saying that it should be relevant to what we are trying to do.

Mrs MIRABELLA—But isn't there a danger in who decides what is relevant?

Prof. Williams—Elvis is alive and well on their web. If you go on the internet you can find someone telling you that Elvis has been seen.

Mrs MIRABELLA—That is a silly example.

Prof. Williams—It is not a silly example. It is an example that there is too much—

Mrs MIRABELLA—Are you saying that some of the arguments used in the last referendum equate to 'Elvis is on the web'?

Prof. Williams—I would not comment, possibly. Some of the statements would suggest things that may not have actually happened. We are not refighting 1999 here.

Mrs MIRABELLA—No. I am just saying this because you used that as an example that previous yes/no cases left a lot to be desired, but then you used very extreme examples to illustrate it.

ACTING CHAIRMAN—Could we just hold this line of questioning. Mr Andrews has to go in about five minutes, so I would like to give him the opportunity of asking some questions and then we will get back to Mrs Mirabella.

Mr ANDREWS—Professor Williams, just so that I understand what you are proposing—and I am not trying to put words into your mouth, but just trying to understand—are you saying that, in addition to the partisan cases that are put, there should be some other material published earlier that contextualises the proposal?

Prof. Williams—That is true but I do not think that there should be a yes/no case produced by this body; that could be produced by the players themselves, and whether that should be funded is another question.

Mr ANDREWS—So there is a body—

Prof. Williams—Yes.

Mr ANDREWS—Whatever the body is, I am not so interested in that at the moment, but I just want to understand the overall mechanism that you are proposing. There is a body, the members of which are to be determined, that produces a document published in various ways, but the main purpose of that is to contextualise the proposal which is subsequently to be put to the people.

Prof. Williams—That is true.

Mr ANDREWS—In addition to that there would still be a yes/no case, something similar to what is produced now.

Prof. Williams—We would leave that to the parties who are involved—and I am not just limiting it to the political parties—to put that yes/no case into the public arena, but not through the processes.

Mr ANDREWS—Without public funding.

Prof. Williams—Yes. We are talking about a timing question here. The partisanism can come in later, but the public document should be the one we have described.

Mr ANDREWS—So there would only be one public document and this would be the expert panel document contextualising the argument.

Prof. Williams—Contextualising, and some of those arguments will obviously be picked up from the political arena when the mechanism started, so they may say that these are our arguments but they can be found in other places.

Mr ANDREWS—I am not necessarily against having a document that contextualises. If you go back to 1999, as I recall, a committee with Sir Ninian Stephen was charged with doing that additional thing. I cannot recall what happened with that precisely but that was in addition to the yes/no case.

Prof. Williams—It was lost.

Mr ANDREWS—To put it in a nutshell, isn't one person's partisan statement another person's principle?

Prof. Williams—I guess that it does turn on the issue that you are looking at. I do not know that there is going to be a lot of partisanship in the example that I gave you of section 41 or some of those other cleaning up ones. Using another example, the cross-vesting case, as we know, really caused some problems. There is a normal, rational constitutional change explaining why we would have to make that change. We never get into those changes. The real concern that I think my colleagues and I share is that we are caught up on not even doing the ones we need to do because of the process. So contextualising would be an important process and that role, we think, is probably best to be done in a dispassionate manner, and let the politics break out after baseline information is provided to the citizens.

Mr ANDREWS—You say yes to contextualising. Shouldn't contextualising be yes and no, in a sense?

Prof. Williams—That could be ventured as well. It could say that there are legitimate debates about whether this provision will solve the problem. That is fine. What we do see in the yes/no case is a sharpening of the rhetoric to the point where people are forced nearly to make an emotive response to something. It is the equivalent of a 30-second attack ad such as we see in the US and some sort of open baseline information, which people can then have an emotive response to if they want. If we are using public money, we should at least have a role to arm the citizen with information that they can use to make an informed deliberative decision.

Mr ANDREWS—I do not necessarily have problem with the partisan. You might say that 1999 was an exception to the referendums we have had. If you look at 1999—and this is just taking the first page of the case for yes and no—we should stand on our own two feet versus a puppet-for-president vote no. You can argue depending on your perspective that they are partisan comments, but equally you could argue that they encapsulate in one sentence the principle behind those views.

Prof. Williams—We would not stop those statements being made, but whether they were made in the name of a public document that was supposed to inform the debate, I am not sure that they did. Our process is arguing when the adversarial process should break out. That is what we are trying to bring this debate towards. We are not trying to stop it; we are just saying to have a moment where we create a document, an information system, a process whereby the people

can be engaged and have something armed to respond to the emotive, the reason, the rationale or whatever debate you have. At least give them something to start with.

Mr NEUMANN—The independent panel produces an explanatory memorandum—is that what it is?

Prof. Williams—That would be another way of putting it, yes.

Mr NEUMANN—On the mechanics of it—the 14-day provisions—do you have any comments in relation to that?

Ms Appleby—We probably do not have any view as to 14, 21, one month or two months. But we would make the point that, if this sort of explanatory memorandum or informative document is to serve its purpose, it needs to be out as early as possible to inform that debate and then allow the debate to expand from there.

Mr NEUMANN—And the 2,000-word limit in relation to it?

Prof. Williams—The 2,000-word limit is set up to try to have the yes/no balance. I think the document should be as long as it needs to be to inform. Another point made was that one of the ideas of having the old media and the new media working together is that it is quite possible to have this group alive during the process and then they could respond and make commentary—not a running commentary—on issues that maybe need some comment upon.

Ms Appleby—That also pulls in another point that, if there are other relevant issues that have not been considered in the initial explanatory memorandum and are raised throughout the debate, the committee could then address them throughout.

Mr NEUMANN—In relation to the emerging media, you would like the governing legislation to be as flexible as possible and not so prescriptive with respect to media and the methods by which dissemination takes place. Is that what you are saying?

Prof. Williams—That is true. There have been recent amendments to the Archives Act, which I have a little bit of experience of, where the definition of what a Commonwealth record is seemed to be stuck in time in 1983. We just want a flexibility that could pick up new media as we go on.

Mr NEUMANN—What about flexibility in terms of the dollars and cents we can spend. We have evidence that it should be a case-by-case basis, there should be amending legislation. Do you think we should just have that—if I could put a blank—so there is no actual prescription of how much money should be spent? What is your thinking about that?

Prof. Williams—My thinking is appropriations in many ways should be the best way to put that. I think a parliament should appropriate money as required for the tasks it needs to do.

Mr NEUMANN—Rather than a specified amount of ‘this is how much you spend entirely’ for example?

Ms Appleby—I think that different referendums will raise different sizeable issues. So yes; it should be a case-by-case issue.

Mr NEUMANN—The revocation of section 41 would involve a minimal amount of money but revisiting the Australian republic would involve a considerable amount of money. Is that what you are saying?

Prof. Williams—I suspect that would be the case.

Mr NEUMANN—So there is a need for greater flexibility in that regard? That is more efficient than amending legislation every single time, isn't it?

Prof. Williams—It is. I can see the attraction to saying 'let's cap this' but then, over the long haul, if it costs so many millions of dollars and that provision will stand in time for the next 50 or 100 years, we are not talking large dollars.

Mr NEUMANN—I thought your recommendation was about limiting expenditure of public money?

Prof. Williams—Our recommendation on that point is about the limitation between the states and the Commonwealth. One of the ideas is that if we are going to limit money, as we think we should in a sense, we have to be mindful of the constitutional requirements so that you just cannot ban political communications—but if we are going to limit it at the Commonwealth level it would make no sense to not have some effect on the states, again raising other constitutional questions.

Mr NEUMANN—Surely that would raise constitutional questions about the Commonwealth parliament passing legislation that would limit expenditure of state governments on referenda that may affect 'states rights'.

Prof. Williams—It certainly would. But one of the other countervailing principles is that we know parties exist both at federal and state levels, so you would not want the situation where the Commonwealth itself cannot do it and all the resources effectively are taken up by states in their political processes. We are very much alive to the points you are making, that is, the constitutional limitations, but for a level playing field we should try and affect both the Commonwealth and the states on these issues.

Mr NEUMANN—The expert panel seems to be made up of experts in constitutional law, if I can put it like that. Is that what you are suggesting?

Ms Appleby—We would not shy away from the proposition that there would be a number of constitutional lawyers on the panel, given that it is for constitutional change, but we would not also advocate that it be solely constitutional lawyers. We would see roles for political scientists, for educators, even for marketers. It does not have to be solely limited to lawyers. But at the base of it, if it is an explanation of legal context, there would obviously have to be lawyers on the committee.

Mr NEUMANN—Why would you suggest that it be selected by the AEC? We have heard evidence this morning about the High Court, which I think was politically nonsensical, to be honest with you, but why the AEC? Surely that might tarnish their integrity and reputation in the eyes of the Australian community?

Prof. Williams—We would not want to do that. In the submission we probably should have said ‘an AEC-like’ body.

Mr NEUMANN—So another body?

Prof. Williams—We suggested there are ways of doing it. You could just pick ex-officio people as the selection committee. You could get the Solicitor-General, the Ombudsman, three or four others and their role could be just to set up the panel. What you do not want to do is pass the partisanship to an ‘Okay, I can’t be involved but I’ll choose someone who can’ type of process. You want to try to get a balance—

Mr NEUMANN—So you might have the Auditor-General, the Commonwealth Ombudsman and the Public Service Commissioner involved and you might have a representative of, say, the Premier of each state—

Prof. Williams—Yes. The purpose is that the body that is selected can do the task and in itself has some level of independence, which can be gained by the fact that it is at arm’s length.

Mr NEUMANN—So it would not be randomly selected—is that what you are saying? The people would be elected on the basis of their expertise and merit—it would be meritorious as opposed to a lottery.

Prof. Williams—I suspect we should have some criteria beyond just postcodes, yes—some sort of meritorious selection.

Mr NEUMANN—As a Queenslander I would like to see some aspects of regionality taken into consideration.

Prof. Williams—Coming from South Australia we would probably consider that as well, and given that it is a federal system that is an appropriate thing to do.

Mr NEUMANN—Absolutely.

ACTING CHAIRMAN—You mention that there should be a limit on state spending in referendum campaigns. How could you justify this? Don’t you think that the states have a valid interest in taking a certain position on a proposed referendum question?

Prof. Williams—I think the principles here are quite evenly balanced. I think the one you have just put is a real issue, that most federal changes will impact on the states, and it is possible that so many have failed because they do change the relationship between the Commonwealth and the states. So that principle you have put is a good one. The other one is the consistency issue: that if the money is stopped from the Commonwealth then what you will see is that, tactically, people will move the money to the states to argue the case. We have federal parties,

parties that sit across the Commonwealth and states, so that is the dynamic we are talking about here. If we want to have a blanket limitation I think there is an argument that we do so. I do not think there is any point in trying to have a bucket and then putting a hole in it.

ACTING CHAIRMAN—I am a little rusty on constitutional law. Is it legislatively competent for the Commonwealth to legislate to prevent a state government from spending money?

Prof. Williams—It would certainly raise a good question about whether you were curtailing or destroying the capacity of the state to function as a polity. I suspect regulation rather than an outright ban might be more likely to survive.

ACTING CHAIRMAN—But, either way, it is impeding their ability to do what they want to do with the money that is theirs.

Prof. Williams—It could well be. Without getting into the details, in the AEU case about the employment of public servants there was a question that the Commonwealth could regulate their salaries but the numbers of public servants would be an issue for the state, so, if we got into that sort of dichotomy where the Commonwealth might be able to limit how the money is spent or maybe even limit the money, it might be different to an outright ban on the spending.

Mr NEUMANN—I practised for a long time as a lawyer, but not too much in constitutional law. Peter and I practised at one stage in the same area. But I just cannot see it as possible that the High Court would uphold the idea that the Commonwealth parliament could pass legislation that would limit a state government spending money in relation to the exercise of its jurisdiction.

ACTING CHAIRMAN—That is my view as well.

Prof. Williams—Interestingly enough—and you raise the question about this—take an example where the Commonwealth has legislated in this area and is saying that state elections cannot take place within a period of Commonwealth elections or referendums. The Commonwealth has already done that. The machinery act we are looking at here today has provisions of a similar nature. Those have never been challenged.

ACTING CHAIRMAN—But, if they were challenged, they might be struck down.

Prof. Williams—They could be.

Mr NEUMANN—I know that the High Court has expanded the role of the foreign affairs power, and Mr Howard was the great centralist when it came to the Corporations Law and Work Choices. We are all socialists now, I think—as John Grey Gorton once described us. The Liberal Party is as centralist as the Labor Party on lots of these constitutional issues. But, when it comes to issues like that, I just cannot see that the High Court would ever uphold that.

Prof. Williams—It depends. I think it really does turn on this question of regulation as against an outright ban. I think it would turn on that.

Mr NEUMANN—I would be interested in information.

ACTING CHAIRMAN—Rather than just have a discussion here, would you be able to go away and just put some thoughts together for us on this particular point?

Prof. Williams—Yes.

ACTING CHAIRMAN—I would value those comments.

Mr NEUMANN—Yes, I would too.

ACTING CHAIRMAN—Thank you for that, Professor. As there are no further questions, I will just mention that the secretariat will send you a transcript of what Hansard has recorded you as saying. If you could let us have the additional information that you have undertaken to give us when you can, that would be greatly appreciated. Thank you very much.

Proceedings suspended from 11.46 am to 1.05 pm

GALLIGAN, Prof. Brian John, Private capacity

ACTING CHAIR (Mrs Mirabella)—Welcome. Although the committee does not require you to speak under oath, you should understand that these hearings are formal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. You have presented the committee with a submission. Would you like to make a brief introductory statement or speak to that submission?

Prof. Galligan—Yes, I would. Thank you for the opportunity to speak to the committee. My apologies for not submitting my proposal earlier. I could not do that, but I have done it now and I have handed the text to you. It is only brief and I will speak briefly to that. I will cover a number of points but only briefly. You might want to come back to these or take them as given or irrelevant. The first point is in the broader context. What I am concerned with here is the widespread view that Australia has a poor constitutional referendum record. The reason that is often given is that the record is in fact bad, and that reflects that something is badly wrong with either the process or the Constitution, and blame is often attributed to the Australian people, who are considered to be ignorant and conservative. I make the point that in fact Australia does not have a poor constitutional referendum record; it has a record of poor proposals being put to the people which usually fail. The key thing is: compared with what? Compared with the US and Canada, we do not have a poor constitutional record. Developed countries that have had democratic constitutions from the beginning and have not had coups, revolutions and so on would not expect to change their constitution much if it is fairly flexible, as ours is. The Australian people are no more stupid or ignorant than any other people. They are as well informed as you would expect a diverse electorate to be. They might appear to be more so if you bombard them with ‘do you know’ quiz questions about technical aspects of things. But for things that concern them, they are usually well informed. If the inquiry is done well, that will come to the fore. Being conservative is no poor thing. The Constitution should have a high threshold for change. It should demand a certain extra consensus among people.

The second point that I make is about depoliticising the referendum process. I guess it is quite common—and I have just looked through some of the earlier submissions made to the committee—for people to advocate experts to depoliticise the referendum process. What they usually mean is putting in some group of independents—a few judges and people like themselves—instead of politicians in parliament. Again, I think this view is flawed because referendums are inherently and fundamentally political questions. It is a superficial view that you could somehow sanitise these or depoliticise them. Any proposals to take the process basically out of the control of parliament should be rejected.

ACTING CHAIR—It reminds me of a few politicians who say they are not politicians but parliamentarians, whatever that means—

Mr NEUMANN—That was the view of 11 One Nation members in 1998 in Queensland.

Prof. Galligan—They probably abused the term, but I think ‘parliamentarian’ has a bit more public standing than ‘politician’.

ACTING CHAIR—But the reality is the reality—that these decisions are highly charged.

Prof. Galligan—Exactly. And even if you get so-called experts to make them it does not take that essential political character away from them. I have given some consideration to properly informing the electorate, and one of the key issues is whether the rather old-fashioned printed form of the yes/no booklet going to every person will take too much of the budget and is adequate. I think obviously it is not adequate—there are many other more modern forms of communication—but at the same time it is probably still necessary. Restricting it to one per household to save money could be justified, but there is still something nice if you get an individual copy. Then there is a question of whether most people would read it in the form that they get it in—I suspect probably not. There is a case—I raised this in another section—for perhaps having the Electoral Commission attach a short-form executive summary of a few paragraphs to each of the cases.

Moving to other forms of communication—for example, the internet, which most younger people or students and certainly better educated people favour—ought to be done, but that would probably be in addition to having a basic printed form available to all households. There would be a proviso in relation to people in country areas. I have a bit of experience through a breeders association, in which 50 per cent of people are not on the internet. So you do need both forms of communication. If you improve the internet information, you have to keep in mind that you should be getting material to people who are still very dependent on print and mail.

Using new technologies is related to that. I think that is essential now. Most young people and informed people use the web primarily and almost solely to be informed, so even if it is additional back-up, that is where they are going to go to seek further information.

In relation to the funding of referendums, I think there is a compelling case for having them funded in some comparable way to the 1999 referendum or to the way elections are funded.

The next point goes to developing the role of the Australian Electoral Commission. In criticising the so-called experts and calls for independent bodies above, I would not like to rule out the essential role of an independent body such as the AEC and indeed expanding that role. Lawyers might tell me better here, but it seems to me under the existing legislation that the Electoral Commission's role could be expanded. They have been a little bit coy and a little bit reluctant to get into more robust dissemination of information about referendums, but I think that could be encouraged. In reading their brief they seem to be suggesting that they would quite like that role. It might be appropriate to take it further through legislative form. Certainly I think that is the body to do the independent aspects of the information process and formulating messages appropriate for electors.

In relation to expanding the initiation role, I thought for some time that one of the reasons why so many referendums fail is that the Commonwealth is the initiator and it usually puts up proposals that favour the Commonwealth. I would call it a positive federal gesture to bring the states back in in the sense of allowing them, if they had a majority, the pathway of bringing forward a proposal. It would still have to go through the Commonwealth parliament. There would be very little chance of anything getting up if the Commonwealth parliament and the government of the day did not support it. So it would not be a terribly major change but it would be a federal gesture of some significance.

To summarise, from the combination of the points I have made above, it seems to me that the amendments you might want to make to the machinery act are fairly simple and straightforward. You would allow the Commonwealth to fund referendums in a manner similar to 1999 rather than have to pass special legislation to do that. You would develop the role of the AEC to a broader, perhaps more flexible provider of information to electors. Then—and this is perhaps a federal gesture—you would allow a majority of the states to bring forward proposals to the Commonwealth. But I would not be in favour of popular referendums. I think they would be largely ineffectual and not satisfactory.

ACTING CHAIRMAN (Mr Slipper)—Like citizen initiated referenda?

Prof. Galligan—Yes. There is not a good case for those, in my view.

Mr NEUMANN—The AEC expressed pretty strong views at the roundtable on 14 October opposing the idea of the expansion of its role to develop what I described earlier today as explanatory memoranda or even developing the yes or no case. Why do you think the Australian Electoral Commission is the appropriate independent body, when it really is simply about running elections and keeping the electoral roll?

Prof. Galligan—It is a little bit more than running elections and keeping the electoral roll, isn't it? It has had a limited role under the existing legislation to actually handle the technicalities of the printing and dissemination—although it is fairly simple, I suppose—of the yes and no cases and it does run advertisements to tell you to vote and whatever. What I imagine is not a terribly expansive role but a role of further finessing the information that is available.

Mr NEUMANN—But isn't a yes or no case an inherently adversarial position that involves people adopting different positions? So isn't it the case that we might be tarnishing or sullyng the Australian Electoral Commission's integrity?

Prof. Galligan—No. If the yes or no cases still remain with parliament, and I think they must, even if parliament decides to allocate those to committees or bodies representing the two sides—which I think is fine and which, to a extent, was done in 1999—the Electoral Commission is really retailing what have been the substantial cases made in the political process.

Mrs MIRABELLA—You are talking about expanding the role of the AEC in disseminating information, not in actually drafting it?

Prof. Galligan—In disseminating information but also in providing explanation of the text that they have got there.

ACTING CHAIRMAN—They would be very reluctant, because they feel that their position in the public mind is fragile. Depending on what they do with respect to redistribution sometimes, they might feel that their situation is a little perilous and they seem to be highly reluctant to become involved in putting points in favour of and against referendum changes.

Prof. Galligan—Provided it were clear that they were presenting or retailing the thing. Redistributions are, I would have thought, much more politically sensitive and difficult things to

get into. It just seems to me that you have got an expert body which is highly reputable there at hand that has been doing part of this. They do express their coyness in their documents.

Mr NEUMANN—You are suggesting that they actually prepare an executive summary of the yes and no cases. Isn't that involving themselves in the political—

Prof. Galligan—That is not too difficult, is it?

Mr NEUMANN—Sorry?

Prof. Galligan—That would be more an editorial or a reporter type thing. You can say to an independent person: 'This is the case. Give me an executive summary.' That clearly is not simply a neutral thing, but on the other hand I think it is not a terribly difficult task to ask somebody to do. I do not think you need an entirely independent body. If it were considered that it was going too much into the articulation of the substance of the case, then perhaps you might need the independent body. I just see this proliferation of these sorts of independent expert committees and bodies and so on as not really justified.

Mr NEUMANN—With respect, you actually say that the AEC has a key role in the technical aspects of preparing the case. That is not just an executive summary. You are actually suggesting that they be involved in the technical aspects of the case.

Prof. Galligan—I would have thought an executive summary is a technical aspect, isn't it?

Mr NEUMANN—They are your words, not mine.

Prof. Galligan—Yes.

Mr NEUMANN—What do you say about the 14-day provision and the 2,000-word limit?

Prof. Galligan—I think there is a problem when you try to overspecify these things and you get into too tight situations. I think you have to have reasonable limits. The 14-day thing seems to be rather arbitrary. It really depends on what your media of communication are and whether they are better or worse today than they were some time ago.

Mr NEUMANN—You do not favour the limits on expenditure; you favour the idea that we should not really look at amending legislation on the limit of expenditure, like in 1999.

Prof. Galligan—No, that is one of my proposals. I have said that I think you should change the legislation—I have not given details—to allow the Commonwealth to fund referendums. But it should not be done so that the government, which is usually driving the process, can favour its own side. It should be something comparable, although not exactly comparable, to the electoral funding.

ACTING CHAIRMAN—I think you said that you believe that the yes and no cases should remain with the parliament.

Prof. Galligan—Yes.

ACTING CHAIRMAN—What would be your view if you had a referendum proposal where no member of parliament actually opposed it? Should there still be a no case so that people would know that there are arguments in favour and against, even if none of those arguments against commended themselves to any member of parliament?

Prof. Galligan—That is the 1967 case, isn't it? It seems to me that this is a fairly small point. The no case is going to be put by somebody and, if it has got any legs, by quite a lot out there in the media. I think that in circumstances like the 1967 referendum when there was no parliamentary opposition it was appropriate and symbolically significant not to have a formal no case there. There could be issues that we would imagine into the future where, if there were consensus across the board, it would be appropriate not to have a no case.

ACTING CHAIRMAN—Don't you think, though, that the 1967 referendum has subsequently been discovered by the courts to have meant a lot more than people thought it meant at the time and that maybe it would have been healthy to have a no case?

Prof. Galligan—I think the people expected a lot more of the 1967 referendum at the time. It was the Liberal government putting it who were very cautious and wanted to minimalise. They wanted to satisfy the popular view that they needed to act in this area but they really did not want to be seen to be intending to do much. I do not think that the courts made more of it than was there. In the South Australian case—if that is the one you are referring to—it seems to me that it was a race power and the exclusion of Aboriginal people from it, which the court considered. It is pretty straightforward.

Mr NEUMANN—If one person in parliament voted against the motion, should there still be equal funding or should the funding be commensurate with the votes in federal parliament?

Prof. Galligan—That is a difficult one. There seems to be a common-sense point of view that if you have one lone voice then that gets equal funding. That does not seem to be warranted. On the other hand, if you are going to have a no case it needs to be funded in some way. I think proportionality is the key. Whether you go for one out of however many hundred, you give it that proportion.

ACTING CHAIRMAN—That would be very unbalanced, wouldn't it?

Prof. Galligan—It would be very unbalanced, yes.

ACTING CHAIRMAN—I think it was the late Peter Andren who proposed the preamble, and he managed to win.

Prof. Galligan—Yes, and I voted against it and so did a lot of other people. I do not know what that actually establishes. I think there was use in having a no case there. Most people were probably influenced by factors other than the no case.

ACTING CHAIRMAN—It seems to me to be very dangerous to put a referendum proposal forward and not to at least give equal space. Otherwise, you could convey the impression that any opposing view is not worthy of appropriate consideration.

Prof. Galligan—There is nothing clear cut here and there are arguments on both sides. If you take the extreme position on both sides I think you can make it look unacceptable. I have no problems either way. I have no problems in properly presenting the no case, even if it only has one person. They might just be grandstanding—who knows? But I do not see it as a huge issue. It might be important to make a decision on.

Mrs MIRABELLA—Previous witnesses have pointed to the, in their opinion, less than savoury and at times distasteful aspect of referenda when political parties get involved—as if it is some sort of dirty act for politicians to get involved, with which I disagree because of the very nature of referenda changing the Constitution, which is the founding political document of our nation in the first instance. In your written submission, in paragraph 2, you talked about depoliticising the referendum process and you have made some very concise statements. Could you please expand on those? Because we have had so much discussion from well-meaning experts and academics, who no doubt would like a position on this so-called neutral body to replace politicians, it would be good to hear a bit more about the alternative view.

Prof. Galligan—Political parties are the main structuring institution of our parliamentary process, forming the governments and so on, so it seems to me that they are going to be right in the front line of any significant political issue. To think that you could take them out and have a sort of welling up of sensible political discussion and debate without them, given that they are there, seems to me to be silly. The other point I have made is that it reflects a view that somehow the bigger political questions like constitutional issues and referendum changes ought not to be politicised in this nasty way. But they are fundamentally political questions. The political parties clearly engage in tactics which, on various occasions, people find distasteful, but that is par for the course; it is part of politics. It seems to me that if you take them out you get left with the constitutional convention leading up to the republican referendum, which you would have to say was a nice gesture but at the end of the day highly ineffectual.

Mrs MIRABELLA—Yes, quite.

Prof. Galligan—I have forgotten whether you starred in that. I should perhaps—

Mrs MIRABELLA—Yes, I was there, for better or worse.

ACTING CHAIRMAN—Is Mrs Mirabella one of your ex-students, Professor?

Mrs MIRABELLA—No.

Prof. Galligan—No. I think we probably have very different views on a lot of things but perhaps not on that.

ACTING CHAIRMAN—I see you are a Queenslander.

Mrs MIRABELLA—Is there perhaps another risk, if have a so-called neutral body of experts, that a political party, which will get involved in the referendum question in some way in any case, could hide behind the so-called neutral body to push its very partisan views anyway?

Prof. Galligan—I do not know. If I think of colleagues of mine and the positions they take—for example, on a republic or on a bill of rights—they are very much political positions. As with, in many instances, judges on bill of rights cases, the best indicator of how they are going to vote is their track record. In the same way, you can know what the choice of these people is going to be on a political issue because you know pretty well how they are going to vote on the big issues.

Mr NEUMANN—You mentioned before the yes/no case. Is there any way we could improve the quality of the propositions in terms of the yes/no case? It seemed to me that ‘If you don’t know, vote no’ and ‘It’s time to stand up for ourselves’ were quite trite and almost disingenuous.

Mrs MIRABELLA—No more trite than ‘Kevin 07’.

Mr NEUMANN—‘Kevin 07’ was a brilliant exercise in marketing—

Mrs MIRABELLA—What is good for the goose is good for the gander.

Mr NEUMANN—Do you think there is any way we could actually improve the qualities?

Prof. Galligan—It is very complex, isn’t it. One would hope that you could do that. I spend a lot of my time teaching and writing in areas with the hope that there may be some sort of flow-on of that. I guess we have to expect that in the political process it is going to be pretty robust and there is going to be the good and the bad. It is then going to be partly a question of the quality and calibre of politicians and the political taste they bring to bear and it is going to be partly the quality of the electorate that they are speaking to. If they think that they are sophisticated and have good taste they will not do these things but if they are not quite there then they will.

Mr NEUMANN—If the AEC is preparing an executive summary, getting involved in the technical aspects or taking the more broad and flexible role that you suggest, what is the purpose of the yes/no pamphlet?

Prof. Galligan—It seems to me it is basically the official, substantial cases for and against that are sanctioned by the parliament in putting the proposal. It means that the responsibility for that is taken where it should be taken, by the political people responsible for it. In a sense, the presentation of that, getting it out and using the various forms of media and so on, is a job that then can be handed over to somebody else—not to change the substance of the cases, which have been approved in the political process, but to present them in a way which speaks to the diversified and rather unequal access of Australians to them. Most people take shortcuts to this. Regardless of what the referendum yes/no case is or what the AEC might present to them, they are probably going to go mainly to the tried and trusted people or media that they listen to. Nevertheless, there needs to be the availability of the formal, sanctioned, public documentation behind this process.

Mr NEUMANN—You say there is a strong case for the states to take an initiating role. Can you expand on how you would envisage that would play out?

Prof. Galligan—It is a bit of an add-on. I actually put that in as I was finishing the thing off this morning before rushing down here, partly because I am a federalist. If you look at why most referendums fail, it is often because of the Commonwealth government of the day, which has the numbers, putting up proposals which do not have sufficient breadth of support. So many of them have failed in the past because of states combining, even within the same party. You can go back to the thirties and see Labor people putting up the Commonwealth proposal and state Labor leaders shooting it down. So it is one way of both making a gesture to the states and bringing forward a greater consensus. Most prime ministers know that a thing is not going to get up unless it has fairly broad consensus, yet that has not stopped a lot of them in the past from grandstanding—running a constitutional decision in order to be seen to be doing something or to get them off the hook so they cannot do something else they have promised to do.

ACTING CHAIRMAN—That is like the current government's view of the constitutional plebiscite on a republic in the next term. Clearly, unless there is sufficient consensus, you will never get a change through, and, clearly, there is not the consensus, and it would just seem to be a waste of money to go through that process.

Prof. Galligan—I agree. In the past we have seen quite a number of repeat constitutional proposals put in the same format as proposals that were rejected. I support the staged republican thing, although I can see there are arguments of, perhaps, entrapment that some people might see. But, certainly, if as a prime minister you want a republican convention to fail, you say you do not believe in a republic and then let it go to referendum. That is obviously an element that is going to help it fail.

Mrs MIRABELLA—You have mentioned in your submission and in your oral submission that the questions have been of a poor quality and people have not wanted to support them.

Prof. Galligan—Political poor quality, I think.

Mrs MIRABELLA—Yes. Is another significant reason, not necessarily different in the broader sense, the fact that there is not much public concern or passion to change the Constitution, because people do not see a practical need to change it?

Prof. Galligan—I think that is obviously true and is to be expected. If we were prone to serious crises then there would be much more concern that there is something wrong with the political process. But, if we are not, it has to get to a certain threshold before you get widespread concern. If you have elite groups, political parties or governments wanting to change things for whatever reason, even for the best of reasons, they are going to come up against that wall that inherently is partly apathy. But it is partly apathy which is well based, because there is not a perceived need or political reason. That is why people lament that we have not had a successful constitutional amendment for 30 years and we have not had any proposals put in the last while.

On the other side of that, you could say that that was probably a good sign. But it might be a sign that everybody has become very conservative and cautious and the obvious things that are wrong are not being fixed and, if they get so wrong, surely the smart politicians will pick them up and people will respond to them and so on. So I think you can argue that overall it is to be expected.

Mrs MIRABELLA—There does seem to be a view from the so-called political or academic elite that people really need to be told what is in their best interest.

Prof. Galligan—That is naturally enough too. These guys spend their lives teaching people what they should do and how they should think and so on, so it is only natural enough. If they are constitutional lawyers particularly, they seem to be prone to this and usually assume that they or their friends would be running things and not the other group and that they would be much better at it.

Mrs MIRABELLA—A bit of humility might go a significant way to greater success for them in their quest for constitutional change perhaps.

Mr NEUMANN—Professor, you would agree that we get around constitutional difficulties by COAG and by judicial activism in the High Court.

Prof. Galligan—That is not getting around it. They are key parts of it. There is not much that we would want to do that you cannot do through improved intergovernmental relations and better governance and all of that. Whereas, again, I think it is rather a superficial view. People say, ‘We have a problem and we need to change the Constitution.’ There was a marvellous cartoon when one of our cricket captains retired and a little boy says to his father, ‘Dad, we need a new cricket captain. We need to change the Constitution.’ Well, clearly, we do not. I think that it is a good sign that most things can be done intergovernmentally and then with some adjustment by the High Court, which was always intended to be the case.

ACTING CHAIRMAN—Professor, thank you very much. We have enjoyed your evidence and we will send you a transcript. If you have any other thoughts that you would like to share with us before we report, please feel free to contact the secretariat. Thank you.

Prof. Galligan—I have given a short copy of this paper and I think that that is probably sufficient, thank you.

ACTING CHAIRMAN—We will receive that formally as a submission. Thank you.

[1.38 pm]

WILLIAMS, Ms Jennifer, Private capacity

ACTING CHAIRMAN—Welcome, Ms Williams. While the committee does not require you to give evidence under oath, I should remind you that these are proceedings of the Australian parliament and that any false or misleading evidence could be deemed to be a contempt of parliament. Thank you for appearing in person today; it is greatly appreciated. Would you like to give us a brief opening statement, say, up to five minutes, and then we might proceed to ask you some questions.

Ms Williams—Thank you so much for allowing me as a citizen to submit a submission. I am very grateful for that, and I am also really grateful for the opportunity to be here today. Thank you for your interest. I must say that sometimes people might think that politics and design are odd bedfellows but actually they do share a certain conceptual approach. They are both about the future and what can be. They are making and shaping the world, one through designer policy and the enactment of that, and the other through designer systems and artefacts.

My submission really is asking you to consider the way that public education materials are envisaged, designed and disseminated. In all that I have read, and I have certainly read the transcripts of the roundtable discussion that you had in October, the one you had last year and one in 2004, I think, and I have read a number of articles from people who really have a vested interest and hold very strong and passionate views, it seems to always come back to the fact that there is a lack of engagement and so on, and I think people have also adequately countered those arguments.

From a design perspective, and information design in particular, when I look through the lens of visual communication I see that the lack of design in this mix is a problem. That is not because it makes something beautiful, necessarily; it is not an aesthetic. It is simply something that makes something clearer. It engages people and gives them enough information; it turns data into information. It takes some text or data and turns it into something relevant. It must be relevant for people. It must be clear and it must be memorable and actionable. That is the role of information design generally. My request is that you consider opening up the processes of referenda to other disciplines which may be able to offer, in part, something that would aid in fixing some of the problems that you have had in the past. Thank you.

Mrs MIRABELLA—Ms Williams, what do you mean by ‘opening up the referendum process to other disciplines’?

Ms Williams—My understanding is that it tends to be overtaken, as we have just heard, by academic experts or people who have a vested interest. Sometimes they do not have all the answers that could enable a greater understanding by the public. I know from the discipline that I work in that it can assist people who are making decisions, such as politicians and constitutional experts, and can offer something to that.

Mrs MIRABELLA—So you are talking about the method of delivering the message?

Ms Williams—The structure of content as well as the way you deliver it—how you would use the appropriate media effectively and, afterwards, how to evaluate that. One thing I noticed was that there was no evaluation of the yes/no booklets. I contacted Ian McAllister a couple of years ago, because I was doing this as a research piece, and I asked, ‘Were any of these booklets ever evaluated?’ We were talking about the one in 1999. He said that the survey they undertook as an Australia Research Council project really was not the right instrument for that, but he took my point that, no, it had not been evaluated in terms of what people understood, whether they were able to grasp the key elements and make an informed decision, whether they felt that the information was accurate and transparent and whether it gave them confidence to act in an informed way.

I used to work in museum design and you would always evaluate because you were talking to so many different audiences with so many different levels of understanding, literacy levels and so on, that you really had to be very mindful that you were not talking above them or talking down to them. I think that, from a design perspective, you evaluate very carefully whether people are getting what they need from the experience.

Mrs MIRABELLA—I do take your point, but isn’t that onus really on each of the yes and no sides? Just as political parties during an election campaign employ their own consultants, advertising agencies and visual communications and design consultants, isn’t it up to each individual group engaged in a referendum debate to employ relevant professionals?

Ms Williams—Yes, I think that is true. I do not know that it is always effective. With the 1999 one, I was not desperately impressed by either case. One seemed to be quite bland and passive—I thought, ‘Make me want it’—and with the other, the ‘No’ case, I was trying to get rid of all those slogans to get to the real meat of the issue. I do not know where the advice was coming from there. Maybe passion and the desire to win the adversarial contest overtook the other considerations. I do not think it should be bland. Anyone who is passionate enough to stand up and advocate any point of view is worth listening to.

Mrs MIRABELLA—To help me understand what you are saying to the committee, what are you practically recommending with, for example, the yes/no booklet? If you had an opportunity to say, ‘I can improve that,’ what would be your recommendations?

Ms Williams—This probably contradicts Brian’s evidence a little, but I would ask a group to be set up with politicians who would be working together so that politicians would certainly come up with the reasons why something should go ahead or not. I think that raw data should then go to an independent group, not necessarily of experts but people in the public—people who have engaged in different fora that we know about like the recent national human rights consultation. I think there have been over 35,000 submissions, so there must be people who are desperately interested and not necessarily with an axe to grind. Even the Victorian Charter of Human Rights and Responsibilities attracted a number of people who are interested in engaging with the community. I would like to see those voices in there, not telling politicians what to do but actually monitoring it, and going back to that group and saying, ‘Actually, this does not quite meet our needs. Could you answer these questions? I don’t understand’—

Mrs MIRABELLA—So you are not actually talking about the visual aspect of the booklet; you are talking about who should have a role in deciding the content of the information?

Ms Williams—I am doing both. If you have a really adversarial approach, even visually, it is very difficult to do anything but polarise people. A group of people, whatever its composition, would take responsibility as citizens' advocates—the public advocates—

Mrs MIRABELLA—Sorry to interrupt, but wouldn't those citizens' advocates have their own point of view and their own barrow to push? Why are they so cleansed of an opinion on a particular referendum question?

Ms Williams—I do not think they are cleansed of an opinion, but I think if you also include some professionals in the mix—for example, a writer—

Mrs MIRABELLA—But why is a writer neutral? They are pretty political.

Ms Williams—It depends on the writer, I suppose. If you were to engage a particular type of writer and a particular type of company that did information design, it is professional to be able to argue both sides of the case.

Mrs MIRABELLA—I think there is a bit of confusion. That is the design. There is a difference between the design and the layout—and I take your point about making something easy on the eye and easy to read—and the content. I am asking about the layout. Do you have any suggestions on the visual aspect of the yes/no pamphlet layout?

Ms Williams—Yes. I would make sure that in fact it was not typeset individually by each group, which ends up being cluttered. I think they should have equal weight—whether it is a yes or no case, regardless of who supports it, it should be there. As has just been said, someone in this country is going to disagree. What are the reasons, so that maybe it clarifies their vote a little more? I think that is perfectly understandable. I think it should be visually presented as having equal merit to the 'Yes' case, if that is what we are talking about, so that people can get a very clear understanding of what it is. Then there is space for reflection. I will not say it should be taken out of the hands of politicians—that sounds really rude.

Mrs MIRABELLA—No, there are a lot of things that should be taken out of the hands of politicians—we do not disagree with that.

Ms Williams—Sometimes it can become polarising, and that can lead to misinformation in the heat of passion in an argument, and it ends up being crude on both sides of the fence. So I would like to see a more nuanced argument. I would like to be able to unpack those ideas. I would like to see, for example, a small booklet—I agree with not having a 2,000-word limit. I think that if necessary you should take what you need. If you need 200 words or 400 words, that is fine. If you can make a case succinctly and really clearly, with intelligence and eloquence, that is excellent, because I think your audience will reward you. But I would like to see something like the following. Suppose we are having a referendum about X—you can nominate the subject matter. The reason for this is that the parliament believes, or several parts of the parliament believe, that if we enact this then certain parts of the Australian community or the way we govern will be made easier or there will be less expense or wastage. They might like to articulate that. However, there are different viewpoints on this proposal. Here they are in brief—an executive summary, if you like. Then I would like to see questions posed to both the opposing sides, and I would like to see answers to those questions.

At the moment, when you look through the yes/no booklet—at least the 1999 one—both sides just go for it. You cannot work it out and there is no correlation. You have to read through one and then through the other; there is simply no connection at all. They may not address similar points. So I would like to see a set of questions posed. Again, it is up to a group of people. The question, ‘What do I need to know?’ really drives information design. ‘I don’t know this; could you explain this to me.’ It is really very honest. It is then a matter of asking both cases to explain what they mean.

ACTING CHAIRMAN—How would you select the group of people, though?

Ms Williams—I do not have a great answer for that. I know that Lyn Carson has moved in that way with the deliberative or citizens’ parliament. I really would not want to see people who just have an axe to grind and are just going to get on their bandwagon, for the reasons that you mentioned before.

ACTING CHAIRMAN—You also spoke about what you thought of as being the desirability of an evaluation of the yes/no cases. Wouldn’t you say that in a democracy the result is an evaluation?

Ms Williams—It is an evaluation of whether you have rejected the proposal, but that is not about whether you got something out of the materials and whether the materials were able to inform you well enough. I think the government information—something that is generated by the state—should be the absolute best standard. It should be transparent. People can go to that booklet, if to nothing else, and say: ‘Okay, I can make a decision from this. I trust it—both sides. It is clear. I get it. I can make a decision based on this.’ Bear in mind that this may not be at the top of most people’s lists of things to do.

ACTING CHAIRMAN—Exactly. Don’t you think—maybe this is a question I should have asked the professor—that, given the fact that as Australians we tend to resent authority, when a referendum proposal is put up by the government of the day a lot of people in the community will say, ‘The government of the day wants this—the politicians want this—so that’s probably an initial reason to say, “It’s probably not in my interest”’? So there is already in the community mind a predisposition to vote no because the referendum is seen as being the creation of politicians.

Ms Williams—But I think Professor Galligan and others have also answered that. If a proposal is poor, people see through it and vote no accordingly. Mrs Mirabella made a point—I think at a roundtable last year—in response to someone who was really very insistent about a particular proposal coming back. I think, Mrs Mirabella, that you said something along the lines of, ‘Can you accept that maybe people just didn’t think it was a good proposal?’ It is a fair point. If you have not made a good enough case, why should people accept it? So if you are putting up a proposal as a party or as a parliament then you have to give people a good argument for why it benefits them. How is changing the Constitution—which should be hard—going to benefit the community? How is it going to make governing easier, more seamless and maybe less expensive with less duplication? How is it going to affect people’s lives? It may affect them not necessarily on a personal basis but by their having better access to health or education and so on, simply because you are not duplicating costs. It is up to parliamentarians—politicians—to make that

understood to people, rather than keeping it as something they understand but having us outside—that forum—not understanding it at all. You have to communicate that.

ACTING CHAIRMAN—You also mentioned that in the community there are differing levels of capacity—presumably intelligence and differing levels of comprehension. I am someone who believes that voting should be voluntary at elections and also at referenda. Some people have put the point of view that although they believe that voting should be compulsory at elections, voting should be voluntary at referenda. Do you have a view on that?

Ms Williams—I think it is a privilege to vote. We do not have to look too far from these shores to see people who die for the chance to make a contribution and to have a vote. I think it is a privilege and a responsibility.

ACTING CHAIRMAN—But should it be a legal obligation in referenda?

Ms Williams—I think it is the least a citizen who wants to live in this country can do. I really do believe that.

ACTING CHAIRMAN—So you are in favour, as part of the mechanism for referenda, that the electoral roll should be used and that it should be compulsory.

Ms Williams—Yes, I do. I think if you start changing the mechanism all the time—so that it is compulsory here and not compulsory there, which I think, although I am not sure, is the case in New South Wales for certain types of elections—it confuses people. They do not know what to do—whether they are going to vote this time or not. I know that some people have made the argument that had there not been compulsory voting some proposals would have gotten up. But I think that is looking for avenues to get your way, really.

I respect your position on voluntary voting but I think that if you live in this country and you want to enjoy the benefits of this country then you should take a responsibility in shaping and nurturing the Constitution. We—all of us—are the guardians of that document: not to see it preserved in aspic but to make sure that changes, when necessary and beneficial to present citizens and future citizens, are enacted. I think that is the very least you can do as a citizen if you want to live here.

ACTING CHAIRMAN—You talk a lot about design. I looked at your professional career and what you are doing now. Who should be the thought police determining what is an appropriate design for getting the message out? There is the content and then the design of how it is formulated.

Ms Williams—Everybody wants to own design because it is pretty sexy, to be honest—or it can be.

ACTING CHAIRMAN—Should it be the University of Technology Sydney?

Ms Williams—It is there. Yes, it is extremely sexy! In my experience working as a museum designer—I worked on the Museum of New Zealand, Te Papa Tongarewa—

ACTING CHAIRMAN—Which one?

Ms Williams—The Museum of New Zealand, Te Papa Tongarewa. It was an interesting experience for me as an Australian to be working on the history and culture of another country.

ACTING CHAIRMAN—The colony that got away from the federation!

Ms Williams—Indeed. I think they still have a chip on their shoulder about all sorts of things Australian, but there you go! My experience is that design is very visible and people like to be attached to it if it works because they tend to look really good. If you employ a company or companies that might take a role in designing various constitutional or educational materials you should work together with the company to work out what you want to impart and what you want people to understand. You want them to act with intent—whatever that intent is; whether it is yes or no. My role in the museum was not to influence what people thought; it was to open up an experience so that they could make decisions for themselves. Contemporary design practice is really not like contemporary advertising, which is to influence you to buy this thing, but to do this. It opens up a dialogue. It is more of a translator. It really wants the consumer, or in this case the citizen, to evaluate and think for themselves. That is the role.

Constitutional history is not the most interesting thing. There is no revolution and there is no blood and guts. Unfortunately—although fortunately for Australia—unless it has that sort of drama, people feel that it is not worth knowing. But I think there is more than knowing facts and that sort of thing. It is actually about how to evaluate things that are put in front of you, and that is what information design does really well. It is not personal. You can use metaphor, animation and any number of things in your palette, according to the budget and how your client or your partner in this venture, which in this case would be parliament, wants to engage people. I am not one of those people who want to get on that bandwagon, but I would be bold. I would have a very bold approach, an unexpected visual approach. I do not mean something silly or trendy. I would simply ask citizens to be engaged by presenting them with things that would confound their expectations of what a referendum pamphlet might look like, which is sort of what you have at the moment. That does not mean it is not readable or intelligent or that it is trivial. It is a hard task to do but it is a really interesting one. You could do it and actually start conversations, which I think Lyn Carson wants to do. That is what she really wanted from this education process, and I would agree.

Mr NEUMANN—I have the unenviable record of having voted yes in every referendum I can think of and not winning one, so I am passionately of the view that we should do something so that at some stage I might actually be on the winning side in a referendum. But I am just a bit confused about the two bodies you were suggesting. You have a small non-partisan working party comprising several concerned citizens, and then you have another independent team later on, after the referendum is called. Who is going to appoint these people and how is it, in real terms, that they are not going to be involved in an adversarial process? Inherently it is adversarial. It is yes or no and win or lose. I have lost every time, but some day I will win. You understand what I am saying. I gave that trite and flippant analogy because someone wins and someone loses.

Ms Williams—The first recommendation was really for a modelling team. I am not really fussy about who is on it. I am just throwing out some suggestions for consideration. I think a

writer should be there, one who is really good at editing, who can tease out the arguments of politicians and convey them in a fair, eloquent, interesting and passionate way. There is no such thing as neutrality, so do not even try.

Mr NEUMANN—It really is a nonsense to think that you can have an independent body that can draft up cases without taking a partisan view, because inherently people have views.

Ms Williams—But it is not a little team that is God and so whatever they say goes. There is obviously consultation. If, for example, you gave this group information that you wanted transformed into yes and no, it is then up to that group to go back and have consultation so there is no misinterpretation. It is about constant consultation so that everybody realises that it is actually fair and reasonable. I could have argued for yes and for no in that 1999 proposal. I could convince you visually and in words that both proposals were worthy of getting up. A design professional and writer would be able to make that case because they are professional. They can take your arguments and explain those things with honesty. People might have to leave their partisan feelings at the door, because it is in service of a bigger picture than just themselves.

Mr NEUMANN—But will we?

Ms Williams—As far as I understand it, you do not have a referendum coming up, so what I would suggest in that first group is that you actually model approaches. You have had enough evidence over I do not know how many roundtables telling you pretty much the same things. It seems to me rather circular. You need to model some approaches so that, when the next referendum comes along—whenever that is—that you have some idea of how you are going to approach it and that you have some templates that can be adjusted accordingly. You might find that the next referendum is something quite sedate—not something that is going to knock everybody’s socks off—but there is sense in there and it is not too controversial. I think you can adapt that template according to the type of referendum that you have in mind. If you have something like the republic—if and when that comes back again—you might expand that. A modelling team is there to give suggestions so that, when a referendum is called in two years, five years or 10 years time, there might be something that you can start with.

Media has not been discussed. I favour the preservation of print—not that format or that kind of thing, as I have discussed—but also parallel mechanisms that would aid and abet different groups in the community, such as Indigenous citizens, migrants and so on. There is radio and there is the web, but you have to work with each medium to its strength. It is not about saying, ‘I’ll just bung this up on the web’, because that is not going to work. You have to be really sensitive and know what you want out of that media. I think the print should be your first call and should go to every elector. You get in your hand. Whether you choose to read or not, you have still received it. I think what some people would do is get it out of the letterbox, put it on the kitchen bench and say, ‘Oh, I have to do something about that later,’ and when it comes closer they might have a read of it. If it is engaging and truthful—and people can pick up on the bullshit factor pretty easily—they will probably give it a go. If they want to dig deeper: ‘Here’s some web addresses. If you want more partisan information, go here and go here.’ That information should be absolutely the strongest you can possibly make it. The second team might consist of some people from that first group. They might be available or you may not want them—they might be terrible.

Mr NEUMANN—So different communications strategies for different demographics and different times?

Ms Williams—Yes.

Mr NEUMANN—Hope springs eternal. I was 28 years of age before we saw a Labor government in Queensland. So I have faith that one day we might win.

Ms Williams—I feel really sad.

ACTING CHAIRMAN—We don't mind if he does not win. Having said that, we will send you a transcript of your evidence. Thank you very much for coming in. It is greatly appreciated. If you do think of anything else you would like to tell the committee, please contact the secretariat.

Ms Williams—I have copies for you of the voter pamphlet from Oregon. They are for you to keep.

ACTING CHAIRMAN—Yes, I have seen them.

Ms Williams—I know Lyn Carson was talking about those. She was talking about citizens writing the material. That is what it is going to end up looking like. The state of Oregon, through Harbor funding, has a design fellow that actually designs all the election materials—ballots; everything, including web and so on—and they work directly to the Secretary of State. That is now Election Assistance Commission standard policy in the US, and it was about eight years in the making. A copy of the book that I showed you was delivered to every congressperson in the United States. Those templates of ballot designs are available for free and I think the software is as well. Individual jurisdictions can adjust and develop those templates as they wish.

The second, bigger pamphlet and the larger one are actually for information design. I want just to show you different approaches by different companies. They were from a magazine called *Wood*, a New York based magazine. They distributed free newsprint pamphlets on current issues and explained things like voting, carbon emissions and so on, free to anyone who just walked into Starbucks. Again, there are a variety of approaches, very different from each other. I am giving them to you for your information—although they are not the only things.

ACTING CHAIRMAN—Thank you very much.

[2.10 pm]

PATMORE, Mr Glenn, Private capacity

ACTING CHAIRMAN—Mr Patmore, thank you very much for joining us. Do you have any comments on the capacity in which you appear before the committee?

Mr Patmore—I appear in a private capacity. I am employed as a senior lecturer in law at the University of Melbourne.

ACTING CHAIRMAN—We do not require you to give evidence under oath, but I have to remind you that these are proceedings of the Australian parliament and any false or misleading evidence could be perceived to be a contempt of the parliament. Would you like to give us a brief opening statement of, say, up to five minutes, and then we will proceed to some questioning?

Mr Patmore—Thank you very much. I would like to make a brief opening statement. Thank you very much to all the members of the committee for inviting me to be here. It is an honour. Turning to my submission, I would just like to explain that the focus of my submission and my expertise is in relation to the 1999 referendum. I understand, though, that the committee's terms of reference extend beyond this. My submission largely deals with whether or not the special rules for referendums which were introduced in 1999 ought to be continued and improved—in particular, the provision of moneys to yes and no case committees for advertising, the use of electronic media and a publicly funded education campaign.

It is my central contention that the problem with the 1999 referendum rules was that they nonetheless failed to result in voters being informed about the nature of the referendum and the content of the Australian Constitution. This contention is supported by both survey data, which I have included in my submission, and some interviews which I conducted late last year with republicans and constitutional monarchists on the yes and no committees.

In order to redress this problem, I propose for the committee's consideration four arguments to reform the 1999 referendum rules. I understand that minds will differ over what appropriate reforms are. Firstly, I thought it would be important to retain the 'know the facts' document, an innovation in the 1999 referendum pamphlet. This document might be improved by shifting its focus from bare description of the basic facts to include more analysis of the proposed amendment.

Secondly, the yes and no cases could be drafted not by a partisan committee but rather, perhaps, by a dispassionate group of people providing for dispassionate arguments for and against the proposed amendment. Thirdly, the yes and no campaign committees I think ought to be retained. They could still be composed of the parliamentary and perhaps even some community representatives to authorise advertising as well as acting as campaign leaders in the public debate.

Fourthly, I suggest that the government ought to embark on an education campaign about the proposed amendment and about the Constitution generally. I have suggested in my submission the adoption of the recommendation from the Senate committee published in *The road to a republic* regarding education of the Australian people.

Finally, what I wanted to do in my submission was to present arguments for and against the 1999 model. I understand that there will be differences of opinion and that minds may differ on these various proposed reforms, but I hope they are of assistance to the committee. Thank you for allowing me to make this opening statement.

ACTING CHAIRMAN—Thank you very much. Your submission notes that criticism could be minimised if the document were drafted by a panel of experts. But, as you would be aware, when we had an independent panel in 1999 both sides accused it of bias. Some might say that was an indication of the fact that it was doing its job well. Still, do you think it is really possible to get a truly neutral group—people who are so disinterested or dispassionate or objective that personal feelings would not enter into it? And how would you select such a group?

Mr Patmore—I think you could select such a group from a broad section of the community, people who perhaps have different leanings. On this panel there would be people who represent arguments for and against the proposal. That is one way to ensure that the dispassionate arguments represent a broad range of points of view. But I think it is important to recognise that we do expect certain groups in the community to provide us with impartial information or to make impartial decisions. For example, we expect judges to make impartial decisions irrespective of their political leanings.

ACTING CHAIRMAN—Do you think that always happens?

Mr Patmore—It does not always happen but we do have systems in place to encourage that to happen. Of course, one cannot possibly exclude all personal biases and interests, but we do have systems which require, for example, the publication of reasons in judicial decisions, and we have law reform commissions that publish reports where arguments are canvassed for and against, and we have submissions and criticisms of those reports.

I also wanted to come back to one of your other points, where you talked about the ‘know the facts’ document being criticised by both republicans and constitutional monarchists. In my submission I referred to a comment by Sir David Smith, who was on the no case and who was a recognised constitutional monarchist. He said that he thought the ‘know the facts’ document was quite workable although not perfect. Even Sir David recognised it was possible to produce a document that could inform voters in a more dispassionate way. Provided that this group of people can consult various groups, it would be possible to ameliorate some of those biases. Of course, biases are impossible to completely remove. I think that would produce a more informative kind of document than the current way we have for producing yes and no cases. These are designed to persuade in a partisan way, not in a kind of judicious way. I realise that politicians and political leaders are very knowledgeable about how to make partisan cases. It is my criticism of both the yes and no cases in 1999 that they were designed to persuade. They were not designed to inform. They were designed to convince the voters of their case. They did it in quite different ways but that was their point.

Mrs MIRABELLA—Are they mutually exclusive—to inform and to persuade? I would have thought you persuaded people by informing them of what the proposal was about and what the likely outcomes would be.

Mr Patmore—Your question is whether persuasion and information are mutually exclusive. I think persuasion requires an understanding of a particular argument. To a certain extent information is provided when you are trying to persuade people. But it is the way that information is provided that is critical. Is it provided with a view to winning on any ground? Is it provided with a view to emphasising a particular case in a way that you do not talk about the negatives? Is it provided in a way to omit the most difficult issues?

Mrs MIRABELLA—But that is going to the motive of the person trying to persuade.

Mr Patmore—It certainly goes to the motive—that is correct—but it also goes to the argument presented to the voter. If you want to win a case—and you would know this better than I because you are parliamentarians—you argue your case to the best of your abilities and make all the necessary points to win your case. It is highly competitive between yes and no case committees and between Labor and opposition in persuading the voter of your point of view. So, if we retain the current system, those are probably the kinds of arguments that we will have presented in yes and no cases.

Mrs MIRABELLA—You could appreciate, because you have had a detailed look at the 1999 referenda, that it was not just the yes/no cases; there were detailed arguments put up by all sorts of organisations that contributed to the debate as well. Some of us have a problem with the concept of a so-called ‘neutral’ committee, because I know, from personal experience during the last referendum, that even many judges were not impartial. I was at the bar at the time and I recall the senior barristers saying, ‘Sophie, we agree with the no side, but we could not possibly come out and say anything, because I am in front of Judge so-and-so tomorrow afternoon.’ When you are working in an environment like that, with so many academics who are clearly partisan, why is a committee of nonpoliticians, but of knowledgeable people who presumably have views on these things, superior to a group of politicians?

Mr Patmore—In terms of providing a non-partisan point of view?

Mrs MIRABELLA—Yes. Just because they are not part of a political party does not mean that as human beings they do not have their own leanings, because they do and we have seen that in past referenda.

Mr Patmore—Perhaps I will come back to the points I made a bit earlier. A committee of politicians is subject to partisan pressures and a community committee is subject to partisan pressures. They are the ones who have to advocate a particular point of view. An impartial body to provide arguments which are balanced can be achieved if the committee is composed of people from a range of different points of view. Secondly, if it is insulated to some extent from those partisan pressures and its brief is to provide a balanced and considered argument for and against, that could be useful if you want to prepare certain kinds of documents—for example, yes and no cases or information. I would also like to say that I do not see that as the only way in which members of the community would be informed. That is only one of the ways, but I think it would be very useful for members of the committee to have a document prepared in that way

that is not designed to score points but rather to draw out the key arguments. I am a little influenced in putting this proposition to you. A long time ago I went to Switzerland. In Switzerland they have a system of citizen initiated referenda and they have a commission that prepares cases—the arguments for and against—and it is meant to do it in a more impartial way. They prepare a rather fuller document for their citizens than we have in Australia. That is the basis of informing their citizens in, if you like, a more dispassionate way. Systems might have changed since I was there; it was a long time ago—the mid-90s—but it seemed to me to provide a better way to educate the voter than more partisan arguments.

If I may make this point: I still see it as very important that under future referenda we would retain parliamentary committees, campaign committees, or committees composed of some community representatives. Their role would be to maybe take responsibility for the advertising of the yes and no cases and act in the community as community leaders. I think it is important to have a partisan debate, because that is a very good way of testing arguments. It is also a way of engaging people in the debate. It would add to the information provided by other organisations.

I think that my ideal referendum rules would include ways in which we provide different sorts of information—more impartial, informed argument, partisan debate and also, in the longer term, education of the Australian voter because the empirical evidence is very strong that after the referendum voters remained uninformed about the actual proposal itself. That is not just me giving my opinion; it draws on the evidence of members of the yes/no committee who are interviewed, both constitutional monarchists and republicans. In addition, there is the empirical evidence of the Australian Constitutional Referendum Survey 1999. The researchers surveyed thousands of Australians and found that they were unaware of the actual method—

Mrs MIRABELLA—Education has certainly been accepted as an issue that requires more work—that is, generally education on the Constitution that we have as a starting point, which is not limited to discussion or analysis just when there is a referendum. There is the work that CEFA started in the last few years. They are two separate issues surely, aren't they?

Mr Patmore—Sure. I just wanted to make that point of the overall argument so that you do not see that it was one—

Mrs MIRABELLA—But there is room to enhance the knowledge about our Constitution through general education, irrespective of a referendum?

Mr Patmore—Yes, there is, although a referendum I imagine will focus the minds of voters because it will be an issue they have to make decisions about. Having it intensified or targeted just prior to the campaign would be very useful I think.

Mr NEUMANN—So you are looking for an explanatory document that is more reasonable, judicial and impersonal, not partisan; is that what you were saying?

Mr Patmore—That is right. As I have said, I think if you want to get rid of bias you put people from both points of view on the committee that has responsibility for overseeing it so that there can be this constitutional conversation between the various groups.

Mrs MIRABELLA—If you have people from varying points of view, various leanings, doesn't that lead to a compromise of information and not necessarily the facts?

Mr Patmore—It depends what your brief is for them. Is your brief for them to act as an advocate? Is your brief to act in a judicial way? Is your role to provide an impartial opinion? If people were employed on the basis that they were to perform a certain role I think you could reasonably expect that they would do so and that the other people with the different points of view would keep them honest.

Mr NEUMANN—Are you talking about the 'know the facts' document here?

Mr Patmore—I am talking about that.

Mr NEUMANN—What do you think about the proposition that the Australian Electoral Commission plays a role in the preparation of that document?

Mr Patmore—The 'know your facts' document rather than the way it was provided for in 1999?

Mr NEUMANN—Not drafting the yes/no pamphlet. What do you think of the Australian Electoral Commission playing a role, if not being the organisation that prepares the 'know your facts' document?

Mr Patmore—I think you could have various organisations that prepare the 'know the facts' document. You could have the Australian Electoral Commission if you felt that that body had the right expertise to do it. You could have the Australian Law Reform Commission prepare it. You could have different kinds of bodies do it. In addition, you could have a consultative committee comprising all different points of view to advise that body to ensure there is community input and arguments from all sides.

Mr NEUMANN—I apologise that I was not here earlier. I had to make a phone call. Have you commented on the 14-day provision with respect to the issuing of the pamphlet? Did you give your view on that?

Mr Patmore—On whether 14 days is sufficient time?

Mr NEUMANN—Yes, sufficient time to disseminate to the public. Could you comment on the 2,000-word limit as well?

Mr Patmore—Let's deal with the 2,000-word limit. The virtue of the limit is that it is of sufficient length to allow a cogent argument. It is not overly long, so it is perhaps likely that the voters would read it. If it is 10,000 words they are not going to read it. Having a relatively succinct length is desirable. I have not actually thought about or commented on the 14-day limit, so this is just giving you a reflection from my own experience of how I, as a voter, would respond. I think 14 days is an adequate time but maybe 21 days is better. It just gives people a little bit more time for the document to be digested. It might be desirable to increase the length of time, but on the other hand 14 days means that people have to read it relatively quickly and have to refer to it because they have to vote.

Mr NEUMANN—What about legislative limits on the amount of public funding that is used?

Mr Patmore—Yes, I have been critical of that in my submission. Prior to the 1999 referendum moneys could only be spent on the yes/no case and related information. There were special rules put in place for the 1999 referendum.

Mr NEUMANN—An act of parliament.

Mr Patmore—Yes, that amendment act permitted money to fund an information campaign as well as the yes and no cases.

Mr NEUMANN—That was a one-off. What do you think of the general proposition that we allow that and get rid of the limits?

Mr Patmore—I agree with that proposition. There are strong reasons for doing that and I will offer a few that come from my submission. I think that money should be able to be spent by the yes and no case committees. We live in an age where people are informed not only by print but through the electronic media. I think it is highly desirable. Many people learn about news from the electronic media so it is very important that the cases be put in that media, and that adequate funding be provided to ensure that the message is heard in an age of saturated media coverage.

Mr NEUMANN—Would you accept that the quality of the argument put in the yes or no pamphlet leaves a lot to be desired from time to time?

Mr Patmore—Perhaps you were not here when I was talking about it, but the arguments in the yes and no case are put from a partisan point of view. The arguments are designed to win, sometimes on any account. The arguments are not designed to inform.

Mr NEUMANN—We just heard from Ms Williams before in relation to how we can better communicate and engage in strategies that are likely to inform the public and also be involved in persuading them one way or the other as to how they should vote. Can you comment in relation to that in view of what you have seen about the past yes and no pamphlets?

Mr Patmore—I can comment in relation to the yes/no pamphlets; I did not quite hear all of what Ms Williams said. If I may rephrase your question which is to comment on the adequacy of the yes and no case arguments.

Mr NEUMANN—Yes, and also the effectiveness of the pamphlet as a strategy, as a means of communication. Could we improve both the content of it as well as the means of communication?

Mr Patmore—In my opening statement I suggested various ways in which the pamphlet's content could be improved. If the pamphlet was written in a more balanced, even-handed and judicious way, that would provide more useful information to a voter. If the pamphlet is written in a more partisan way it means certain things are omitted and emphasised. That is part of what partisan persuasion is all about. It is what political persuasion is all about. But that is not terribly useful for voters in informing them of the strength and weaknesses of arguments in making an important constitutional decision.

I suggested the alternative that perhaps the pamphlet could have been drafted by a panel of experts or the Electoral Commission or the Australian Law Reform Commission. I thought it was important that the issue of bias came up and I thought that could be addressed in a variety of ways. Firstly, people could—I am sorry if I am repeating this—be told that they are required to act in a judicious, balanced way, that people with different points of view should have input into the drafting process and that these people are more likely to draft the document in that way because they will not be subject to partisan pressures.

ACTING CHAIRMAN—Do you think that, regardless of how one might put the yes and no cases or how one might disseminate the information, there is a healthy sense of scepticism in the Australian community and, if a government puts up a referendum proposal—and all referendum proposals must be put up by parliament—people have an immediate predisposition, unless it is a situation where there really is only an argument in favour, to vote no?

Mr Patmore—Just because it is put up by parliament or politicians?

ACTING CHAIRMAN—In the sense that people think, ‘If the government wants it, that may be a good reason not to go along with it.’ The reason I ask that question is that we are talking about how we inform people about the yes and no cases. Ms Williams spoke about design. Other people have spoken about using other forms of media to inform. Some people have spoken about independent bodies. Do you think that, regardless of what mechanism is adopted, there will always be this predisposition to say no and that we are really up against it as far as constitutional reform is concerned?

Mr Patmore—I think that the predisposition to vote no is not just based on simple mistrust of parliament or government. It is far more complex. There are many factors that encourage voters to vote no. I will run through a number of those factors. The first is the fact that many voters are not well informed about the Constitution itself. Why would you vote for a particular proposition when you are not aware of how the current system works? It has been a very effective no case to say: ‘If you don’t know, vote no.’ That has been used effectively by no cases in the past.

ACTING CHAIRMAN—And it will be in the future.

Mr Patmore—That is right.

Mr NEUMANN—To their shame.

Mr Patmore—Perhaps this committee can take a role in addressing that argument. I talked to Sophie about the need to inform the voters. Really there is a very important reason why education is vital in referendums. That is because the Constitution actually asks the people to make a decision. Normally most political decisions are delegated to representatives. We think that those representatives should be adequately informed. I think that the people should be no less informed.

Coming back to the factor that you raised about distrust of government and politicians, there is some distrust of government and politicians that comes out of, say, the 1999 referendum survey, but there are other reasons why people voted no in that survey, not just because of the distrust of politicians. Some people voted no because they wanted a more directly elected president—so the

model was an issue that influenced their decision. A predisposition to vote no because government is distrusted can sometimes be accentuated because a constitutional issue becomes a partisan political issue—the government proposes it and the opposition opposes it. In that case, that kind of government-opposition dynamic comes in also to affect the way a constitutional issue is perceived and debated.

Mrs MIRABELLA—That was not the issue with the referendum that you—

Mr Patmore—No, it was not; but there is some interesting empirical data that shows that, even where a government might take a more neutral stand, it kind of sends a cue to some voters to vote no. If a referendum is to succeed, then the broader the bipartisan support the more likely it is to succeed.

Mrs MIRABELLA—It is interesting though that on one side it is said that politicians should not draft the yes/no case because they are too partisan and, on the other side, if they take a neutral position then they are sending out messages to oppose it. So it is really a bit of a lose-lose for politicians, according to that sort of analysis.

Mr Patmore—You are asking a question I have asked about the negativity of politicians putting up constitutional proposals, but I think there is a role for politicians as being opinion leaders, and they have a very important role in doing that and in public debate. I think that they can take a very positive role, so I do not think it is completely lose-lose for politicians.

Mrs MIRABELLA—You would concede that a positive role could also include arguing for the no case.

Mr Patmore—Absolutely. Of course. The key issue, I think, is that we need to better inform the electorate about the issues and then allow the partisan debate.

Mrs MIRABELLA—Do you think it is wrong to say that people vote no just because they do not understand?

Mr Patmore—Some people may have voted no—

Mrs MIRABELLA—But some people could also vote yes because they do not understand what it is about.

Mr Patmore—That is an intriguing argument. I had not quite heard it before, actually—

Mrs MIRABELLA—I would have thought that it is a rather elitist argument coming from academia that all of those who voted yes were better informed and that those who voted no were less informed.

Mr Patmore—There is some empirical evidence to support that thesis. The 1999 survey showed that the political aware were more likely to vote yes than no.

Mrs MIRABELLA—The ‘politically aware’—and how are they defined?

Mr Patmore—They are defined as people who understood the proposition.

ACTING CHAIRMAN—People who were academics.

Mr Patmore—No. This was from a survey of thousands of Australians—

Mr NEUMANN—Keep going, Mr Patmore. You are actually convincing me.

Mr Patmore—The survey was of 1,000 people on the electoral roll in all the states. I think it was several hundred in each of the territories. These were ordinary voters who were surveyed, and it is generally representative of the views of the Australian people. It is a very valuable survey for giving us accurate information on the views of Australian voters.

Mrs MIRABELLA—Are you contending that there were not people who voted yes who did not know what it was about? It is a pretty big call to say that people voted no because they did not understand but no-one voted yes because they did not fully understand.

Mr Patmore—I did not say that in that way. I said that some people would have voted no because they did not understand.

Mrs MIRABELLA—Can you concede that some people would have voted yes because they did not understand?

Mr Patmore—I could concede that, but the evidence from this survey is to the contrary. It suggests that the people who were aware of the issues tended to vote yes.

Mrs MIRABELLA—That is quite extraordinary, and that is a reason why so many people were put off during that last referendum—because they were told they were idiots and ignorant if they were not voting yes. It really pushed a lot of people in a particular direction.

Mr Patmore—I said they were politically aware; I did not say they were idiots—

Mrs MIRABELLA—I was not talking about you, but that general attitude really pushed people in a particular direction and will do so again, no doubt.

ACTING CHAIRMAN—How did you vote, Mrs Mirabella?

Mrs MIRABELLA—I think it is pretty clear how I voted.

Mr Patmore—Those kinds of views were in the media, but I will leave the committee to form opinions on it. I would not endorse those views. The idea about referendum rules is having a fair process so that people are informed.

ACTING CHAIRMAN—Thank you very much for coming along and for your frankness. It must have been an incredibly interesting assessment you did of that referendum and of the yes/no case.

Resolved (on motion by **Mr Neumann**, seconded 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 2.44 pm