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JOINT SELECT COMMITTEE ON THE REPUBLIC
REFERENDUM

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Republic) 1999 and Presidential Nominations Committee Bill 1999**

MONDAY, 19 JULY 1999

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JOINT SELECT COMMITTEE ON THE REPUBLIC REFERENDUM

Monday, 19 July 1999

Members: Mr Charles (*Chairman*), Senators Abetz, Bolkus, Boswell, Payne, Schacht and Stott Despoja and Mr Adams, Mr Baird, Ms Julie Bishop, Mr Causley, Mr Danby, Ms Hall, Mr Hawker, Mr McClelland, Mr Price, Mr Pyne and Ms Roxon

Senators and members in attendance: Mr Causley, Mr Charles, Mr Danby, Ms Hall, Mr McClelland and Mr Price

Terms of reference for the inquiry:

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

WITNESSES

FRASER, Alderman Ian Kenneth, Convenor, Australian Republican Movement, Northern Territory Branch	450
FRIEL, Mr Colin McCallum (Private capacity)	439
SKENNAR, Mr Norman Dennis (Private capacity)	456

Committee met at 12.55 p.m.**FRIEL, Mr Colin McCallum (Private capacity)**

CHAIRMAN—Welcome to this public hearing of the Joint Select Committee on the Republic Referendum. This committee is examining the provisions of the draft legislation introduced by the government in June to provide for the Constitution to be altered to lead the way for Australia to become a republic. Over the last three weeks, the committee has taken evidence at public hearings in Canberra, Sydney, Melbourne, Adelaide, Perth, Broome and Hobart. This week we are taking evidence in Darwin, Townsville, Brisbane and Newcastle. We are pleased to be taking evidence today in Darwin and the committee welcomes witnesses and members of the public who may wish to observe the proceedings.

I advise witnesses that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the House. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I now invite you to make an opening statement before we ask you questions about your submission, which we have received today.

Mr Friel—I have no objection to Australia becoming a republic provided it has the constitution of a republic not the constitution of a colony and certainly not the Constitution which we now have nor that which is proposed. If we are going to be a republic, let us first have a fully elected constitutional convention, a convention that is elected by a system of proportional representation and not the convention that has drawn up these proposed changes. That convention was so constituted that its decisions were those that represented the wishes of the major political parties and not those of the people. It was a convention with an exorbitant non-refundable nomination fee, with appointees predominantly dyed-in-the-wool conservatives, and its decisions a rubber stamp for the government. Those decisions have no credibility.

We want a new constitution that places power in the hands of the people rather than in the hands of the politicians. We want a constitution that, amongst other things, guarantees a free and fair electoral system, not the dishonest fraud that we now have. We want political reform of the House of Representatives, the abolition of the single-member electorate system and, in particular, the right not to vote and the right to vote for one candidate only—that is, optional preferential voting. Instead, we see moves being made to attack the few democratic parts of the Senate electoral system.

This proposed constitutional reform—this further charade that is being foisted on the Australian people—will, in the long term, further alienate the electorate because of the obvious contempt for the voters shown by the blatantly undemocratic nature of the provisions for the appointment of the head of state. This replacement of the Queen's lackey with the Prime Minister's lackey is another example of unmitigated arrogance. The contempt of parliamentarians for the opinions of the electorate is palpable. The concerns of the people cannot be heard in parliament. Our life support systems are being bartered away by our politicians in the name of globalisation; only lip-service is paid to environmental protection.

If we are to have constitutional reform, it must totally reform the electoral system. The minimalist position advocated by the ARM, the artificial republic movement, is unacceptable to anyone with a sense of social justice, to anyone with a feeling for democracy. The parliament cannot be allowed to select the head of state. We could end up with someone like Malcolm Turnbull, rewarded for his efforts in this exercise.

In the general running of this country, in day-to-day politics, the Queen plays no effective part whatsoever. For all practical purposes, the monarchy is irrelevant. Our Governor-General is irrelevant. The vast majority of our governors-general have been irrelevant and inconsequential. The real head of state is the Prime Minister. Any head of state appointed by the Prime Minister will be irrelevant, a powerless figurehead. We do not need one. If we are to have a head of state, he or she must have executive powers. Those powers can only be decided by a popularly elected constitutional convention. They must not be decided by politicians.

We come again to the conclusion that we need a major review of the Australian Constitution. But a majority of Australians want an elected head of state, and that matter should be settled by plebiscite first. If we adopt the proposed constitutional reforms, we will have a mickey mouse model of a republic with a de facto nobility composed of parliamentarians, with entry by endorsement for election by a major political party. The powers of the Queen will simply be transferred to the Prime Minister. If we are to be a republic, it is fundamental that political power be in the hands of the people, not in the hands of politicians. Our Constitution must not only reflect that principle but also protect it.

CHAIRMAN—Thank you for that, Mr Friel. You said in your submission:

The contempt of parliamentarians for the opinions of the electorate is palpable. The concerns of the people cannot be heard in parliament.

What are we doing here?

Mr Friel—We will see what the result of this hearing will be. I am sure that nothing that I have said will have any effect on any of you.

CHAIRMAN—What you have said is:

The contempt of parliamentarians for the opinions of the electorate is palpable.

I thought we were here to listen to your opinions. It is hardly fair.

Mr Friel—In that case, why was that Convention held in the way it was constituted? There was nothing democratic about that, and you are the result of that Convention.

CHAIRMAN—Why was the Convention undemocratic?

Mr Friel—Because it was not elected. Very few of those people were elected.

CHAIRMAN—Half of it was elected.

Mr Friel—Half of them were appointed. That takes half the vote straightaway. How do you get a majority for a democratic decision? You do not.

CHAIRMAN—But even the appointed representatives were free to vote how ever they wanted.

Mr Friel—They would not have been selected if there was any doubt about which way they would vote. The thing was stacked, let me put it that way.

CHAIRMAN—I am not convinced that is true, Mr Friel. Quite frankly, I cannot answer for the other side of politics, but I know that on my side of politics a number of people were appointed to the Convention by John Howard who held very strong republic views—very strong. On the floor of the Convention, they came out and said so. We know that he is not in favour of change. I would have thought that the Convention was not loaded in any sense.

Mr Friel—I disagree with you. Following that we also had the later convention here in the Northern Territory, which I was part of, so I know how it was done.

CHAIRMAN—You say:

If we are to have constitutional reform, it must totally reform the electoral system.

Mr Friel—Yes. The electoral system is no good at the moment. The House of Representatives electoral system is designed so that either one of the two major political parties' candidates fills a seat. The single-member electorate system is no good to us. There is only one member in the House of Representatives who is not a member of a major political party—one Independent—and that is the result of our political system.

CHAIRMAN—How did political parties come about? Did they come about first and then people joined them, or did political parties come about because men—and it was not women; I am not being sexist, but it was men—who were elected to parliament, in order to be able to get legislation through the parliament formed political parties to get collegiate agreement on issues, views and philosophy. Without such agreement, if you had, as we had before, 74 members of the House of Representatives, you would have had 74 people voting 74 different ways, and I would have thought that no legislation would ever have passed the parliament.

Mr Friel—They would have had to have consensus. They would not have been able to sell the Commonwealth Bank, for instance, or Telstra. You might notice that in any election about 20 per cent of the electorate, and the percentage is becoming greater, does not vote for the major parties in the primary vote. That should tell you something. But they are not represented in parliament. Their vote is taken and given to somebody else by the allocation of preferences, quite unjustly; otherwise, you have to vote informal. You cannot just vote for one person. If that person does not get in, your vote—if preferences are counted—is allocated to one of the major groups eventually.

CHAIRMAN—If you accept that our job here today is not to rewrite what the Constitutional Convention came up with but rather to examine the legislation to see if it

reasonably faithfully represents the views put out by the Constitutional Convention, and to make sure that it will work properly if the Australian public votes for it in November, given that that is a fact, what do you think of the model and do you think it will work?

Mr Friel—It will not work. I do not like the model at all. That is why I am here. It is so undemocratic. That is my problem.

Mr CAUSLEY—Could we explore that a bit further? You say you do not like the model as proposed, and I note what you have said in your submission. Do you have in your mind a model of a republic? Is there an example around the world that you would see as the type of republic that you want?

Mr Friel—That is a big ask, of course. There are so many different peoples that call themselves democracies and republics but there is such wide variation. If we have a head of state, what is the sense of having a figurehead? The Prime Minister is the head of state in actual fact. He is over there now touring the world as the head of Australia. It is not the Governor-General who does these tours and organises all the policies, it is the Prime Minister. Why do we have to have a Governor-General? Why do we have to have this supernumerary person?

Mr CAUSLEY—Under our system, of course, there are the checks and balances to see that people do not take absolute power.

Mr Friel—That is what the Senate is for.

Mr CAUSLEY—That is the use of a Governor-General or President in any of these systems. Do you have any republican model that you see as being the one that suits your purposes?

Mr Friel—No, but I would like to see a proper constitutional convention that decided it, one that sprang from what people think instead of what those people thought at that Convention. I did not even vote at it because I so disgusted with the set-up of it, as many others were. It is such a sham. It does not even look democratic. This is why I am saying that you have a contempt for the democratic process.

Mr CAUSLEY—I disagree with that because there were a lot of people—I think you said that they were conservatives—who were appointed to that committee who certainly were not conservatives. It was an attempt to get people there, plus a mix of the general public, who understood the systems of government and who would come up with a proposition for a model that might work.

Mr Friel—I do not think that will work. I did not hear about this until Friday morning on the ABC news. It has not been in the Northern Territory newspaper. Nobody knows about this that I know of. This was the same with the previous Convention. On the Friday afternoon—the paper in those days came out in the afternoon—I found out that they were going to have a hearing on whether we should have a bill of rights in the Constitution on the Saturday at 12 o'clock. How can you draw up a submission in that time? I did this on the Friday. I could have done a lot more. You can see that it is pretty rough. People are not

here: where are they? There are a lot of people who are very interested in this business, but they were not told that there was going to be a hearing.

CHAIRMAN—We did try.

Mr McCLELLAND—You would know a little bit about the American presidential election process from what you have seen of the campaign so far.

Mr Friel—I know that the President himself is not actually elected by the people; he is elected by a college.

Mr McCLELLAND—Yes, by a college. But that process, you would accept, has got sensational media releases by all candidates. You would accept that the system of election is marked by pre-rehearsed, stage-managed conventions and that it has ingrained mud-slinging, wouldn't you?

Mr Friel—You might note that less than 50 per cent of the electorate votes.

Mr McCLELLAND—Yes, but the process involves all of those things. It involves massive party structures for massive fundraising campaigns to arrange polling booths. Clearly, that is a political process and clearly a politician is elected in that process.

Mr Friel—Undoubtedly.

Mr McCLELLAND—If we had that system here of direct elections, wouldn't we end up inevitably with a politician as our head of state?

Mr Friel—Undoubtedly, and what will we end up with now, with this model? Don't tell me it will not be a political appointee.

Mr McCLELLAND—That brings me to my second question. You have said in your submission words to the effect that entry to this office of our head of state will fall to someone who has the endorsement of a major political party. Is that the thrust of your submission?

Mr Friel—No, you misunderstood me. The nobility I was speaking about are you people. You are more or less an nobility; you are untouchable.

Mr McCLELLAND—Let us leave aside the elected members of parliament. What sort of person is going to be appointed as President under the proposed system? Won't it be a person who, by definition, will not be a politician?

Mr Friel—No.

Mr McCLELLAND—It certainly will not be a person who is associated with either of the major political parties.

Mr Friel—I disagree. I do not see that it could be anything else but associated with one of the political parties.

Mr McCLELLAND—How can that be when it takes both sides of politics to endorse that person? Wouldn't it be a foolish opposition leader indeed who endorsed a diehard member of the governing party?

Mr Friel—Why?

Mr McCLELLAND—Surely it will be someone who is not associated with either political parties, who will not be a political warrior for either of the political parties.

Mr Friel—It is an extremely unlikely event.

Mr McCLELLAND—It has to be the inevitable event, doesn't it? Why would an opposition leader—take it now, the Liberal-National Party in government—

Mr PRICE—They will not always be in government.

Mr McCLELLAND—That is right. Take it on that point, that the Liberal-National Party is in government. John Howard, under this proposal, would propose a person to Kim Beazley. Kim Beazley would be a fool, wouldn't he, if he accepted the nomination of a dyed-in-the-wool Liberal-National Party warrior?

Mr Friel—Not necessarily.

Mr McCLELLAND—Why would he be so foolish?

Mr Friel—Why does most of the legislation pass through the Senate with the support of the Labor Party? There are only a few things that do not pass through.

Mr McCLELLAND—That is true; because it is in the interests of the country. But come back to the crucial issues, where there is philosophical dispute. It would be a foolish opposition leader—would it not?—to agree to appointment of an Andrew Robb, a Michael Kroger, a Liberal-National Party warrior. It would be absolutely stupid. Why would he? Aren't you going to get someone who is acceptable to both parties, who will not be a political warrior for either side of the fence?

Mr Friel—No, I do not think so. They have just decided—or so I have heard; you could correct me—that Gareth Evans has got bipartisan support for a UNESCO post.

Mr McCLELLAND—That is not the position of head of state, is it?

Mr Friel—No, it is not. But it does indicate that you can get another party to support a long-term party member of the other side.

Mr McCLELLAND—But, surely, even if your logic is right, that person would not be in the ilk of a political warrior? Surely he would have to be a non-politician, to be acceptable to that process?

Mr Friel—I do not agree with your logic.

Mr McCLELLAND—You would have to accept that it would be a foolish opposition leader to give such a prominent position to a prominent member of the rival party. Would you do it, if you were opposition leader?

Mr Friel—You have asked me that question quite a few times.

Mr McCLELLAND—Would you do it? I am asking this one: would you do it as an opposition leader? Would you give such a prominent position to an operative of the rival political party? Would you do it?

Mr Friel—It is an event that I will never have to contemplate.

Ms HALL—We have got the ultimate politician here. He would leave us for dead.

Mr Friel—He keeps asking me the same question: would the opposition leader be a foolish person to do something? I have my own opinion of the opposition leader, particularly the present one, but I do not want to give it here. But I do not want to change my position on that. I do not think he would be a foolish person. I think that eventuality is quite possible.

Mr PRICE—Mr Friel, are you aware that people like Sir Zelman Cowen, for example, have argued that, without the requirement of a two-thirds majority of the House, people like himself would not offer themselves for the position of President—or would not have offered themselves for the position of Governor-General?

Mr Friel—He is not my most popular person at the moment, because he has taken a fairly active part in the yes campaign. I do not know that I am aware of what aspect of it you mean. Could you repeat that?

Mr PRICE—Sir Zelman's argument is that people like himself who have not been politically involved would not offer themselves for that position if they had to contest it by direct election but, if there was a bipartisan process as Mr McClelland was outlining, then of course people like himself would be included. They would be precluded from a direct election approach but not the approach of two-thirds of all members of the House.

Mr Friel—They are, at the moment, selected by the parliament. There are not many who stick in memory as outstanding selections. Sir Zelman Cowen, to me, is not one of them.

Ms HALL—Can I suggest that, at the moment, they actually are not selected by the parliament? They are selected by one person and one person alone, and that is the Prime Minister. Currently the Prime Minister has no pressure on him or no requirement to state publicly why he chose that person or in any way to justify his reason for choosing that person. Under this system, it is a much more visible process and the Prime Minister will

have some form of accountability. At least we as Australian people will be able to see what happens. And despite what you may think, I think of myself as an Australian person too.

Mr Friel—But it will alter from one person to two persons. Once the Leader of the Opposition and the Prime Minister decide on some person, whoever it may be—someone away from politics or in politics—can you imagine the caucus or the Liberal Party itself knocking back that decision and not giving them a two-thirds majority?

Ms HALL—Most definitely. As a person who has been a member of caucuses where we have knocked back things that have been brought to us, I can assure you that it does happen. The other thing is that it is not just two people that actually make that decision. You have the committee of 32 people where there is a very public process where they sift through the nominations, and then it goes to the Prime Minister and the Leader of the Opposition—

Mr Friel—But what is democratic about that?

Ms HALL—Then, as my colleague mentioned, two-thirds of the members of parliament must vote for that. And that is a bit of an ask: it is a lot more accountable and a lot more visible than the process currently.

Mr Friel—Well, I remember Senator George Georges having to resign from the Labor Party because he opposed the government when it itself was opposing Labor Party policy. You would have no problem getting the support of the parliamentarians; they would get kicked out of their party if they did not give it.

Mr PRICE—I served with George Georges.

Mr McCLELLAND—I think he died in office.

Mr Friel—He did not die in office.

Mr PRICE—I am sure he retired. He never resigned from the party. He resigned from the party after he left the Senate but he was a very long-serving senator and chairman of the Public Accounts Committee. There may have been some trouble in relation to that office, but I cannot recall him resigning from the party while a serving senator.

Mr Friel—No. But he had to leave the party eventually, because he opposed the government over the selling of uranium to France, I think.

Mr PRICE—I cannot remember the circumstances, I am sorry, Mr Friel.

Mr Friel—Okay. That is not relevant at the moment anyway. I am just saying that they have a way of dealing with people who vote against them.

Mr PRICE—But he had already left the Senate: that is my point. I have seen party colleagues walk out of a budget, to be honest. And, on the issue of uranium, quite a number have spoken up against it. Although I think all parties would claim to be disciplined parties

in Australia, it does not mean that there are not great tensions about different issues at different times.

Mr Friel—Do you have any further questions?

Mr PRICE—With your indulgence, Mr Chairman, can I follow up Ms Hall's point? Mr Friel, are you aware that there is no formal process at the moment for selecting a Governor-General?

Mr Friel—No, there is not.

Mr PRICE—And that, at least in theory, a Prime Minister could select his chauffeur to be Governor-General—under the current system that we have?

Mr Friel—Yes. Hayden got in, didn't he? He was selected. He was not a chauffeur, though.

Mr PRICE—I know that he was an expert on drovers' dogs; I did not know he was a chauffeur.

Mr Friel—Don't tell me that wasn't a political appointment.

Mr PRICE—There have been some political appointments. The interesting point that you are making is that you are worried that there are going to be more. But I think that under the proposed system there will be nil—not fewer, but nil.

Mr Friel—I know that is a line that is being put forward, but I am too old and too cynical about politics to accept that as a foregone conclusion.

CHAIRMAN—We are a pretty bad breed, aren't we?

Mr Friel—No.

CHAIRMAN—I thought we were just average Australian citizens.

Mr Friel—You go in there as honest people but you do not come out the same way.

CHAIRMAN—I beg your pardon?

Mr Friel—I said that you go in there as honest people, but you have to beat the system to come out as such.

CHAIRMAN—You will understand if I do not agree with you, Mr Friel.

Mr Friel—I gathered that.

Ms HALL—We will have to agree to differ on that.

CHAIRMAN—I recall that one day a constituent came to my office and said, ‘All politicians are liars and cheats,’ and I threw him out because I am not a liar or a cheat. I actually threw him out, because I do not have to put up with that. I am just an average bloke—

Mr Friel—It is easy to generalise about politicians.

CHAIRMAN—and I am dying of the flu.

Mr Friel—Party discipline is the problem.

Mr McCLELLAND—You have mentioned that you have a cynical attitude. If your cynical attitude were to prevail and this referendum were to be defeated by that cynical attitude, when do you think any other political party would take the risk of sponsoring another referendum to give Australia its own head of state?

Mr Friel—If I could see the future, I would back racehorses.

Mr McCLELLAND—A long, long time, though. You will not see it in your lifetime.

Mr Friel—Look at the bigger picture. We are heading into ecological disaster.

Mr McCLELLAND—No, we are not talking about the environment. Come back to the issue.

Mr Friel—This is going to affect all governments.

Mr McCLELLAND—Your dog-in-the-manger attitude could prevent Australia getting a head of state for a long, long time, if it prevails.

Mr Friel—We have a head of state. We have the Prime Minister acting as head of state. Whether you like to class our Governor-General as that or not, it does not matter. In reality, the Prime Minister is the head of state.

CHAIRMAN—I tell you what: Sir John Kerr did not think so.

Ms HALL—Would a more acceptable model for you be one where we abolish the office of, say, Governor-General or President and have a system where the head of the party that has the majority in the House of Representatives is the head of state?

Mr Friel—I would like to see an elected President—quite similar to the American President—who could be the check on the legislature, with that legislature elected on a proportional representation system, and the abolition of above-the-line voting. Above-the-line voting guarantees transfer of votes to somebody who probably would not get voted for.

CHAIRMAN—You want a system like the US system. Are you aware of the fact that Grover Cleveland was elected popularly by the people but was not appointed President because the electoral college killed him?

Mr Friel—That is their system. We do not have to have that system. It is not a popularly elected system, is it? I am talking about the executive powers of the President. Clinton has too many, actually, but he does act as a check on the House of Representatives and the Congress, and they act as a check on him in some ways.

CHAIRMAN—Thank you very much for coming to talk to us and for giving us your submission today.

[1.39 p.m.]

FRASER, Alderman Ian Kenneth, Convenor, Australian Republican Movement, Northern Territory Branch

CHAIRMAN—Welcome. You have not made a submission, but I understand there are a couple of issues you would like to discuss with the committee on the public record.

Alderman Fraser—I have nothing to add to the official Australian Republican Movement submission that you received in your hearings in Canberra except to stress to committee members—and I believe that you already have this message—that, with respect to indigenous Territorians and indigenous peoples in other remote parts of Australia, we need to concentrate more resources in the education process so that they are aware of what they are facing and what decisions they need to make, given the remoteness of the communities they live in and the access that they have to electronic and print media.

CHAIRMAN—We were told in Broome that some communities just never receive mail and that—in addition to Aboriginal communities—when you get out into regional Australia there are still a lot of people with very poor English language skills or for whom English is their second or third language and that at least some proportion of the population have very poor, if any, literacy skills.

Alderman Fraser—That is quite correct. Outside of the metropolitan areas of Darwin, Alice Springs, Katherine and Tennant Creek, there is no mail delivery other than to private mail boxes. Even 25 kilometres from where we sit now you do not get a mail delivery; you have to pick up your mail from the post office or from private boxes. You are quite correct: the indigenous people are quite remote. I believe that they, like the bulk of Australians, have started to engage in the question of constitutional change in a republic. For instance, I staffed a booth at the Katherine Show over the last two days—Friday and Saturday—and people are starting to ask questions. They are aware that the decision will be made in early November, and they are seeking information. I was requested to do that, particularly by indigenous people.

There was, unfortunately, a failed referendum with respect to the statehood process in the Northern Territory. Many Territorians felt that that process was flawed, and they are a little bit against a referendum process. So the Commonwealth process needs to be clearly demonstrated—both the yes case and the no case—and extra steps taken. Quite often, even in elections, the first that some of these people from indigenous communities will know that there is an election on is when they see the mobile polling booths. There are about 14 mobile polling booths in the Northern Territory. The plane arrives out of the sky, and they are asked to make a decision.

That is what happened with the Constitutional Convention vote when mobile polling was used extensively in the Northern Territory. The polling people arrived at the booth and people were not even aware who the candidates were or what the issues were. Because it was a voluntary postal vote, a lot of people exercised their option not to vote at all in the mobiles, and we certainly would not want that to be the case in the referendum on the republic.

CHAIRMAN—If there is no mail delivery, what would you recommend? We have no role beyond 9 August when we report on these two pieces of legislation, but we can make recommendations. How would you propose to get the yes/no cases in very simple, understandable language to remote communities?

Alderman Fraser—I believe that the role of the Central and Northern Land Councils and other councils in other remote areas could be crucial in delivering that information. In addition to that, the Territory based MPs who cover most of the remote areas in the Territory could use their mail-outs and could talk to the communities on their numerous visits to remote areas. I believe also that, particularly in Darwin, you can use indigenous radio which is then translated into the language of the communities. I think that we could use that resource so that we had the language going out, and also use ambassadors such as Yothu Yindi, footballers and other people who are respected to get the message across. I would rely on those things in addition to the normal electronic media which will come up through the satellite footprints of Imparja, Channel 7 and Channel 10.

CHAIRMAN—To some extent, won't that be part of the responsibility of the committees that put forward the yes case and the no case? I remind you that they are publicly funded.

Alderman Fraser—My understanding is that there are very strict guidelines in place about what can and cannot be done with the funding for the yes and no cases. Given the size of the population in the Northern Territory and its impact on the vote, I had a discussion this morning with the ARM people in Sydney. They are aware of it and we will try as best we can to get the message out. But what I am saying is that, in the build-up to the referendum, the last thing we want is for indigenous people and people in remote communities to find out about it only when the electronic and other campaigns start. I am talking about the campaign that is run to explain the current system and what is proposed, the AEC campaign. I want a bit of pre-information prior to the yes and no cases being launched nationally.

CHAIRMAN—What happened in the Northern Territory with the statehood referendum? How did it go so wrong?

Alderman Fraser—Any comment I make would be a personal comment, not an ARM position. We did not have a position on the—

CHAIRMAN—No.

Alderman Fraser—When the parliament voted in relation to that referendum, no-one voted no and so the no case was not officially funded. Therefore, only the yes case got out and people felt that that was owned too much by the executive government.

Aboriginal people certainly had a lot of problems with it. The results of the vote showed quite overwhelmingly that Aboriginal people did not support it. About 80 per cent of Aboriginal people voted against statehood. I think the politics involved in that were a little bit deeper than just the lack of involvement of the community. The big failing of the statehood referendum was the lack of ownership by the individual residents and their exclusion from it.

On the forthcoming referendum, the response I got from Katherine yesterday was that people felt very comfortable about the process that is being proposed and that a fair argument will be presented to them. That comment is based on my experience at two shows in the last two months. I think we have to ensure that everybody does feel they are part in it.

There is a substantial number of baby boomers these days who are on the road for a considerable amount of time. I must have come across 40 or 50 people at Katherine Show who were in caravans and who would not be back at their homes in places like Victoria, Tasmania, Western Australia and South Australia at the time of the referendum. They will be on the road when the referendum is due to be held. They were quite pleased that they could get some information about the referendum while they were on the road. There will be a significant transient population at that time of the year, given that it is the run-up period to holidays down south.

Mr McCLELLAND—Given the difficulty with communication, do you think the way the question is framed is important? In particular, do you think it should be framed in a briefer form or a more informative form?

Alderman Fraser—As I said, you have the official ARM submission and the correspondence from our chairman. That is the ARM position. The question is very important. One of the failures of the statehood referendum up here was that it asked three questions in one. If people disagreed with one part of the question they had to vote no to the lot. Without a doubt, the wording of the questions has to be as unambiguous as possible. It is a very difficult task and I do not envy anyone who has to frame it. It is a very difficult task and it has to be very well thought out. As I said, I support the ARM position on that.

CHAIRMAN—What were those three questions?

Alderman Fraser—For the statehood referendum?

CHAIRMAN—Yes.

Alderman Fraser—The first was, ‘Do you wish the Territory to become a state?’ The second was, ‘Do you support the Constitution?’ There was another question. All were put in the one wording. There were certainly three questions rolled into one. It was something like, ‘Do you support the Constitution and do you want the Territory to become a state?’

CHAIRMAN—And you had to give three ticks?

Alderman Fraser—No, just one tick.

CHAIRMAN—Just one tick for the lot?

Alderman Fraser—Yes.

Ms HALL—What you are saying to us—and please correct me if I am wrong and maybe give us a few ideas—is that because of the particular difficulties that indigenous Australians have in the Territory there is a need for more information, a larger education

program than just the yes or no vote. Would you say that there are groups out there who were unaware of the fact that there is going to be a referendum and, if there was a referendum, what it meant?

Alderman Fraser—In my experience 95 per cent of the Australian population, including indigenous people, are aware that there will be a referendum, but they are not aware of when it is going to occur, and their information on the system of government is not up to a suitable standard for them to make an informed decision. Because the government system is so successful, they do not fully comprehend how it operates. That is not a criticism of it; it just works so well.

Ms HALL—I am trying to sort out in my mind how we would get that information to remote and indigenous communities. Would a way for us to get that information out there be to concentrate on giving it to leaders in the community, contacting all the remote communities and linking in with a medical service that operates in those areas? What way do you think we could maximise getting that information out to the community to make sure that they do get both the yes and no cases and are able to make an informed decision, because I believe that is important?

Alderman Fraser—The divisional returning officer for the Northern Territory, Kerry Heisner, has done programs such as that before. Quite regularly, AEC officials go out to communities to explain the voting process. So the AEC in the Northern Territory does have some experience in that. In my experience they do a very good job. If resources could be made available to the local division of the AEC, they could go and do that. They also have a network of local people who assist them at polling booths and those people are seen to be impartial. So that is another group of people through the Australian Electoral Commission that you could use to visit each of the communities to give them the information and allow them to discuss it and keep it with them for some period of time.

As I said, all the other infrastructure is there, such as the Northern Land Council. Schools could be another important area where we could put information out. The Territory MLAs and also local government have a very important role to play. There is quite a substantial number of community government organisations in the Northern Territory. Local government, from my position on local government, has played a very active role in the constitutional change, so it could be another group of people that you could funnel information through so that it is available there.

Ms HALL—Thank you.

Mr CAUSLEY—Mr Fraser, if the referendum is carried, then the bill before the parliament at the present time will become our Constitution. Representatives of supporters of the Australian Republican Movement have disagreed with the model that might be put forward as a republic. For instance, some have disagreed with the election process of the President. There have also been some concerns about the power of the Prime Minister to dismiss instantaneously and come back to the House of Representatives within 30 days. Are you saying, as far as the Northern Territory branch of the Australian Republican Movement is concerned, you support the bill before the parliament becoming our Constitution?

Alderman Fraser—I support the ARM position which has been presented to your committee, I believe. I am very comfortable with the outcome of the Constitutional Convention. I was a candidate for the Constitutional Convention. I am happy with the outcome of it. I believe that the leadership of the ARM has indicated to you the areas where some follow-up action may be required in respect of the powers of the Prime Minister to dismiss the President. I have no personal opinion other than to support the ARM position. I am very comfortable about that. I will be campaigning over the next five months in the Northern Territory in support of the yes case for the bill as I understand it now and as the ARM understand it.

Mr CAUSLEY—As I understand it from some people who have put forward a position of supporting this bill, they would be keen to see this bill passed and then have subsequent referenda to finetune it as a Constitution. Is that the way you see it?

Alderman Fraser—I think it is very dangerous to approach any sort of hidden agenda. My agenda is that on or around 6 November I will cease to be the convener of the Australian Republican Movement in the Northern Territory because my position will be defunct. I have no personal agenda and I am absolutely certain the ARM has not got any agenda other than the recommendations of the Constitutional Convention that there be further constitutional conventions to look at other issues.

A constitution, as I am sure you are aware, is a living, breathing document. The citizens will need to change it when they see fit, but the bill before your committee and before the parliament is the bill that I will be going out and campaigning for. I have no other agenda in relation to that Commonwealth constitutional change than what will be contained in the referendum. At the conclusion of the yes vote, I will have a dry ginger ale in some location around Darwin to celebrate with other booth workers on the day.

Mr CAUSLEY—But you would concede that in the past it has been very difficult to change the Constitution by referendum?

Alderman Fraser—It certainly has, and it is like everything. One of the proposals is four-year terms. I am an alderman on the Darwin City Council. We have a fixed four-year term and it does not seem to worry us. There are numerous things that have failed, but I think they have failed because there has not been bipartisan support and there has not been enough education. One of the by-products, if you like, of this proposal before the people is that, if we can get the process correct—that is, that there is maximum involvement of the community in it—it may be a way forward for further constitutional change in Australia.

A constitution, as I said, should be a living document that reflects people who are living under it at the time. It should not be a document that is seen to come down off a mountain and be inviolate and should not be touched forever and a day. One of the good things about the whole debate—I have been involved for five years—is that Australians are becoming more aware of their government, how it exists, how it operates and why it is so successful. We have problems changing it because it has been so successful. Our system at federal level is quite stable and gives the result that people like. We are sort of hamstrung by our own success, if you see my point.

CHAIRMAN—Considering your view that the Constitution is a living, breathing, evolving document, do you think our forefathers served us poorly when they took the Swiss model for the referendum to change the Constitution?

Alderman Fraser—No, I think any constitution needs to be difficult to change. As someone who lives in a remote area of Australia and has suffered under Canberra's rule, before we got self-government, I think you have to have a balance against the large populist centres such as Sydney and Canberra. For a lot of regional Australians, that political leak does exist down there. It is not uncommon for me to get phone calls from people asking if I can drop down to Tennant Creek and get someone to sign a form. I say, 'Certainly, I will drop down there. What would you like me to do for the two days it is going to take me to drive down there and back?'

When people come up here they expect to see a city of 250,000 or 300,000 people. They are a bit shocked when they see on the news every night that it is a city of 78,000 people and that there are only 170,000 people in the whole of the Northern Territory. You have people who drive up here in caravans and have no idea of the distance between one place and another. They just assume it is like driving through the south-west of New South Wales where, if you go 60 kilometres, you hit another town. They do not realise that you can go 300 kilometres before you hit another petrol station.

The Constitution has served us well. The lack of change to the Constitution may be frustrating to the people involved but our system has evolved around that. There has been the evolution of the High Court, the evolution of the Senate and the changing role of the Senate. With respect to the role of parliamentary committees, I think there has been an evolution in our political system that is quite dynamic, that is going forward. I would not be critical of the founding fathers, at least they got it up. We have to get this one up.

CHAIRMAN—Well said.

Alderman Fraser—Thank you very much. I appreciate the short notice and I hope you have a good stay in the Northern Territory.

Ms HALL—I think that is very valuable information for us to have. We need to be aware of the issues that are out there in the remote communities.

Alderman Fraser—That is right. It is not an easy question, but if we can put some resources to it and the more people we engage in the debate the better we will be.

CHAIRMAN—I can assure you that we will address the issue. How far we can go in making a recommendation, I do not know. But we will address the issue in our report. We report on 9 August and we will send you a copy of our report.

Alderman Fraser—Thank you very much.

[1.55 p.m.]

SKENNAR, Mr Norman Dennis (Private capacity)

CHAIRMAN—Thank you for appearing before our committee this afternoon. You have given us a submission which is a copy of a submission you made to the referendum task force with respect to the exposure draft. Would you like to speak to that?

Mr Skennar—I applied for this draft of the bill and the senator's office that I contacted said they had never heard of the draft being released. It took me 10 days to get a copy. Unless you have a copy of the Constitution, the draft means nothing.

Ms HALL—That is right.

Mr Skennar—So I had to get a copy of the Constitution. Further to this, I spoke to friends and relatives in Sydney and Brisbane back in April and they said they had never heard that it was open for public discussion in Sydney or Melbourne or Darwin. A lot of people did not know it had been released.

Further to section 61, the term 'in remuneration of the President', the original submission was that he could have more than one term of office. I remember during the Second World War when Franklin Roosevelt was elected to his third term of office he publicly stated that it was too much for any man to bear and he had the Constitution of America altered so that the President could not have more than two terms of office. I think that is relevant for any person.

We are giving them a five-year term; 10 years in office is a long time out of anyone's life. Let us say they can have two terms of office. With it being a five-year term of office, that would give them a 10-year term. If, after they had a break from office, it was considered by the parliament that a further term was in the nation's best interest, there should be no objection to re-election and that would be for a further two terms. That would give someone 20 years, which I feel is more than enough in that sort of position.

Section 62, page 5 of the draft, lines 10, 11 and 12—the removal of the President—gives the Prime Minister the power to sack the President. It gives him 30 days in which to go back to the lower house of parliament for it to be approved by a civil majority of the lower house. This is definitely not fair. It takes a two-thirds majority of both houses of parliament to elect the President from the nominations given. If it takes both houses and a two-thirds majority, at least a simple majority of both houses should be required to sack the President, otherwise there is no justice in the Constitution, because you have the Prime Minister who can sack the President and the President who can sack the Prime Minister. So whoever gets in first gets rid of the other one.

My proposal was that, within seven days after the Prime Minister removes the President, the Prime Minister must seek the approval of both houses of parliament for the removal of the President. This approval must be approved by a majority in both the House of Representatives and the Senate. In the event that either house rejects the dismissal, then a joint sitting of both houses is to be called immediately to prevent a constitutional impasse

developing. My reasoning for this was that the President could only be elected by the two-thirds majority; therefore, that has to be justified.

The reason for reducing the 30-day period for the Prime Minister to get approval from the lower house to seven is to prevent and reduce a possibility of evidence being manufactured to justify an unfair dismissal on either personal or political grounds. There was mention of Sir John Kerr before. I was talking to some politicians earlier this year. They said whoever the Prime Minister put into office would never vote against the Prime Minister. I said, 'Have you ever heard of Sir John Kerr?' They said, 'Oh, yes. Well, your point's taken.' It can happen.

CHAIRMAN—I did not understand when you said that schedule 1 repeals sections 59, 60 and 61.

Mr Skennar—Sorry. In the draft submission they put out, that was using their numbers in the original draft. You had to read this in conjunction with the original draft—that is, the Constitution Alteration (Establishment of a Republic) 1999 exposure draft.

CHAIRMAN—Right. I understand your argument about no more than two terms consecutively. I think the Constitutional Convention was silent on that, wasn't it? One of the difficulties we have is that part of our mandate, which I guess is the strongest part of our mandate, is to try to determine that the bills themselves represent the will of the convention.

Mr CAUSLEY—If I can interrupt, my understanding of the Constitutional Convention, and I was not there, was that the argument was put forward that there are no constraints on a Governor-General at the present time holding office for more than that period of time. So the minimal position was to say that it should be the same.

Mr Skennar—Yes, I can appreciate that, but I can remember the episode from Franklin Roosevelt's period and his comments.

CHAIRMAN—But my more substantive question deals with section 62. Can you tell me the circumstances which you think would cause a Prime Minister to sack a President, considering the fact that it has never happened?

Mr Skennar—If there was a justifiable case, it would have to be something on either criminal or similar grounds.

CHAIRMAN—Not political?

Mr Skennar—It is not normally on political grounds because the President under this Constitution does not have much in the way of political power. He is really a figurehead. The Constitution says that he shall sign the bills that are presented to him once they have been passed by an act of parliament.

CHAIRMAN—Suppose the President, on the advice of the Executive Council, was not signing legislation.

Mr Skennar—In that case, if the Prime Minister feels strongly enough about it, he sacks him and then has to go to the parliament to get approval to say that it carries, but he only has seven days to do it.

CHAIRMAN—I take your point about seven days, but that is probably impractical. To try to recall parliament in seven days is a huge task, particularly when you can have people over the four corners of the globe. The point, it seems to me, is that the Prime Minister is not responsible to the Senate. The Prime Minister is responsible to the House of Representatives.

Mr Skennar—But the Prime Minister is still the senior government figure.

CHAIRMAN—But he is not responsible to the Senate.

Mr Skennar—The Senate is the states' house.

CHAIRMAN—That is correct.

Mr Skennar—But the Senate also helps elect the President, so therefore they should have as much control in the sacking.

Mr PRICE—If we were to be consistent, shouldn't it be a joint sitting? In other words, the Prime Minister should be required to seek the approval of a joint sitting for the sacking. If it is a two-thirds approval for appointment, it should be a two-thirds approval of a joint sitting for dismissal.

Mr Skennar—As I read the Constitution, a two-thirds majority of the lower house and a two-thirds majority of the Senate.

Mr PRICE—No, it is a joint sitting.

CHAIRMAN—Not for dismissal.

Mr PRICE—No, for appointment.

Ms HALL—It is section 60 of the Constitution.

CHAIRMAN—If we have got an argument, perhaps we should put that in the bill.

Mr CAUSLEY—But what you are arguing is a joint sitting of both houses and a simple majority.

Mr Skennar—You do not have to call a joint sitting. It says 'may in a joint sitting'; it does not say 'shall in a joint sitting'. The word is 'may'.

Ms HALL—That is a good point. It is something that needs to be considered.

Mr PRICE—The point I am making is that you are seeking a simple majority in two separate votes to approve the sacking.

Mr Skennar—Yes. I feel it would be much more difficult to get a two-thirds majority.

Mr PRICE—I am not saying it should be two-thirds. I agree with you there. Wouldn't it be better then to have a simple majority in the two houses sitting together or in a joint sitting?

Mr Skennar—If you do that, your lower house might outvote the Senate anyway, because of the difference in numbers.

Mr PRICE—It is at least in theory possible that a Senate could outvote the lower house.

Mr Skennar—Only if a lot of them do not sit.

CHAIRMAN—Let us take 1975, and let us change the scenario a bit. Gough finds out, through one means or another, that Sir John Kerr is going to sack him. Under these amendments to the Constitution, he simply writes a letter and instantly sacks Sir John Kerr. But it is the Senate which has been obstructionist. That is what caused the problem in the first place, not the House. You are asking that the obstructionist house then approve or otherwise of the Prime Minister's action.

Mr Skennar—Yes, but I also put in there that in the event that both houses do not agree on the sacking then they shall have a joint sitting.

Mr DANBY—Can I follow that up. If you had a joint sitting and you had the numbers in the House of Representatives and the Senate relatively close to each other—over time that is becoming more and more the case—you could have a deadlocked result. The problem with that goes back to what you referred to earlier, and that is the impasse between the President and the Prime Minister. It is one of the things that I assume, if this were to go through, we would all like to avoid. Surely you can understand why a lot of people who have testified to us already therefore say that the way out of that is to go along the line that our chairman was, and that is to say that the House of Representatives should have to approve what the Prime Minister did and at least you would get a decisive result there, and that establishes the primacy of the House of Representatives over a titular head of state.

Mr CAUSLEY—If we were to say that it was a 60 per cent vote in the House of Representatives, that might be better.

Mr Skennar—Yes. Because of the fact that it takes both houses to elect the President, then it should be both houses that are approving the dismissal.

Ms HALL—Mr Skennar, I have just given you a copy of the draft legislation and it is very clear that it is not 'may'. It is definite that it is two-thirds of both houses. I have just put a line down the side for you. So that is reinforcing what you are saying.

Mr Skennar—Yes.

Mr DANBY—Mr Skennar, I bring you back to that difference between the two values that you expressed in your own submission. One is opposition to the impasse and the other is you would prefer it to be done by both houses along the lines of the appointment. I can understand from a democratic point of view that you would prefer that, but in democracies we all have to make choices and the choice may be in a worse case between impasse and, theoretically the best case, democracy. What do you prefer?

Mr Skennar—I think probably a joint sitting of both houses would be the best way to go and we would still have 60 per cent or whatever as the majority to approve the sacking. I can definitely see times when Presidents could sack Prime Ministers. I reckon that Gough Whitlam was wrong when he tried to borrow his money overseas. I said at the time before he got sacked that he should have called a double dissolution and gone to an election. He might have got re-elected. But in the circumstances Kerr did the right thing—that is in my opinion. There are always times when this can happen. I thought that was the best way of overcoming it.

Mr McCLELLAND—Do you think the present bill, even if it does not go as far as what you are proposing, is an improvement on the present arrangement where one person can effectively dismiss the Governor-General, albeit after notifying the Queen?

Mr Skennar—If he sacks him on the spot, he has 30 days to get approval. So that gives you a month where the senior Governor of the state is acting.

Mr McCLELLAND—I understand what you are putting forward is an improvement to that system but, if that does not take place, do you think what is proposed under the bill at least introduces some accountability that does not currently exist where the Prime Minister of the day can effectively dismiss the Governor-General without having to account to anyone for that decision?

Mr Skennar—I have not studied that particular part of it in the current Constitution. I know that he has the right, but I have never looked particularly at what grounds he could sack him on.

Ms HALL—Any grounds.

Mr Skennar—Any grounds, is it?

Ms HALL—He might get out of bed one morning and decide that he does not like the colour of his hair, and he could do it because he does not have to explain it.

Mr Skennar—Fair enough. So it is an improvement on that, I will admit.

Mr CAUSLEY—But that has never been tested.

Mr DANBY—What has never been tested?

Mr CAUSLEY—The right of the Prime Minister to sack the Governor-General. No-one has ever tried it.

Mr Skennar—I think you have got to have the right for the people's representatives to query it because, as I said, with both the Prime Minister able to sack the President and the President able to sack the Prime Minister, whoever is fastest on the draw wins.

CHAIRMAN—Mr Skennar, thank you very much for coming to talk to us. We will table our report on 9 August, and we will be delighted to send you a copy.

Mr Skennar—Thank you.

CHAIRMAN—Committee members, I have to advise you that Peter Yu cannot make it. He will send us a written submission.

Resolved (on motion by **Ms Hall**):

That the submissions made to the hearing today be received as evidence to the inquiry and authorised for publication.

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

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 2.20 p.m.

