

Introduction

A referendum on a republic

- 1.1 The Government has announced that, on 6 November 1999, Australians will vote to determine whether the nation will move from being a constitutional monarchy to being a republic.¹

The proposed laws

- 1.2 The proposed laws, Constitution Alteration (Establishment of Republic) 1999 ('the Republic Bill') and the Presidential Nominations Committee Bill 1999 ('the Nominations Committee Bill') were introduced into parliament on 10 June 1999.
- 1.3 The two bills were prepared to give effect to the republic model developed by the Constitutional Convention conducted in Canberra from 2 to 13 February 1998. In March 1999 the government released exposure drafts of the bills for public consultation as part of the final drafting processes.
- 1.4 The Republic Bill would, if passed at the referendum, alter the Constitution to establish the Commonwealth of Australia as a republic.

1 Hon Daryl Williams AM QC MP, Attorney-General, speech on Second Reading House of Representatives *Hansard* 10 June 1999 p. P5266.

- 1.5 Only if Australia were to become a republic, would the Nominations Committee Bill be passed by Parliament.² This Bill provides for a committee to be established to consider public nominations for presidential nominees.

The Joint Select Committee on the Republic Referendum

- 1.6 The Joint Select Committee on the Republic Referendum was appointed to consider and report on these two Bills:

to inquire into and report on the provisions of bills introduced by the Government to give effect to a referendum on a republic.³

- 1.7 The approach of the Committee was to examine the provisions of the Bills and to consider whether they are effective and appropriate in the context of implementing the republic model developed by the Constitutional Convention. The Committee also sought to identify weaknesses in the Bills that might prevent the legislation from operating as intended.
- 1.8 The terms of reference were such that the Committee could not seek evidence on alternative models of a republic, nor did it inquire into constitutional change in general. The Committee did not seek evidence on the draft Constitution Alteration (Preamble) Bill 1999 as the Committee's terms of reference did not include consideration of proposed preambles to the Constitution.⁴
- 1.9 The Committee comprised equal numbers of government and non-government members. It had twelve members from the House of Representatives and six Senators, reflecting the relative sizes of the two chambers.
- 1.10 The Committee was required to report by Monday 9 August 1999. The reason for setting this reporting date was stated by the Attorney-General, the Hon Daryl Williams, at the time of appointing the Committee:
- For a referendum on 6 November, the legislation needs to be finalised by 20 August at the very latest. In practical terms this means it will need to be passed by both houses by 12 August, the

2 House of Representatives *Hansard* 10 June 1999 p. P5270.

3 *Journals of the Senate* 26 May 1999 p. 925 and House of Representatives *Hansard* 31 May 1999 p. P4516.

4 The preamble legislation is as yet only in draft form. It has not been introduced to parliament. Consideration of that subject by this Committee was expressly excluded in the Attorney-General's speech addressing the appointment of the Committee. See the House of Representatives *Hansard* 31 May 1999, p. 4516.

last scheduled sitting day before 20 August. The deadline for the passage of the republic bill arises because the Australian Electoral Commission needs at least 11 weeks to carry out its obligations in relation to distribution of the official yes and no cases.⁵

The Committee's inquiry

- 1.11 The terms of reference for the inquiry were advertised widely, and written submissions invited, in newspapers in metropolitan and regional areas during the period 12 to 19 June 1999. Over 200 invitations were made seeking written submissions.
- 1.12 The Committee met formally for the first time on Tuesday 22 June 1999. At this meeting the Committee, chaired by Bob Charles MP, approved a program of public hearings in metropolitan and regional Australia, to be based on the written submissions received.
- 1.13 The Committee received 122 original written submissions on the proposed legislation, as well as exhibits and other correspondence.⁶ Submission number 4 was the first received of 157 identical form letters, and was duly authorised by the Committee.
- 1.14 Public hearings were held in the following places—Adelaide, Brisbane, Broome, Canberra, Darwin, Hobart, Melbourne, Newcastle, Perth, Sydney and Townsville.⁷ There were also two round table discussions with some of Australia's leading constitutional lawyers. The Committee's inquiry was well supported by expert and non expert witnesses alike. The Committee was pleased that a wide range of Australians came forward to meet with the Committee. The Committee agrees that this inquiry was, as one witness in regional Australia observed, an example of democracy in action.⁸

Background to the inquiry

- 1.15 The Committee's inquiry is one stage in a process that spans several years. Some of these steps are discussed in more detail below.

5 Hon Daryl Williams AM QC MP, House of Representatives *Hansard* 31 May 1999, pp. 4516–4517.

6 Appendix A contains a list of submissions, and Appendix B contains a list of exhibits.

7 Appendix C contains a list of witnesses.

8 Dr David Lemmings, *Transcript*, p. 647.

- 27 May 1993** The Republic Advisory Committee met for the first time.⁹
- 7 June 1995** Prime Minister Paul Keating expressed his Government's view that Australia should become a republic by 2001.
- 8 June 1995** In response, the then leader of the Opposition John Howard, proposed a People's Convention on the republic issue. After the 1996 General Election, arrangements were made to hold the 1998 Constitutional Convention.
- 2–13 Feb 1998** A Constitutional Convention was held in Canberra. At its completion, Prime Minister John Howard announced that the Convention's chosen Model would be put to voters in 1999.
- 1 Dec 1998** The Referendum Taskforce was established in the Department of Prime Minister and Cabinet.
- 9 March 1999** The Government released exposure drafts of the Republic Bill and the Nominations Committee Bill for comment.
- 10 June 1999** The Government introduced the final Bills into the Parliament.
- 22 June 1999** The Joint Select Committee on the Republic Referendum commenced its hearings to review the Bills.
- 9 Aug 1999** The Joint Select Committee on the Republic Referendum will table its report in Parliament.
- 12 Aug 1999** The relevant legislation must be passed by Parliament by this last sitting day before 20 August, in order for the referendum to be held on 6 November 1999.
- Sept 1999** The Government is to run an education campaign about the referendum.
- Oct 1999** Separate campaigns outlining the pros and cons of the proposed changes will be managed by advocates of the 'yes' and 'no' cases.
- Oct 1999** The Australian Electoral Commission will mail information to voters.
- 6 Nov 1999** Australians are to vote on whether to amend the Constitution to provide for a republican system of government.

9 The Republic Advisory Committee was established by the Keating Government to produce an options paper on issues relating to a possible transition to a republic. Its findings are discussed in *The Report of the Republic Advisory Committee*, Canberra 1993 AGPS.

Constitutional Conventions

- 1.16 In February 1998, 152 representatives of the Australian community gathered in Canberra at a Constitution Convention to consider the following questions:
- whether or not Australia should become a republic;
 - which model for a republic might be put to the Australian electorate to consider against the current system of government; and
 - in what timeframe and under what circumstances might any change be considered.
- 1.17 On the question of whether Australia should become a republic, a majority of Constitutional Convention delegates supported the idea in principle. The model selected by delegates was the ‘Bipartisan Appointment of the President’ Model.¹⁰ The Convention agreed that a referendum should be held in 1999, and that if it was successful, the new republic should come into effect from 1 January 2001.¹¹
- 1.18 The issue of ongoing constitutional reform was also addressed by the Constitutional Convention. The Constitutional Convention Communique recommended that, should Australia become a republic, another constitutional convention be convened within three to five years after its commencement. That convention would:
- review the operation and effectiveness of the republican system of government introduced by the constitutional referendum; and
 - address other matters related to the operation of the republican system of government.
- 1.19 The Committee takes the view that further community discussion on constitutional reform would be beneficial. It supports the recommendation of the Constitutional Convention that another constitutional convention should be held three to five years after the introduction of a republic. It also supports the Constitutional Convention’s recommendation that such a Convention be preceded by ‘an extensive and properly resourced community consultation process’.¹²

10 See Constitutional Convention Communique, reproduced in the explanatory memorandum for the Republic Bill, pp. 37–39, paragraphs 10, 17–29. See also Appendix D for a summary of this model.

11 See Constitutional Convention Communique, reproduced in the explanatory memorandum for the Republic Bill, p. 37, paragraph 12.

12 See Constitutional Convention Communique, reproduced in the explanatory memorandum for the Republic Bill, p. 42–43, paragraphs 58, 63.

Referendum Taskforce

- 1.20 After the 1998 Constitutional Convention, Prime Minister Howard announced that it was the intention of the Government, if re-elected, to hold a referendum on the matter before the end of 1999.
- 1.21 The Referendum Taskforce was established in the Department of Prime Minister and Cabinet to oversee the drafting of legislation to give effect to this intent.
- 1.22 On 9 March 1999 the Referendum Taskforce released its exposure drafts of the proposed laws, Constitution Alteration (Establishment of Republic) 1999 and the Presidential Nominations Committee Bill 1999, for public comment. The Taskforce received over 100 submissions on the exposure drafts. As a result, the draft bills were modified before the legislation was introduced to the House of Representatives on 10 June 1999.¹³

Information campaigns prior to the referendum

The education campaign

- 1.23 In September 1999, the Government will fund and manage a neutral education campaign. This will explain the existing system of government, the 1998 Constitutional Convention's preferred republic model and the referendum process.
- 1.24 The Committee heard compelling evidence about the importance of the education campaign. This matter is specifically addressed in Chapter 7.

The 'yes' and 'no' campaigns

- 1.25 The Government has allocated \$15 million of funding to the 'yes' and 'no' campaigns.
- 1.26 Each campaign will be managed by a committee appointed by the Government. Respective budgets will be approved by the Government's Ministerial Committee on Government Communication.
- 1.27 The 'Yes' committee comprises Malcolm Turnbull, Janet Holmes a Court AO, the Hon Neville Wran AC, Lowitja O'Donoghue AC CBE, the Hon Gareth Evans QC MP, Senator Natasha Stott Despoja, Chris Gallus MP, Jason Yat-Sen Li, Professor Greg Craven and Steve Vizard AM.

13 Refer Referendum Taskforce, *Submissions*, pp. S145–S182.

- 1.28 The 'No' committee comprises Kerry Jones, Cr Julian Leser, Senator Alan Ferguson, Major General Digger James AO MBE, Ted Mack, Sir David Smith KCVO AO KStJ, Senator Ron Boswell, Dame Leonie Kramer AC DBE, Heidi Zwar and Clem Jones.

The Australian Electoral Commission mail-out

- 1.29 In October 1999, the Australian Electoral Commission will mail information to voters. It will also provide voters with the formal 'yes' and 'no' cases in accordance with s.11 of the *Referendum (Machinery Provisions) Act 1984*.

The referendum

- 1.30 The referendum will be held on Saturday 6 November 1999.
- 1.31 Voters will be asked whether they support the proposed changes. The precise wording of the question is a matter of discussion in this report (see Chapter 2).
- 1.32 In order for Australia to become a republic, the question must satisfy the requirements of s.128 of the Constitution. The question must be answered in the affirmative by:
- a majority of voters; and
 - a majority of voters in a majority of States (at least four States).
- 1.33 If the proposed legislation is not approved by a majority of voters as well as a majority of voters in a majority of States, the Australian system of government will not change.

Scope and structure of the report

- 1.34 As referred above, the approach of the Committee has been to examine the provisions of the Bills and to consider whether they are effective and appropriate in the context of implementing the republic model developed by the Constitutional Convention. The Committee has also sought to identify weaknesses in the Bills that might prevent the legislation from operating as intended. This report sets out the findings of the Committee as follows.

- 1.35 In Chapter 2 the Committee examines the arguments in relation to the question to be put to voters in the referendum. This includes discussion of the merits of the current long title of the Republic Bill and the suggested alternatives.
- 1.36 Chapter 3 of the report deals with the appointment of the President. It presents the relevant recommendations of the Constitutional Convention and outlines how the Nominations Committee Bill and the Republic Bill give effect to the Convention's Model. The Committee examines the concerns of witnesses regarding these Bills.
- 1.37 Chapter 4 of the report outlines the findings of the Committee in relation to the powers of the President. It reviews the relevant recommendations of the Constitutional Convention, and examines the provisions of the Republic Bill to determine whether they give effect to the Convention's model. The Committee compares the powers held presently by the Governor-General and the proposed powers of a President in the Republic Bill, and discusses the concerns of witnesses regarding the nature of the powers that are given to the President under the Republic Bill.
- 1.38 Chapter 5 outlines the recommendations of the Constitutional Convention dealing with the removal of the President and examines how the Republic Bill gives effect to this model. In reaching its conclusions, the Committee gave careful consideration to the concerns detailed in the evidence regarding the nature of the proposed dismissal process.
- 1.39 The final two chapters deal with the remaining issues relating to the proposed laws. Chapter 6 addresses proposals in the evidence in relation to other issues in the Republic Bill. These issues include discussion of the provisions relating to an acting President and presidential deputies; potential impact on the protection currently offered by s.117 of the Constitution; provisions allowing the States to retain their links to the Crown; provisions for clarifying that the federal system of government is unaffected; and the facilitation of necessary amendments to the Australia Acts.
- 1.40 Chapter 7 addresses miscellaneous issues which were raised during the inquiry, such as amendment of the covering clauses of the Constitution; amendment of the enacting words; the education campaign; Australia's membership of the Commonwealth of Nations; the Australian flag; the use of the prefix 'royal'; the position of Norfolk Island; and drafting issues.