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JOINT SELECT COMMITTEE ON THE REPUBLIC REFERENDUM

**Reference: Proposed laws, Constitution Alteration (Establishment of
Republic) 1999 and Presidential Nominations Committee Bill 1999**

TUESDAY, 20 JULY 1999

TOWNSVILLE

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JOINT SELECT COMMITTEE ON THE REPUBLIC REFERENDUM

Tuesday, 20 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, Mr Price and Mr Hall

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.

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[1.05 p.m.]

McLUCAS, Senator Jan Elizabeth, Senator for Queensland

CHAIRMAN—I now open this public hearing of the Joint Select Committee on the Republic Referendum. The 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, Hobart and Darwin. We are continuing our investigations this week in Brisbane and Newcastle. We are pleased today to be taking evidence in Townsville, and the committee welcomes witnesses and members of the public who are here to observe the proceedings. We are pleased to have Peter Lindsay, the member for Herbert, here with us today. Thank you for letting us come into your electorate, Peter. It is very kind of you indeed.

As I have said before, there are really three things this committee is trying to accomplish in this inquiry. The first is to determine whether the bills, in our mind, fairly reflect the outcome of the Constitutional Convention. The second is that, if these bills are passed by both the House of Representatives and the Senate and they go on to be passed at a referendum—theoretically, in November—they will act in the way that we believe they were intended by the Constitutional Convention to act. The third is to give the Australian public a chance to have a say about this important legislation.

Having said all of that, I welcome Senator Jan McLucas, who is appearing before the committee today. We have received your letter, Senator. Would you like to make a statement?

Senator McLucas—The letter that I sent to the committee was simply to invite the committee to come to a regional centre in Queensland. I certainly appreciate the committee coming to Townsville in this case. My reasons for doing that stem from the fact that I am concerned that there is limited debate about the whole issue of the republic in the lead-up to the 6 November referendum. I am concerned from a regional Queenslander's point of view that we are not talking about the issues that are fundamental to our becoming a republic. The debate has been moved off into discussion about other issues, including the issue of the preamble. But certainly, I appreciate your taking up my suggestion to come to regional Queensland, and I welcome you to this part of the woods.

I want to restrict my comments this afternoon to three major points. It is my view that the community does not want to debate how we become a republic or how we may select a President; they simply want the question, 'Do we in fact want to be a republic?' to be answered. I think we can move later to the debate about how that may occur. I appreciate your comments that the role of this committee is to assess whether the legislation reflects the view of the Constitutional Convention, but I think we have actually got the cart before the horse. People want to make an initial comment about whether or not we are ready to move to the point of being a republic.

Related to that is the whole issue of timing. There has been some desire by certain elements of the community to have an Australian head of state in position. There has been some discussion about the Olympics, and there has been some discussion about the Centenary of Federation. This is something that we will only get one go at. I think we should leave the point of timing aside and do it properly and slowly enough for the community to keep up with us. My first point is that the discussion that we have in the lead-up to the 6 November referendum

question should in fact be about whether we want to be a republic or not and should leave the question of how to one side. But that is probably not going to be the case.

I want to make two other points about the legislation. The legislation says that there will be a committee of 32 people, that eight will be federal politicians, eight will be state and territory politicians and 16 will be community representatives. The legislation, I understand, says that all of those people would in fact be selected by the Prime Minister. This raises a concern with me not because of who the Prime Minister is at the moment but because this legislation will sit there forever. It provides an element of politicisation of this process that I do not think should exist.

The community are saying to me that that process includes too many politicians. They are saying to me that there is no provision in the legislation to reflect the diversity of our population, even though the Prime Minister may select people from those various groups within our community. But the legislation does not demand that. I think that is a failing, because the Constitutional Convention clearly said that they wanted some control over the membership of that committee in order to reflect our diversity. For example, it does not say that there should be a good proportion of women there. In my view, at least 50 per cent of the members of that committee should be women. The legislation does not provide that. The legislation does not provide that people of Aboriginal and Torres Strait Islander background are necessarily included in that committee; it does not say that Australians from other ethnic backgrounds should have representation on that committee.

This leads to my second point: the most important group of democratically elected people in this country are those in local government, and they also do not have a legislative say in that committee. Local government is a very important level of government in our nation. We know that it is not recognised in the Constitution. That is something that concerns me, but that is a side issue. Local government is very good at tapping into community feeling, and we are missing an opportunity if we do not include local government in a statutory way in this committee.

The third point I would like to make is about my concern about the ability of the Prime Minister to sack the President, and I am sure this has been raised with the committee before. Without going into the way the legislation works, it seems to me a recipe for instability rather than for good government. I propose that the legislation be amended to reflect good management practice so that the same person or group of people who employs somebody also be the ones to make the decision not to employ somebody. I suggest that the appropriate group to sack any President would be a joint sitting of both houses. In today's society, that is something that you can pull together reasonably quickly if that event occurred.

That is all I need to say to the committee. There is a whole range of other issues that we could go into, but they are the points I wanted to make. Thank you for coming to Townsville. I encourage members of the Townsville community and of this region to participate in this inquiry.

CHAIRMAN—Thank you very much for that. Our visits to regional Australia so far have been valuable, starting in Broome and confirmed again yesterday in Darwin. One of the things that we heard from a range of people was that mail is very slow and sometimes non-existent in the outback, that English language skills are not always the best and that there is a range of people who have no literacy skills whatsoever. If we are going to do it right—and not do what the Northern Territory did when they tried pushing through the statehood bill—we need to make sure that a simple message for the yes case and the no case is produced and that

mechanisms are put in place to make sure that everyone has access to this information in a comprehensive, understandable form. To the extent that it relieves your mind, it has been valuable for us to go to regional Australia, and we will continue that process here today and again on Thursday. We have learned something that we could recommend that the Commonwealth take on board.

As for your specific issues, you say that, if it is a joint sitting of both houses that approves a nomination which has been seconded by the Leader of the Opposition for the position of President, it should also be that same body that approves a Prime Minister's decision to sack a President. Firstly, would you agree that it would be highly unusual circumstances for a Prime Minister to sack a President? Secondly, the Prime Minister is not responsible to the Senate.

Senator McLucas—That is correct.

CHAIRMAN—So you are suggesting that you ask a body, to which he or she is not responsible, to pass judgment on the Prime Minister's action. I say to you that I find that unreasonable.

Senator McLucas—I suppose what I am suggesting is that it is not the action of the Prime Minister that would be approved or not by a joint sitting of both houses; it is, in fact, a decision of the joint sitting. You would convene both houses of parliament; there would be a motion; it would be agreed to or not agreed to. So the Prime Minister does not take that decision; the group takes that decision. It is not a matter of the Prime Minister coming to a point and looking for support; it is a matter of the group making that decision collectively—of course, on the motivation of the Prime Minister or other leaders in the chambers.

CHAIRMAN—In the event of a Prime Minister sacking a President for some reason other than outright incapacity, fraud or misuse of office—which is hard to imagine, quite frankly—

Senator McLucas—Yes, I agree.

CHAIRMAN—But outside of that, it would only be a major political crisis that would lead a Prime Minister to do such a thing. The sanctions are very severe if he or she got it wrong. The public can be very unforgiving. I just do not see how you can expect to resolve in both houses of parliament a political crisis which undoubtedly involves both houses of parliament when what you are approving or disapproving is, in effect, the Prime Minister staying in office.

Mr DANBY—The President or the Prime Minister?

CHAIRMAN—The Prime Minister because, in effect, if a Prime Minister sacks a President, what you have—although the bill does not state it—once he takes it to the House of Representatives, is a de facto vote of no confidence.

Senator McLucas—Yes, my point is the point of timing. Timing is everything in politics. The legislation allows for there to be four weeks from the point where the Prime Minister sacks the President. Let us say that the House of Representatives says, 'No, we do not support the Prime Minister's ruling.' Then you go into an election period. You have a long period where there is no stability, where there is no clear position of leadership in the country.

CHAIRMAN—How did you get to an election?

Senator McLucas—I understand that, if the House of Representatives under the legislation does not approve the Prime Minister's ruling, that is a vote of no confidence, as you said, and then we go into an election.

CHAIRMAN—I do not know how it would lead to an election, unless there was some change in the numbers in the House of Representatives.

Senator McLucas—I think you would end up with an election though, wouldn't you?

CHAIRMAN—No. You would wind up with a new Prime Minister not an election.

Senator McLucas—I think you would get both.

CHAIRMAN—If you got a vote of no confidence in the Prime Minister, the Prime Minister steps down. That is the tradition.

Senator McLucas—Yes.

CHAIRMAN—The Prime Minister steps down and someone from the same party or parties takes the Prime Minister's place.

Senator McLucas—I would suggest that we would end up having an election.

CHAIRMAN—We would not end up with an election.

Ms HALL—There are two issues that I would like to raise with you, Jan: firstly, the committee and the selection process—and I will be joining the two together; and, secondly, the dismissal process. Under the current situation, the Prime Minister can appoint whomever he or she may choose to be the Governor-General. There is no accountability whatsoever. There is no openness in the process. That same Prime Minister can sack whomever may be the Governor-General without any process at all. Given what you say about the committee and the committee make-up, sure there may be room for weakness there, and there is the fact that the Prime Minister can sack the President, but wouldn't you say that this process is a lot more visible than the current situation? Wouldn't you say that there are some in-built accountabilities that do not exist now?

Senator McLucas—Certainly, we have moved on. But when we move on, let us not lose opportunities to do the thing properly. Let us make it very transparent. Let us give the opportunity for the community to feel very much a part of this, rather than still keeping that element of secrecy in the process. I suppose another point that I could make is that there is no transparency in the process; we do not absolutely know. The legislation does not absolutely provide that the name the committee puts up is in fact the same name that the Prime Minister puts up. There is no point where that name or that set of names becomes a public set of names. What I am saying is let us take the opportunity to really make it accountable and really let the community be part of it. Yes, we are certainly moving forward, but let us move the full step forward.

Ms HALL—Firstly, with the committee composition, how would you like to see the Nominations Committee made up? How would you like to see them selected?

Senator McLucas—I would like the legislation to reflect the will of the Constitutional Convention, in that it said that it needed to have this diversity included. I am not a drafter of legislation; I do not know how you would do it.

Ms HALL—Would you have the Prime Minister still appoint those people? Yes, I took the point that you made.

Senator McLucas—No. I think the way to de-politicise it is to ask the Prime Minister, the Leader of the Opposition and any other leaders within the House who have party status at the time to collectively come to a decision about the group of people who nominate.

Ms HALL—The second question about the nomination committee is: would you like to see those nominations made public, or would you like to see the Prime Minister forced into a situation where he or she has to accept one of those nominations and, if not, provide an explanation as to why they did not?

Senator McLucas—I would certainly like the names of the nominees to be public. I think it should be a very open process, so that all of the proceedings of that committee are open.

Ms HALL—It has been put to us by some of the witnesses—even Sir Zelman Cowen—that they would not be prepared to put their name up for nomination if it was to be made public. Let us say they were short-listed in the four or five names that were given to the Prime Minister; they would not be prepared to have their names placed on that short list, because of the implications it could have if they were not successful.

Senator McLucas—I understand that, but if we are going to run an open government we all have to be prepared to put our names up. Of course, we only get one President, but I think it would be wonderful to have your name on a short list.

Mr CAUSLEY—As the Chairman has said, we have to report on two issues. The first is: does the legislation before the parliament faithfully reflect the decisions of the Constitutional Convention? The second is: if the referendum is successful, will the bill before both houses at the present time become our Constitution? Would you be happy with the bill before the House at the present time being our Constitution?

Senator McLucas—In some respects.

Mr CAUSLEY—Do you have concerns about certain parts of it?

Senator McLucas—Yes, I have some reservations with parts of it. But without having them in front of me and listing them to you—

Mr CAUSLEY—I understand. I think you went through some of them. We have to report back on those two issues. They are the main issues as to whether, in fact, you are happy with the bill we have at the present time being the Constitution.

Senator McLucas—This goes back to my first point, which is that I think the community wants to make a decision one way or the other about whether or not we want to be a republic, rather than about how we do it. We want to make that decision first and then move into how we do it later.

CHAIRMAN—For the benefit of those in the audience today, this whole process came about because in the 1996 election campaign John Howard said that if he won he would form a Constitutional Convention. He said that, if that Convention reached an outcome, he would put the outcome of that Convention to the people at referendum. Faithfully, down the line, he has done exactly what he said he would do. We had a Constitutional Convention. Even though the outcome was not voted for by an absolute majority, it was voted for by a majority of those who voted, and he accepted that as an outcome. He said it would be put to the people. It has now progressed into two bills, which we may or may not recommend be modified slightly—or whatever the committee determines to do. But going back and now taking a plebiscite to the people is no longer an option.

Senator McLucas—I understand that.

CHAIRMAN—Simply asking the question of whether people would like to be a republic is not going to alter the Constitution. There needs to be legislation in order to alter the Constitution. We are stuck with that, and we are stuck with the timing, because the Convention said that it wanted a President, if there was to be one, in place by 1 January 2001, when we have a big birthday party.

Senator McLucas—I suppose I am differing from the view of the Convention in that we should be hastening slowly.

CHAIRMAN—Fair enough.

Senator STOTT DESPOJA—Welcome, Senator, and congratulations on your position being official. I acknowledge the Chairman's points that we have a very clear role to perform in a short period. Your comments made it sound as if you would almost prefer a plebiscite or referendum on the specific question of yes or no to a republic. Would that be your preferred position?

Senator McLucas—Yes.

Senator STOTT DESPOJA—Thank you for your comments in relation to the role of the Senate in the dismissal process. Again, I take on board the Chairman's comments in relation to the Prime Minister's responsibility, but do you see—not only as a Senator, but more generally—that it is a legitimate role for the Senate to perform not only because you want the complementary process of nomination and dismissal but also because being left out of that process perhaps undermines or erodes the powers or status of the upper house in the parliament?

Senator McLucas—As I am coming to learn—and you probably know far more than I—the Senate is a very democratic place. The way the Senate is elected ensures that it is a very democratic institution. To leave it out of the process is forgetting a part of our democratic structure and, in my view, it is losing an opportunity more than anything else. If you have those structures in place that are respected and used by this society, to say, 'No, we don't want you to be part of this other inclusive democratic process,' is a wasted opportunity.

Mr PRICE—This is a bit rough—one senator talking to another about the power of the Senate.

Senator McLucas—In answer to your question, yes.

Senator STOTT DESPOJA—Thank you. I will move on to other matters. In relation to the comments from Jill, I realise that you were talking about the Constitutional Convention's model of how diversity should be reflected, but can I get it clear, for the record, that you would prescribe that in legislation, that you would want that diversity to which you refer specifically prescribed or enshrined in law?

Senator McLucas—I think you would have to be careful about how you did it. I do not think you would say, 'We need three people of different ethnic backgrounds,' or whatever. I think you can say that 50 per cent of the representatives should be women. I think that the legislation should acknowledge that there are other groups in the community and that they need to be represented. I do not know that you would do it numerically, but the legislation should actually identify that.

CHAIRMAN—How do you do that, when the Constitution may last forever? How do you define future populations today when in fact that provision of the Constitution may not be tested? No-one may want to change it for another 200 years.

Senator McLucas—I think we simply say that Aboriginal and Torres Strait Islander people should be represented on the selection committee.

CHAIRMAN—And Greeks, Italians, Germans and Americans.

Mr CAUSLEY—And the Irish and the Scots.

Senator McLucas—I think we can easily say that people from other ethnic origins should be represented. I think you can do that without putting numbers on them. I do not think you would put numbers on them, but you would say that they must be represented.

Senator STOTT DESPOJA—The Chairman referred to the vote of no-confidence, and you accepted that it would probably be a de facto vote of no-confidence in the Prime Minister if his view was not ratified. Should ratifying the Prime Minister's decision being taken as a vote of confidence be enshrined in the legislation?

Senator McLucas—It is there, somewhat, isn't it?

Senator STOTT DESPOJA—It is referred to in a de facto way, but the idea that the Prime Minister should be sanctioned in some way as a result is not. It is a vote of confidence, but there is no penalty or sanction for that vote of confidence. Should that be elaborated on in some way that is costly for the Prime Minister?

Senator McLucas—Yes, I take your point. There is no sanction in the legislation and, yes, I think there should be. I think it should be very clear how the process would work after that. Hopefully, we will never have to use that provision, but it has to be there.

Mr DANBY—Senator, congratulations on being elected. I respect your view that the notion of a republic should be put in a simple way to people. I am afraid that the Chairman is right, though, in that other choices are in front of us, and I want to bring your attention to those. You have seen the proposed long title. Do you favour the other suggestion that has received a lot of prominence recently, that it be specified in the long title that Australians will be voting in November for an Australian head of state?

Senator McLucas—Yes, I do support that. It probably goes back to the Chairman's original comments about clarity, that the community does actually understand what we are voting for. There is confusion in the community, and the clearer government can make it, the better the outcome and the more democratic and more reflective of community opinion it will be.

Mr DANBY—I certainly agree with you on that. The problem for us is that we have a lot of other witnesses, too, who have made representations to us and who want various things that are specified in the bill also in the long title. Where do you draw the line with all of these kinds of things? If you present citizens around the country with something that goes for pages, the problem will be that, obviously, that will lead to confusion as well. One of the things people have suggested should be in the long title is the nomination process. Do you support the nomination process—or a specific reference to it—being in the long title?

Senator McLucas—I would prefer it to be as simple as possible. I do not have a clear view on that.

Mr DANBY—What about the Leader of the Opposition and the Prime Minister being mentioned?

Senator McLucas—Certainly that should be in the legislation, but whether it gets into the actual wording of the referendum question, once again, for clarity, there is a balance.

Mr DANBY—Is it your view that it is important to have an Australian head of state mentioned in the long title but that the other details could perhaps be addressed in the bills?

Senator McLucas—Yes. I think the fundamental issue is that we talk about an Australian as a head of state.

Mr CAUSLEY—On the point you raised about the fact that the Prime Minister needs to have his decision ratified by the House of Representatives within 30 days—and you have said that is a fairly long period in which a lot of things could happen—would you be more comfortable with a period of seven to 10 days?

Senator McLucas—Yes, I would be more comfortable with that. But I go back to my original point, which is that it is not a matter of it being ratified; it is actually a matter of those two houses being the appointer then being the ones to—

Mr CAUSLEY—I understand that point, but the period is important too.

Senator McLucas—It is important, and I think it is too long. I think we can get people together in Australia in fewer than 30 days.

CHAIRMAN—You do recognise that the Constitutional Convention said the House of Representatives, not both houses? As there are no further questions, thank you very much, Senator McLucas, for appearing today. To clarify it for the record, I should say ‘Senator elect McLucas’, since you have not yet been sworn in. But you will take care of that, I assume, on 9 August, when we table our report. Since you have appeared as a witness before the committee, we will send you a copy of the report.

Senator McLucas—Thank you very much.

[1.37 p.m.]

TRESTON, Mr Bernie (Private capacity)

CHAIRMAN—I welcome Mr Bernie Treston, who is appearing before the committee today. Do you have any comments about the capacity in which you appear?

Mr Treston—I am from Cairns. I am appearing as a private citizen, up to a point. But I stood as a delegate for election to the Constitutional Convention on behalf of the Australian Republican Movement, so I am committed to the Australian Republican Movement insofar as that goes. I have put in submissions essentially as an individual, but to some extent I am here to support at least one of the contentions of Mr Malcolm Turnbull as to the wording that should be put to the people.

CHAIRMAN—Do you have a statement that you would like to make to the committee before we ask you questions?

Mr Treston—Basically, I have provided a written submission, and I have handed in copies to be made available to all members of the committee. As I see it, there were a lot of people in Queensland—something like over 66 per cent—who did show an interest in voting for candidates for the Constitutional Convention who were in favour of some form of a republic. Admittedly, only 50 per cent of the people overall voted, so we do not know what the other 50 per cent of the public is thinking. Clearly, it is a very important question that a lot of people are interested in. There is very substantial support—popularity polls, taken whichever way you like, that say something.

One point that I felt has not been made clear so far is what section 1 of the Constitution actually says. The importance of that is that federal parliament consists of the Queen, the Senate and the House of Representatives. It does not say ‘a representative of the Queen’. Section 1 of the Constitution clearly says that federal parliament consists of the Queen, plus the Senate and the House of Representatives. My contention and interest in coming here today is to say that we have to get this message out loud and clear. If we want to change the situation we have to look at the Constitution as it stands. If section 1 says that the Queen is part of our parliament, are we happy to let that continue on indefinitely or not?

If we are putting a question to the Australian people by way of referendum to change that wording of the Constitution—everyone knows it is a difficult thing to change the Constitution—we have to be clear. That is why the wording has been kicked around quite a bit and it has been said, ‘We are talking about head of state.’ Clearly, in that position of having those three elements to constitute federal parliament, we have to say something about the Queen. For practical purposes, the Queen is the head of state. There is no wording ‘head of state’ in the Constitution, as your members rightly know. The wording has been kicked around, and I think the second version put up by Mr Turnbull is the one that you are well aware of. No doubt, you have thought long and hard about it after investigating this problem for a couple of weeks.

I believe it is terribly important that the bill spell out that we are replacing the Queen of England with an Australian President as Australia’s head of state. That is substituting an Australian President as being part of the Australian parliament; namely, that when the Constitution is amended it will then read, ‘President, Senate and House of Representatives.’ That is the first important part of the wording that has to be put to the Australian people. The second part, as has been suggested, is that it should also show that the head of state has not just been plucked out by the Prime Minister but is the result of considering the nominations submitted by the people of Australia through a process and approved by a two-thirds majority

of the joint sitting of the houses of parliament—that is ‘approved’ not ‘appointed’, as members of this committee well know.

On that important part, what gets put to the people has to be clear enough that there is an intention to remove the Queen as part of the Australian parliament and to have an Australian President as part of the Australian parliament. I adopt the wording proposed by the Australian Republican Movement because it has been considered at some length and I think it is a fair summary of what should be put to the people.

Another point that I want to speak to the committee about is the presidential nominations bill. I think that Daryl Williams made it fairly clear that the Presidential Nominations Committee Bill is not changing the Constitution; it is not part of the Constitution. This is very important. From some of the discussion today there seems to be some confusion about this. It is important that it is kept as a bill, as something that can be changed. The Chairman has pointed out that in 10 years’ time there may be a majority of some group that needs to be represented. If you fix it in stone now, you are never going to change it. Keeping it as a bill that can be changed as we go along, I believe, is very important. I would like to make sure that in the publicity for the lead-up to the referendum the point is always kept clear that the Nominations Committee can be changed, that it can be varied under a certain process, at a future date.

My concern also is that in satisfying the public nomination of the people on the committee—whether it be 20, 32 or 50 members—the decision should not be made by the Prime Minister alone. I appreciate that the Prime Minister relies on people advising him and all the rest of it, but we want to sell this package as something appealing to the public. To sell it, clearly there has to be some bipartisanship; there has to be some sense in which more than just the Prime Minister is able to pick the selection committee.

We always have the allegation when one party is in control that they are stacking members of subcommittees. Whether they are public bodies, public appointments or so on, that allegation is always made. The newspapers love it. Why not avoid that? Why not have a situation in which there is simply the Prime Minister and the Leader of the Opposition. The curly one that I decided to throw in was that, if there was a dispute or disagreement between them when looking at nominations, why not use the existing President to act as a referee? It might be a bit of an unusual suggestion but, then again, we have to give the President something to do besides putting his rubber stamp on bills. Really, they are the points I wanted to emphasise before this committee.

CHAIRMAN—As we have gone around the country, we have had a number of submissions, as you can imagine, about the long title of the bill. After discussions in Darwin yesterday, I wonder how important that question itself is, if the people are reasonably informed of what they are going to vote for in the first place.

Mr Treston—It would be very simple if the question were put, ‘Do we want a republic or not?’ If it were just yes or no, if people could say ‘republic’ or ‘no republic’, that would hardly be legalistic enough to be the set-up for a bill, would it?

CHAIRMAN—What I am trying to get to is that both camps seem to place a lot of emphasis—the republican movement on one side and the monarchists patch on the other—on the words that are actually presented on the ballot paper. Of those who go into a polling booth without their minds already made up, I wonder what percentage have the English language skills to make a difference out of the wording of the question in any event.

Mr Treston—That is 20 per cent of the population, maybe more. It is a worry.

CHAIRMAN—Then are we tilting at windmills?

Mr DANBY—Not if that 20 per cent decides the referendum.

CHAIRMAN—But I am asking: is the wording of the long title of such critical importance, or are we giving it more importance than really it is due?

Mr Treston—Truly, that is the problem in living in a legalistic society in which fine words can be interpreted and one word of a piece of legislation can change the balance of power.

CHAIRMAN—I understand that in the Northern Territory Shane Stone's question to make the Northern Territory a state was stated in very simple terms, and there was no noes case because everyone in the Northern Territory legislature voted for the bill. They put it out with only a yes case and no noes case. He went down in a screaming heap.

Ms HALL—There are three questions in one.

CHAIRMAN—Simply stated, in pretty simple English, people were not really given a choice. There were no arguments. There was no debate. They said, 'Here it is.'

Mr Treston—The publicity beforehand is certainly going to be terribly important because, as I say, the number of people who know what section 1 of the Constitution says appears to me to be a very small percentage of the population. People just do not understand that the parliament of Australia is composed of the Queen and two houses of parliament. How are we going to get that message out? There is no doubt that there will be smokescreens put across, possibly by both sides of the debate. You do not always get a straight discussion.

CHAIRMAN—This committee has heard the argument now more than once that, supposedly, the public does not understand what the word 'republic' means. Do you have any comment?

Mr Treston—The public has a perception of it—I would think a fairly wide one—but, as far as a detailed analysis of it goes, no. The question for the Australian people is: do we want the Queen of England to remain or not? That is why Malcolm Turnbull got himself into a bit of a mixture with the press by asking, 'Do we need the word "republic", because not everyone understands it?' The newspapers had a field day.

Mr DANBY—Do some people understand by that a US style republic?

Mr Treston—That is the problem, because there are so many republics around the world that are so different.

CHAIRMAN—He said that to us. He has nobody to blame but himself, with respect.

Ms HALL—Could I push this question a bit further. I am one of the ones who believe that, if you have a very complex question, it is going to be very difficult for a person to come along and read it and interpret it because, for a start, we have a large number of people in this country who have very poor literacy skills. Sure, they may get all the information mailed out to them, but they will be struggling to even read that information, let alone a very complex, detailed question. I think that is what the Chairman was getting at when he was talking about the question. In that context, I would be really pleased if you could answer for me whether you think the wording of the question is important.

Mr Treston—The wording of the question is important up to a point. As you would appreciate, in a number of countries of the world, when you go in to vote, you have a photo of the person you are voting for, and you vote yes or no to that photo. It is almost tempting to have a photo of the Queen and put yes or no beside it, because that would be the only way that you would get across to 100 per cent of the Australian people.

Ms HALL—Thank you for your answer.

Mr CAUSLEY—I have two questions following on the long title because, as the Chairman said, there has been argument on either side of this. It seems to me that both sides are positioning themselves for the debate later. While the republicans say that we should change the long title to include that the Australian head of state replaces the Queen, the monarchists also argue that, if you are going to do that, you must include in that question the fact that the Prime Minister has the power to dismiss, because there is no other constitution in the world that gives that power to a Prime Minister. What would you say about that?

Mr Treston—In my submissions, I have not ventured into the delicate area of how to dismiss. As you discussed with Senator McLucas before, it is a most cumbersome process to dismiss—by calling parliament or by whichever remedy—if you do not give the power to the Prime Minister. To me, even in the submission that I am making here following the consideration of nominations and all the rest of it, that even complicates the question by lengthening it. How many stages do you put in and how much do you enshrine in a constitution that may have to be changed after a while? In other words, if this bill is passed, if we enshrine in the Constitution that the Prime Minister has the power to dismiss the President and, in a few years time, something crops up and it happens that everybody wants the Constitution changed again, it is too firmly fixed. Frankly, I would prefer that part of it to be in another bill, like the presidential nominations bill, so that, if need be, it could be changed at a later date rather than be locked in as part of the Constitution. That is my own point of view.

Mr CAUSLEY—But as such, it is in the constitutional bill.

Mr Treston—Yes, it is in the constitutional bill.

Mr CAUSLEY—Isn't it fair that the Australian people should know that the parliament is proposing such a radical situation—that the Prime Minister can sack the President?

Mr Treston—Yes, it is. But, as you say, how do you express it in the long title, other than by breaking the question up? Then it is fraught with more difficulties.

Mr CAUSLEY—The other question I wanted to ask really goes to something similar; it deals with the balance of power between the President and the Prime Minister. I gather that you have read the bill. Are you satisfied that—as the Chairman said, it may be a century down the track—in a period of economic crisis and social turmoil the Constitution will ensure that neither the President nor the Prime Minister can take total power?

Mr Treston—As I read it—and I am only an ordinary country lawyer—I would feel satisfied that the President would not have the capacity to take total power.

Mr CAUSLEY—What about the Prime Minister?

Mr Treston—I believe that a Prime Minister has that potential in our democratic system such as it is, but I think you could debate that for a long time.

Mr CAUSLEY—But it is something that—and the Constitution is going to last for a long time—we need to be sure of.

Mr Treston—Yes. I think our main task at this stage is looking at the position of the President who replaces the Queen. Looking at that, we have a situation in which I do not believe the President could assume dictatorial powers or takeover powers in any way. I believe the present checks and balances are sufficient to keep the presidential system much the same as the Governor-General system.

CHAIRMAN—Jill has another question, but I wanted to ask you: what is an ordinary country lawyer—

Mr Treston—Doing in a place like this?

CHAIRMAN—We do not buy that.

Ms HALL—I want to take you back to both the dismissal process and the balance of power. The current situation is that the Prime Minister can dismiss the Governor-General—

Mr Treston—By asking the Queen to do it.

Ms HALL—By telling the Queen. We had Malcolm Fraser address our committee in Melbourne. He was very emphatic in that he believed that at the moment the Governor-General was given a letter he was dismissed. Historically, there has not been one occasion where the Queen has not followed the recommendations either to appoint or to finish the term of a Governor-General. I would like you to comment on that, firstly.

Mr Treston—I believe that is the case. I accept the fact that, once the Prime Minister sends his telegram or whatever to the Queen, the Governor-General's term is gone.

Mr CAUSLEY—Has anybody ever tested it?

Mr Treston—To the best of my knowledge, it has not ever been tested.

Ms HALL—So wouldn't you say that the proposed change is in fact going to make this a bit more visible?

Mr Treston—Yes.

Ms HALL—My second question goes to the balance of power. Currently, the powers that will be transferred to the President will be the same powers as the Governor-General has, and the same with the Prime Minister. So, will there be that balance that exists at the moment?

Mr Treston—I believe so.

Ms HALL—So any problem that you could see about the power of the Prime Minister in relation to a President would exist under the current system with the Governor-General?

Mr Treston—That is as I see it. There has been much debate since 1975, of course, as to where the line is, but I believe there have been no changes.

Senator STOTT DESPOJA—I just want to return to your interesting final sentence in relation to the outgoing President being an umpire to resolve any deadlock concerning selections. Is that an ARM position?

Mr Treston—No, that is purely a personal one.

Senator STOTT DESPOJA—Is it all your own work?

Mr Treston—I just thought there could be a need for an umpire if you are picking 20 or 30 Australians out of a hat. I would like to think it is a bipartisan debate. I would also like to respect the position that the Chairman raised—that these nominations should be kept secret. I do not believe it would be open to public debate, because the abuses would be endless. As you have suggested, someone like Sir Zelman Cowen would never nominate if he knew that he was going to be debated in the newspapers. So I would join him on that one. Sorry to digress on that, but I just felt that point was a worthy one.

Senator STOTT DESPOJA—I am sure we are all happy to have that position on record. You expressed your dissatisfaction about the Nominations Committee being appointed by the Prime Minister alone. An interesting view came from Senator McLucas in relation to not simply a bipartisan approach but a cross-party approach where leaders of parties with party

status would be involved in those appointments to the committee. Is that something that you would endorse, or are you quite happy for it to be perhaps the responsibility of the Prime Minister and the Leader of the Opposition in parliament, as you specify in your submission?

Mr Treston—I would much prefer to keep it as simple as possible and not open it out too widely. Amongst other things, there are all kinds of leaks, and word gets out that so-and-so has put his or her name up, and so on.

Senator STOTT DESPOJA—Okay. In relation to the broader debate that we are having this morning—and that is how much information you give people in relation to the question on the ballot paper—all of this seems to get back to the need for a comprehensive and widespread education campaign. Do you have any comments on the campaign thus far leading up to the referendum? Are you satisfied with the levels of understanding in the community?

Mr Treston—No, I am not. As I suggested early on, the first thing that the public apparently do not know is what section 1 of the Constitution actually says. For some reason or other, it seems to be well concealed—it seems to be bypassed, even. Some time back there was a television so-called debate with Kerry O'Brien. I do not know what it was. It seemed a horribly vague performance, really, instead of getting to the point of what we are really here for. It is not that complicated.

Senator STOTT DESPOJA—One thing that was touched on in your evidence and in the submission before you is the idea of updating our Constitution and how difficult that might be or how often that occurs. You are aware, of course, that if we do get a republic, we will have a second Constitutional Convention in which we can discuss some of these remaining issues. Is that something you are supportive of?

Mr Treston—Yes, very much so. I have taken an interest in this whole debate for a couple of years at least.

Senator STOTT DESPOJA—Thank you.

Mr DANBY—Since the committee began its hearings, a number of people who support a constitutional monarchy have focused on a new area—which may have been in the public domain before, but which certainly has been focused on more—and that is the power of the Prime Minister to dismiss the President. In your remarks to Jill Hall, you said that you did not feel that the bill as it is envisaged is any worse than the current situation, where the Prime Minister effectively has the power to dismiss the Governor-General. What is your attitude to this fear being raised by opponents of the republic about dismissal of the President by the Prime Minister? Are you alarmed by it?

Mr Treston—I am concerned.

Mr DANBY—Do you see Australia becoming a dictatorship because of it, or do you just not—

Mr Treston—I do not feel that in the slightest, but I am concerned about the manner in which the opponents of change and of the yes vote on the Constitution will be using that—even though, as you say, for practical purposes there is no difference whatsoever. It appears that the opponents of change are somehow bringing it out as if it were going to be a big change, whereas there is really no change whatsoever. But how to sell that to the public, I do not know.

Ms HALL—The Prime Minister is actually more accountable.

Mr Treston—But how do you tell the public that?

Mr CAUSLEY—Why didn't Gough write to the Queen and ask for John Kerr to be sacked?

Mr Treston—It was the quick and the dead.

Mr CAUSLEY—That is the point: he had the opportunity but did not take it.

Mr Treston—Yes, that is true.

Mr DANBY—He may have thought of it, Mr Treston and Mr Causley, but the point surely is that it is a very grave step for a Prime Minister to call for the sacking of a Governor-General. Under the new system, it would be a very grave step to sack a President. In the new system envisaged, it would be within the parameters of political reality that a Prime Minister could move to remove a President. It would still remain a very grave step, and I think Parliament would be very cautious about a Prime Minister who took such a step.

Mr Treston—Unfortunately, there does not seem to be that little extra check or balance on the Prime Minister. Even if you put in the Prime Minister and his deputy, the Prime Minister and the Leader of the Opposition or the Prime Minister and whoever, clearly the public is sensing that there should be some check on one person making that decision. We all know in a political sense that one person does not really make those types of decisions—one gets advisers and everybody else involved—but, from the public perception, there is still that concern. I am worried about the negative vibes coming over. Hopefully, this committee has looked at all of the options.

Mr PRICE—Could I just explore with you the process of dismissal of the President by the Prime Minister. As you have heard, it has been suggested here and elsewhere that perhaps there should be a joint sitting to approve the dismissal. If my understanding is correct—and please correct me if I am wrong—we normally have joint sittings to approve or disapprove bills; it is a mechanism for resolving conflict between the houses. Furthermore, if a joint sitting fails to pass such a bill, a Prime Minister does not have to resign and a government does not have to go to an election. Would that be correct?

Mr Treston—That is right.

Mr PRICE—It seems to me that, if we have a joint sitting to approve the Prime Minister's action, what we really put at risk is his strict accountability in the House, where if a Prime Minister wants for confidence there is no doubt that his government falls and either you get a new leader from that party or you go to an election. Whereas if you had a mechanism for approval or disapproval of a dismissal of a President, you may lose that very accountability that the Constitutional Convention was looking at in its final determination. Would you agree with that suggestion?

Mr Treston—I agree that it seems far too cumbersome a process. You sympathise with the process as being a check on the Prime Minister but, from a management point of view, it would be unmanageable for anybody to try to run a business with a complication like that in it.

Mr PRICE—What worries me is that—in a sense, I find it attractive and a neat symmetry that, if both houses appoint someone by a two-thirds majority vote, the dismissal also be by both houses—what you put at risk constitutionally is that, if both houses do not approve, there is no procedure or anything written whereby the Prime Minister needs to resign or a new government needs to be formed. Whereas the procedures of the House are quite clear in that any time a Prime Minister has a vote of confidence and loses, he is gone. There are no ifs or buts about it; he is gone. I think that was the intention of the Constitutional Convention; that

was the check they were looking for in terms of the respective powers of the Prime Minister and the President to dismiss one another.

Mr Treston—The way I suggest that you look at that proposal is this: when you are going to employ a new staff member for your business, as a manager of Telecom or whatever else, you spend weeks and weeks on the job. You get the applicants, look through them and all the rest of it. But when you want to sack somebody, you want to do it fairly quickly, expeditiously and cleanly. To sack somebody, you normally do not have committees of inquiry and things going on and on for months.

CHAIRMAN—You only have unfair dismissal laws.

Senator STOTT DESPOJA—I think you have possibly touched on the point that I was going to follow up when you were answering Michael's question. If the desire is to make it easier to have the Prime Minister justify his actions or have his actions ratified by a house, it is easier that it be the House of Representatives. We make the assumption of course that the Prime Minister, by virtue of being Prime Minister of the day, will have the numbers in the House. I am reconciling your initial comments expressing concern with the power that the Prime Minister might have to dismiss with the notion that it should still be ratified only by a single sitting of the House of Representatives. To whom is the Prime Minister accountable in this respect? Is it the federal parliament and the people with a joint sitting—and, therefore, what I personally consider a more democratic get-together of members of parliament—or is the Prime Minister just accountable to a House in which he has the numbers anyway? Does that not concern you in any way, given your initial comments in relation to the relative ease with which the Prime Minister can dismiss a President?

Mr Treston—It concerns me. Do you want the half-smart comment? You mentioned the words 'federal parliament'. Federal parliament actually consists of the Queen and the two houses.

Senator STOTT DESPOJA—I thought you might actually put that. You are right in determining what is the parliament.

Mr Treston—So parliament is a three-way stretch, isn't it?

Senator STOTT DESPOJA—Yes.

CHAIRMAN—How is it three ways?

Mr Treston—The House of Representatives, the Senate and the Queen.

CHAIRMAN—I am sorry, but the Queen has nothing to do with the parliament.

Mr Treston—According to the Constitution—

CHAIRMAN—No, it does not say that. Read it again.

Mr Treston—Legislative power.

CHAIRMAN—The Queen is not part of the legislature.

Mr Treston—I meant the legislative power.

Senator STOTT DESPOJA—You have put on record that it does concern you in some ways.

Mr Treston—It does.

Senator STOTT DESPOJA—There are many arguments, and I could probably counteract my own arguments. I find it surprising that, on the one hand, we are concerned about the power of the Prime Minister in this scenario but that it is considered sufficient that a House

to which he or she is certainly accountable but probably has the numbers in anyway is the only safeguard or process in that ratification process. But then, of course, I could take on board Roger Price's comments too when he said there is no way to resolve the impasse if you do have a joint sitting of the two Houses and you do not get support or you do not get a ratified decision.

Mr DANBY—Mr Treston, isn't that the dilemma we are facing? We are making the choice between a constitutional impasse and a decisive decision by the House of Representatives to support the Prime Minister's dismissal. I think that is the dilemma that the Constitutional Convention faced. I have a slight semantic difference with Senator Stott Despoja about the House. The government in a Westminster system is formed in the House of Representatives. In my view, the Constitutional Convention was by this method deciding that we would continue to support the Westminster system of government, whereby we have primacy of government in the House of Representatives. We are not changing that via the system that we are introducing and, therefore, a decision has to be made ultimately in the House of Representatives over a dismissal. If a Prime Minister writes, then the House of Representatives has to support him or, effectively—whether he just loses power temporarily or it forces an election—the decision is nonetheless made and the impasse broken.

Mr Treston—I think it is like the decisions of any business; somebody has to make the decision. It is like sacking somebody in private business—the head of the pile normally takes the responsibility, and that is simply it. If the rest of the organisation does not like it, they have their remedies, as does the parliamentary system—you can have all kinds of committees and subcommittees. I certainly sympathise with the Senate wanting to be involved too—if they are seen to be bypassed—but it is really just a management decision when it is boiled down.

Mr DANBY—For the record I must say that, from a theoretical point of view, I agree with you: it would be more democratic to have both houses involved. But then, if we took ourselves to 1975 or to a similar situation that might occur in the future, the numbers in the Senate and the House of Representatives might be so close that you would not be able to resolve the issue. We would then have a constitutional impasse, which would be worse than theoretical democracy.

Mr Treston—I accept that.

CHAIRMAN—I would like to ask you one last question. You discussed the Presidential Nominations Committee Bill and you stated:

I am firmly of the opinion that it is unsatisfactory for the Nominations Committee to be appointed by the Prime Minister alone.

My understanding of the legislation is that, in concord with the Constitutional Convention's outcome, the bill provides for 50 per cent of the members to be members of parliaments around Australia and for 50 per cent to be members of the public. As I recall, that also conforms to the model used to provide the members of the Constitutional Convention itself. Is that right?

Mr Treston—I believe so.

CHAIRMAN—You are concerned about diversity, openness and transparency. I recall huge criticism in the press—when the appointments were made by the Prime Minister and then the elections took place for those elected ones—that this thing was going to fall in a heap and that it was undemocratic. When the Convention was over, people said that it was the most democratic thing they had ever seen and that it was highly representative of the Australian

community—much more diverse and representative of the Australian community than is the elected parliament. Have I missed something?

Mr Treston—No, I accept that many people were appointed to that. We are talking about appointments, not elections. We are saying that the committee should be appointed. If it is appointed, then all those types of people such as Catholic bishops, Anglican bishops and representatives like that, who would never have stood for election, will be given representation—just as they were appointed to the Constitutional Convention. I do not have any problem with that. We are talking about an appointed selection committee, and that is why I am suggesting that that committee could consider all of those factors. But it needs to have an appearance of bipartisan support; that is purely my point.

Senator STOTT DESPOJA—How should ConCon II, the son of Constitutional Convention I, be constructed? Do you have a view—either in your personal or ARM capacity—as to whether it should be, as before, half-appointed and half-elected or fully-elected? Do you want to answer that?

Mr Treston—I think I will keep my mouth shut.

CHAIRMAN—Thank you very much for appearing before the committee today.

[2.25 p.m.]

COLEMAN, Mr Patrick John, Law student, James Cook University, Townsville, Queensland

CHAIRMAN—I welcome Mr Pat Coleman appearing before the committee this afternoon.

Mr Coleman—I am a student of law and politics at the James Cook University. I am not here as a representative of any political party as I am not a member of any political party. I would like to say—if I can claim it—that I am here representing all those people who have not got a bloody clue about what is going on and who I talk to every Sunday to try to tell them what is going on.

CHAIRMAN—They have been talking to you for some time.

Mr Coleman—I know what is going on, mate; I am just here representing those people who don't. I talk to them very loudly in public every Sunday. My opening statement will consist of a couple of parts. It is a bit of a bastardised statement because I did not know whether I was going to get to speak here today. Firstly, I would like to refer you to submission No. 4 that you have received, and this opening part will come from that. It was handed out on the street and people got to sign it and send it in to you. I am glad that it actually got to Canberra. It reads:

As an Australian citizen, I believe I am entitled to certain rights and freedoms and I expect that in a true democracy that I would have these rights protected by the constitution of the said democracy.

Alas, it is not to be if this particular referendum goes ahead. This referendum should be stopped until the Australian people have been adequately informed that to have a directly elected head of state is a Constitutional right—now.

The high court has consistently reaffirmed that all of our representatives in parliament must be directly chosen by the people for us to be a true responsible and representative democracy.

No referendum can go ahead in a truly representative and free country such as ours is claimed to be without repealing the racist sections of our constitution such as section 25. If that section is not repealed, all it would take is a civil act of parliament to reinstall Apartheid in Australia.

The ecosystem must also be protected by the constitution if we are a truly modern democracy.

The word democracy must be included in our constitution if we are a democracy. We must have the Universal Declaration of Human Rights included in our constitution. We must have the International Covenant on Civil and Political Rights included in our Constitution.

We must have the right to native title protected and recognised by the full force of the constitution. We must set the standard for the rest of the world to follow. This must be about change and not consolidation of the political power of the status quo.

Individual rights and freedoms should be protected in the constitution, and they must be positive and be enforceable against government.

The National Party member here had a word to me before and he mentioned a bit of an analogy between the Weimar republic and now. I would like to make reference to that. I also handed this out as a leaflet on the university campus. This comes from a bloke called Leon Trotsky. He wrote a letter titled 'What next, a question for the German proletariat, 1932'. It is from a pamphlet called 'What is fascism—and how to fight it'. This is 1932 and he writes:

At the moment that the 'normal' police and military resources of the bourgeois dictatorship together with their parliamentary screens, no longer suffice to hold society in a state of equilibrium—the turn of the fascist regime arrives. Through the fascist agency, capitalism sets in motion the masses of the crazed petty bourgeoisie and the bands of declassed and demoralised lumpenproletariat—all the countless human beings whom finance capital itself has brought to desperation and frenzy.

From fascism the bourgeoisie demands a thorough job; once it has resorted to methods of civil war, it insists on having peace for a period of years. And the fascist agency, by utilising the petty bourgeoisie as a battering ram, by overwhelming all obstacles in its path, does a thorough job.

And I believe this bit is particularly relevant to now—

After fascism is victorious, finance capital directly and immediately gathers into its hands as in a vice of steel, all the organs of the sovereignty, the executive administrative, and educational powers of the state: the entire state apparatus together with the army, the municipalities, the universities, the schools, the press, the trade unions and the cooperatives.

When a state turns fascist, it does not mean only that the form and methods of the government are changed in accordance with the pattern set by Mussolini—the changes in this sphere ultimately play a minor role—but it means first of all for the most part that the workers organisations are annihilated; that the proletariat is reduced to an amorphous state; and that the system of administration is created which penetrates deeply into the masses and which serves to frustrate the independent crystallisation of the proletariat. Therein precisely is the gist of fascism.

And, I believe, the Howard government.

The third part of my statement will be taking into account the government's submission to the committee. One has to ask the question: if there is a monarchist government in power—which there is now—and we do become a republic, what would this monarchist government want out of the republic? What would this government like to see happen? I refer the committee to page 4 of the government's submission to the referendum task force dated 25 June 1999. I will meander through this. One of the things that really grabbed me was the fact that there is going to be a yes and no case but, if you look down at paragraph 2.11, you see it is an official yes and no case. You have the official republicans, the ARM, and the non-official republicans, those who believe in human rights and democracy.

That cannot be the case: you cannot go to a referendum and allow one official version of events to occur and a non-official version of events to be squashed. You cannot allow that to happen, but it is going to happen. I know that is going to happen, just like I knew Jabiluka was going to be allowed to go ahead through government bribery. I would also refer you to page 5. This is the 'no tidy-up' paragraph in the Constitution. I would like to refer you also to section 25 of the Constitution, which I have in front of me. This is the racist apartheid clause, which gives the states the rights to take away the voting rights of any race of people—and I do not hear anybody asking for that to be repealed, which is quite amazing. Paragraph 3.3 on page 5 of the government's submission states:

The preparation of the Republic Bill has not been used as an opportunity to tidy up the Constitution. Spent constitutional provisions would be removed or altered only where they refer specifically to the monarchical elements of the current system of government. The government's judgment was that to make these changes beyond those necessary for the implementation of the convention model would give rise to a change in separate issues and distract from the central issue.

It continues:

The style adopted in the drafting of the new constitutional provisions reflects the style of the existing provisions.

I do not think our values reflect the style of section 25. It says:

The new provisions avoid unnecessary or inappropriate detail.

Is it inappropriate to repeal section 25? Is it unnecessary? I think it is necessary, if we are a democracy that is not racist. If the White Australia policy is truly dead, that section should be dead and buried. It says:

While they are drafted in general terms adequate to cover all contingencies—

if that were the case, you would not be here asking questions about what contingencies may arise—

they do not deal explicitly with the remote possibilities or matters of operational detail. Like all constitutional provisions, the new provisions must be capable of meeting new and unforeseen issues as they arise for many years to come. The new provisions would entrench the essential elements of the new arrangements. . .

They would entrench section 25 because it is not being repealed. They would entrench the right to turn back to an apartheid system of government, which is wrong. It says:

The new provisions would entrench the essential elements of the new arrangements without entrenching matters of detail which may have unintended consequences in a changing social and political environment—

like, for instance, people saying, ‘Enough is enough. Let’s have democracy in the Constitution. We have to have some way of dealing with that.’

On the reserve powers the government’s submission—at paragraph 5.34 on page 13—says: Proposed section 59 requires the President to act on advice, except when exercising the reserve powers—which are seen below—

This gives effect to the principle of responsible government—
get this—

which is fundamental to the Constitution.

It goes on:

Responsible government involves the vesting of the executive power in the head of state, who in turn acts on the advice of ministers responsible to the parliament.

Every time I get arrested and go to court I have to refer to freedom of communication cases, which the judges throw out because that is not entrenched in the Constitution. The High Court, when they get into these constitutional cases, break down every section of the Constitution. They have said, time after time, that responsible and democratic government is vested in the people through the directly elected representatives. That is responsible and democratic government, not this crap. This is rubbish. This is pulling the wool over everyone’s eyes. We have got enough of that to throw around, because the Yanks did not want it.

On to reserve powers again—page 14, para 5.43. On the issue of what are the reserve powers that are not in the Constitution now, they say:

However, it is generally agreed that there are probably only four reserve powers: to appoint the Prime Minister, to dismiss the Prime Minister, to refuse to dissolve the parliament, and to force a dissolution of parliament.

They contradict themselves again:

In exercising a reserve power the Governor-General acts in accordance with rules or practice known as constitutional conventions which are, for the most part, well established and generally accepted.

Well, bugger me. Why are people asking all these questions about things that are generally accepted? They are not going to entrench the reserve powers in the Constitution, I believe. It has got me stuffed why people like Senator Vanstone ask, ‘Why can’t we have a national criminal code to impose rights and obligations on the people basically not to break the law?’ You can go to all the trouble to have a national criminal code which is based on the common law and yet, when it comes to human rights—individual rights and freedoms—being encompassed in an act of parliament or being constitutionally protected, they say, ‘No, it is not possible.’ In that respect, I refer to a report of the Legislative Council of Queensland—the

Legal, Constitutional and Administrative Review Committee put out a report entitled, *The preservation and enhancement of individuals' rights and freedoms in Queensland: should Queensland adopt a bill of rights?*

Mr DANBY—What was the date of that report?

Mr Coleman—November 1998, report no. 12. This was done in much the same fashion as the education process for this republic referendum. I did not know about it until submissions closed. On 25 September last year, submissions closed. Should Queenslanders have a bill of rights? There were 86 submissions, mostly from right-to-lifers and monarchists. Let us go to the chairman's foreword. I would say that this came from a Labor bloke. I am not a member of any political party whatsoever, but it was quite upsetting. Gary Fenlon, the chair of the committee said:

An enforceable Queensland Bill of Rights would most likely result in a significant and inappropriate transfer of power from the Parliament . . . to an unelected judiciary. In the case of a constitutionally entrenched bill of rights, it would be the judiciary, not the Parliament, that ultimately decides the validity of legislation and government action. Judicial decisions that impose significant costs to society or that do not meet with general community acceptance would be extremely difficult to modify or reverse.

They are saying that if we have human rights in the Constitution it would give too much power to the judiciary. The High Court has given us a heap of constitutionally protected rights, including freedom of communication. I was in court two Thursdays ago on appeal, and I was petitioning in public—it is not even against the law of the Commonwealth or any state—yet I was arrested by a copper for disobeying his direction to leave a pedestrian mall. I knew what my rights were. I was dragged off and I was locked up. I was arbitrarily detained until after the newspaper deadlines. The judge in this case, Judge Clive Wall, a known conservative—I am protected by privilege, and I think it is contemptible what his decision was—said, 'I will distinguish all these High Court cases'—he did not mention which one. 'Freedom of communication—not relevant.'

CHAIRMAN—Has a decision been made in that case?

Mr Coleman—I have not, as yet, put my appeal in, so it is reporting on something that has already happened. It is not sub judice at this point in time.

CHAIRMAN—Okay.

Mr Coleman—He distinguished all the High Court cases in freedom of communication. I found that totally unreal. He said the Peaceful Assemblies Act in Queensland did not apply to me because I was just one person, even though I was not doing anything against the law. It seems to me the judiciary has unlimited power now to throw out the law. It has unlimited power to say, 'Well, I'm a conservative and I don't give a rats what the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights said.' I would like to remind this committee that, on 10 December last year, both houses of the federal parliament re-ratified the Universal Declaration of Human Rights. Thirteen days after that, I read out the Universal Declaration of Human Rights in public, on a Sunday in the Flinders Mall in Townsville. I got chucked in the slammer—

Ms HALL—Don't tell me you got arrested?

Mr Coleman—No, on that occasion I did not get arrested. They just took film of me. I had so many court cases on this issue that I forgot what day I had to go to court, and I turned up on the wrong day. I was in the slammer. They said, 'Here, you are going to love this' and they charged me with an unlawful public address under section 8(ii)(e) of the Flinders Mall by-law. That says that you cannot give a speech—and that was the Universal Declaration of Human

Rights. The magistrate did me like a dinner. The Townsville City Council, which prosecuted me, used a barrister. They did not want to use a police prosecutor because they did not think they were mercenary enough. There were \$3,035 in costs, which was as good as a fine; a \$300 fine for reading out the Universal Declaration of Human Rights which was ratified 13 days before the offence. I remind everybody that it says that you have the right to free speech, free education as well as freedom of association. Tell that to Mr Kemp. I find that disgusting. Clive Wall has done exactly the same thing. They threw it out. I want a bill of rights. I want constitutionally protected rights and freedoms.

We have not had a revolution here; we have not had people being blown up by car bombs. We are not getting our constitutional change to a republic in that respect. The ARM and the government are taking advantage of that fact. You should ask indigenous people whether they would like a bill of rights. I believe some of them are still very angry about being oppressed. You should ask Albert Langer whether we should have a bill of rights. The Speaker of parliament put him in gaol, didn't he? It is absolutely disgusting.

Ms HALL—But the Australian people voted against a bill of rights.

Mr Coleman—In 1986, I believe.

Mr DANBY—In 1988.

Mr Coleman—Wasn't that thrown out of parliament?

Ms HALL—No, there were four referendum questions and people voted against it. I will quite freely tell you that I voted for it, but the majority of people voted against it.

Mr Coleman—That was then and this is now. If you asked people now, after the Constitutional Convention, whether they would like another Constitutional Convention or whether they would like the chance to directly elect their head of state, I reckon they would say yes.

Does this bill reflect the outcome of the Constitutional Convention within the terms of reference? A couple of months back, the Democrats and the Greens put up a motion in the Senate asking for another Constitutional Convention for a constitutional review three years after referendum day. I believe that was the motion.

Senator STOTT DESPOJA—Senator Margetts moved it.

Mr Coleman—Yes, and it was voted down by the Labor Party, the Liberal Party and the National Party. The outcome of the Constitutional Convention was to have further constitutional review. You are going to go to a referendum and, behind your long title, you are going to have a piece of legislation which nobody knows about and which nobody would have read. They would have had a chance to ring the 1800 number if they knew about it to get the consultation draft. Was it minimal change in the consultation draft? On page 10 of my submission, I think it is, I have also asked that it be amended.

I looked at the consultation draft. The government wanted to repeal section 69 of the Constitution, which vests the post, the telegraph and everything like that in the Commonwealth. That is the consultation draft. It is not in the bill now. That was going to be privatisation by stealth, by referendum and they were going to hide that behind the legislation. Nobody would have known about it.

On this business of dismissing the President, I have to ask a question: why aren't we asking the people if we can directly elect the Prime Minister, who is an unelected Prime Minister now? I did not vote for him. People might have voted for the party, but they did not vote for the Prime Minister. There is unlimited power in the hands of the Prime Minister: the power

to bribe world heritage committees, the power to do anything—that is absolutely disgusting—the power to send dogs in against wharfies—going back to 1932. I think that is spot on.

Mr Causley said, ‘We’re a peaceful country, but any peaceful country can revert to a dictatorship.’ That is quite right. If you entrench in the Constitution the right of the Prime Minister to dismiss the President, even though the parliament may not ratify his decision, the effect is that the President only gets the right to ask for reappointment. It does not mean that he or she gets re-elected. Why can’t you have a joint sitting of parliament? This is after we go to a referendum on a directly elected head of state, mind you, with codification of powers, like a national criminal code, which would be giving rights and responsibilities to us and to you lot.

Why can’t a joint sitting of parliament refer the matter to the High Court, the High Court being the place which is the protector of the Constitution? It is apolitical. The court knows what is right and wrong. That would take it out of the hands of a conservative Prime Minister, which may be a Labor conservative Prime Minister; that happens quite often. Why can’t we do that? And why can’t we directly elect the Prime Minister? I would be happy to directly elect some sort of head of state who just happens to be an Australian. I am not voting for this crap. They can shove it. I want my rights and freedoms. I want to be able to go to the court of appeal and say, ‘I don’t just have to seek leave, I’ve got a right to go there and have this poxy load of rubbish overturned—as well as the other one, and the right to legal aid.’

In the decision with the unlawful public address, I applied for legal aid. Legal Aid had not processed my application and the time ran out. So now I am going to have to go to gaol for 110 days because I am not going to pay—for reading out the Universal Declaration of Human Rights 13 days after you lot re-ratified it. Sure, we have not had a revolution, but put this to the Australian people: an Australian head of state might equal a republic, but constitutional change pushed peacefully by the people equals a revolution—no blood, no bombs and most certainly no bullets. Nothing in the style of this whacko Ron Owen, who was going on about referendum, revolution and a future war, the moron.

Ms HALL—Who is that?

Mr DANBY—Ron Owen puts out *Lock, Stock and Barrel*.

Ms HALL—The gun lobby.

Mr Coleman—I want a bill of rights, but let us be reasonable about this. There is reasonableness in free speech. There is reasonableness in hopefully not having an entrenched right to bear arms and stuff like that. But that is what we need. If you would like to ask me questions, you can ask the same questions you asked of anybody else. I am only a first year law student, but I have thrown myself into this. Hopefully, I can give you a good answer.

Senator STOTT DESPOJA—I value the peaceful and tolerant way in which we are progressing and hopefully modernising our Constitution. Like you, I have strong support for whether it is entrenching legal aid or removing discriminatory provisions in our Constitution, or even a bill of rights. But what I have to grapple with, as someone who supports the notion of a republic, is whether or not I want to move into the next century with the Queen as my head of state—

Mr Coleman—That is irrelevant.

Senator STOTT DESPOJA—whether I want to perpetuate an institution that symbolises a lot of things that you have referred to either directly or indirectly. It is sexist, it discriminates on the basis of religion—it discriminates on a whole range of factors. It is my personal opinion

that it is not relevant in a modern and, hopefully, democratic and equal society. I know you have many problems with the bill as drafted and some of the other processes, and there are other very good arguments for constitutional reform and change, but isn't it worth making this decision? Do you want to wake up in the next two years and know that we still have a monarchical institution and a queen—who knows?—as our head of state? Is it really worth sacrificing this opportunity for that result?

Mr Coleman—On 4 April this year Malcolm Turnbull said on *Business Sunday*, 'I don't know why the Liberals and the Nationals aren't supporting this model. It's the most conservative model around.' And you are going to be supporting that model, I think.

Senator STOTT DESPOJA—I am indeed going to support going to a republic.

Mr Coleman—I am a republican. The Queen may actually have the power not to assent to a law one year after its enactment, I believe. But if you have a look, even on the consultation draft, supposedly after a referendum this legislation gets enacted and it says, 'This act commences on royal assent.' I am confused, right? Personally, I think it is completely irrelevant. I am a republican. I cannot stand somebody, because of their blood line, getting to wear a poxy bunch of diamonds on a beehive haircut, or whatever. I cannot stand that idea, but my government that is in now—that I did not elect and I did not vote for—is more oppressive than any Queen of England, who has nothing to do with the country. This government is oppressive. They are going out of their way to do what Joh Bjelke-Petersen did. When did Joh Bjelke-Petersen get ousted? Was it 1988? That was in Queensland, Australia. In 1977, the day of the street march was over. 'Do not bother getting a permit, you won't get one.' Did the Queen say that? No. Back then you still had appeals to the Privy Council. You had a level of being able to go out of Australia to another court, regardless of whether it was a queen, a monarchy or whatever.

Mr PRICE—Gough abolished the appeals to the Privy Council. That was in the 1970s.

Mr Coleman—That is gone. But the thing is that you had another level where you could go to. The Prime Minister of this country is being oppressive. That is what it comes down to. And if he is the only man who has the say and the President comes out and says, 'Hey, you're wrong, pal,' he will say, 'See you later. Take your cut lunch.'

Mr PRICE—Isn't it true that the Prime Minister, whether good, bad or indifferent, is elected by the people? The great thing in our Australian democracy—

Mr Coleman—Rubbish. Crap.

Mr PRICE—He is not elected by them?

Mr Coleman—No. He is just the head of a political party. Bob Hawke was overthrown in a coup d'état by Paul Keating. I did not elect Paul Keating, though I voted for him in 1993 because somebody was going to bring in a GST.

Mr CAUSLEY—But the Prime Minister is elected by his party, who are elected by the people.

Mr Coleman—Yes. But what other choice did we have?

Mr CAUSLEY—How else do you elect a Prime Minister, unless you are going to elect a popular President, as you suggest?

Mr Coleman—How do you elect senators?

Mr CAUSLEY—That is a good question.

Senator STOTT DESPOJA—Proportional representation.

Mr Coleman—That is right. So that means that you can elect somebody in Brisbane whom you may like over a conservative up here who is only going to be doing the bidding of the mining companies.

Mr CAUSLEY—Getting back to the questions we are supposed to report on, it seems to me that you do not agree with the bill that is before the House for the republican model.

Mr Coleman—Does this adequately reflect the outcome of the Constitutional Convention?

Mr CAUSLEY—That is the first one, yes.

Mr Coleman—The Labor Party, the Liberal Party and the National Party overturned a motion in the Senate to conform with the outcome of the Constitutional Convention, which was to have a further constitutional convention three years after the date of the referendum for further constitutional review. That was voted down, so obviously now we have not got that next level that we can go to. You are going to go to this referendum, and you might well win it. John Howard is a monarchist, but he will get what he wants out of this. Risk management. Malcolm Turnbull will get what he wants out of it. Even if it does not happen, he will sit back comfy on his couple of hundred million or whatever it is. If you are in this government, you are doing the bidding of big business.

Mr CAUSLEY—So the second point is that you do not agree with the bill before the House as being a model for our Constitution?

Mr Coleman—No, I do not. You cannot go to this referendum and impose a question on the Australian people. You should go to this referendum. Instead of having a referendum, you should go to the people with a plebiscite and ask them first, ‘Do you want a referendum?’

CHAIRMAN—With respect, Mr Coleman, that is not going to happen.

Mr PRICE—That was not what the outcome of the Constitutional Convention was.

Mr Coleman—I believe it was day 2 or day 3 of the Constitutional Convention that democracy was shot in the foot.

CHAIRMAN—Sorry?

Mr Coleman—Democracy was shot in the foot. People tried to open up the Convention to these questions, but the ARM and the monarchists got together with the government appointed delegates who were not directly elected by the people and they shot that down in flames. I am very annoyed about that. Next question?

Ms HALL—Mr Chairman, I would not mind asking the next question, if I could.

CHAIRMAN—Okay. But we are going to have to move on because our next witness has to leave shortly.

Ms HALL—I will be very brief. I just need to get in my mind exactly the format that you would support. First, I have read your submission and I must congratulate you on your poem.

Mr Coleman—I have got another called ‘I am a defender of something called democracy. I have signed away my opinion like my father’s father before me.’

Ms HALL—Would you support a situation where we totally moved away from having, say, a President and we had the Prime Minister elected by the people?

Mr Coleman—That is the question. That is the choice that you could put before the Australian people, as opposed to the official version of the question. ‘Hey, this is an option. You can discount it if you like. Have you got a better idea?’ You can ask that to the people. But I will repeat what I stated in my submission: a 10-point plan for democracy. One, ask the

people in a plebiscite, ‘Do you want to remove the Queen as our head of state?’—meaning that we become a republic. I think Malcolm Turnbull would like that question. It is pretty simple. You could do hieroglyphics or something like that for Malcolm Turnbull. It would be easy to understand. How do you put democracy in a little picture so he can get that through his thick skull?

Question 2, ask them, ‘Do you wish to see a directly elected head of state, that is, a President or equivalent?’ Or, 2(a), ‘Do you wish to see the powers of the President and the parliament codified?’ You have got your standing orders now obviously, but the powers of the President could be codified. 2(b) ‘Should the post of head of state be just ceremonial?’ Three, ‘Should the head of state be elected by a two-thirds majority of the parliament?’ Four, ‘Should we have a bill of rights?’ Five, ‘Should the ecosystem be protected by the Constitution?’

Mr PRICE—Mr Coleman, I think there would be some members of the committee who would like to see the changes go a lot further, but you have to start somewhere, and accepting this model does not forever rule out another constitutional change. Are you satisfied that in voting against any referendum question we will have a situation where a Prime Minister is not bound by any process of selection of a Governor-General and in fact can appoint his chauffeur, should he so choose, as Governor-General—

Mr Coleman—Max Moore-Wilton.

Mr PRICE—He can appoint his gardener, his cook, his chauffeur. In the present system there is no formal process of selecting a Governor-General other than at the wit and whim of a Prime Minister.

Mr Coleman—I think that is wrong. I think it would come back to how they get elected, and that will be who pays the biggest donation. That will mean a uranium miner deciding who is Prime Minister or President.

Mr PRICE—I am just saying that you must be happy that we go into the next millennium with a system of a vice-regal representative where the Prime Minister is unaccountable in his choice. If he dismisses a Governor-General, there is absolutely no present accountability. Having railed against the power of the Prime Minister, what you are really saying to the committee is that you are quite happy with this unaccountable process and lack of checks and balances under the current system.

Mr Coleman—I think you are leading to the question that was put to somebody else before. The Governor-General can be dismissed now.

Mr PRICE—With no process. That is the point I am making.

Mr Coleman—In this bill there is no accountability because it says that they do not want the President to have recourse to a judicial review. They do not want the President to be able to go to court.

Mr PRICE—There is an accountability process in the bill; that is, the Prime Minister needs to get the approval of the House of Representatives. That is the accountability process that is proposed.

Mr Coleman—In the government’s submission the government has stated that, if the President gets dismissed or has a bit of a fight with the Prime Minister, it would not like to see the President with the power to seek a judicial review of the situation.

Mr PRICE—There is a difference between a justiciability and an accountability process.

Mr Coleman—You do not seem to understand.

Mr PRICE—You are the one, Mr Coleman.

Mr Coleman—If the President gets dismissed, the public is not involved. Yet if it goes to the High Court, any Australian can petition the High Court. Any Australian can intervene in the High Court if they have the money. Do you know what I mean?

Mr PRICE—I will just make the point that whether something is reviewable by the High Court is an issue of justiciability. It remains to be seen whether the High Court would like to get involved in such a matter anyway if it was made justiciable. The point is that there is proposed in the legislation an accountability process that is not there now. Indeed, if a Governor-General is dismissed at the moment the matter cannot be taken to the High Court. This is a system that you would prefer rather than any change.

Mr Coleman—That is not, in effect, what I am saying.

Mr PRICE—That is the outcome of what you are saying.

Mr Coleman—I would like to draw your attention to this bill as well. I remember from the consultation draft that the government wants to, from time to time, make it oh so very clear that it can restrict who gets to go from the Supreme Court to the High Court. It has taken away another level. You have a look in the consultation draft. I am not sure if it is in the bill, but the government was thinking about it, about a restriction on the number of people or how people can go from the Supreme Court to the High Court. Do you know what I mean? It is dithering with these accountability processes.

CHAIRMAN—That is the responsibility of government.

Mr PRICE—This is not in the bill. You are talking about the High Court, aren't you?

Mr Coleman—You are talking about a layer of accountability.

Mr PRICE—No. I can accept some of what you are saying; that is, that in changing to a republic you want to see a lot more. In fact, you even said that you want a direct election, and it is not something that I am unsympathetic with. What I find really difficult in what you are saying is that, in opposing this change, small as though it may be, you infinitely prefer in the next millennium those systems that are completely lacking in transparency, accountability or safety net arrangements.

Mr Coleman—That is complete rubbish. It is a way of painting somebody. What I have said is that I want rights and freedoms protected. I do not think this goes far enough. I think this legislation is a virtual landmine that we are all supposed to stand on because afterwards you have blown your vote, blown it into smithereens. When it comes down the track and you want to get further constitutional review, they are going to go, 'Stuff you, mate, I am the Prime Minister.'

CHAIRMAN—I think we will have to move on.

Senator STOTT DESPOJA—Mr Chairman, I would like to clarify a point. Mr Coleman, I take your point about the motion moved by the Greens that was overturned, but that was reaffirming the ConCon's suggestion that there was a second constitutional convention, which is still supposed to be a part of this process. So, as far as we know, that is supposed to happen as a consequence of a successful referendum campaign.

CHAIRMAN—That is not in the bill, though, is it?

Mr PRICE—It does not have to be in the bill.

Senator STOTT DESPOJA—No, but in terms of that being quashed, as you state—

Mr Coleman—If people knew there was going to be a further chance of constitutional review after we became a republic, encompassing the right to directly elect our President, obtaining rights and freedoms which we do not have now and which we cannot enforce because the courts would just throw them back at us—well, these lower courts would but we cannot afford to go to the higher courts—and they could change something later down the track, they might even vote for this. I am saying no at this point in time because I have no guarantee, as an Australian citizen, that my rights and freedoms are going to be guaranteed. I have no guarantee that we are not going to go back to the Joh Bjelke-Petersen era, only at a national level. I have no guarantee that you are not going to reinstate apartheid, because we did have apartheid here and it was odious. I have no guarantee that that is not going to happen again.

As far as I can see, it is preferable the way it is now, because I get a really bad feeling from this. I get a very bad feeling. They keep stymieing debate on a local level. You might see Terry Wiltshire behind me, and he is not going to like me saying this, but before the Constitutional Convention there was a ‘politics at the pub’ night. Michael Lavarch, Bernie Treston and a lot of other people who were there got up and spoke. Michael Lavarch said, ‘Well, I’m glad we haven’t had a revolution in this country because we don’t need that sort of stuff.’ They all got up and said that we ought to become a republic and mentioned Catholics and Protestants. I got up and said, ‘If you fight for this republic and you win, but you don’t fight for our rights, then you will have lost.’ I got barred from his pub for saying that, and this is the first time I have seen him in about a year.

Senator STOTT DESPOJA—It is going to be an interesting next witness.

Mr Coleman—He might be able to refute it, but I had only one light beer, so there you go, Terry.

CHAIRMAN—Thank you, Mr Coleman, for making your submission and for coming and talking to us today. We will report on 9 August, and we will send you a copy of our report.

Mr Coleman—That time is just not long enough to report.

CHAIRMAN—That is when we are going to report, but thank you for your views.

[3.08 p.m.]

ARMATI, Mr Phillip Vincent (Private capacity)

CHAIRMAN—Welcome. Do you have any comments to make on the capacity in which you appear?

Mr Armati—I was born in Townsville in 1933. I have a number of concerns about parliamentary procedures which relate to the Constitution. These concerns about parliamentary procedures come to me from time to time. I have picked two of them: one, the subject of a secret ballot and, two, the subject of cronyism. I believe these two subjects are the cornerstone of democracy. I do not see how any government can work effectively without a secret ballot and without promotion on merit, accountability and good business practice.

Mr CAUSLEY—A secret ballot for what?

Mr Armati—A secret ballot for all decisions and all bills.

Mr CAUSLEY—You are talking about Wik.

Mr Armati—I am talking about the constitutional bill and anything to do with parliamentary procedure.

Ms HALL—So everything that we vote on in the House should be by a secret ballot. Is that what you are saying?

Mr Armati—There is a secret ballot for the Constitution and a secret ballot for everything to do with the Constitution.

Ms HALL—What about all bills in parliament?

Mr Armati—All bills—everything. The forthcoming Constitution should embody a secret ballot clause: every bill, every debate and every division should be by secret ballot. We have an electronic system now where members and ministers can listen to the debate, make their decisions, put in their passwords and press a yes or a no vote.

CHAIRMAN—How does that make your members and your senators accountable to the people who put them there?

Mr Armati—It makes them accountable to their own conscience. It does not make them accountable to party solidarity.

CHAIRMAN—That is not the question I asked. The question is: if you have secret ballots in parliament, how on earth is democracy served when the member or senator no longer has to demonstrate his or her responsibility to those who elected him or her?

Mr Armati—Do you mean to say that, when the vote is taken and the hands are shown, everybody's vote is recorded?

CHAIRMAN—Absolutely.

Ms HALL—Yes, exactly.

Mr Armati—Couldn't that also be recorded then on the electronic system?

CHAIRMAN—Then it would not be a secret ballot.

Mr Armati—No, it would not, I suppose. If it was recorded electronically, it would not.

CHAIRMAN—I understand what you are getting at, but you would not have responsible government. One of the very bases for democracy in the first place is electing representatives of the people through some system or another and them being in some form or other accountable to the people who put them there.

Mr Armati—I thought they would be accountable through their consciences and voting along conscience lines rather than for parliamentary solidarity.

CHAIRMAN—I am a Victorian. The people in my electorate could have decided that they really hated the idea of the gun laws. They hated them so much that they looked up the record in the *Hansard*. I voted for the gun laws, and they would have taken it out on me at the election in 1998 and sent me packing. But if it were a secret ballot, they would not have known. I could have told them anything I liked.

Ms HALL—Similarly, I come from Newcastle and the people in that area were really very much opposed to the GST. It is on the record how I voted on the GST but, if that were not there on the record, I could have voted for it. They never would have known, and I would not have been accountable in any shape or form.

Mr Armati—I am sorry, but I am not that much of a political expert.

Ms HALL—But I understand your idea and where you are coming from.

Mr Armati—You have shot me down in flames on that one.

Mr CAUSLEY—Weren't you really saying that you did not believe in party politics? That is what you were saying, wasn't it?

Mr Armati—A member of parliament goes to parliament to represent his electorate. When he is there, he votes along party lines because, if he does not put his hand up when everybody else does, he can be ostracised, disenfranchised, penalised or demoted. He can even be dropped from being a minister.

Mr CAUSLEY—I understand your point, but do you remember how many governments there were in Italy after the Second World War until about 1960?

Mr Armati—No, I do not know but—

Mr CAUSLEY—There were about 30 different governments; they were split. The parties were very small. There was no stable government. One of the strengths of Australia has always been a stable government.

Mr Armati—The New South Wales government started in 1858 with a secret ballot. Why had that been dropped in 1901?

Mr CAUSLEY—You have beaten me; I do not know that one. I would have to research that. You would have had only the legislative council which was the Governor and a few nominated people.

Ms HALL—People of great wealth.

Mr Armati—That was all that I thought. There it was in 1858, and it was not there in 1901.

Mr CAUSLEY—The first government in Australia was in New South Wales. It was the Governor and a few nominated business people who became the Executive Council. It is a vastly different government to what we have today.

Mr Armati—Can I go on to cronyism then?

Senator STOTT DESPOJA—Just to let you know, we actually do have some secret ballots in the parliament. In some cases, there is a ballot for a particular position, say, a president, deputy president or nominee on a committee, that presumably cannot be resolved among the parties. Secret ballots do happen in our parliamentary system.

Mr Armati—All right. In secret ballots in plebiscites or party room politics, you have a payback system where you have a show of hands in the room, they count all the votes, and people are for or against—if they are not for, they are immediately on the other side.

CHAIRMAN—Peter, can I say to you honestly that it is not like that.

Mr Armati—Isn't it?

CHAIRMAN—Decisions are largely arrived at in party rooms on a collegiate basis and, most frequently, without even voting—that is to say, the majority view prevails. Those who want to speak, speak and those who don't, don't—but it is a rigorous process. Roger will say the same thing, won't you, Roger?

Mr PRICE—Definitely.

CHAIRMAN—It is an extremely rigorous process, and one of the things that we find—

Mr Armati—And doesn't it get rather nasty sometimes?

Ms HALL—It gets very heated at times.

CHAIRMAN—You bet your bippy, baby—it sure does! Of course it does. It is very robust, and so it should be. But one of the things that we somehow do not make clear to the public is the degree of consultation, discussion, negotiation and debate that goes on about any major issue—long before it is decided. There is no such thing as an official party line that just develops somewhere out of the heavens, by a stroke of lightning or the stroke of a pen—someone saying, 'Oh yes, I see the light, and that is what we will do now.' It is not like that. Policy development takes years. Ask me—we were in the wilderness for 13 years. Ask Roger now. It is part of the process of trying to redevelop policy; it does not happen overnight.

Mr Armati—I do not want to appear to be nasty, but I thought that lots of policies were developed by the lobbyists who want things done here, there and anywhere.

Mr CAUSLEY—They will take you in all different directions, because each lobbyist—

Mr Armati—Each lobbyist has a different project.

Mr CAUSLEY—That is very diverse, so you have to come to a consensus within the party as to what policies—

Mr Armati—Which direction you want to go.

CHAIRMAN—In the political system that I grew up with, for the last 35 or more years the political parties have had almost no control whatsoever over their members and senators. Why? Because they do not raise the funds. Why? Because it is so expensive to campaign, because of regional television. If you want to win in a primary vote—to be preselected for your party—and then you want to win at the election, you need absolutely huge sums of money. So, realistically, the members and senators are more beholden to their financial backers than they are to their political parties. That is why, frequently, you see major gridlock between both the Senate and the House and the executive in the United States. I think our system works so much better; it is more open and transparent, and it is more dedicated to making the people in the electorates happy, rather than the financial backers. For whatever it is worth, I just throw that in.

Mr Armati—All right. I have to run through this very quickly. I think that good business practice and picking the person who is most suitable for the job—as opposed to cronyism and selecting public servants and directors of government departments on the basis of political favouritism—is a cornerstone of democracy. I think we should enshrine that in the Constitution

and make sure that the best man with the best credentials gets the job, despite political affiliations or being an ex-politician and so on. Can that be enshrined in the Constitution?

CHAIRMAN—The bill that we are debating today—and we will be taking a report back to the parliament in August—actually provides that—

Mr Armati—It is the same as you were saying about the selection of the Governor-General: do you select the Governor-General on merit and ability, or do you select him on his political affiliations?

CHAIRMAN—No, the bill says he cannot be a politician. He has to resign before he is nominated by the joint sitting of both houses.

Mr PRICE—Peter said the Governor-General, not the President.

Ms HALL—But currently there is no accountability over the appointment of the Governor-General—none whatsoever. At the moment, the Prime Minister could walk up to someone in the street and say, ‘I want you to be the Governor-General,’ and not explain to a single, solitary person why he chose that man or woman.

Mr CAUSLEY—It has not happened, because in the past we have had eminent people so we have not had that. New South Wales had a tradition of the leaders of the armed forces being the Governor in rotation. That was just a tradition; it is not happening now. An eminent person, Gordon Samuels, has become the Governor. On your concern about public servants, I cannot speak for the Commonwealth because I have not been in that position, but I have certainly been in that position in the New South Wales government. Committees were set up with equal numbers of public servants and outside experts, who would choose who would take the position of head of department. So, it was not cronyism; it was a very prominent committee, with people from outside the Public Service on that committee to choose the person who would take over as head of department. As much as possible, cronyism was kept out of it.

Mr Armati—But that was in New South Wales.

Senator STOTT DESPOJA—For your information, Mr Armati, I do not know how you can enshrine that in the Constitution: every attempt by the Australian Democrats—and I think that we have made a dozen so far—to enshrine in law that there are merit and transparent provisions for the appointment of people to positions such as statutory authorities has failed. So, good luck to you in enshrining it in the Constitution because we cannot get it into law.

Mr Armati—I have two books on the Australian Constitution—old books. From time to time, when something comes along, I get my little books out. I also have a great big book on the Australian Constitution. Of course, I have no political affiliation, except that I did not like the communists when they were around—but they are no longer around. I will read a little bit of a letter:

There are certain laws and formulas for mathematics, astrology, science, nature, biology, genetics and nearly all that exists and happens in the planet earth environs. Space probes to distant planets are no problem; plumb the depths of the world’s oceans—no problems; communications technology and advancement—no problems; drug corporations, research and development, new products and profits—no problems; multinational companies, banks, financial profiteering—no problems. The above-mentioned succeed because management advertise the positions, interview, and check candidates’ qualifications, work records and personality to select the best-qualified person for their organisation. The interviewing officer follows a criteria formula and scores the candidates accordingly. Some high-score candidates are short listed, and then re-interviewed before the decision is made on the best person for the position. This formula appears to have produced capable organisations, management and staff.

Alternatively, other large public organisations, federal, state and local governments and quangos, regional boards and utilities have management and staff appointed from the political party brotherhood. Political parties in power create positions in the public sector quango boards for their ex-political or aspiring party friends. It is the accepted, politically correct thing to do these days—no problem. Australia can afford it, or else we would just up the taxes and the charges. The decision for a political party candidate is his years of membership, activity, party policy and loyalty, party pecking order and who he has helped, supported, and from whom he can expect support and help when the opportunity for nomination for a selection as a candidate can be made.

Pity our neighbours. Indonesia: social and economic systems collapsing through entrenched cronyism and nepotism. Malaysia's democratic rights and justice systems: compromised by an autocratic ruler, economic and social systems collapsing. And Papua New Guinea: bribery, corruption, cronyism, nepotism and law and order collapse.

I wrote this on 28 April, and I could go on. These cronyism and nepotism problems were exposed and condemned in Australian television, radio and newspapers by Australian leaders as undemocratic and the root of all evil. But cronyism and nepotism is practised in Australia by all political parties. I will leave it at that. Until we can get away from political favouritism and can run the country as a proper business, I think we will keep on muddling along in the way we are. That is my opinion.

CHAIRMAN—Thank you for that.

Mr Armati—Thank you for hearing me out.

CHAIRMAN—We appreciate you coming. As I said before, we will table our report on 9 August, and you will get a copy.

Mr Armati—I apologise for the little mistake about the secret ballot.

CHAIRMAN—You do not need to apologise at all.

Mr Armati—It is just that secret ballots have been around for as long as I have been going to public meetings. Thank you very much.

CHAIRMAN—Thank you.

[3.27 p.m.]

McCULLOCH, Mr Robert George (Private capacity)

CHAIRMAN—Mr McCulloch, thank you for coming to talk to us this afternoon.

Mr McCulloch—I am appearing as a concerned citizen. I found out about this meeting only this morning. I am actually travelling around Australia, so I am very unprepared. I thought it might have been a question and answer type of thing, so I hope you will bear with me a bit. I appreciate the opportunity of being able to say something. Frankly, I wonder why we are all here. Australia, without a doubt, is an independent sovereign nation so I do not really know why we are even having a referendum. I cannot understand that. Is there any dispute that we are not an independent sovereign nation? I really cannot understand why we are going to all this trouble.

I wrote a letter to the federal Attorney-General in which I stated 10 points. I will not bore you with them all. I got an answer back from him that says, 'Section 1 of the acts'—and he refers to the Australia acts—'acknowledges the complete legislative independence of the Commonwealth and the states and terminates the power of the United Kingdom parliament to legislate for any part of Australia.' He goes on to refer to 'Australia's development into an independent nation', so we are an independent nation. That is also held by the fact that we joined the United Nations in January 1920 and, under the charter to join the United Nations—which I have a copy of here—they guarantee us to be an independent sovereign nation.

Mr DANBY—Is that the League of Nations?

Mr McCulloch—It was originally the League of Nations and it became the United Nations. The charter says:

The Organization is based on the principle of the sovereign equality of all its Members.

There is another one here—The power to make and implement treaties report. 'Where Australia became an independent member of the League of Nations and the International Labour Organisation in 1919, in both these fora, the dominions were given separate votes and their representatives were accredited by and responsible to their own dominion governments rather than to the imperial government.' There is no doubt we are an independent sovereign nation. I do not think there can be any argument about that.

We are an independent sovereign nation and we are a member of the United Nations. My point is quite simply that our Constitution is an act of the British parliament. It is British law. It is against international law and British law—and I have it here somewhere; I could find it—to govern a member state of the United Nations with a foreign country's laws. It is treason, and there is actually such a case before the war crimes tribunal now. There is a judge now appearing before the tribunal on this matter. So that was my query to the federal Attorney-General.

I will just read you parts of another one that was sent by a solicitor to the New South Wales Attorney-General. I will not bore you with too much of it. He goes on about how we joined the United Nations on 10 January, how we were mandated territories in Nauru and German New Guinea on 17 December 1920 and how the United Kingdom recognised Australia's sovereignty by accepting the credentials of Sir Joseph Cook as Australia's first high commissioner to the UK and so on. The question then asked was:

As the above items are historically correct . . . after the demise of British Legislation in Australia in accordance with both British and international law as at the 10th January 1920 what document(s) provide for the basis of law in New South Wales on and after this date?

He does go on to say that this could have been done federally also.

He got a return letter from the Attorney-General, a Mr J.W. Shaw, QC, MLC, which said, 'I refer to your letter concerning the operation of article X of the League of Nations Covenant in relation to the state of New South Wales. The issue of the international recognition of federal states has been the subject of some academic debate. I also note your statement that the issue has been before the courts of New South Wales but has not been resolved. That is currently being legislated before the High Court of Australia. As constitution issues such as this are more properly considered by the Honourable R.J. Carr, MP, Premier and Minister for Arts and Minister for Ethnic Affairs, I have referred your letter to him for his consideration and reply.' That was on 21 January 1999. There has still been no reply. It is quite obvious that the Attorney-General cannot answer the question.

I had a similar reply. Unfortunately, I have sent off the reply that I got from the federal Attorney-General. It should be in front of some QCs at the moment. I am totally uneducated in law but I can see that it is wrong. What I am saying to you is that it is my belief that we are being run under British law in Australia, which is illegal. I will give you the documents if you wish. I would like you all to inquire into this and get a decision on it.

Mr CAUSLEY—I am not a lawyer, but I understood the Australia Act changed that.

CHAIRMAN—Me, too.

Mr McCulloch—I will refer you to that, if you like.

CHAIRMAN—I have to say to you that that is my understanding as well.

Mr McCulloch—The Australia Act was in 1986. We joined the League of Nations in 1920.

CHAIRMAN—But 1986 is after 1920.

Mr McCulloch—That is right. We were an independent nation in 1920. The government has been illegal ever since then. They had no right to even enact the Australia Act.

Mr CAUSLEY—That is what you are arguing.

Mr McCulloch—That is what I am saying. On 28 February 1998, the International Law Commission of the United Nations issued the ruling that no laws as a member state of the United Nations are valid within the sovereign territory of another member state unless via a reciprocal treaty agreed between the two member states. I have only got a very small fraction of the evidence. Believe me, there is a mile of evidence. If this is true, it is very disturbing to me.

Mr PRICE—I do not understand your basic argument.

Mr McCulloch—It is very simple: we are either a British colony or we are a member of the United Nations. We cannot be both—

Mr PRICE—Yes, I understand.

Mr McCulloch—because the Constitution is undisputedly British law. It was passed in the British parliament. It is British law. All laws that look to that Constitution for their validity are basically British law. I can go into this again, if you want to. I have got it here somewhere.

Mr CAUSLEY—It had to be passed in the British parliament, because we did not have a parliament at that time, did we?

Mr McCulloch—No, it is British law; believe me. There are QCs involved in this. I am only a builder. But I am very concerned about it all. As I said, it is considered a war crime to govern a member state of the United Nations with a foreign nation's laws. The fact that

we are a foreign nation is indisputable. The local paper the other day said that Heather Hill was thrown out because she was a member of a foreign power, so it is indisputable that Britain is a foreign power. They have also passed laws where we cannot migrate there any more; we have to apply for citizenship and so on.

Mr DANBY—The point you are making with regard to the bills that are before us is that we cannot advance this to referendum because we are illegally constituted—the Australian government and its procedures do not have any legal basis at all.

Mr McCulloch—That is my understanding. But I have no legal education whatsoever.

CHAIRMAN—In the schedule to the Statute of Westminster Adoption Act 1942, which is an act to give effect to certain resolutions passed by imperial conferences held between 1926 and 1930, paragraph 2 says:

The Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this act by the parliament of a dominion.

Is that clear?

Mr McCulloch—Not particularly, no.

CHAIRMAN—I am not a lawyer either, but my understanding is that it says that from 1931 the Colonial Laws Validity Act does not apply any more; so that the Commonwealth of Australia is no longer subject to any British law.

Mr McCulloch—This document that I have reads:

In 1997 the British government states and has provided documentation with regard to legislative powers of the parliament of the United Kingdom—

It states here:

No act of parliament in the United Kingdom or act that looks to the parliament of the United Kingdom for its authority is valid in Australia or its territories in accordance with the laws of the United Kingdom, international law and the charter of the United Nations.

It goes on to say, when specifically asked about the validity of the following items, that the British government referred to the answer that I have just read to you.

The first one they asked them about was the Commonwealth of Australia Constitution Act; the second one was the Westminster Act 1931, UK. When asked about the Westminster Act 1931 UK, the United Kingdom said that no law from the United Kingdom applies, as I read to you earlier. They are saying that that does not apply.

Mr CAUSLEY—What about it going to the Privy Council?

Mr McCulloch—I do not know. I am only a builder. I have read a lot of this information and it is very worrying. For the want of running a test case, I am taking a small traffic fine through to the International Court of Justice. I am sending a letter off very shortly with all this documentation. I have asked for the documents which show where the police have the right to even pull me up on the highway and fine me, and they can't issue that.

Mr CAUSLEY—I hope you're not spending too much money on it!

Mr McCulloch—No.

Mr DANBY—If all law and statute in Australia has been illegal since 1920, what do you propose that we on this committee should do? Shall we wait until you have received an answer to your letter?

Mr McCulloch—It is not up to me—you are the people in the hot seat.

Mr DANBY—I am asking you for your suggestions. Do you have any proposals? What is the implication of all of this? What should be done immediately?

Mr McCulloch—I do have a letter here, as part of the documentation, which is allegedly from a High Court judge. He says that a new Constitution would have to be rewritten, backdated to 1920 and passed through referendum by the majority of people in the majority of states. He says that there is no other way to fix it. I can give you a list, if you wish. **Mr DANBY**—Which High Court judge is this, and how recent is the letter?

Mr McCulloch—The problem is that it does not have his name on it. I have not got it, anyway.

Mr DANBY—How do you know it is a judge?

Mr McCulloch—I am only saying what is written here. If you read it, it is obviously not written by an amateur.

Ms HALL—Is there something more that you can give to the committee?

Mr McCulloch—I can give you some of this, if you wish. It is of great concern to me. I want to know what is going on. I can assure you that their argument is very convincing. As a matter of fact, a 300-page submission was sent very recently to the International Court of Justice about exactly this. It is supposedly being considered right now.

Mr PRICE—When did you first become concerned about it? What prompted the concern, Mr McCulloch?

Mr McCulloch—About 12 months ago, I started to find out about this. I have actually gone to republic meetings, where people say they are going to vote for the republic, ‘Yah, yah, yah.’ I have held this up and said, ‘This is our rule book. Where is yours?’ When they said that they did not have one, I said, ‘What are you here to talk about?’

Mr DANBY—What rule book is that?

Mr McCulloch—This is the Constitution. I am shattered to find out that maybe this is not legal.

Mr CAUSLEY—So we are all going to be jailed for treason?

Mr McCulloch—I am not saying that. I think it is an issue. I am bringing the issue up: I want it to be brought forward and I want people like you to look into it. There is no use just shrugging it off and saying, ‘This bloke is a ratbag’—which I may well be.

Mr PRICE—No, we will look into it.

CHAIRMAN—We will get a legal opinion.

Mr McCulloch—I will hand over a couple of other documents, if you like. This one, for instance, goes into great detail about the whole thing. You can have that one.

Mr DANBY—Mr McCulloch, would it be possible to get some of these documents and this argument made up and sent to the committee in written form before we make our final deliberations, so that we have some of your arguments in writing? If you want people to deal with it—

Mr McCulloch—I will get far better qualified people than me to do it, if you like. I will get it from a QC.

Mr DANBY—But this committee has not got those far better arguments. It is better to have some of the arguments than none.

Mr McCulloch—What time have I got to do this?

Mr DANBY—When is our final hearing?

CHAIRMAN—9 August.

Ms HALL—We will need it by the end of next week.

Mr McCulloch—If you can give me the address and so on, I will get someone far more educated on the subject than me to put a submission to you.

Ms HALL—Mr McCulloch, could I ask you something: have you got photocopies of the material you have there?

Mr McCulloch—Yes, I have a spare one of those.

Ms HALL—Maybe you could leave that with us.

Mr McCulloch—Gladly. I just want to get to the truth; that is all. For instance, there is a person here who wrote to the tax office and asked them for documents—I will just quote this. I am getting a bit side-tracked here, but it is all part of the same thing. He requested certified copies of the documents that established the Australian Taxation Office. This poor fellow went to no end of trouble to find the document that actually established the Taxation Office. I quote: With regard to the creation of the Taxation Office (ATO), I was able to ascertain that the ATO was created as a branch of the Commonwealth Public Service by an executive instrument in 1973. Officers of the Commonwealth Public Service were assigned. . . . An extensive search of the ATO library and records management system failed to identify any document relevant to this . . . request. Similarly, inquiries to the Commissioner's office, People and Structures Branch, the delegations and authorisations officer and the Parliamentary Business Unit did not identify any document. On the advice of the Australian Government Solicitor's Office, I contacted the office of the Official Secretary of the Governor-General in an attempt to identify and obtain a copy of the executive instrument. This office referred me to the Federal Executive Council, who then suggested I contact the Australian Archives. A detailed search by all officers failed to locate the relevant document.

So is the tax office legal?

Mr DANBY—That letter is from the tax office?

Mr McCulloch—It is from the tax office. I am concerned. Where does this all end? I think we are all wasting our time, I really do. Here is another document—I will leave that one for you.

Mr DANBY—Mr McCulloch, can I just bring you back to when you went along to this republican meeting and they were going 'rah-rah' and you brought along the Constitution, what was the point at that stage of you going along?

Mr McCulloch—My point is still the same, actually. How can you vote on something until you read the rule book? As far as I am concerned, if people do not have this new bill available to read, how can they possibly vote for it? It is like two football teams running on a field: one has a set of rules and one has not. What happens to all our inherited rights?

Mr DANBY—You are against people voting just on the long title? You want them each to have read the bill beforehand?

Mr McCulloch—You have to know what you are voting for. There is more involved than just a change of head of state—we all know that. There are many more changes than just that.

Mr DANBY—Are you concerned about those changes?

Mr McCulloch—I certainly will not be voting for it until I can read the whole thing. I might be in favour of it—I do not know. I must admit that I have not read it, but I will. I do not see

how anyone can be asked to vote on a document that they have not read. I just do not see how you can do that.

Mr DANBY—Isn't that a problem with a lot of referendums: the majority of Australians would not read the full bill; they would just read the long title?

Mr McCulloch—If they choose to remain ignorant, you cannot help them. Unfortunately, with the apathetic Aussie there is one thing I have discovered: you cannot get him off his backside. While he has three meals a day and a stubbie in his hand, he is right. That is an absolute fact. I would like to see CIR put in it. You are talking about the problem of the Prime Minister sacking the President. If CIR were put in there, the people could say, 'No, we don't like that.' That would be a very good deterrent for that sort of thing.

Mr DANBY—Did you know that a copy of the bill is going out to every citizen in the education program that is being planned before the referendum?

Mr McCulloch—No, I did not know that, but that is good. I hope they read it. Let me say, I am not a member of any political party or organisation either; I am just here as a concerned citizen.

CHAIRMAN—You are allowed to be. We are a democracy.

Mr McCulloch—Yes, I hope we are.

CHAIRMAN—You can belong to whatever you want to or not.

Mr McCulloch—This is of great concern to me, and I would appreciate something being done. This is a golden opportunity to speak to so many MPs.

Ms HALL—We will listen.

Mr McCulloch—Please copy and read the documents because, I can assure you, it is a very strong argument.

CHAIRMAN—We will check it out.

Ms HALL—How about you leave the ones that you can afford to leave?

Mr McCulloch—I have left those.

Ms HALL—Yes.

CHAIRMAN—Thank you very much for appearing before the committee today. Is it the wish of the committee that we receive those documents as evidence? There being no objection, it is so ordered.

[3.46 p.m.]

WILTSHIRE, Mr Terry James (Private capacity)

CHAIRMAN—Welcome. Do you have any comments to make about the capacity in which you appear?

Mr Wiltshire—I am the proprietor of the Republic Hotel, South Townsville. Subsequent to renaming the hotel from ‘The Empire’ about six years ago, I became a member of the ARM. But I do not talk for the ARM here; this is personal. I jotted down these notes only a little while ago, so I will read them as they are.

CHAIRMAN—We are pretty easy to get on with.

Mr Wiltshire—You can see I am nervous, can’t you? I am a fairly ordinary person, I think.

CHAIRMAN—So are we.

Mr Wiltshire—I have my say on some issues and, because I have a hotel, I talk to a lot of people. I think I know the average Joe Blow in the street fairly well. I thought I had followed the republic issue fairly well until last Friday when I found out that this meeting was on. I did not know at any stage that I could personally comment on the bill. I do not know the terms of reference because it was only yesterday morning that I had any idea at all of what it was about, so just bear with me.

I do not understand law or politics any more than the average Joe Blow does, but I do believe that most of the people do not understand what the issues are. Most of the people would accept a question, as has been suggested by Jan and Bernie, simply along the lines of, ‘Do you want Australia to become a republic?’ That means replacing the Queen with an Australian as head of state. I think that simple question would do. I also think, from what you said earlier, that that question cannot be the one asked. Is that correct?

CHAIRMAN—No.

Mr Wiltshire—It shows how much I do understand, doesn’t it?

CHAIRMAN—It has been proposed, for instance, that the title might read ‘A bill for an act to alter the Constitution to establish the Commonwealth of Australia as a republic’.

Mr Wiltshire—Thank you very much. I think that is what a lot of people would understand. They would not understand the greater detail of it—no way—as the gentleman before me said. They never will understand a lot of the issues and many of them do not want to. But there are a lot of people out there who want to have a clear question asked, basically: do you want a republic, yes or no? Having a republic means replacing the Queen as head of state.

I would like, at this stage, to say that I very much support what Jan McLucas and Bernie Treston have said. There were slight differences in what they were saying but, I think, by and large, they have covered my stance as far as the referendum on the republic is concerned. So I do not believe I need to go back over those matters. I was not aware that we were all getting a copy of the bill.

CHAIRMAN—No, you are not. As you are appearing before the committee, you will get a copy of our report.

Mr CAUSLEY—A copy of the bill will be distributed in the education campaign.

Mr Wiltshire—In the education campaign?

CHAIRMAN—There will be a copy of the bill itself?

Mr CAUSLEY—Yes, I understand so.

Mr DANBY—I understand so.

CHAIRMAN—I am advised by my colleagues.

Mr CAUSLEY—Are we wrong?

Senator STOTT DESPOJA—I am not sure.

Mr CAUSLEY—I think we are. I think we are putting that out.

Mr Wiltshire—I was not aware of the fact that we are doing that and that we were on the verge of an education campaign, which means that the reason I fronted up here becomes a lot less relevant because my main aim was to inform you that the people really do not know what is going on.

Ms HALL—I think that is a very good message for us.

CHAIRMAN—We know that, by the way.

Mr PRICE—The fact is that it is important to come forward today.

Mr Wiltshire—My last item is to thank you for giving me the opportunity to be here and to thank you for being in North Queensland.

Mr CAUSLEY—It worries me a little that people did not know that we, as a parliamentary committee, were coming here because the government is required to advertise in the major newspapers. We advertised in the *Courier-Mail* for submissions, didn't we?

Mr Wiltshire—The *Courier-Mail* is not all that well read.

Mr CAUSLEY—I am asking which of the major newspapers we advertised in. Also, press releases are put out to every media outlet. So we try as much as possible to get the message out there.

Mr Wiltshire—In the course of my business, I advertise in all sorts of things. I am still amazed at how the message does not get out a lot of the time. Someone told me this morning that it did appear in the *Townsville Bulletin*, but he thought it may have appeared in the public notices or somewhere like that. For my information I rely on a press release that has a big heading, a feature article or something like that. So if it was there, I missed it as well.

CHAIRMAN—I am advised that we did advertise in at least one Townsville newspaper.

Mr Wiltshire—I do not doubt that at all.

CHAIRMAN—The committee instructed the secretariat that we wanted the advertisements to go to not only the national papers or the big city dailies but also regional papers. We demonstrate our sincerity by the fact that we are here.

Mr Wiltshire—I do not have a problem with that. In getting the message out to the people—even to someone like me; and I am reasonably well informed about which way things are moving at present—I have missed it. I am sure it was there, but I missed it. From the response I have had this morning, there are a lot of people like me, people who have said, 'I saw something on the news last night,' or 'I heard something about it on the radio.' It was as recent as that. That is the only information that these people have had that you people were going to be here.

The other point, too, is—going back even further—that I was not aware that I had an opportunity to comment at all. I could have been sitting down in the last month or so, in what little spare time I have, trying to put something meaningful together. I have not been able to present anything but, thank goodness, Jan and Bernie have basically said it for me anyhow.

CHAIRMAN—Terry, if it makes you feel any better, we could not have told you a month ago that we were going to be here.

Mr Wiltshire—I figured that from something Jan passed on to me recently. What I meant was that I could have done a written submission, I imagine, to Brisbane or somewhere like that.

CHAIRMAN—A month ago we did not even know we were a committee.

Mr Wiltshire—Oh, okay.

CHAIRMAN—This is a very quick process over the winter break. We have to travel around the countryside with our dog and pony show, try to get it all together and get answers back to the parliament on 9 August in order that there is enough time. To understand the process, what has to happen is that, since the Constitutional Convention, quietly behind the scenes in A-G's they have been working together trying to put into a form of words the outcome of the Constitutional Convention that is workable and demonstrates the will of the Convention. That was not easy. The lawyers have all had a go at it. They have sent out drafts here, there and everywhere. Independent advisers have come in with different advice. You know how lawyers are—none of them ever agree on anything anyway.

Mr Wiltshire—My point is not a criticism of what has been; it is more to give you a bit of knowledge from our side of it as to how you might be able to publicise and present.

CHAIRMAN—I am trying to explain the process. When the bills were ready, Daryl Williams sent out an exposure draft for people to comment on. They got some 80-odd submissions on the exposure draft. He modified the bills based on some of the replies to the exposure draft. Then the Prime Minister said, 'We'll have a select committee of both houses of parliament with equal numbers of government and opposition members in the same proportion to senators and members that there are in the Senate now.' The bills went before the Senate and the House, and this committee was established. We formally became a committee on 22 June, and it has all had to happen since then. That was three weeks ago. It has been a pretty fast process.

Mr Wiltshire—Not bad for you people.

CHAIRMAN—We have to report back so that the government can include any amendments quickly—if there are any—to get that bill through the House and the Senate in that first week in August in order to allow the yes and no cases to be prepared, the money for them and all that stuff to go forward and then for the Australian Electoral Commission to do their job in formally advising ahead of the poll. It is all to a very tight time schedule. We are sorry about the timing.

Mr Wiltshire—I am glad to see it happening.

CHAIRMAN—We lost our winter too.

Mr CAUSLEY—It is the government's intention that everyone will get education—information—about what the referendum is all about. Then there is the \$10 million that goes to both sides to advertise. From here on, you will hear a bit about the republic.

Mr Wiltshire—Thank you very much. Do you want me for anything?

Mr DANBY—I want to draw your attention to the fact that the long title the Chairman read out was the government's proposal for what will appear on the referendum. That is a very crucial point for you and other people here to understand, because the alternative that is being

suggested by the Australian Republican Movement and, in fact, is in Mr Treston's submission here today—

Mr Wiltshire—I do have a copy of it.

Mr DANBY—You should have a look at that and contrast it with the existing long title that is being suggested. The opinion polls show that, if you ask the two questions: 'Are you in favour of a republic?' in that bland form and, 'Are you in favour of an Australian head of state?' in another form, the answers that you get are very different. One of the very germane things that witnesses are talking to us about and that we are discussing amongst ourselves is: in what form does this long title go ahead? Therefore, the input of people all over Australia, suggesting, 'This should be in the bill,' or 'That should be out of the bill,' is all very valuable, because it will help us to formulate a position which we can recommend to the parliament. We will then hopefully have a refined position which as many people as possible can support or not support.

ACTING CHAIRMAN (Mr Causley)—Thank you for appearing before the committee today.

Mr Wiltshire—Thank you very much.

[3.59 p.m.]

COMINO, Mr Michael Theodore (Private capacity)

ACTING CHAIR—The chairman has disappeared for a while and has conscripted me as chair. Are there any other people who would like to make a statement?

Mr Comino—I am a citizen concerned about the entire concept of the republic. Like many people here, I have been following the debate very carefully. However, there is one thing I am disappointed with. The person who initially proposed this was Paul Keating, of course, the then Labor Party Prime Minister. We had problems such as unemployment and youth suicide, so he diverted people's attentions away from the issues that are of pertinent concern and talked about the republic. What I have to ask is this: if we want to go for constitutional change, what will happen to the Australian Constitution as a whole? What will happen to the states of Australia, for example? We have the names 'Queensland' and 'New South Wales'.

Ms HALL—They will still be the same.

Mr Comino—They will still be the same—in other words, nothing will change.

Mr PRICE—They have the option to become republics themselves or continue with a constitutional monarchy.

Mr Comino—In other words, we are going to have countries within a country, like in Europe. No?

Mr PRICE—Not at all.

Mr DANBY—No. There have been a lot of submissions to us from various people who see the same strange situation developing that you are talking about, and they have made recommendations to us about how this ought to be addressed. Some people say that it is impossible that you could have royal prerogatives existing in certain states if the Australian people were to vote for an Australian republic.

Mr Comino—This is the question—if and when Australia becomes a republic. In order for the referendum to succeed, as far as I am aware, it needs a majority of the people in a majority of the states. In many respects, you could say that that is a disguised gerrymander. The states will ultimately decide, not the people.

Mr PRICE—No. It is the people voting in the states. The double requirement in a referendum is a majority of the people in the states agreeing and a majority of the voters in Australia agreeing. You need a double majority. In other words, if you had a majority in Victoria, a majority in New South Wales and, overall, a majority in Australia, it would fail, because it did not carry the majority of states.

Mr Comino—Another thing is that, for a referendum to succeed, we need bipartisan approval.

ACTING CHAIR—Usually. It did not happen in the Northern Territory.

Mr Comino—Yes. They tried to have a little thing about euthanasia, and look what happened—it fell flat on its face. They are not really a separate—

ACTING CHAIR—You are right in that the referendums that have succeeded have had the support of both sides of politics.

Mr Comino—Yes.

Mr PRICE—Eight out of 43 have succeeded. Can I go back to the point about the states. If you look at what happened with imperial honours once we abolished them at the federal level, the Queen—of her own volition—approached the states to say that she would no longer offer imperial honours to the states, although the states, in theory, were allowed to confer them. So there is an argument that, if a referendum were carried, the Queen might very well say that she would prefer not to be the head of the various Australian states, as she currently is. That is a matter of speculation; we do not know. But, under these proposals, the states have the right to continue unfettered and unchanged as part of the federal system and having a vice-regal head, or they have the choice to undertake their own referendum.

ACTING CHAIR—Senator Stott Despoja will tell you that the Senate is the protector of the states.

Mr Comino—Actually, that is open to debate now.

Senator STOTT DESPOJA—Just to clarify, I recognise that it has not operated as a states house since at least—

Mr Comino—The Democrats stepped in.

Senator STOTT DESPOJA—the Second World War. Without meaning to prolong any more facetious comments from members or witnesses, I did want to say there is no guarantee that the bill will be sent out. It is not planned at this stage. My understanding from the Attorney-General's office is that if people request a copy of the bill it will be made available to them. There is some uncertainty as to whether or not the bill will definitely be provided at the polling station for people voting in the referendum, but as far as we know it will not be sent out. That may be something that the previous witness may like to make a recommendation on, or are you just happy to have that clarified?

Mr Wiltshire—I do not think so—as long as the department decides to make it available.

Mr DANBY—I am sorry; I thought there was an understanding that the yes case was sending it out.

Senator STOTT DESPOJA—It may happen that the yes committee decides to do that, but I am not sure at this stage.

Mr Wiltshire—Will that include a definition of the republic?

Senator STOTT DESPOJA—You ask too much; I know only so much.

Mr Comino—Other questions concern me about whether we become a republic. As the previous speaker stipulated, British law is enshrined in the Constitution. It is enshrined in every constitution that you can think of in the former British colonial world. The United States of America Constitution is based on English laws primarily, but they have diverted their structure away. For example, the Prime Minister and the Governor-General's powers are enshrined in the President. The Congress actually has the purse strings and says, 'Yes, you can go ahead with that' or 'No, you can't' and the Supreme Court says, 'That is law as against the Constitution.'

Another concern to me is that here in Australia we do not have a bill of rights. Many people have stated this, even Geoffrey Robertson, who said, 'We don't have one.' Is there any clause in the Constitution that stipulates we have these following freedoms: the freedom of speech, the freedom of expression, the freedom of choice? Are these basic fundamental human rights enshrined in the Constitution? More importantly, do the Australian people, as a whole, know about them?

Mr CAUSLEY—Are they denied in Australia? Is anyone stopped from speaking in Australia? Have you been stopped from speaking here today?

Mr Coleman—Yes.

Mr CAUSLEY—You were not stopped from speaking here today.

Mr Coleman—I have been arrested on a few occasions.

CHAIRMAN—These are formal proceedings. You cannot call out from the floor.

Mr Coleman—Sorry.

Mr Comino—Exactly. If we protest or someone expresses a point of view against a political party, we get arrested. Political parties, I stress, are in it only for whatever they can get. This is a sad fact about all politicians, I am afraid.

Mr CAUSLEY—I take exception to that, quite frankly.

Mr Comino—Really?

Mr CAUSLEY—Yes, I do. I take huge exception to it.

Mr PRICE—The point about the bill of rights is that there are those, like me, who would argue that we should have them here and now today. There is nothing that this referendum will do to stop us arguing, at a later point, that we should have a bill of rights in the Constitution.

Mr Comino—Why not? Why can't the Australian people have something in concrete to say what we can and what we cannot do?

Mr PRICE—Because the outcome of the Constitutional Convention was that this is the model that the majority agreed with.

Mr Comino—The majority of whom?

Mr PRICE—Of the Constitutional Convention. It does not stop us at a later time arguing for and debating over and finally having a referendum to adopt a bill of rights.

Mr Comino—The majority of the Constitutional Convention said that, but the majority of the people were the silent majority, you could say.

Mr PRICE—Sorry?

Mr Comino—What you discussed was in the Constitutional Convention; the Constitutional Convention members decided that. It was not the majority of the people outside who decided that; it was the Constitutional Convention itself and that is really bizarre. Why can't the people be consulted on this?

Mr CAUSLEY—The referendum in 1986 asked whether they wanted a bill of rights and they said no.

Mr PRICE—There were some rights proposed that were rejected by the people, regrettably, but certainly they were not as extensive as a bill of rights.

Mr Comino—Like one vote, one value? For example, the preferential system of things.

Mr PRICE—Freedom of religion, fair compensation for land and recognition of local government were rejected by the people.

Mr Comino—There was no bipartisan approval of the thing.

Mr PRICE—I do not disagree.

Mr Comino—There was not any bipartisan approval on that. The only thing that had bipartisan approval was one vote, one value, one time.

Mr CAUSLEY—We cannot change that at this stage.

Mr Comino—The preferential system is another thing. That is undemocratic because we have a power sharing arrangement between two political parties. One vote, one value.

Mr CAUSLEY—And voluntary voting?

Mr Comino—No. I do not prefer voluntary voting. I did not say I preferred voluntary voting. I prefer compulsory voting, but I prefer to have a system in which I make the choice and my vote is not used as someone else's vote.

Mr CAUSLEY—You do not have to in the states these days.

Mr Comino—In the states, no. But in the federal arena you do.

CHAIR—Thank you very much. Thank you everyone for your attendance. Thanks to Hansard and the other staff.

Resolved:

That the submission by Bernie Treston be accepted.

Resolved:

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

Committee adjourned at 4.11 p.m.

