

MEMORANDUM

TO: Claressa Surtees
Secretary of the Joint Select Committee on the Republic Referendum

FROM: Michael Lavarch

RE: INQUIRY INTO THE REPUBLIC REFERENDUM BILLS

DATE: 2 July 1999

Dear Ms Surtees

Thank you for your letter advising me of the inquiry being conducted by the Joint Select Committee and the invitation to place a submission before the Committee. I would be pleased if the Committee could take regard of the following submission:

1. **The long title of the Constitution Alteration (Establishment of Republic) Bill 1999**

In my submission the long title of the Constitution Alteration (Establishment of Republic) Bill ("the Bill") both misrepresents the substance of the Bill and perpetuates the misconception in the public debate that the Republic model's defining feature is the appointment method.

As currently drafted the long title states that the Bill will alter the Constitution to establish a republic "with a President chosen by a two-thirds majority of the members of the Commonwealth Parliament". The title makes no reference to the substance of the model incorporated in the Bill or even accurately describes the method of appointment of the President.

The core issue for the republican model adopted by the Constitutional Convention and embodied in the Bill is not the method of the appointment of President but rather the powers of the office of President and the office's relationship to the Executive and Legislative arms of Government. By focusing only on an incomplete description of the Presidential appointment process and not on the powers of the office the long title really misses the point.

The method of appointing the President follows on and is dependant upon the question of the powers of the office. For instance, if a President with executive powers was proposed, then it would follow in a democratic system that the President would be directly elected by the people.

The republican model in the Bill, in contrast, is not of an Executive Presidency but rather of a President with the same powers and duties as currently exercised by the Governor-General. This was the key decision of the Constitutional Convention and the method of appointment was then crafted to ensure the decision on the powers would be reinforced and not undermined by how the President was appointed.

A more accurate depiction of the model would be as follows:

"A Bill for an Act to alter the Constitution to provide for an Australian Citizen to replace the Queen as Australia's Head of State with the same powers currently exercised by the

Governor-General."

If the Committee is of the view that the appointment process should feature in the long title, then the current description contained in the long title is clearly inadequate and inaccurate. This is because it makes no reference to the public nomination process and inaccurately states the President is "chosen" by Parliament rather than "approved" by Parliament.

The public nomination process is a core component of the appointment process and should be contained in the long title (if the title is to refer to the appointment process at all). Equally, the Convention resolution on the appointment process speaks of the Prime Minister's nomination for President being "approved" by a joint sitting of both Houses of Parliament. The use of term "chosen" in the long title is a departure from the Convention's language and as a result gives a less accurate understanding of the model.

2. **The Presidential Nominations Committee**

The intent of the Constitutional Convention was that the public should be involved in the Presidential appointment process through the nomination process. In this regard a nomination committee was proposed which would take into account the considerations of federalism, gender, age and cultural diversity.

It is submitted that the Committee would better achieve its aims and would enjoy greater public confidence if members were selected by a bipartisan process involving consultation with non-Government parties in the Parliament.

This might be achieved by providing in the Presidential Nomination Committee Bill 1999 for the Committee Members to be appointed by the Prime Minister following consultation with the leaders of political parties with at least 5 members of the Parliament.

3. **Conclusion**

On the whole both Bills before the Committee represent a fair reflection of the Convention's outcome. It will however be a major departure from the Convention's model if the long title of the Bill remains as proposed and fails to reflect the core feature of the republican model namely the replacement of the Queen and Governor-General with a President have the same powers as the Governor-General.