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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

WEDNESDAY, 21 JULY 1999

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JOINT SELECT COMMITTEE ON THE REPUBLIC REFERENDUM

Wednesday, 21 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: Senators Boswell and Stott Despoja and Ms Julie Bishop, Mr Causley, Mr Danby, Ms Hall, Mr McClelland and Mr Price

Terms of reference for the inquiry:

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

WITNESSES

Committee met at 10.15 a.m.

LAVARCH, Mr Michael Hugh (Private capacity)

ACTING CHAIR (Mr Causley)—I declare this hearing open. For the information of members, our chairman has been in hospital overnight, our deputy chairman is on a plane that has not arrived yet, and I have been asked to chair these proceedings until he arrives. This committee is examining the provisions of the draft legislation introduced by the government in June to provide for the Constitution to be altered to lead the way for Australia to become a republic. For the past three weeks the committee has taken evidence at public hearings in Canberra, Sydney, Melbourne, Adelaide, Perth, Broome and Hobart. This week we have been to Darwin and Townsville and we are today in Brisbane. We are pleased to take evidence in Brisbane, and the committee welcomes witnesses and members of the public who may wish to observe the proceedings. Welcome, Mr Lavarch. Would you like to make an opening statement?

Mr Lavarch—Thank you, Mr Acting Chairman and members. It is good to be on the other side of the desk at one of these occasions. I generally tried to avoid them as a minister, but I have very fond memories of travel similar to the pattern that you have just outlined, Mr Acting Chairman, in chairing the Legal and Constitutional Affairs Committee of the parliament.

The committee obviously has an enormously important task before it. Essentially, the committee has been asked to look at the Constitution Alteration (Establishment of Republic) Bill 1999 and the Presidential Nominations Committee Bill 1999 to determine whether these bills do in fact reflect a fair implementation of the decisions of the Constitutional Convention. I had the good fortune to attend the Convention as an elected delegate from Queensland, and I would have to say as a general statement that the government has put together a generally fair representation of the Convention's outcome. My comments will focus not so much on the particular detailed provisions contained in the bill but, to an extent, on the long title of the Constitution Alteration (Establishment of Republic) Bill. I will also make some brief comments concerning the public nomination bill.

Essentially, the Convention had before it a number of key issues which it had to address to meet the charter which the government had set in terms of developing a republican model to be put to the Australian people. In simple terms, the core elements of the model, if you like, revolve around three issues. First is the question, which I will argue is paramount, of what the job is—what are we talking about; what is the nature of the powers and functions which an Australian President within an Australian republican model would exercise? Second, having decided that question, how does one best appoint or elect a President to fulfil that particular function and those powers? Third, what are the circumstances, and how should it work, whereby a President might be dismissed from office?

In terms of the public debate about the issue, the focus has very much been on the issue of appointment and, from the Convention debate, whether the appointment should follow the so-called McGarvie model, whether it should follow a parliamentary appointment process or whether there should be a direct election of the President. That also has characterised the public discourse about the republican model. However, in my view, that has put the cart before the horse. Focusing on the question of the appointment process is like operating a business and having a great debate as to whether we should get a job filled by going to Australian National, putting an advertisement in the *Courier-Mail*, going to a headhunter or putting a poster in a shop window which says that there is a job vacant. Having decided this key question, together we had better scratch our heads to decide what the job is. Are we appointing

the managing director of our company, are we appointing the person working in the mail room or are we appointing a cleaner?

To my mind, the logic of this is that you would first decide what the job is and then you would decide how you get the person into the job. That is why the Convention, in terms of its order of proceedings in going through these matters, first decided to receive reports from the working groups and through the resolutions group on the question of powers. That was the issue which was decided first by the Convention. Following from that, there was debate and there were resolutions and votes concerning the method of appointment and the dismissal questions. What is the nature of the job we are talking about? Are we talking about an executive presidency? Are we talking about a role which essentially exercises the powers which are currently exercised by Her Majesty and, more appropriately, on a day-to-day basis by her representative, the Governor-General?

From the decision of the Convention and the public debate over the last decade, the core of this issue is the replacement of Her Majesty and the Governor-General with an Australian President within an Australian republic, but that the issue of powers should remain the same—that is, the President would exercise those same powers which are exercised by the Queen and by the Governor-General. We are not proposing—and this model does not propose—to move to an American style of presidency nor proposing that all powers of the head of state be removed, as one sees in an Irish model. So there is no reduction in powers nor an increase in the powers of the head of state.

When confronted with having to give a succinct description of the model so people understand it, as much as it can be understood through a simple sentence—obviously, there is great constraint in that, but the task that confronts the committee, the government and the parliament is to devise an appropriate sentence or phrase to describe the model—the long title of the bill has picked but one element of the model, and that is the appointment process. As currently drafted, it does not even accurately describe the totality of the appointment process. In my view, a better description would focus on what I believe to be the core issue—the question of the powers—and not attempt to describe the appointment process and the dismissal process.

These are all important parts of the model. But, in my submission, they hang off the question of the powers. Once you decide the powers, the question flows: how do you best appoint or elect someone in order to reinforce the nature of that role and the powers that it exercises, and how is a person exercising that power and playing that role dismissed? How do the power balances work between the executive government, the Prime Minister and the parliament? The model answers that question at its core and, in my submission, the long title of the Constitution alteration bill should also reflect that.

In my submission to the committee I proposed a form of words, but I have drafted a slightly better form for the committee's consideration which, with your permission, Mr Acting Chairman, I will submit to the committee secretary. I will read it for the benefit of the *Hansard* record. The form of words that encapsulates the point that I am trying to make about the central nature of the powers of the position is as follows:

A Bill for an Act to alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by an Australian President having the same powers as those currently exercised by the Governor-General.

I accept that most of the submissions before the committee—and, indeed, the public debate—have taken as a starting point the question that it will be the appointment process which is

contained in the long title, and it may be a conclusion that the committee reaches. To that extent, it is too far down the track to try to make the change that I am proposing, even though I would strongly urge you to at least give my submission some consideration.

If the committee comes to the view that the long title will have to refer to the appointment process, then, in my submission, the long title as it is currently configured does not do justice to it. The operative words are, 'A republic with a President chosen by a two-thirds majority of the members of the Commonwealth parliament.' That is but part of the appointment process. If a decision is made that the model is to be described to the Australian people by reference to its appointment component, then, in my submission, the appointment component should be properly described by the long title. To that extent I would endorse the submission of the Australian Republican Movement, which suggests that reference be included to the replacement of the Queen as Australia's head of state by a President chosen following a public nomination process and then approved by a two-thirds majority of the Commonwealth parliament. I will leave my remarks on that matter there.

I make one final comment in relation to the second bill before you—the Presidential Nominations Committee Bill 1999. My general comment is that, again, on the whole the government has put forward a fair bill that attempts to fairly implement the—albeit somewhat broader—recommendations of the Constitutional Convention on this matter. My only concern with it, and where I think it might be improved, is that at the moment it is proposed that the community members of the Nominations Committee—that is, members beyond those who go through the formula, if you like, in terms of parliamentary representation—will be appointed by the Prime Minister.

I think there would be a greater degree of public confidence in this committee and its membership if the community members were appointed through a process of consultation with the Leader of the Opposition and other parties in the parliament. To that extent, I think that clause 11 of the bill, which talks about the Prime Minister appointing the members of the committee, might be examined to see if the Prime Minister can appoint the members following consultation with leaders of political parties with at least five members of the parliament. That picks up the same formula which is earlier in the bill in terms of representation at a political level on the committee. I have not actually proposed a form of words to achieve that end, but I would ask that the committee give consideration to that view as well.

ACTING CHAIR—Thank you, Mr Lavarch. I might just ask a couple of questions to start with. You raised a couple of issues that have had quite a bit of debate before this committee. We have had submissions either way about the long title. The Australian Republican Movement has suggested that there should be a form of words to show that the President is replacing the Queen and the Governor-General as head of state. The monarchists of course have said, 'If you are going to put that in the long title, then a very important part of the bill is the powers of the Prime Minister to dismiss.' I think what you were saying is that you cannot put all of that into the long title, and that is why you have suggested this form of words. Is that correct?

Mr Lavarch—Yes. I am saying that it would become, I think, extremely difficult to describe completely the entire model. We have a bill here which describes the changes to the Constitution which are necessary to implement the model. Although it is not a terribly long bill, it nonetheless cannot be easily reduced to 50 words. My basic point is that if you have to make a decision as to how you can best give the essence of this change and describe it to the Australian people, you have to make a fundamental decision about what is the core change being proposed. In my view, the core change is the replacement of Her Majesty and the

Governor-General in the Australian constitutional arrangements with an Australian President exercising the same powers. I would be concerned that to focus only on the appointment process would not address a degree of misconception in the community where, when they think 'President', people probably think Bill Clinton rather than Bill Deane.

The core element of the change is that the system remains. The balance of power between the executive, the parliament and the states is not being touched or altered, that the relationship between the head of state, the executive and the parliament—and their powers—is not being altered. That point needs to be conveyed, and it seems to me it could be best conveyed by saying that the powers are those currently exercised by the Governor-General. If the long title has to focus on a part of the model, it should focus on the core part—that is the powers part. If the committee take the view that it should focus on the question of appointment—and that is not my preferred view—then my submission is: describe the process fully; do not simply describe part of the process of appointment.

ACTING CHAIR—I take you to the powers of the Prime Minister and the powers of the President. There has been quite a bit of evidence about those, and in particular about the powers of the Prime Minister. One side of the debate would say that it is only a minimal change in that the power of the Prime Minister to sack the Governor-General has been transferred in this bill to the power of the Prime Minister to sack a President. The other side of the debate is saying, 'Not quite, because if you have to go to the palace there is a bit of delay there, and we do not know how much delay, so there could be a bit of change there.' Given for the sake of this question that they are the same and going back in history to 1975, when in fact the Prime Minister could have sacked the Governor-General—and I think from evidence given to this committee a future Prime Minister would sack the President—and when you had the Senate deny supply, where to from there?

Mr Lavarch—That was very much the core issue which dominated a great deal of debate at the Constitutional Convention. Of course, the fundamental difficulty with a process of direct election of the President is that to implement such a system requires dealing with the issue of the power of the Senate to block supply and the power of a Governor-General in our current circumstances to dismiss a Prime Minister and government. The advocates of direct election at the Convention, for instance, recognised that and in their final form that they modelled put forward a proposal which did not touch the Senate's powers but proposed to place a limit on the powers of the President to dismiss a Prime Minister, the point being that it was accepted that you cannot move to a situation of direct election without confronting that issue of powers.

You ask, 'Well, what does the model do about it?' In my submission, the model leaves it where it is. That may not be hugely satisfactory. Many people would argue that the powers of the Senate should be looked at, but that is a different debate. This leaves the balance where it is, except, I suppose, to the extent that it places a constraint on the effective exercise of power by the Prime Minister. It does that because, while the Prime Minister can dismiss a President, the Prime Minister cannot simply appoint a new President. There is a situation of Acting Presidents who are drawn from state Governors. A new President can only be finally approved by a two-thirds majority of the parliament. So, under our current situation, the Prime Minister gives advice to Her Majesty and Her Majesty is, of course, bound to act on that advice.

I would be very sceptical about suggestions that somehow Her Majesty might exercise powers to delay, counsel or warn. If that is the argument being put forward by others, they are then arguing that the Queen does in fact have a potentially active role to play in Australia's constitutional circumstances. I would have thought the core argument coming from those

opposing change is that the Queen has no active role and, hence, there is no need to embark on this process of change. My submission would be that Her Majesty would not countenance any suggestion of delay and would immediately act on advice of the Prime Minister. If the Governor-General is dismissed, the Prime Minister, immediately, in the same letter of advice can recommend that someone else be appointed as Governor-General. Again, Her Majesty would immediately act on that advice, and a person recommended by the Prime Minister would be appointed. The new situation constrains prime ministerial and executive power to that extent and hence, if there is any shift of power in this particular model, it is a shift of power away from the Prime Minister and into the hands of both houses of parliament.

Mr DANBY—Former Prime Minister Malcolm Fraser in testimony to this committee in Melbourne took up the point that was raised by Mr Causley with you, and that is this area of dismissal. I paraphrase what he said, and I stand to be corrected by the rest of the committee. He said that essentially it was vital—this is very interesting in the light of historical events—that the Prime Minister have the power to dismiss the President, because this was essential for the Westminster form of government where the parliamentary system was primary. Is that your understanding as well, and is that why the Constitutional Convention suggested that the power be given to the Prime Minister to do that? I understand what you have said, that there is no real transfer.

Mr Lavarch—That is right. That was the conclusion. The model which the Keating government cabinet proposed in fact had the President being dismissed—from memory—by a two-thirds majority of the parliament.

ACTING CHAIR—Both houses?

Mr Lavarch—Yes, from memory, and I stand to be corrected on that. Certainly the Convention in its examination—and I think Mr McGarvie's contribution was quite important in this regard—came to the conclusion that a true replication of the current balances between the Governor-General exercising the role of head of state in Australia and the Prime Minister and the executive government required that the President be able to be dismissed immediately by the Prime Minister. The reason why that should be the case is obvious—that is, the people elect, as they should and must in a democracy, their government. That is where day-to-day government decision making powers are held and life changing decisions are made.

The President does not purport to exercise those sorts of powers. It is not an executive role, it is not a democratically elected role exercising those important executive functions and, in terms of a stand-off between those two positions, it is important that the Prime Minister be able to exercise that power over the President. But, as I say, where the change comes, I suppose, is that there is a shift—which I would argue is a good shift—from the complete prime ministerial authority which currently exists in terms of this circumstance to a greater role and power in the hands of the parliament because of the reappointment process of a new President.

Mr DANBY—I have two other questions. The first is a rather simple one, and that is the difference between your new suggested long title and the one that is in your original submission. You insert the words 'Australian President' and drop 'head of state'. Isn't that the opposite of what you have said in the sense that people are confused by what the word 'President' means in that they think it is Bill Clinton, not Bill Deane? It might be an idea to have the President at least explained by the words 'head of state' in the title.

Mr Lavarch—I attempted to do that by the Australian President having the same powers as are currently exercised by the Governor-General. Even with the phrase 'head of state', I

do not know that, if I were to ask 10 people on the street, I would get 10 nice, clear answers as to what a head of state is.

ACTING CHAIR—The Sultan of Brunei.

Mr Lavarch—That is right. You might get a whole lot of answers. I am not saying necessarily that people particularly understand what the Governor-General does and the powers that the Governor-General exercises. But, as much as one can attempt to describe what we are talking about here—we are talking about a particular role and a particular set of powers being transferred from the Governor-General to the position of the Australian President, and that is what I am attempting to get at there—I put forward those words as a suggestion to the committee. No doubt, finer minds could improve them.

Mr DANBY—My last question will rely on your more arcane legal knowledge as a former Attorney-General. In Tasmania we received advice that in the case of, say, a scandal involving a new King Charles III and the British parliament moving to either abolish the monarchy or put in another royal house, Australia would still have the Windsors, the existing royal family, as the royal family to whom—unless we change the Constitution—we would have allegiance. Is that correct?

Mr Lavarch—I do not know if I would want to—

Mr DANBY—Could we have the situation where the Stuarts are running England and we had the Windsors here?

Mr Lavarch—I think the operative wording in the Constitution is 'Her Majesty Queen Victoria's heirs and successors according to law'. What is the law to which this is relating? I understand it to mean the laws of succession in Great Britain. To that extent, if the position of head of the British monarchy is taken according to those laws, then that person will continue to be Australia's head of state. But about whether under that circumstance that would end up being the Stuarts or the Windsors, I do not pretend to be able to answer you at this stage. So I am afraid I cannot shed too much light on that arcane question.

Senator STOTT DESPOJA—I want to make a similar point to that made by Michael about the distinctions between your amended title and the previous one. He has asked about 'President'. Clearly, you have used the word 'republic'. You are not afraid to use it. You are quite keen to have it in there. That is a position of which you are proud, no doubt.

Mr Lavarch—I have to say that the—in my view—beat up which occurred after Malcolm Turnbull's evidence was simply some evidence of the two-minute shelf memory of the Australian media, because I recall on many occasions Prime Minister Keating, when speculating publicly as to what the nature of the question might be, talking about phrases such as 'Australia's head of state' replacing 'the Queen', and what have you; no mention of the actual word 'republic' or 'President', and no-one suggesting, 'He is hiding and running away from the term.' Mr Robb made a speech to the National Press Club a few months ago which also proposed that form of words. Again, there was no suggestion that he was hiding things under a bushel or what have you. I think that there is no huge magic in how one describes it, provided it is described in terms of its core, which in my view is the powers issue. I am very happy for 'republic' and 'President' to be up there in lights.

Senator STOTT DESPOJA—I get the impression that you are very keen to see not only an accurate reflection of the bill and the powers, et cetera, in the title but also—when you say that it is inaccurate when it states that it is 'chosen' rather than 'approved'—that this plays a fundamental part in the public information and education campaign.

Mr Lavarch—That is right. The current long title wording does not pick up on the Convention's resolution to the extent that the Convention uses the language 'approved by parliament', whereas the bill uses the word 'chosen'. I think actually in the proposed section 60 of the amended Constitution at one stage 'chosen' is used and at another stage the word 'affirmed' is used. If the criteria which the committee has is a faithful representation of the outcome of the Constitutional Convention—if that is your basic charter—then probably the word 'approved' is the language used by the Convention. But I do not know if absolutely huge things turn on it.

Senator STOTT DESPOJA—I take on board your comments that this is a general reflection of what came out of the Constitutional Convention. Something that we have discussed a number of times is the Nominations Committee and, again, I am conscious of your complaints about the Prime Minister's role in appointing those public members. But the other thing is: does this bill reflect, in your mind, the communique that looks at diversity being represented on that committee? One of the questions I have asked a number of witnesses is whether or not that specified diversity in relation to culture, age, et cetera, should be reflected or enshrined in the legislation or whether that is inappropriate or unnecessary.

Mr Lavarch—I accept the point that you make. Certainly, as I recall—as do you—it was not an unimportant part of this discussion at the Convention at the time that in order for the committee to properly fulfil its role it did have to reflect the nature of Australian society and the diversity of Australian society, and a range of characteristics were identified by the Convention to be reflected in the membership of the committee. That, to a degree, is the basis of my recommendation. Though I have no lack of faith that the Prime Minister of the day would do the right thing, if there was a consultation with the other parties in the parliament, one could be more confident that that would be the outcome.

It is a little difficult I think—and I do not mind the bill to this extent that it does not then attempt to actually list the range of characteristics. It is a bill that will become law. It can be altered over time if it is thought that what is reflected as at 1999 may be somewhat different in 2030 or what have you. It would not be a matter where I would argue against what you are proposing in terms of those criteria going in there, but I think a more effective method of actually achieving it would be to make sure that the appointment process goes beyond simply the Prime Minister of the day.

Senator STOTT DESPOJA—That leads on to the idea of updating and modernising our Constitution. How important do you see the next Constitutional Convention in, say, three to five years? How important is that in this process, and what opportunities does that give us not to fix up loopholes, specifically, but perhaps to make improvements to the legislation and indeed in our Constitution?

Mr Lavarch—In my view it was an absolutely seminal decision of the Convention that there should be ongoing constitutional conventions. It seems to me that if we, as the Australian people, cannot agree to support this particular change—which at the end of the day is an exceedingly modest change in terms of the circumstances of our head of state—then the prospects of there being ongoing constitutional change do not look terribly bright. If in 1998 something like 70 per cent of people could vote against freedom of religion being extended into the Constitution, it does not necessarily augur well if you cannot get what is an important but nonetheless modest change through. It seems to me that those who support further constitutional change would be best advised to support this process and endorse the continuing Constitutional Convention role in order that the Constitution does become a document that

can adapt—as it was always intended to—to different Australian circumstances as time changes.

Senator STOTT DESPOJA—Thank you.

Ms JULIE BISHOP—Mr Lavarch, could I focus on a couple of aspects of proposed section 59, which is in relation to reserve powers and conventions. You mentioned that the nature of the powers and functions of the President is obviously at the core of it. I will list the three issues and then ask for your comment. First, it states that the President shall act on advice and then name three separate sources. Does this impose an obligation on the President that the Governor-General does not currently have, thereby making the President's acts justiciable? Secondly, it lists three sources of advice and now, for the first time, refers to the Prime Minister or another minister of state. Does that cause confusion, potential conflict or any cause for concern? Finally, it refers to reserve powers and conventions. So, in effect, the President constitutionally must, in accordance with non-binding, fluid, evolving conventions, exercise reserve powers which are inherently uncertain in their scope—and we know how difficult it is to define the reserve powers. Will they now be rules of law under this proposed section 59? Could you comment?

Mr Lavarch—On your first point—whether, as a result of section 59, issues will become justiciable which currently are not—I do not think that would be the outcome, although the High Court has, I suppose, taken different views on things at different times. It has looked at whether the proper circumstances for the placing of a bill before a joint sitting of parliament following a double dissolution have in fact been satisfied in accordance with section 57 of the Constitution. In the case of McCormack v. Coates, the High Court did find that there were matters which the court could determine. In other instances, the court has found that matters are properly within the political domain or within the domain of the parliament and are not subject to court ruling. I have looked at the submission before the committee of Gavan Griffith QC, the former Solicitor-General, and I would endorse his view on this point at least. He took the view that he did not think it would become justiciable, and that would also be my view.

On your second point, at the moment the circumstance is that the phrase, 'The Governor-General when acting on advice,' refers to advice from the executive council. Section 59 refers to the President acting on the advice of the executive council, the Prime Minister or another minister of state. That, of course, does no more than simply state the reality of how our current system works in terms of the position of the Governor-General. On more than one occasion as Attorney-General I had occasion to give advice to His Excellency on matters, and I did that as a minister of state. Though, in a formal sense, all advice is given through the executive council, in reality, the circumstances do not necessarily operate exactly like that. To the extent that that actually describes how things operate, to my mind that is no bad thing.

I understand the point you are making: does it mean that someone can try to run a case through court that the Prime Minister gave different advice from a minister, and did the President acted properly on which level of advice? It is very difficult to conceive a set of practical circumstances where this would be of great moment or be likely to lead anywhere. I do not think it would lead to conflict or problems, but if there is a desire to simply limit the advice of the President to the Federal Executive Council, it would not disturb me to go back to that form of words.

On the issue of the reserve powers, by their nature, of course, they are potentially fluid or uncertain, and there are differences of view as to what the reserve powers are and in what circumstances they should be exercised. I have to say that I think that this, read in conjunction

with the later provision in schedule 3 which talks about 'Constitutional Conventions not being prevented from evolving,' really settles that point. It says that the President 'may' exercise; it does not say 'must'. It says he 'may exercise a power that was a reserve power of the Governor-General in accordance with the Constitutional Conventions relating to the exercise of that power.' That later provision makes it quite clear that these things are not set in concrete as of 1 January 2001. So I am less concerned about that last point that you raise.

Ms JULIE BISHOP—I just have one very quick question on the nominations bill regarding your point about being true to the Constitutional Convention communique. Your bipartisan suggestion might fairly be said to follow the communique to the extent where I believe the wording 'appointed by parliament' was used; the committee was to be selected by 'parliament'. I was not quite sure how that was going to be translated.

Mr Lavarch—I have it here. It says that, 'having taken account of the report of the committee, the Prime Minister shall present a single nomination for the office of'—

Ms JULIE BISHOP—No, I am going back to the nomination of the committee.

Mr Lavarch—'Shall be appointed by parliament', then.

Ms JULIE BISHOP—The communique said, as I recall, that the Nominations Committee was to be appointed by 'parliament', as opposed to the Prime Minister, as it appears in the legislation. And as I said, I am not quite sure how 'appointed by parliament' was to be translated.

Mr Lavarch—It would be exceedingly difficult for a committee to be appointed by parliament, as a matter of practicality. Someone has to put forward names. In my view it is not inappropriate that that be the government of the day, but I am suggesting that the government of the day should consult. I am not saying it has to be done—

Ms JULIE BISHOP—Or be compelled to consult?

Mr Lavarch—I think that clause 11 of the bill should be amended to require that the Prime Minister does in fact appoint, but following consultation with the Leader of the Opposition or the leaders of political parties with more than five members. At the end of that consultation, it would be open to the Prime Minister to make whatever decision the Prime Minister so sought, but there would have been an obligation to consult. As a matter of practice, the Prime Minister might choose to consult. I just think it might be a bit stronger if an actual obligation to consult was stated.

Ms JULIE BISHOP—Thank you.

ACTING CHAIR—Michael, I have just a few questions. Does the obligation to consult make up for the diversity issue that was raised by Senator Stott Despoja?

Mr Lavarch—It certainly goes some way towards that point. Under the current parliamentary numbers, one could well expect that, if one were obliged to consult with Senator Lees as Leader of the Democrats and with Mr Beazley as Leader of the Opposition, it would be quite likely that both leaders would put forward a range of individual's names, which would go to the very issues which Senator Stott Despoja has indicated the Convention thought should have been included in there. But I would not say, 'Hence, you then should dismiss any suggestion of listing some criteria.' If you think that is useful, then I would not be perturbed about that. I am also conscious that these things do have to work. You have to have someone making a decision—that is what executive governments do have to do.

Mr PRICE—In relation to the appointment of the Governor-General, would you concur with Malcolm Fraser's testimony that in fact there is no formal process at the moment?

Mr Lavarch—There is no process. I do not think I am speaking out of school. When Bill Deane was appointed Governor-General, I was asked about it in terms of my responsibility to find a replacement for Bill Deane in the High Court. The actual decision to appoint Bill Deane was not a cabinet decision; it was a decision taken solely by Prime Minister Keating, which was his right under our current circumstances. It did not even go to cabinet. As I say, the only reason I knew about it a bit in advance was because I had to start finding a new High Court judge. It may well be that Prime Minister Keating consulted with a range of senior ministers, but I am not aware that he necessarily did so.

Mr PRICE—Apart from good sense, is it also fair to say that there is nothing at the moment stopping the Prime Minister from appointing his chauffeur as Governor-General?

Mr Lavarch—There is obviously nothing stopping the Prime Minister appointing whomever the Prime Minister believes is appropriate for the position of Governor-General. So the chauffeur could be appointed. A former High Court judge can be appointed. Obviously, the convention which surrounds the appointment of Governors-General is that they be an eminent person of great standing. One would have to say in fairness that that has not been a power that has been abused in Australia.

Mr PRICE—In terms of the presidency and the shoot out, is it possible that the office of President could be vacant—in other words, there be neither a permanent President nor an Acting President under these proposed bills and arrangements?

Mr Lavarch—It is hard to see how that could come about. I think Mr Pyke will give evidence to you later today. He has some suggestions about making sure there is no inordinate delay between matters coming forward to the parliament to appoint a President. But if a President is dismissed, say, then the senior state governor acts. You can conceive absolutely incredible circumstances where the Prime Minister goes about dismissing in turn each of the state governors down the line so he ends up with absolutely no-one and then refuses to take anything to the parliament. But we have to put this against the test of some sort of political reality in the way in which our system actually operates and the public scrutiny upon it, and it is just inconceivable that that could occur. There is nothing in the Constitution now which talks about some sort of time frame or limit in terms of the appointment of the Governor-General. If that is a criticism of this system, then it is equally a criticism of the existing system.

ACTING CHAIR—Except if you did not appoint another Governor-General, then wouldn't the Queen automatically, under our Constitution, take over that tier of the government?

Mr Lavarch—No, I do not believe so.

ACTING CHAIR—But the Constitution talks about the Queen, the House of Representatives and the Senate.

Mr Lavarch—Yes, that is so. But, again, it is inconceivable that the Queen would start signing laws into effect in Australia.

ACTING CHAIR—I am just talking about the gap; that is all.

Ms HALL—If the Queen did that, wouldn't that in fact say that Australia was not an independent nation?

Mr Lavarch—I think that is a valid point.

Mr PRICE—In relation to the dismissal of a President, as you are aware, there is now, if you like, a safety net in that the House of Representatives should approve the dismissal by a simple majority. If that failed, what would you see happening? Would that mean then that

the Prime Minister, given that it would be a vote of confidence, would be required to stand down and another leader chosen from the majority party, or, I suppose, ultimately even an election? If you involve a joint sitting in the approval process, might you not jeopardise this confidence issue in the House if the approval process involved a joint sitting? In other words, if you are having a vote in the House, it is a vote of confidence, whereas the history of joint sittings is for approval of bills and the Prime Minister might just shrug off a lack of approval of a joint sitting.

Mr Lavarch—It is quite conceivable that in a joint sitting after a double dissolution a government with a one-seat majority in the House of Representatives does not get the bills through, given the configuration of the Senate. That of itself is no vote of lack of confidence in the Prime Minister and the majority party in the House of Representatives. You asked what the effect would be of refusal of the vote of the House of Representatives to endorse or approve the dismissal of a President. I would have thought that the convention for a vote of that nature, just as a matter of course in terms of these nebulous written constitutional conventions, would effectively be a vote of no confidence in the Prime Minister. The Prime Minister could then immediately follow on and ask for a vote of confidence, and that conceivably could be put.

Again, the way the real system works in Australia is that a Prime Minister who was voted down after dismissing a President, which is not going to be some sort of everyday decision—it probably will never happen but, if it ever happened, it would be a once in a century 'John Kerr type' circumstance—would be obliged to resign. That is the reality of the tensions in our system.

Ms HALL—I just have one very quick question—I must say I do not have a lot of questions to ask you, Mr Lavarch, because of the clarity of your submission and because a number of other people have picked up on some of the points that I was interested in—and it is probably hammering home one point that has already been made. This proposed Constitution would make the Prime Minister more accountable and make the whole process more visible. Australians would be much more aware of how a President is chosen as opposed to how a Governor-General is chosen and appointed. It would be the same with the dismissal process. Would you agree with that?

Mr Lavarch—In my view, the net outcome of this model is that it does two essential things. Firstly, it maintains the nature of our system and the power balances between the core arms of government—between the executive and the parliament and between the federal parliament and the states. There is no change to that; it is maintained. Secondly, it improves the operation of the system by diminishing to some extent the practical operation of executive power and enhancing the circumstances and powers of the parliament, opening up the process—if you consider the alternative of the Governor-General—of the appointment to involve the public and the parliament. All of those things, in my view, are significant improvements on the way our current system operates.

Senator STOTT DESPOJA—Picking up a bit on Roger's point in relation to the dismissal provisions, I am less concerned with the vote of confidence issue, although I think that is important, but I am curious about the rationale for not including the Senate in the dismissal process. You brought up the distinction between this model and the previous model advocated by Paul Keating—that is, that there not be a joint sitting of the parliament. What is your personal rationale for the dismissal process not involving the Senate?

Mr Lavarch—Essentially, the tension which exists in our current relationship between the Governor-General and the executive should be maintained. You maintain that through replicating the prospect that either the Governor-General can dismiss the Prime Minister or the Prime Minister can dismiss the Governor-General. We have that. In terms of the vote going back to parliament for open debate and endorsement—it is not a ratification—of the Prime Minister's position, the Prime Minister is drawn, and rightly so, from the House of Representatives and is answerable to the House of Representatives, and this is properly a matter which is dealt with within the House of Representatives. I recall that the previous model which was kicked around by the Keating cabinet was a complete change—that is, the dismissal would take place by the parliament, not by the Prime Minister. So that was quite a fundamental difference. Listening to the arguments advanced during the Convention, I was convinced that that was not the best way to go forward.

ACTING CHAIR (Mr McClelland)—Thank you very much.

[11.16 a.m.]

PYKE, Mr John Richard (Private capacity)

ACTING CHAIR—Welcome. Do you have anything to say about the capacity in which you appear?

Mr Pyke—Although I am a lecturer in law at the QUT, I appear in the capacity of a private person. I have no authority to give collective views of the QUT or the School of Law—indeed I believe we even have a few monarchists in the School of Law.

ACTING CHAIR—Although the committee does not require you to give evidence under oath, the hearing today is a legal proceeding of the parliament and warrants the same respect as proceedings of the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of parliament. Before we ask questions, would you like to make a brief statement, speaking to your submission?

Mr Pyke—Thank you. Since Michael Lavarch neglected to do so, let me act as an unofficial greeter for the city of Brisbane. I foreshadowed to Senator Stott Despoja a submission to you that I think you ought to include in your recommendations, and that is an amendment of section 125 of the Constitution to provide that the national capital should be in the state of Queensland but not within 100 km of Brisbane, which would indeed allow it to be at Noosa or in the hinterland at somewhere very nice like Eumundi.

To the serious business, I am certainly not speaking in any representative capacity for the QUT, but let me state the two capacities in which I am now speaking and in which I sent in written submissions. Firstly, I am a republican. I am therefore concerned that what is presented to the people be a bill which will provide for a sensible working republic and hopefully one which will have the maximum possible chance of success. Secondly, I am a constitutional law teacher, and in that capacity I find increasingly that I think I would perform a much more useful social role if I could teach the Constitution and the political system to secondary school students rather than to tertiary students who really just want to make money out of commercial law and are as bored as heck with constitutional law.

Because of that interest, I have a concern that the Constitution should be a transparent, readable document. It should not contain meaningless phrases. It should spell out the real workings of the Constitution and not leave some of the workings of the Constitution to be divined by the seers and by those who know the conventions, which are kept almost secret from the general public. That has a bearing on a couple of my particular submissions about the way the conventions are described and the submission that the Constitution be generally tidied up. I touched on five particular matters in my submission, and no doubt the committee will want to ask me questions about the appointment and dismissal—or, in my preferred view, suspension—of the President.

Let me first mention the long title. This was not something that I had seen as an issue when I was drafting the submission. Admittedly, I drafted it in rather a hurry because it was one afternoon and evening taken off from exam marking. I am a bit surprised that it has become such an issue for the Australian Republican Movement. Malcolm Turnbull said that it has to be right because that is the last thing the voter will see, as if the voter is going to come in without any decision in their mind until they pick up the ballot paper and read what this constitutional amendment is about. I hope that that is an utterly wrong forecast.

The government is going to be running an educational campaign based on Sir Ninian Stephen's material, and the yes and no cases will be saturating the airwaves with advertising

with their $7½ million budgets and whatever else Malcolm Turnbull wants to spend out of his personal fortune, I guess. To think that the long title is such a crucial thing that it is going to determine how people vote, firstly, underestimates the ability of the people to pick up something about what the debate is about in the last few weeks as the public campaign gains heat and, secondly, is terribly pessimistic about Malcolm's and the ARM's own capacity for educating the public. It seems a very odd supposition that people will be going into the ballot with no firm view until they pick up the ballot paper on which the question mirrors the words of the long title.

Having said that, I do agree that, by long parliamentary practice—going back several hundred years in Great Britain and a couple of hundred here—it is traditional that the long title accurately describe the content of the bill. I think that Michael Lavarch is right and Malcolm Turnbull is still wrong, even in his supplementary submission to the committee. The crucial feature of this bill is the fact that it is bringing in a President who will be called 'head of state', which is a term that has no real constitutional meaning anyway. It is part of the language of diplomacy rather than of Australian constitutional law.

The crucial thing is that the bill will bring in a President who exercises the same functions as the present non-executive Governor-General. Surely that is the thing that should be spelled out, in words pretty much like one or other of Malcolm's suggestions. I do not think there is a crucial difference between them. After that, it probably is necessary that it spell out something about the appointment process. I would suggest that, instead of spelling out all of the details, maybe it would be appropriate for the long title simply to spell out the purpose of the appointment process. It could say something like, 'President who exercises the current functions of the Governor-General, appointed by a process designed to ensure that the President has the confidence of both government and opposition members of the parliament'. After all, that is the rationale for the bipartisan election model. I do not know that it needs to spell out the public canvassing, filtering by committee, nomination by Prime Minister, seconding by Leader of the Opposition and the two-thirds majority.

But the manifest purpose of all of that is summed up in this nickname, 'bipartisan appointment'. It is important to make sure that we get a President who, in parliamentary language—and we talk about the government having the confidence of a majority—has the confidence of more than a majority of the members of parliament on both sides of both houses. I think that a reasonably short form of words would manage to do that.

The other thing that I would particularly like to talk about is the lack of new enacting words. I think this has been foreshadowed to you by Ms Winckel, with whom I co-authored something for which we cannot now find a publisher. As I have suggested to her, if we can persuade the committee, that would be far more to the point than having it published in some constitutional law journal which might be read by only 50 people.

The current Constitution has a United Kingdom act in the front. To use the right terminology, it has a preamble, some enacting words, sections 1 to 8 and the preliminary words of section 9, which we call the covering clauses. Section 9 says:

> 9. The Constitution of the Commonwealth shall be as follows:-

And then begins our Constitution. The Convention recommended that there be a new preamble. I understand why the preamble has been shunted off to another bill, because it is really rather difficult—especially if we are going to try to spell out our national character—to find words that we all agree on. The Convention rather lamely recommended that the preamble should include concluding language to the effect that, 'We, the people of Australia, commit ourselves

to this Constitution.' As I pointed out in the written submission, this was in fact something of a watering-down of one of the sub-working groups. I think it was subgroup 1 of the working group which dealt with the preamble matter. They had recognised that the right title for a phrase like that is an 'enacting clause', and they had suggested—and had phrased it merely as a suggestion—that it be worded to the effect that, 'We enact and give to ourselves this Constitution,' which is a form taken from the constitutions of several other countries in the world.

It seems to me that this is symbolically just as important as instituting an Australian President. What is a republic about if it is not about the sovereignty of the people? There has been an influence which has been exercised in this debate by many who have enjoyed ministerial power. Let me hasten to say that I do not share the almost paranoid suspicion of politicians that some people out in the street have, but I do constantly observe that a few months' practice in the exercise of power as a minister seems to give people who have started off with the greatest goodwill in the world an inflated view of the importance of ministers and of the necessity that they must have supreme power. We have heard words to the committee from Malcolm Fraser about the disaster that would ensue if the people elected the President and what disasters would ensue if this or that thing happened. I do not think that any of you have exercised ministerial responsibility. Senator Boswell, have you been a minister?

Mr CAUSLEY—I have been a minister in a state government. By the way, ministers were created by the Public Service to take responsibility for mistakes.

Mr Pyke—That is certainly one interpretation. I would submit to this committee—who are all, at least now, backbenchers and have not been too seduced by the limousines and ministerial swivel chairs—that, if we are to switch to a republic, two things are fundamentally important. One is that we have an Australian, directly elected or indirectly elected, head of state. Personally, I do not give two hoots which appointment method it is. The second is that we have a document which says, 'This is enacted by us: the people,' and gets its validity not from its enactment by the United Kingdom parliament and the Queen, by and with the advice and consent of the House of Lords and the House of Commons, but from the fact that we, the people, back in 1899 and 1900 approved it at referenda and we, the people, have approved amendments to it at subsequent referenda.

If the preamble bill is to be kept separate and perhaps indefinitely postponed, I submit that in the republic bill there should at least—even if we cannot agree on the whereases that should precede the 'we the people enact'—be a new enacting clause which, in the context of the current one, goes in between the ':-' in covering clause 9 and the heading 'The Constitution'. It should say something along the lines of 'We declare that this continues to be the Constitution'—we cannot actually say 'we enact the Constitution', because has existed for nearly 100 years—'solely by virtue of the fact that we the people have endorsed it.' In fact, I can think of an even stronger form of words where we would combine the supreme law clause, which is currently covered in clause 5, and say, 'We the people of Australia declare that this Constitution is the supreme law of the land and is binding on', as section 5 says, 'the courts and the people of the Commonwealth and of all the states.' That is the way the constitution of a republic starts. The constitution of an independent republic does not start:

> Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords . . . and Commons.

I note that the state parliaments, as well as passing the Australia Acts (Request) Act, are also passing a Constitution (Request) Act. When all six of them have passed it—I think that five have, and it still has to go through the last stages in Queensland perhaps—that will be

presented to your parliament to be enacted under section 15(1) of the Australia Act. That will repeal many of the transitional provisions of the Commonwealth of Australia Constitution Act but will still leave at the front of our Constitution the long title—it will for some reason take out the preamble—and will then leave the United Kingdom enacting words, the short title and the commencing words of section 9 of the UK act, presumably still to be published in front of the Constitution of the republican Commonwealth of Australia. This, I submit, is farcical.

The only way that a republican constitution ought to start—and it ought to be done, I submit, by the same amendment which will take out the references to the Queen and Governor-General and put in the President—is with the hallowed words which the Americans first drafted and most nations of the world have since copied, 'We the people', and some verbal formula to the effect that we enact this Constitution—or, in our case, that we declare it to continue to be the Constitution after existing for 99 years or so.

I guess you are going to want to ask me questions about the other things in my submission. One thing I did not discuss in the submission was the Presidential Nominations Committee Bill. I did not discuss it because I really do think it is secondary. After all, it is not going to have constitutional force; it can be amended by parliament later. But I do have much the same criticism of it that has been made by almost everybody who has mentioned it in submissions. In fact, as currently drafted, I think the marginal note to the section about community representatives is misleading and deceptive. If parliament were subject to the Trade Practices Act, which of course you are not, it would be a breach of section 52 of the Trade Practices Act.

To talk about community representatives and to leave the nomination wholly in the hands of the Prime Minister is, it seems to me, a contradiction. The Prime Minister may have the best will in the world to nominate people who are truly community representatives, but if the letter of the law says that they are to be nominated by the Prime Minister then they can only be described as the Prime Minister's appointed representatives. I have not turned my mind to working out a particular form of words that I would prefer to see substituted, but the various suggestions that have been made in submissions and that have come across the table from Senator Stott Despoja are all getting closer to the mark than that which the drafting team has managed to produce. I certainly intend to say something about those other points that I mentioned specifically in the submission, but I imagine if I shut up and let you ask questions that is probably going to arise anyway.

ACTING CHAIR—Just on the dismissal issue, the bill proposes a system of at least some accountability to parliament whereby the Prime Minister will have to justify his action, whereas at the present time the question of dismissal is really at the whim of the Prime Minister. Do you think that is an improvement on the current system? Insofar as it could be improved, what are your views about having a negative vote or a vote objecting to the actions of the Prime Minister constituting a vote of no confidence in the Prime Minister?

Mr Pyke—On that particular question I think I would endorse almost exactly the remarks made by Michael Lavarch. We have seen here in Queensland a tricky situation—perhaps it was not tricky; it was seen by some as tricky—where parliament wanted to express its condemnation of one particular action by a minister, the Attorney-General, yet the majority of parliament did not actually want to see the A-G dismissed from office. Because of tactical games that were played by the Labor Party, the only way that a censure motion could get through was in fact if it were worded as a motion of no confidence. Then we had a debate that went on for about 18 months about whether a vote of no confidence in a particular

minister means that the minister must resign. A parliamentary committee on privileges investigated that and—correctly, in my view—reported that, no, they do not.

Similarly, if the parliament passes a motion disapproving—or, in the terms in which it would be presented, 'failing to approve'—of a particular action of the Prime Minister, this would generally be seen as a pretty strong rebuke of the Prime Minister. But it does not necessarily imply that the majority in the House of Representatives prefers somebody else to be the Prime Minister. As Mr Lavarch suggested, I think immediately a motion to approve a dismissal had failed you would expect the Prime Minister either to resign or to seek a confidence motion on his or her own motion. If the intention of the majority in the parliament is, first of all, to say, 'No, PM, we don't approve of your dismissal of the President; we think that was entirely wrong, but looking around the chamber we cannot find anybody better to continue as PM,' then I guess the PM would have to continue.

This is why I think the whole thing smacks of contradiction and why, to some extent, the recommendation of the ConCon should be departed from. I really do not think that every word in the recommendations of the ConCon should be taken as Holy Writ. Firstly, the body was one-half directly elected, one-quarter indirectly elected and one-quarter stacked. Secondly, as Senator Stott Despoja will remember very clearly, it was in something of a hothouse atmosphere where a decision had to be reached by the end of the 10th day where compromises were cobbled together.

Senator STOTT DESPOJA—And Ms Bishop was also in the hothouse.

Mr Pyke—And Senator Boswell. I only mentioned you because you are the only one currently in your seat.

ACTING CHAIR—Given those limitations, what do you—

Mr Pyke—As I pointed out in the written submission, it seems to me there is an inherent contradiction in the language that emerged out of this hothouse, compromising process in which they said that the President can be removed yet described the motion going to the House of Representatives as a 'ratification'. Ratification seems to me—and I do not know if I am speaking as a lawyer; I am also speaking as a person with 50-something years' experience, in ordinary people's use of the English language—to describe a process whereby something is done conditionally in the first place and it becomes fully effective when the ratification occurs.

If we are to have a John Wayne and Gary Cooper constitution where the first to draw the pistol gets to fire the only effective bullet, it seems to me that the Prime Minister's bullet should only be described as a contingent one. With respect to all of those who were present and voting in favour of the resolutions in that terribly high pressure Convention, it seems to me that we would have a republican constitution which makes an awful lot more sense if the removal of the President can only be done by one house of parliament, the House of Representatives, with apologies to senators present.

Senator STOTT DESPOJA—Why is that? Could you elaborate on your reasons for that?

Mr Pyke—It is for much the same reason, I guess, for which it is the House of Representatives that the Prime Minister is responsible to. I think there has been too much obsession with what would happen if the events of 1975 are repeated. I do not think we should let that govern every decision that is made about the text of a republican constitution. But if it is repeated, you will have a situation in which perhaps the President does have the confidence of one house and does not have the confidence of the other house. If the idea of

the bipartisan appointment is that you want somebody who has the confidence of both sides in both houses, then logically it follows that if that person loses the confidence of either house they really should forfeit the office.

Ms HALL—But you could argue possibly that the Prime Minister at any stage does not have the confidence of both houses.

Mr Pyke—Indeed.

Ms HALL—Therefore, you would have a situation where you could never have a Prime Minister that both sides of parliament agreed to. Therefore, you would have a situation that would be unworkable.

Mr Pyke—If that rule applied to the Prime Minister, it would be unworkable. That is why we only require the Prime Minister to have the confidence of a majority of one house.

Ms HALL—That is exactly right. What you would be doing is upping the ante. If it was both houses of parliament, if at any time the Prime Minister actually removed the President, that could be used as a way to get rid of the Prime Minister and really destabilise the government.

Mr Pyke—Indeed. I was not seriously suggesting that it should be both houses of parliament—this is in response to Senator Stott Despoja's question—for the same practical reason that if you give the right to dismiss to both houses you are going to have conflicts for the same reasons for which we require that the Prime Minister have the confidence of one house. I think the workable solution for the President is that the President also must retain the confidence of the House of Representatives.

If there is then some fear of what happens if the President 'goes mad'—I think that phrase was raised at the ConCon; I really find this a bit exaggerated, and the whole debate about the republic has been a sequence of people raising exaggerated fears—and there is some need for an instant unseating of the President and for some quick action by one powerful person to get the President out of the presidential seat, then I submit it should only be a power to suspend, contingent upon a proper 'ratification', in the proper sense of the word, by the House. If the House of Representatives fails to ratify, then the President should go back to the chair. Then the Prime Minister would be in a very embarrassing position and would probably have to resign.

Ms HALL—Isn't that creating a situation different from the one that exists at the moment where the Prime Minister can end the term of the Governor-General instantly?

Mr Pyke—First of all, I deny that the Prime Minister can instantly end the term of the Governor-General. I think we have heard exaggeration on both sides here. Malcolm Mackerras has compounded his reputation for making widely inaccurate predictions by saying in a column in the *Australian* recently that, of course, if the PM asked the Queen to dismiss the Governor-General there would be a delay of three or four months. I have had this debate face to face with Michael Lavarch. I am sure there would be some delay. What we saw here in the state of Queensland when Bjelke-Petersen wanted to dismiss several of the softer members of his cabinet is a pretty good foreshadowing of what would happen. Sir Walter Campbell delayed for about 1½ to two days. We will never know, but I suspect that, if an Australian Prime Minister sent a message to Buckingham Palace, they would, firstly, have the excuse of a different time zone and the first message would come back, 'The Queen is asleep and we are not going to wake Her Majesty even for a crisis in Australia.'

Secondly, as Sir Walter Campbell did, I suspect she may want to know that this is not just the PM's whim because what if it is just the Prime Minister going mad? She would want to confirm that this is indeed the opinion of the whole Executive Council. I think there would be a delay of a couple of days.

Ms HALL—I have a couple of further questions to add to that. Malcolm Fraser, when he addressed this committee in Melbourne, said that, as far as he was concerned, the dismissal of a Governor-General took effect as of the time that Governor-General was informed of his dismissal, that it was just a formality that the Queen would rubber stamp that dismissal and that to suggest otherwise was actually ludicrous. He said that it took effect from the time the Governor-General was informed.

Mr Pyke—If he is saying that it takes effect from the time the PM says, 'I am having you dismissed,' I do not believe that is true. Consider a scenario where, instead of guns and holsters, they have pieces of paper behind their backs saying, 'I dismiss you.' At present, if the Prime Minister pulls out his 'I dismiss you' and the Governor-General then pulls out his 'I dismiss you', I would be quite confident that, if the High Court had to end up deciding it, the High Court would say that the Governor-General was still the Governor-General and that the Prime Minister had been sacked.

Ms HALL—My follow on question is: if you say that the Queen plays such an important role in this, isn't it true that Australia is not an independent nation and that Australia is in effect still a colony?

Mr Pyke—To a minor degree. We are an anomalous independent nation. You will hear ex-senator Dr Sheil this afternoon lecturing you on the fact that the Governor-General is the head of state and that the Queen is merely the sovereign—whatever meaning he gives to the word 'sovereign', I have not really ascertained. The Governor-General is indeed the de facto head of state, but it is a very strange de facto head of state because he, or maybe one day she, is appointed by the head of state of another country. If you are trying to get out of me arguments in favour of a republic, I will happily cooperate from here to kingdom come.

Mr PRICE—Can I just raise a couple of points? You mentioned that the Queen may require a whole executive council approval of the dismissal.

Mr Pyke—I suspect that.

Mr PRICE—I cannot recall an executive council ever meeting in full.

Mr CAUSLEY—It has happened in New South Wales.

Mr PRICE—Has it happened in the Commonwealth?

Mr CAUSLEY—It has in New South Wales on a couple of occasions. It really was not for any more than ceremonial type occasions. They can.

Mr PRICE—It normally operates with two people, either parliamentary secretaries or ministers, and the Governor-General.

Mr Pyke—I probably used the word 'executive council' a bit carelessly.

Mr PRICE—You said 'whole'.

Mr Pyke—I think this is clearly what Sir Walter Campbell did when Bjelke-Petersen wanted to sack Ahern and whoever it was—four others. He wanted to be sure that that was really a collective decision of the cabinet and that it had broad support in the National Party, and he delayed until it in fact became quite clear that it did not have broad support in the National

Party. So, yes; strike my reference to 'executive council' from the records; substitute 'cabinet' or indeed 'governing party'.

Mr PRICE—In fairness to Malcolm Fraser, I think what he was suggesting was that, once the phone call was made, effectively the Governor-General was no longer Governor-General. I do not think he was arguing that it would happen instantly but, given the nature of the position, having lost the confidence of the Prime Minister he was no longer effectively Governor-General. But I think you have introduced in your contribution a new concept; that is, a suspended Governor-General. How will that operate? Do we still have normal executive council meetings but the longest serving governor steps in as the acting, or—

Mr Pyke—Exactly, yes. I think the effect of suspension would have to be spelled out as a temporary equivalent of vacation of office: that the next in line to be Acting President would have to step in.

Mr PRICE—But we have no concept of suspension for governors-general, apart from illness, I guess.

Mr Pyke—Yes, I was going to reply that we do not have a concept of suspension but we do have concept of a Governor-General or a governor standing aside because of illness or going out of the country.

Mr CAUSLEY—Or being absent, yes.

Mr PRICE—Going out of the country, he can still exercise his power.

Mr Pyke—Yes, these days. But it used to be—

Mr PRICE—We do not have a concept of a suspended Prime Minister or a suspended minister. Ministers either operate as ministers or stand down, pending inquiries or whatever.

Mr Pyke—Yes. I do not think that is a bar to bringing that into the republic model. I do not think minimalism is a religion; minimalism is a tactic of convenience to avoid frightening too many horses.

Mr PRICE—I agree. In fact, at Townsville, one of the members of the public put to me that, really, we should not have these additional safety nets and nomination committees; we should stick to the raw, 'We are replacing Her Majesty and the Governor-General with a President,' and do not deviate; keep it simple. 'Just cross out words and substitute,' was his point of view.

Mr Pyke—That seems to be the extreme of minimalism. As I mentioned in my written submission, I ran quite unsuccessfully for election to the ConCon as a Queensland delegate and put up a lot of suggestions on a webpage—which I have totally neglected to update ever since, so it still says why you should vote for me. I was making the point there and I make the point again that, if we are really trying to make a minimal alteration to our institutions, we have to do a bit more than minimal amendment of the words of the text of the Constitution. We are seeing some of the absurdity. Not only I but other people making submissions have drawn attention to some of the absurdities that are surfacing in this bill because the drafting team has stuck so strictly to the instructions to make minimal changes, so that we take out the odd totally expired provision because the words 'Governor-General' are there but we leave other totally expired provisions in.

Mr PRICE—Thanks very much. Thanks, chairman.

Mr Pyke—As I said in my preliminary remarks, I think we have got to design a republican constitution that makes sense.

Mr CAUSLEY—I have just a couple of quick questions. In your submission, you talked about 'a nominations committee being required to be established three months before the expiry of a President's term; joint sittings should be required to be convened one month before the expiry of a President's term'. In the bill, there is no term.

Mr Pyke—Several people have said that, but indeed there is a term in the bill. The second paragraph of section 61 of the bill says:

The President holds office for five years but if, at the end of the new term, a new President does not take office—

The paranoid suspicion here of course is: what if the Prime Minister was perfectly happy with this President and does not initiate a nominations committee? Another that I have heard from a very earnest monarchist is: what if the opposition will not cooperate and, just to make mischief, refuse to second any nominee? You could have a period that goes by for ages without a new President being appointed and then, in those circumstances, the term becomes indefinite.

Mr PRICE—But you would have an Acting President.

Mr Pyke—No, according to this paragraph, you would still have the previous President continuing in office for six, seven or eight years—who knows how long?—while people fumed about it and while nothing was done.

ACTING CHAIR—But there would be a date for the next election, wouldn't there, in so far as it could not be indefinite?

Mr Pyke—There would, I suppose.

Mr CAUSLEY—You obviously disagree with some of the sections of the bill as proposed. One of our terms of reference is: if the referendum was successful, would we be happy with the bill as our Constitution? Am I reading you correctly in saying that you would accept the bill?

Mr Pyke—If there were no amendments at all to this bill not only would I go out on referendum day and vote yes but also I would be campaigning for other people to vote yes. The one thing that might tempt me to vote no is the lack of any clause which makes it clear that this is an enactment of us, the Australian people, and makes it still seem to be section 9 of a UK act. But I guess I would reluctantly swallow that and go out and vote yes.

Senator STOTT DESPOJA—Citizen Pyke, I see is your—

Mr Pyke—I am perfectly happy to answer to that, citizen Senator Stott Despoja.

Senator STOTT DESPOJA—I realise we are running short of time, so I will be brief. I notice you refer to the submission of Harry Evans. You have outlined your concerns with the dismissal process.

Mr Pyke—What did I say about that?

Senator STOTT DESPOJA—You actually state:

I would really prefer a more thoroughgoing change such as that suggested by Mr Evans, but if parliament . . .

Were you identifying there, for example, the Clerk of the Senate's concern that there is a lack of justification for the dismissal? I think we discussed with him at the Canberra hearings the idea of a written justification. Is that something that you would endorse.

Mr Pyke—That is something that I would prefer. However, I have come to see the logic, as I have already expressed, that, if bipartisan appointment means that you should have a man

or a woman there who has the confidence of both sides of politics, perhaps a simple loss of confidence by one side—in the hard, cold, brutal world, the majority side—is grounds enough for dismissal. It would make us a very unique republic. I think in every other republic of the world where there is provision for dismissal of a President, there are grounds such as incapacity, ill health, et cetera, spelt out. I can see—and I suppose I am persuaded against my intuitive judgment here—a logic in the grounds for continuing in office being much the same as the Prime Minister: a continuation of a feeling of confidence in those who control the lower house of parliament.

Senator STOTT DESPOJA—I am just trying to ascertain the support for Mr Evans's proposals:

The head of state should be dismissible only for stated clause by provisions like those applying to judges in section 72 of the Constitution.

He also goes on—and I suspect this is where you may differ:

The dismissal should be only by the appointing authority, the houses of the parliament, to provide for periods when the houses are not sitting. At most, there should be a suspension by the independent parliamentary commissioner until the houses are able to meet . . .

But you would differ on that point, judging from your earlier comments in relation to it being like a complementary process to that of the appointment.

Mr Pyke—I think there are lots of republican models that would be perfectly acceptable. I am not one of those who is going to die in a ditch campaigning no because my perfect model is not being presented. Probably the best model for dismissal of a President who has become incapacitated or is showing extreme bias or whatever would be some sort of independent panel. The Queensland youth delegate to the ConCon said to me that the reason why he had opted for the McGarvie model was nothing to do with the appointment but the dismissal process.

If you have a small panel of, hopefully, disinterested people who can make a quick judgment as to whether the President has lost capacity or is acting in an insanely biased way and can act quickly, that is probably the best of all possible worlds. If you have not appointed the President by that means, it seems very critical of the President to then have instituted a permanent watchdog body which more or less shadows every motion that the poor old President makes. The whole thing is difficult. It is only difficult in theory. In practice, how many times have real crises about the capacity of the President arisen in the republics of the world?

Senator STOTT DESPOJA—On a related matter but briefly, does the Prime Minister's preamble have sufficient introductory and concluding language?

Mr Pyke—No. We, the people, commit ourselves to this Constitution. Really it seems to me that that is the sort of thing that would be written by a Prime Minister who likes power. For the people to commit ourselves to a document which is creating lots of bodies with governmental power has connotations. In one sense, it is nice. We are all gathering around the perimeter of Australia in one giant collective hug committing ourselves to a binding document. But remember what this document does: it vests executive power in a group of people, legislative power in a group of people, judicial power in a group of people. To commit ourselves to that sounds awfully like we are making obeisance to you and saying, 'Okay. You've got the power. We are but your subjects.' I would like a document which makes it clear that we are citizens. While the parliament, the executive and the judiciary have day-to-day power, the ultimate power still vests back in us, the people, spelt with a capital U and a capital P.

Senator STOTT DESPOJA—So the concluding language in the Prime Minister's preamble—'In this spirit, we the Australian people commit ourselves to this Constitution . . . '—is insufficient?

Mr Pyke—I think that is weak.

Senator STOTT DESPOJA—Thank you for that. I have other questions, but I wonder if you would accept questions on notice to facilitate the committee's time, if that is acceptable to colleagues.

Mr Pyke—I would accept questions on notice. Having read everybody else's submissions, there are a lot of things I can say in response to those submissions. I actually have time to do a bit of that this week now that the marking mountain has been conquered. Would the committee accept some fairly lengthy comments on everybody else's submissions? I know you have to make a decision.

ACTING CHAIR—Yes, in a week's time, so any members wishing to ask questions on notice would have to get them in in the next couple of days to give you time to get it back in the week. But, certainly, if you wanted to put in a supplementary submission within that week, I think that would be welcome.

Mr Pyke—For purposes of quick communication, your secretary has my e-mail address.

Ms JULIE BISHOP—Mr Pyke, you will have heard that I raised with Mr Lavarch some issues concerning the third paragraph of proposed section 59.

Mr Pyke—Yes.

Ms JULIE BISHOP—It deals with the additional references to the Prime Minister, ministers, reserve powers, conventions and the like. I note your position in your submission. I put to you another extreme that has been put to us—that is, that we delete the third paragraph of section 59 altogether and not refer to the reserve powers and conventions as is currently the case. Would you have concerns if the third paragraph of proposed section 59 was deleted altogether, the basis being the ambiguity, uncertainty, justiciability and all those sorts of issues that may otherwise arise by these additional references?

Mr Pyke—I would have some concern, not so much with the reserve powers. In your various submissions you have received a number of suggestions about how that could be redrafted. Rather than leaving it out altogether, I think Sir Gerard Brennan's redraft, which was attached to Justice Handley's submission, makes a deal of sense to me. I would be concerned if the first part of that was left out.

Ms JULIE BISHOP—The reference to the other sources of advice?

Mr Pyke—The President to act on the advice of the Executive Council, Prime Minister or another minister. If we have to have a republic with a non-executive President, the high school teacher in me would like the Constitution to make that clear. If we take out the third paragraph, we perpetuate the myth that executive power is vested in the President. Some supervisory role over the executive power is vested in the Governor-General and will be vested in the President, but our current section 61 and the first paragraph of proposed section 59 make it look like it is an executive President; make it look like it is Bill Clinton rather than Sir William Deane. That is why I rather rejoiced when I saw that the task force had put that in. It is contradictory. I would go further. The first paragraph appears to vest executive power in the President. Okay, that is the traditional formality. The third paragraph makes it clear that this is not real power, that the President is expected to act on the advice of either this group or these people.

Ms JULIE BISHOP—And exercise his reserve powers in accordance with certain conventions.

Mr Pyke—Yes. As I said in the submission, the second paragraph worries me. All of these references to holding office during the pleasure of the President has got this really monarchical—

Ms JULIE BISHOP—Quaint.

Mr Pyke—Quaint, and indeed monarchical and wrong. If we are going to spell out the conventions as much as possible—this mirrors what I said about the long title—instead of trying to codify all of the conventions, why don't we state what the overall purpose of the conventions is? The overall purpose of all of the conventions of responsible government is to make sure that the government is carried on by a group of people who have the collective confidence of the lower house of parliament. It seems to me that that ought to be in there, maybe in the second paragraph of section 59 and in section 64. On the third paragraph, I think Sir Gerard's amendment is much better in that it makes it clear that the President only accepts the advice of a particular minister when it is dealing with the business of that minister's department, rather than just leaving this vague disjunction which makes it look as if maybe the President can shop for advisers.

ACTING CHAIR—Thank you very much for coming along and for your thoughtful comments.

Mr Pyke—It is a pleasure.

[12.09 p.m.]

MUIR, Mr David Alexander, Director, The Real Republic

ACTING CHAIR—Welcome. Is there anything you would like to say about the capacity which you appear today?

Mr Muir—I am here today in two capacities. One is as a director of an organisation named The Real Republic. I am also here in my capacity as a private citizen. I was one of the elected delegates to the Convention from Queensland, in company with Clem Jones and Ann Bunnell.

ACTING CHAIR—I need to advise witnesses formally that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings in the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Before we ask questions, would you like to make a brief opening statement?

Mr Muir—Thank you. Essentially I am here not in the capacity as a constitutional lawyer today. The points I would like to make are concise points. I am very much aware that the purpose of today is to focus on these two bills and to try to bring some constructive criticism with respect to them.

From my point of view, the model that is enshrined by the bills, as you are all aware, did not have the majority support of the delegates at the Convention. Of the 152 delegates, 75 supported the particular model. I do not want to belabour the point, but the model that is enshrined in these two bills does not meet the desire of the Australian people, and no doubt this will be resolved at the referendum in November. The particular desire of the Australian people is to be more involved in the political process of this country and, more specifically, to be involved in the election of their President.

In relation to the two bills, I would like to focus today on the nomination process and the appointment and dismissal process. I will refer to the bills as the republic bill and the nomination bill. The republic bill is the one that I would like to spend most time on. There are some matters of syntax—which I hesitate to raise—and substance. I have some concern about how section 60 of the bill has been drafted. Perhaps I should raise the matter of syntax first. Quite frankly, it looks a bit messy. There is a mixture of tenses and a jumble of clauses in it. Perhaps it could be better understood if it were separated out. It seems to be addressing a number of matters. It addresses the establishment of the committee and the auspices of the committee, and then it goes on to address the conduct of the Prime Minister. With the way the clauses appear against each other, it is difficult to read. Quite frankly, I do not think it could be expressed as plain English or even as the Queen's English.

With respect to tenses, the words 'After considering the report of a committee established' are past tense, and the words 'and operating' are present tense. If you take out the words 'and operating as the Parliament provides', it then reads 'After considering the report of a committee established to invite and consider'—et cetera—'the Prime Minister may . . . '. That would probably be easier to read. It might even be better if you then took out of the clause the words 'to invite', et cetera, and put that into a separate section so that it would then read 'After considering the report of a committee, the Prime Minister may', et cetera. It would read, I submit, much better.

The substance in section 60 that concerns me is that, first of all, there is no obligation on the Prime Minister. When the Prime Minister puts forward the single candidate, there is no obligation on the Prime Minister to accept the short list from the committee. In effect, there

is no link between the function of the committee—when I say 'link' there is no link in the sense that there is no obligation arising—and the act of the Prime Minister. In other words, the committee may go through what it does, and spend a good deal of time and energy in doing that, and then the Prime Minister is at liberty to find somebody else who is not on the short list and submit that person—obviously with the support of the Leader of the Opposition—to the joint sitting of the parliament.

The reason for the concern, apart from anything else, is that some store has been set in relation to the importance of the Nominations Committee to address the desires of the Australian people to be involved in the political process. The second reading speech makes reference to this. It actually makes reference to 'the means by which the Australian people could be involved in selecting a President, so will be of great interest'. So it is obvious that the Nominations Committee has been put up to address the issue of the desires of the Australian people to be more involved in the political process.

Unfortunately, there is no obligation, once that process is gone through, on the Prime Minister to then in fact take note of the short list submitted by the committee. The effect of that could be somewhat compounded by the secrecy provisions in the nominations bill, and I refer to section 24. Those provisions forbid the committee, as you know, to divulge the names of candidates—and that is a continuing obligation even after the appointment of the President. If you put that together with the other issue, it may be that people will not become aware of who was on the short list and of whether in fact the Prime Minister has actually made reference to that short list in his nomination to the parliament.

The removal issue is of great concern. There is an absence of any ground for removal—which would constitute in the ordinary law a denial of natural justice. In fact, the provisions on the removal of the President are not compatible with what we can see as being the status of the head of state, and there is no apparent precedent for removal in this fashion in other republican constitutions.

The other point about the removal process is that the House of Representatives has a role in the process but is, of course, not in a position to be able to reinstate a President who has been dismissed by the Prime Minister. For that reason, there is also a danger of a politically motivated dismissal of a President in circumstances where, say, supply is blocked in the Senate. The Senate has no role in the dismissal process, as I have indicated. In fact, as they are, the provisions relating to dismissal of the President are such that it would be easier for the Prime Minister of Australia to dismiss the President than to dismiss his own driver. If the Prime Minister sought to dismiss his own driver without notice and without grounds, his driver would have recourse to the Workplace Relations Act—

ACTING CHAIR—But it depends on whether he earns over $65,000.

Mr Muir—Certainly, with that caveat of course. But the principle is there that you have got somebody of supposedly very high status who can be dismissed without the normal recourse to legal remedy.

Ms HALL—How do you see that that varies from the current situation?

Mr Muir—I say that it not necessarily varies, except that what we are now putting up is supposedly an appropriate model for a republic, and two wrongs do not make a right in that sense. The present process, of course, does not involve the parliament, as I understand it. It is essentially the decision of the Prime Minister and there is no pretence that it is anything more than that. My understanding is that we are endeavouring to actually put forward here

now a different way of doing things in this country and, in those circumstances, it is appropriate that we do it the best way we can.

Ms HALL—Would you say that this is just a little more accountable than under the previous constitutional situation, where the Prime Minister could, as you said, very easily dismiss the Governor-General? Wouldn't this be harder? He is more accountable, should I say.

Mr DANBY—It is not passed yet: it is the existing one.

Ms HALL—I know.

Mr Muir—You could argue that, but the problem that I have is that you are comparing oranges with apples in the circumstance. We are now operating under a system that has been here for a long time, has its origins in history and has no real pretence about the kind of philosophy that one would expect to be behind a republic in modern times. So I think that to some extent it is really comparing apples with oranges.

ACTING CHAIR—Mr Muir, did you want to continue with your remarks?

Mr Muir—Just briefly, I would like to make some reference to what I see as the effect on the parliament of the appointment and dismissal procedures. Perhaps I could use the terminology of the Julie Bishop amendment. On the last day of the Constitutional Convention, words were deleted from the model that has been enshrined in these bills. The words that were deleted were to the effect that the appointment process by the joint sittings of parliament 'shall be done without debate'. Those words were deleted by way of a motion by Julie, and I think they were rightly removed. My concern is that taking them out takes away something which is explicit, but may still be implicit, in the process. We have a circumstance where one candidate only is submitted on the motion of the Prime Minister, seconded by the Leader of the Opposition, and in that circumstance one could probably say that there is little to talk about; there is no choice of candidate. Even though the words 'which shall be done without debate' have been removed from the original model, it may well be that the effect is nevertheless the same. That is a concern to me in the sense that—together with the way in which the executive has been operating in recent times in the parliament—it can be said that it is a further demeaning of the parliament.

The function of parliament as a forum for debate is something which I think a lot of people hold dear. The one single principle that most people would be looking for in their parliament is the principle that people can have a full, free and vigorous debate. The principle of parliamentary supremacy touches on that same issue—the importance of the supremacy of parliament in relation to this whole process—and our concern is that the parliament is being demeaned. If these laws are made, through the function of the referendum in November, the parliament will be limited in the way it will be able to be involved in the process, and in effect it will be limited in its ability to debate issues, which is the proper function of the parliament. There is also no regard in this process, as members of the committee will be aware, to Independents or members of minor political parties; it is merely the Prime Minister and the Leader of the Opposition, so there is no role for those parliamentarians in this process.

An added problem on the dismissal side is that you are involving one house rather than both houses, whereas on the appointment side you are involving both houses. In that context, the description of the model enshrined in these two bills as a 'parliamentary appointment' is probably a misnomer in a sense, because in actuality it is an appointment by the Prime Minister and the Leader of the Opposition, and the parliament is being used, I submit, as a rubber stamp. I have a quote here from John Stuart Mill—I do not know whether you want me to read it. It is a few lines.

ACTING CHAIR—Sure, go ahead.

Senator STOTT DESPOJA—We had Trotsky yesterday.

Mr Muir—It is something that touches on the importance of parliament as a forum for debate, and it reads:

> The peculiar evil of silencing the expression of opinion, is that it is robbing the human race; . . . If the opinion is right, they are deprived of the opportunity to exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and liveliest impression of truth produced by collision with error. If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.

Mr DANBY—Mr Muir, you have raised a number of objections to the current bills which we have heard before, and some of them are very fair minded; particularly concerns about the dismissal procedure. But I want to cut through a lot of your objections and get the sense of it more than the particular issues that you have raised.

There are people in Melbourne who shared your views in support of the direct election of the President, but who take the view now, with these two bills, that they are inadequate but they go towards the establishment of an Australian republic and therefore, in the meantime, they will support them and afterwards push for further constitutional change. If you were satisfied that some of the small changes, and some of the big ones, you have suggested today and that other people have suggested were to be accepted—and this committee is very seriously considering a series of improvements to the bills—would you support the current bills or would you be opposed to them because they did not incorporate the idea of direct elections?

Mr Muir—I personally would probably continue to urge the no vote in November, if I can put it in that fashion. If some of the changes that I am suggesting here are made, there may be people in the community who will be subject to changing their minds. If some of these changes are made it will make a difference to how people will vote in November. From a personal point of view, I do not think it will change my vote because I do not subscribe to the belief that, if you put something through and achieve that which is perhaps broken or inadequate, you will necessarily be able to change that at some later time. This is particularly so because I believe there is a very strong head of steam in this country to become a republic. Once that is achieved, in whatever form, that head of steam will diminish substantially. Constitutional change is very difficult to achieve in Australia, as we all know, as is the chance to get a real republic or any kind of satisfactory republic. I do not think anybody would claim ownership of the best model. That would be pretty facile, really. I do not think anybody ought to make a claim of that kind. Some people are hanging on to certain principles, though, and will pursue them. From my personal point of view, it will not influence my position, but I suspect it will influence the position of other people.

Mr DANBY—You see the defeat of the current referendum, even with the bills amended as you would hope, as leading to public mood for further constitutional change in favour of direct elections?

Mr Muir—If the referendum fails in November I am convinced that the process for change to a republic will continue in Australia. It will not happen as quickly as some people desire. There is a preoccupation at the moment in this country with this threshold—this 2001 issue. There are very few decisions in life that people will make just because it has to be done now, particularly if they are important decisions. Most people will take the time to come up with the right answer before they go with the decision. There is too much emphasis on the time

factor. It is important for our nation that we get it right. Nobody has all the answers. We need more discussion, more process. The really disturbing feature of this whole process is that the Australian people do not get a choice as to what kind of republic they get in November. It is a tragedy for our country that we do not spend more time discussing these issues with our people. We do not give them choice—it is a take it or leave it. When I say 'leave it', it is leave it until next time. There is a huge cost in that, of course, and it is a tragedy.

Ms HALL—Couldn't you say that people have already been involved through the ConCon—in electing their delegates, et cetera?

Mr Muir—The Constitutional Convention achieved a lot in terms of informing the Australian public about the issue. I think we have an awful long way to go, though. I know that people were receiving these ballots in the mail and were throwing them away because they thought they were from *Reader's Digest* or somewhere else. We still have a lot of education to do in this process. People need more time. I do not think we have had enough time on the issue.

Ms HALL—Do you believe that there is a model that everybody would find acceptable?

Mr Muir—No. You will never find a model of anything that you will get 100 per cent agreement on, but you will find a model that you will get the majority of people agreeing on. That is all we can ever hope to achieve.

Ms HALL—Given that there is real division between elected and non-elected, you may never get to a stage where you can come up with a model that is agreed on by both sides.

Mr Muir—I believe that there is a dynamic in motion at the moment and once November is over there will be a re-formation of the republican cause in Australia. There will be a number of people involved now who will be exhausted by their experiences and will feel that they cannot go on any more and that they have put too much into it, but there will be others who will re-form. I strongly believe that this referendum will fail. In my personal opinion it has no chance of succeeding in Queensland and little chance in Western Australia and South Australia and possibly Tasmania.

ACTING CHAIR—Why would a direct election model be more likely to succeed in those states when, by definition, if the majority of Australians were selecting the President it is more likely to be someone from either New South Wales or Victoria? Why would you be more likely to get those smaller states to support your model?

Mr Muir—My belief is that the Australian people put their involvement in the process higher than necessarily having a Queenslander or a Western Australian as the head of state. I have not detected any sense that Queenslanders believe that under one particular model they have a better chance of getting a Queenslander up than under any other model. I do not think there are any real grounds for suggesting that.

ACTING CHAIR—Have you looked at the history of referendums? Many have gone down because they were perceived as affecting the balance between the Commonwealth and the states' rights.

Mr Muir—Absolutely. There is no doubt about that.

ACTING CHAIR—That is something that is pervasive.

Mr Muir—Centralisation. Absolutely.

Mr PRICE—You shared your view with us that the Republican Movement will re-form after a failed referendum. Would you share a prediction with the committee as to when you think it likely that a new referendum might be put before the Australian people?

Mr Muir—This is crystal ball gazing, of course, but I would expect that we would have another chance at this issue in five to 10 years.

Ms HALL—Maybe more like 50.

Mr Muir—Those who suggest that we get something that is not satisfactory and then change it would turn that equation into 100 years.

ACTING CHAIR—Would you? Look at section 60, for instance, of the Constitution Alteration (Establishment of Republic) Bill 1999. That refers to the report of a committee established and operating as parliament determines. Parliament could, for instance, legislate to establish effectively the American presidential committee procedure whereby a college is established. Why do you say it is locked in?

Mr Muir—My understanding is that that section gives the Prime Minister discretion to ignore the short list.

ACTING CHAIR—Sure, I accept your point there, but leaving that aside—and that is what Mr Danby touched on; that is a relatively minor amendment—the structure certainly allows evolution.

Mr Muir—Absolutely. There is no doubt that, in relation to the Nominations Committee itself, there can be all sorts of changes made by parliament in relation to that. There is no doubt about that.

ACTING CHAIR—Then, as people become more confident with the procedures and so forth, that evolution is certainly something that could take place.

Mr Muir—There is no doubt about that, but the problem is the nexus between what happens there and what the Prime Minister does.

ACTING CHAIR—Right, I note that point.

Senator STOTT DESPOJA—I have a general comment. I understand people's desire for broader constitutional change. I think you would find many members on the committee who share your concerns, not only with the model but also with the idea that we are not touching on broader constitutional change. You made a comment about the time line. I think symbols are very important, and moving into the next millennium in a monarchy with the Queen as our head of state is symbolically quite negative and distresses me. I do not want to be attached to a monarch or a position or an institution that I believe is discriminatory—sexist and based on religious discrimination.

Obviously, in your mind you have made the decision that it is not worth proceeding with at this point in time, regardless of prospective constitutional change, a constitutional convention No. 2 or the chance to re-establish or reinvigorate the Republican Movement—or we might have to recreate it altogether for a period of time. You have made this utilitarian decision, having weighed it up, but do you, as a republican, really feel that it is worth jeopardising this opportunity, that it is worth advocating a no vote this time around?

Mr Muir—I have spent a lot of time thinking about this.

Senator STOTT DESPOJA—I suppose we all have.

Mr Muir—Yes. I guess you need to go with your conscience on it. Something which I think is very important is that when people deal with this issue they really should go with their own

conscience rather than with what may be a party line or some other situation. I think this is something that transcends the political party situation. As for my personal opinion, all I am saying is that if we get a real republic—but I am very careful to say that whatever model that I might subscribe to might not be the right model—in relation to involving the Australian people in electing their head of state, we will achieve more with a model of that kind—if we get that in five to 10 years time—than if this gets up in 2001.

ACTING CHAIR—What government in five or 10 years time would reactivate this issue? It would be crazy to do so.

Mr Muir—The issue is not going to go away. It just will not go away for the very reason that the senator mentioned.

ACTING CHAIR—The realities are that after you have gone through the expense of ConCon and this referendum procedure you are looking at well over $100 million.

Mr Muir—That is right.

ACTING CHAIR—What government would just throw that away and face the embarrassment of another failure? That will not happen, will it? That would be very unlikely to happen.

Mr Muir—I think it is inevitable. My strong belief is that it is inevitable.

ACTING CHAIR—But not in that time.

Mr Muir—You can argue about the time frame, but it is just so much crystal ball gazing as to who the government will be in five to 10 years time.

ACTING CHAIR—But you have to have commonsense in looking at the electoral process and at what these probabilities are. Barry Jones made some comments to the effect that perhaps you might get it in the year 2027, when we are celebrating the 100th year of the opening of parliament. That may be a point, but do you really want to put it back that far?

Mr Muir—It might be that, if King Charles takes the throne in a few years time, there might be another dynamic to think about as well; there are so many variables in this equation. But it is an issue that will not go away. There is no way in the world that it will go away because there are a lot of passionate Australians who very much want a republic and think it is an anachronism that we have a monarchy in this day and age. That feeling will not die.

Senator STOTT DESPOJA—I note that you predict that the referendum will fail, depending on the polls you are looking at—and I am certainly aware of today's poll that suggests some of the smaller states like South Australia and Tasmania are problematic—but how much of that prediction is based perhaps on people's support for a different type of model, as opposed to people's unawareness, ignorance or the lack of government education about the campaign and this model? I think it is very difficult for us to conclude that opposition to this model is based on either support for another model or even support for a constitutional monarchy; there are those variables as well.

Mr Muir—Queensland is inherently a conservative state where change does not come easily, and I think there are all sorts of features. There are a number of strong monarchists in this state, so that will be a feature. There are those that are not satisfied with the model enshrined in these two bills. It is hard to separate out the extent of all these things. All I can say is that it is a combination. Some people will not understand the issues enough and they will vote no because they do not understand; others will say, 'No, we want a monarchy anyway'; while others will say, 'We are not satisfied with the model. We want to wait.'

The polls say all sorts of things, but they tend to say that the Australian people want to be involved in electing their President. You could argue that maybe the Australian people do not understand what that means, but after a period of years when the Australian people keep on saying the same thing somebody is going to have to recognise what they are saying. Nothing will happen in terms of constitutional reform without carrying the Australian people with you, because the Australian people ultimately are the arbiters. If the Australian people remain fixed with their view about electing their Presidents, there will not be constitutional change without it.

Ms JULIE BISHOP—Can I clarify one point you raised about the motion that was moved at the Constitutional Convention to delete the words 'without debate'. What were you suggesting should be the position in relation to the approval process by the two-thirds majority sitting?

Mr Muir—The suggestion would be that it would be with debate. I certainly think it is appropriate that the words be deleted, because I think it was just total anathema that you would be asking the parliament to make a decision without debate.

Ms JULIE BISHOP—Quite, but you would not add 'with debate' in the event that there was no debate.

Mr Muir—The point I was making was that with the elimination of those words the words would not necessarily mean that there would be. In fact, it may be taken that, even though the words are not there anymore, it is implied, because of the process with the two individuals concerned, that debate is something that is just inappropriate in the circumstances.

Mr CAUSLEY—Any appointment would be political, wouldn't it? It would draw politics right into it.

Mr Muir—With the debate, obviously. Inherent in any debate is controversy in the sense that there has to be; otherwise there is no debate.

Mr PRICE—Not necessarily. A condolence motion has no controversy.

Ms JULIE BISHOP—I think what we were trying to do at the Convention was take away the words 'without debate' because that was seen to be a fetter on parliament somehow and it was a very unattractive precedent that we were setting up there, so the words were taken out. But it was anticipated that, if an appointment had gone through the process that was anticipated by the Constitutional Convention, that is, a nominations committee, a Prime Minister, a Leader of the Opposition and two-thirds majority, there would be a certain level of agreement. That was anticipated. You would not want to prevent people speaking in parliament on the approval process, but it was anticipated that it would not be turned into a US Supreme Court style appointment, which is what we were trying to avoid. So I would have thought that it would be best left as it is, approved by the two-thirds majority, and over time perhaps convention will arise whereby people make laudatory comments about the appointment or they might take the opportunity to say, 'Look, I do not know how this person got through the net but they are actually a most unsavoury nominee.' Let us hope that never happens. But I think it would be a far better position for the words 'with debate' not to be added, and obviously 'without debate'.

Mr Muir—That is a fair point. My primary point was really that the words were deleted, and rightly so. The concern I had was that the deletion of the words really may not fix the problem in the sense that it is implicit that there is no debate.

Ms JULIE BISHOP—Parliament being parliament, it will dictate its own conventions in that regard, as to whether people speak on the appointment process or not.

Mr Muir—Except that the Leader of the Opposition and the Prime Minister would control, I would assume, the process.

ACTING CHAIR—Isn't there a risk that in adopting the attitude that you are adopting that you are—I do not want to be sexist—like a young woman waiting for Prince Charming to come along or a young man waiting for Princess Charming to come along and they never happen? If my wife had waited for Prince Charming, she would never have married me. Isn't there a risk that Australians will go through life thinking about what could be and not doing what is?

Ms JULIE BISHOP—I am not sure about the moral of this story!

Mr Muir—I come back to what I said before. I think this issue will not die. I think it will be a question of timing: will this occur in 2001 of will it occur at some later time?

ACTING CHAIR—Without labouring the point, would Queensland be more likely to vote for a direct election model? I think you would have to say they would be less likely, wouldn't they?

Mr Muir—I think you have to wait and see. I think, quite frankly, that a lot of people will vote no this time irrespective of the model because they need more time to think it through. I think timing is a big issue here. The cruel thing is that we are not having a plebiscite. The cruel thing is that we are going straight into a referendum which I think was set to fail. To me, that is a cruel scenario. We should have had a plebiscite, we should have had more education and we should have taken more time. I think we would then have spent less money and would have come up with a better result.

Mr PRICE—Would it be fair to say that if we were to have a direct election model there would be some people who might otherwise be voting no that would vote for it, but on the other hand we would probably lose some who are voting for this model but would then vote against it?

Mr Muir—At this point in time I think that is a pretty fair comment, that people would change their vote as you have indicated. If it was a direct election model some people would vote yes but will vote no on this occasion, and vice versa. I think that is right at this point in time. As time moves on, I think the numbers will change. There may be still a bit of a crossover, but I think there will be less changeover on the next occasion. But the timing is the issue, and really it is a difficult issue to engage the community in. I know there will be a lot of that happening in October and November, but it is a difficult issue on which to engage the average person, who is concerned about whether they have got a job and various other issues in their lives. That comes back to the other point I mentioned, that the primary head of steam keeping this going is the realisation by most thinking people that having a monarchy where we share our head of state with another country is just out of date and we need to move on from that. I think that is the head of steam that is actually keeping it alive. Without that, I think it would be a dead duck.

ACTING CHAIR—Thanks very much for coming along. We appreciate your contribution.

Mr Muir—I hope you enjoy the rest of your stay in Queensland.

Proceedings suspended from 12.47 p.m. to 1.49 p.m.

SHEIL, Dr Glenister, Leader, Queenslanders for a Constitutional Monarchy

ACTING CHAIR—Welcome. I advise as a matter of formality—although you would be well aware of the procedures from a previous life—that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Before I call upon you to make a brief statement, I note that, in addition to your submission of 22 June, by letter dated 6 July 1999 you complained about inadequate notice of this committee's deliberations.

Dr Sheil—Yes.

ACTING CHAIR—When were you first aware of the committee's terms of reference?

Dr Sheil—I do not know offhand, but it was not that long ago—within a fortnight.

ACTING CHAIR—I presume it was before 22 June when you prepared your submission.

Dr Sheil—I presume.

ACTING CHAIR—Are you aware that we had to act quickly on this committee and that we have to cover as much territory as we possibly can? You received notification as soon as the committee was aware that it was going to conduct hearings in Brisbane. Are you aware of that fact?

Dr Sheil—Yes. I have forgiven you. Are you Doug McClelland's son?

ACTING CHAIR—I am indeed.

Dr Sheil—You got the gene all right.

ACTING CHAIR—It is too late to change. It is too late for me to do anything about that. I am acting as chair of the committee today because Bob Charles unfortunately took ill last night with a respiratory problem. I should indicate his personal concern and also that of the committee's that the issue of his citizenship or potential eligibility to sit as a member of the House of Representatives was challenged on the basis of his accent. For the record, I should also indicate that Senator Bolkus was born in Footscray. What relevance these issues have to the bulk of your submission perhaps is of academic interest only, but having made those points we will move on to the substance of your submission.

Dr Sheil—I am still interested in Bob Charles.

Mr CAUSLEY—His citizenship was revoked. He has a letter from Dean Rusk to say so.

Dr Sheil—When would that have been?

Mr CAUSLEY—It would have been before he went into parliament.

Senator STOTT DESPOJA—Acting Chair, is this relevant?

ACTING CHAIR—No.

Mr CAUSLEY—He does not have dual citizenship.

ACTING CHAIR—Having made those points, I think from our point of view and yours, it would be useful to convey the position of your association with respect to the issues we are looking at. Would you like to speak to your submissions before we ask questions? Would you like to give us an outline?

Dr Sheil—I was concerned about the eligibility of those two gentlemen because the Constitution is a living, breathing, developing document, and there has been a recent decision

in the High Court about citizenship. I was concerned about it because you do have to make a definite act of revocation of your foreign citizenship if you have ever had foreign citizenship. I did not know whether Nick Bolkus was a Greek, but he looks like a Greek. I thought he might have Greek citizenship.

I understand your unseemly haste with the committee—having to press on as you are doing—but I do not see the reason for that. The Constitutional Convention seems to have been given authority which it does not deserve. As you know, it had 152 members, half of them selected Suharto style by the Prime Minister and the other half elected by less than 44 per cent of the electorate. Parliament seems to be going on as if its recommendations are cast in marble and have to be carried on.

They are even saying that a consensus was reached on the preamble of the bill and all this sort of thing. There was no consensus at all—I was there; I was an elected delegate. In fact, the republicans had 10 models that they put to the ConCon and they could not agree on any of them and none of them got majority support. The model they have got through is a bit of a dog's breakfast, I would say. There have been objections to it all over.

It is all based on a misapprehension. The whole republican debate seems to be predicated on the fact that the Queen of England is the head of state of Australia, which is simply not true. A whole section of this bill is to do with the repeal of monarchical provisions in the Constitution. The way our Constitution is developed there are no monarchical provisions in it anymore. There used to be but they were all removed without the necessity of amending the Constitution at all.

In fact, everyone seems to have forgotten that there was an Imperial Conference in 1931 at which the position of the Governor-General of Australia in relation to the Australian parliament was made the same as the position of the monarch of England in relation to the British parliament, which virtually turned our Governor-General into the monarch of Australia with all the powers of the Crown. The monarch of England has no powers of the Crown. We actually return some to her when she is in Australia so she can perform some of the formal functions that we might require her to do, but at the same time the Governor-General still has all his powers and that position has never been abused.

Apart from that, the Queen of England has no say in the government of Australia. The sole remaining function of the British monarch is the appointment or removal of the Governor-General on the advice of the democratically elected Prime Minister. So to say that the Queen of England is the head of state of Australia is just wrong. This whole removal of monarchical provisions is based on that sort of realisation.

A lot of people read the Constitution as if it is black-letter law and cast in granite; it is not at all. In fact, it has to be interpreted in light of a lot of different factors such as letters patent of which there are no royal powers at all, or the Statute of Westminster, or the Royal Titles Act, several referenda, lots of treaties, and High Court decisions. In other words, you could hardly say the Constitution is a legal document at all because it has to be interpreted in light of so many different things.

As I said before, a lot of the constitutional changes have been made since Federation without the need for constitutional amendment at all, particularly section 2, which says that we belong under the Crown of Great Britain and Ireland and the Queen of England and every other thing like that, is no longer true. Wherever you see the Queen in the Constitution now you should read the Crown of Australia because Australia has its own Crown.

When we started we were in British possession. We became a British colony, then six British colonies, then six British Crown colonies, then self-governing with their own parliaments and their own governors. They had independence. They were not controlled from Britain, except Britain used to appoint governors. Then those Crown colonies got together and formed the federal government, which had a federal Crown of Australia, not a Crown of England—you cannot divide it up like that.

So we have developed a Crown in our own way and in the way we use it. We put it at the head of all our great departments of state, and while the Crown is there no rogue politician can be there. This is therefore the people's ultimate—an untouchable source of security, and that is the Crown. Every one of the republican models there is wants to get rid of the Crown. The republicans quote that by saying they want to get rid of the Queen of England as our head of state, but it is the Crown that they want to get rid of. Of course that is what I am here fighting for, to see that the Crown stays.

All our law is Crown law. In fact, I cannot think of anything that the Crown is not the head of. We just do not have anyone to wear it. We have asked the Queen of England to be our sovereign. Out on the campaign trail I have found that there are a whole lot of people who do not know the difference between a Crown, a monarch, a sovereign, a head of state, a President and any of the other high offices that we have.

Ms HALL—Would you consider yourself an authority on that?

Dr Sheil—Yes.

Ms HALL—On what grounds?

Dr Sheil—I have studied it for ages. I have been doing it. I challenge you to disprove it. It has not been disproved.

Mr PRICE—Dr Sheil, didn't Her Majesty only become Queen of Australia in Whitlam's time?

Ms HALL—Yes, that is correct.

Dr Sheil—There were changes in Mr Whitlam's time. But that is not true; she was not there then.

Mr PRICE—But she was not titled Queen of Australia.

Ms HALL—No, she was not.

Mr PRICE—She only became titled Queen of Australia, I understood, through the changes Mr Whitlam put through.

Ms HALL—Yes.

Dr Sheil—All right. I will not argue about that. What is wrong with that?

Ms HALL—I thought that would have come readily to mind when you are an expert on the Crown.

Dr Sheil—Nothing comes readily to my mind.

ACTING CHAIR—Did you want to continue before we ask questions or would you like us to move to questions?

Dr Sheil—There was supposed to be a large program of educating the public carried out with this whole campaign. For example, there are bills going through the state parliaments at the moment to facilitate the implementation of the republic should the referendum be successful.

ACTING CHAIR—Amendments to the Australia Act.

Dr Sheil—That is right. I have found that people know very little about those, but they are very important because should the referendum fail the Prime Minister is going to be holding six applications to turn the states into republics. That means that he could make the place a republic without having a referendum on the same basis that the Australia Act was passed as a states agreement rather than going through the people. I would have thought that was an important thing to tell the people about but nobody knows about it. In fact, they have almost been passed through the state parliaments in secret.

Senator BOSWELL—How many parliaments haven't they been through?

Dr Sheil—Queensland was passing them through last night and today and the rest I think have all passed them.

Senator BOSWELL—I did not think Western Australia had passed them.

Dr Sheil—I cannot be sure. But it is a serious threat to the people. I can talk about removing the monarchical provisions if somebody wants to know. Certainly ask me questions.

ACTING CHAIR—Are there any questions?

Ms JULIE BISHOP—I was going to raise one issue. You were talking about the states being turned into republics. Did you mean Australia could be turned into a republic?

Dr Sheil—Australia.

Ms JULIE BISHOP—Right. You were not suggesting that there could be any alteration to Western Australia's Constitution and hence the position of the Governor of Western Australia without there being a referendum in Western Australia?

Dr Sheil—No. You may have noticed the ConCon was aware that some states may not want to go through at the same time.

Ms JULIE BISHOP—Yes.

Dr Sheil—But they would be gradually coerced into it if all the other states went that way.

Ms JULIE BISHOP—I do not know about coercion. I think everybody was very keen to reassure themselves that in this day and age states would not be coerced but they would be allowed to consider the futility of remaining a sovereign state, if you like, when Australia as a whole had determined to become a republic.

Dr Sheil—Yes. The whole states agreement of our Constitution is that we the people of Queensland, New South Wales, Victoria, et cetera, agreed to unite in one indissoluble Commonwealth under the Crown, the Crown of Australia. Now if you pull the plug on the Crown, the whole states agreement will go. The republicans think they can remove the Crown and the states will go on exactly as before, but they will not—the states will sever and move apart. I should imagine that Queensland would be the first to secede.

Ms JULIE BISHOP—I would suggest the only.

Mr PRICE—Have they indicated that—that is, that the states see this as an option and whether or not they might exercise that option? Are you aware of that?

Dr Sheil—I have no idea.

Mr PRICE—Wouldn't you think that the premiers or state leaders of the opposition would raise the issue, if your view is correct?

Dr Sheil—My view is correct.

Ms HALL—What facts and assumptions do you base that on?

Dr Sheil—On the Constitution itself. We agree to unite under the Crown. Pull out the Crown and the states fall apart.

Ms HALL—You are not giving us any facts; you are just making statements.

Dr Sheil—That is a fact.

Mr PRICE—Getting back to the question, are you aware of any state Premier or state leader of the opposition echoing your view of the impact the referendum would have on the Commonwealth?

Dr Sheil—Not that I am aware. That does not mean that—

Mr PRICE—I accept that it may be possible.

Senator BOSWELL—There is a view that on the conservative side of politics it is a problem—that is, this referendum question.

Mr CAUSLEY—Dr Sheil, you said that you believe that the Governor-General is the Crown of Australia at the present time. That is your belief.

Dr Sheil—Yes.

Mr CAUSLEY—The minimalist people who have come before this committee argue that we are only changing the name; we are not changing anything else. Therefore, why are you opposed to that?

Dr Sheil—There is no minimalist option with the Constitution; it is all or nothing.

Mr CAUSLEY—But if it is the Crown of Australia, it will be the President of Australia.

Dr Sheil—Yes, but you will not have the Crown any more. With the Crown, of course, the President—or the Governor-General, as we have—would come under the Crown and all of the protections that go with the Crown under the Statute of Westminster and the Letters Patent. He has to swear to be politically independent and to govern for all the people 'without fear or favour, affection or ill will' and all of that sort of thing and also wield the reserve powers of the Crown, which he can do.

Mr CAUSLEY—But Malcolm Fraser told this committee that he believed that if the Prime Minister as much as indicated to the Crown that he wanted the Governor-General removed then the Governor-General's powers were absolutely destroyed and, therefore, he would have no power under the present system.

Dr Sheil—Yes, this is right. What Prime Minister is going to risk that? No Governor-General, no governor, has ever been sacked in Australia; only rogue Labor politicians have been sacked. And there have only been two: Lang in New South Wales for refusing to pay interest on the money he had borrowed and Gough Whitlam for trying to govern without money guaranteed to him by the parliament—both rogues. They were removed by the Crown.

Mr CAUSLEY—But wouldn't your system have broken down in 1975 if Gough Whitlam had asked the Queen to sack the Governor-General? Where do you go when the Senate has denied supply?

Dr Sheil—But that did not happen in 1975.

Mr CAUSLEY—But if it had?

Dr Sheil—No, I was there. It could not have happened, and it did not happen.

Mr CAUSLEY—Why?

Ms HALL—But it could have, if Gough Whitlam advised the Queen first.

Dr Sheil—No. In 1975 Gough Whitlam was trying to destroy the Senate's power to block supply. The Senate was blocking supply because a whole lot of revolutionary legislation had gone through that the Senate could not agree with. It had allowed a lot of legislation to go through because it had lost electoral appeal by amending things and doing things. People were saying, 'Let the government govern.' So we did, and we let a whole lot of stuff through. But, in the end, there was a whole lot of bills—some 20-odd bills—stacked up by the Whitlam government which were revolutionary from our point of view. We thought he should face the people and get a fresh mandate.

He was determined not to do that. He had appointed a strong Labor man as Governor-General, thinking that he would never go against him. So Gough went hell for leather to test out the Senate. In the end, the government was running out of money for the ordinary services of the country, and the Governor-General put the same questions to Malcolm Fraser as he put to Gough Whitlam: 'Will you call an election? Will you not pass any laws? Will you not sack anybody? Will you not appoint anybody? Will you be a caretaker Prime Minister?' Gough said no, and Malcolm said yes.

Ms HALL—We could make political statements too, about Queensland appointments to the Senate. There is a number of issues involved there. I do not think we are interested in political statements here; we are interested in looking at legislation and making sure that legislation has proper consideration.

Dr Sheil—That is not a political statement; I am just telling you the facts.

Ms HALL—You told the facts how you saw them, and we could change them.

ACTING CHAIR—I think Ian's point—and Ian can clarify it—was that when Malcolm Fraser gave evidence before this committee in Melbourne he was of the view that Whitlam had the power to, at the very least, instantaneously neuter Sir John Kerr by making a request to the palace that he be dismissed. It was Malcolm Fraser's view that the Prime Minister currently has tremendous power to sack the Governor-General.

Dr Sheil—We are playing the big dibs in doing this. With the situation we have, if the Prime Minister is blocked and is sacked—as happened in 1975—it immediately causes an election. The whole thing is just thrown to the people.

ACTING CHAIR—But Ian's question was asked in the reverse, about the Prime Minister acting first.

Dr Sheil—That is right. Had the Prime Minister tried to act, the Queen still had the right to be advised, to advise and to warn. It takes a little time. To say that he would not have his powers and so on is not right. The Senate was not going to budge at the time.

Mr CAUSLEY—Who would have called the election, and who would have funded the election? Let us say the Senate denied supply under the system we have at the present time and the Prime Minister has the power to remove the Governor-General—Malcolm Fraser believes he had the power. How does it get back to the people? Who calls the election, and who funds finds it?

Dr Sheil—You have to realise that you are dealing with men here: who is going to have a shoot-out at high noon? You have people involved in it—you have the Governor-General and the Queen involved in it. You do not just play fast and loose at this end of politics. I think Malcolm Fraser is talking through his hat, because if Gough Whitlam had tried to sack the Governor-General the public outcry would have been enormous. You could not get over it.

Mr CAUSLEY—It still does not answer the question: who calls the election?

Dr Sheil—The Governor-General would call the election, and I think there would be an election.

Senator STOTT DESPOJA—You made a comment in your opening remarks about unseemly haste. Is it your view of the entire process that the Prime Minister has set down a referendum time line with extreme or unseemly haste?

Dr Sheil—Yes, it is, because this change in the type of government we have—from a constitutional monarchy to a republic—is revolutionary. Usually it does take a revolution: you have to cut the head off the monarch. But at this time in Australia we are having a revolution without a revolution. It is a complete change of government, and to rush that sort of thing through and not inform the people of the acts that are going through the parliament seems a bit clandestine to me.

Senator STOTT DESPOJA—Do you think the government could be doing more to inform Australians about their choices? Is the education campaign, for which the government is responsible, inadequate?

Dr Sheil—Yes, they could be doing more. For example, they have a yes case committee and a no case committee. The yes case committee consists of 10 republicans, and the no case committee consists of five republicans and five constitutional monarchists.

Senator STOTT DESPOJA—But they are all opposed to the model; they are all noes.

Dr Sheil—That is not the point. The direct election people are still republicans; they just do not want this republic.

Ms HALL—Are you saying the government should fund three campaigns: a yes campaign, a no campaign by people who favour a republic but are direct election people, and a third one by monarchists? Do you think each of those should receive the same amount of money?

Dr Sheil—I do not think the government should fund anything. It is the people, not governments, who make governments. Why should the government be dictating to the people? If there is a groundswell of opinion that people want a republic, why don't we hear from the people? We have heard nothing from the people; it is only from government.

Senator STOTT DESPOJA—There is a distinction between the funding that has been provided for the yes and no committees. I understand how you may have an opinion that that is inappropriate, but there is also a government funded education campaign which is theoretically separate from and independent of—

Dr Sheil—Where is that?

Senator STOTT DESPOJA—That is why I was just—

Dr Sheil—Nothing has happened about that yet and we are well down the track, and the people take a bit of time to absorb these things.

Senator STOTT DESPOJA—Are you sure there were 10 republican models at the Constitutional Convention?

Dr Sheil—Yes, there were. There were some pretty crazy ones but there were 10 models and, by a gargantuan feat, they reduced that to four and by a series of Tammany Hall votes they reduced it to one, and none of them got a majority at all, ever. Talk about a comity of views—you have got the direct election republicans fighting against the bipartisan model in the campaign, to the death.

Senator STOTT DESPOJA—Yes, we have noticed that already.

ACTING CHAIR—You started by saying that the Governor-General, as I understand your position, is effectively our crown, that the Queen does not have a role under our Constitution.

Dr Sheil—Yes, only with appointments and removal.

ACTING CHAIR—Right. Are you saying that is because of the way practice is developed or are you saying that the wording of the Constitution does not provide for a role for the Queen?

Dr Sheil—The wording of the Constitution does not provide a role for the Queen.

ACTING CHAIR—That is not right, is it? Section 59 of the Constitution, as currently drafted, says:

> The Queen may disallow any law within one year from the Governor-General's assent . . .

Section 60 of the Constitution says:

> A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented . . .

I mean, the Governor-General effectively gives a message that he has received the Queen's assent.

Dr Sheil—Section 59 is an effete clause and has never been used and was only put in there when the Constitution went to England for ratification.

ACTING CHAIR—This is why I asked the question. These clauses are effectively redundant, aren't they?

Dr Sheil—That is right. When you are dealing with constitutional matters, you want to know what was exercising the minds of the people at the time they wrote the thing.

ACTING CHAIR—How can you say the wording of the Constitution does not provide for a role for the Queen?

Dr Sheil—It does not, because it is redundant, as you say. But you still want it there because you want to know where you have been so you know where you can go to.

ACTING CHAIR—If you look at section 68, for instance, it says:

> The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

Couldn't the Queen, hearing of all of this insidious debate of the potential of Australia to become a republic, under the Constitution direct the Governor-General, Sir William Deane, as her representative, to exercise his command in chief of the naval and military forces—using a strict wording of the Constitution—and call a military dictatorship?

Dr Sheil—No, you cannot do that.

ACTING CHAIR—On a literal wording of the Constitution that could occur.

Dr Sheil—But you cannot read the Constitution as black-letter law. It has to be interpreted. It is really a brilliant Constitution because it has to be interpreted. Events have overtaken all of that.

ACTING CHAIR—Don't you think it is appropriate for the substance of the document to reflect those events?

Dr Sheil—It does reflect them but I do not want to see the words changed, because you can have unintended consequences every time you alter anything.

ACTING CHAIR—Anyone wanting to use these literal powers would well and truly be able to rely on the wording of the document to support them.

Dr Sheil—No, you cannot rely on them because you have to interpret the Constitution in the light of all of those other things.

ACTING CHAIR—Right, so you are saying these have effectively become redundant clauses?

Dr Sheil—Yes.

Mr CAUSLEY—What about when Churchill declared war on Germany in 1939—I mean, Australia was very quickly drawn into that war. Wasn't that because we were considered to be a dominion of England?

Dr Sheil—There was a lot of patriotism kicking around then and I think most Australians would have wanted to support England. They were keen to join up and all of that sort of thing. I do not think constitutionally we were forced into it. I think there had been a lot of negotiations and Australia had more or less said, 'If you go to war, we will be with you the next day.' They went to war so Australia was with them the next day. There was not any objection. In fact, people were joining up to the forces.

Ms HALL—Could you see a situation where Australia and the UK could be on opposite sides, with our current Constitution?

Dr Sheil—Yes. You see, we are two separate entities as nations but constitutionally we are like mother and son: the son has grown up to be a strong, independent person in his own right.

Ms HALL—Therefore Australia could enter a war on an opposite side to England's?

Dr Sheil—Yes.

Ms HALL—Okay. So now we have got the commander of the armed forces responsible to the Queen—

Dr Sheil—No, not responsible to the Queen.

Ms HALL—in accordance with the Constitution and the reserve powers.

Dr Sheil—No.

Ms HALL—We have that situation written in black and white and on the other hand we have got the country at war with England.

Dr Sheil—Well, the Queen is not in charge of our armed forces, for a start; nor is she in charge of any of the government of Australia. If we did go to war, our Governor-General would be the officer in charge of our forces.

ACTING CHAIR—You are saying that that is a matter of practice that has developed.

Dr Sheil—No. That is a constitutional fact.

ACTING CHAIR—Well, it is not. We have gone through the provisions of the Constitution, and they are to the contrary. But I can understand your argument to say that, despite the black-and-white wording, custom and practice have surpassed that.

Dr Sheil—Yes. I think they have gone further than that.

ACTING CHAIR—Right. They have made these clauses irrelevant or redundant, I think we agreed.

Dr Sheil—Not irrelevant; they might be redundant.

ACTING CHAIR—All right. But they are redundant in their operation. Isn't it better to have a document which does not retain redundant provisions?

Dr Sheil—I would say no. I want everyone to know where we have been and how we have got here, because it is very important. I think we should erect a monument to the founding fathers. There is no other constitution like this in the world.

Mr PRICE—Dr Sheil, I am trying to understand your objections. You have made an objection about the way, if the Crown is removed, the states may be able to go independent or go their own way—and that is something that the committee will need to address in its final report.

Dr Sheil—I would say that they will go.

Mr PRICE—Have you any other objections to what is proposed in the referendum? Obviously you are against us becoming a republic, but are there any other concerns like that?

Dr Sheil—Yes. Just with the bill itself there are the ordinary 19 concerns about, for example, the selection committee that is going to select the candidates for Governor-General. That is just a plaything of the Prime Minister. With regard to the sacking, someone said it would be easier for him to sack his Governor-General than to sack his driver. They are really ridiculous sorts of provisions that they are trying to put up.

Mr PRICE—Would you agree that, currently, there is no formal process of selecting a person to be Governor-General—that is, that it is at the wit and whim of the Prime Minister?

Dr Sheil—That is a formal process. He does not just put anybody there. There have been some rather peculiar choices of heads of state. Gough Whitlam thought he had picked a staunch Labor man, but it turned out that he was not. Bill Hayden, you would have thought, would have been a strong Labor man, but he learned a lot in the job—on the job training, you might call it. Yes; in the states there have been problems. We had Wayne Goss up here. He made his laws laws of the Queensland parliament, not laws of the Crown. In my book, the Governor should have sacked him forthwith. They should have been laws of the Crown and not laws of the state.

Mr PRICE—Would you agree with me that it is quite possible that a Prime Minister could select his chauffeur to be Governor-General?

Dr Sheil—He could, but wouldn't that be a crazy decision?

Mr PRICE—I do not disagree with you. The point that I am making is that there is no process at the moment and that, at least in theory, a chauffeur or a head gardener could be selected—or even the gardener—to be the Governor-General.

Dr Sheil—There have been choices of Governor that have been designed to belittle the office of Governor. Don Dunstan did that, and it was a very cruel and inhuman thing he did. He appointed Pastor Nicholls as Governor, and he just did not have the capacity to do the job; it gave him blood pressure and diabetes, and he died from the stress of the job.

Mr PRICE—I apologise. I thought he was fairly successful. But the governors-general that have been appointed by the coalition in recent times—or by Labor, for that matter—have, by and large, served Australia pretty well.

Dr Sheil—Yes, so the present system is not too bad.

Mr PRICE—Although you concede that we could, at least in theory, have someone such as a gardener appointed?

Dr Sheil—It is unlikely that the fellow who gets to be Prime Minister is going to appoint a gardener as Governor-General.

Mr PRICE—I agree, but it is also fair to say that there are no safety nets, other than the operation and custom of the thing, to prevent that happening.

Dr Sheil—What is wrong with that? Do you want them to be in a straightjacket?

Mr PRICE—No. Would you also agree that there are no current safety net provisions should a Prime Minister sack a Governor-General?

Dr Sheil—It has never happened, as I said before.

Mr PRICE—I agree that it has never happened.

Dr Sheil—What do you mean by 'safety provisions'?

Mr PRICE—There is no accountability. Ringing the palace and providing the advice is the only bit of a safety net or accountability or whatever. The Prime Minister faces no sanction other than that of his party and the next election.

Dr Sheil—And that of the people. That is a good way to have it.

ACTING CHAIR—There being no further questions, thank you for coming along and conveying your views to us, Dr Sheil.

[2.27 p.m.]

ELLIOT, Mr James (Private capacity)

ACTING CHAIR—Thank you for coming, Mr Elliot. I need to formally advise you that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make a brief statement before we ask questions?

Mr Elliot—Yes, I would. I was a lecturer in political science at the University of Queensland for 26 years. I also lectured for several years in the UK and in Japan on the same subject. I am grateful to the committee for giving me the opportunity to appear here today. I was told yesterday I would appear at 2.15 p.m., but I gather there was some kind of miscommunication. I do realise that the committee is required to consider the provisions of the two bills and the possible problems arising from the bills.

These bills are extremely important for the future of our political system. The basic questions are: will the bills make Australia a more vibrant mature democracy; will the bills allow Australian people opportunities to more fully participate in our political system; and, will the bills give Australian people a sense of ownership of the system—a sense that it is their system and not somebody else's?

I think it would be sad if people got the wrong impression about the republican debate and even about the activities of this committee. The impression could be that the process is really about keeping the existing power holders in their positions of power. I think it would also be sad if the opportunity for Australia to move towards a more mature democracy was lost. We talk about the rights and liberties of the Australian people, however some of the provisions of the two bills seem to be more concerned about the rights and powers of the Prime Minister, and I do mention this in my very short submission. This can be seen particularly in the Presidential Nominations Committee Bill, with the appointment of community members by the Prime Minister and the appointment of the convenor of the committee by the Prime Minister and with the fact that community members are not in the majority on the committee. These are all questionable issues in terms of democracy and representing the people. With the Constitution Alteration (Establishment of Republic) Bill, why isn't the Senate involved in the removal of the President in clause 62? Does the Senate not represent the Australian people? I think it is very odd. I find clause 63, about the role of the state governors, really quite odd.

Ms HALL—Could you explain that a little bit for us, please?

Mr Elliot—Clause 63?

Ms HALL—The role of the state governors. I would appreciate it if you could just expand a little.

Mr Elliot—The fact that they are brought into the system at all I find anachronistic and unusual.

ACTING CHAIR—So you would want a Deputy President?

Mr Elliot—Not necessarily. I think the key thing here is: what has it to do with democracy; what has it to do with the Australian people? I think we should be very clear about principles. There is too much in the whole debate about details, about legal matters, and not enough about principles. How do we truly represent our people? I do not think the governors truly represent our people, whether in Queensland or wherever else. I am not against them but I am talking

about basic principles in our country. When I talk about a mature system, this is really what I am talking about. We ought to be moving this way. It would be very sad if this opportunity is lost. This committee is an extremely important committee because you could be saying fundamental things about our future in terms of a democracy. That is one reason why I am here today.

Ms HALL—Thank you.

ACTING CHAIR—I do not want to interrupt you, but I am seeing a lot of pages of notes there and I am just indicating that we have to have one of our members away at 3 o'clock. Were you intending to go through all those pages?

Mr Elliot—No, I am not. I have only got two or three more.

ACTING CHAIR—That is fine.

Mr Elliot—One of the problems of these bills and the republic debate is that they could make people more cynical about our system. That would be regrettable. I think people could feel alienated and more cut off from our democracy. We all know about recent events such as court cases and corruption allegations, even the rise of the One Nation Party in our state, and allegations about media figures and all that. I think this all adds to a sense of disillusionment about our political system. It would be sad if this process was also adding to that. I would like to think that the republic debate and the processes would renew our faith and reinvigorate our system.

A major problem in Australia is a lack of knowledge about our political system—we all know this—and the fact that most people do not even know we have a Constitution. I know the committee are well aware of this massive job of education which is needed and I hope the report of this committee will actually a make contribution to that. Fair enough, we can have a compulsory voting system, but a mature political system is one where people can participate freely and believe that their voice will be heard. I think this debate should be all about that. The other thing is we are obviously into an increasingly diverse society. We need to be spending more time explaining democracy and getting people involved.

Another issue which the committee could consider is that many people will find it difficult to understand why there is no choice of the republican model. Why is there only one question there? It is like going into a shop to buy something. You might decide you do not want fish—

ACTING CHAIR—You are aware that section 128 of the Constitution provides for the means of amending the Constitution, by way of a referendum, and people actually vote on a proposed law. So the proposed law—and there is only one option contained in that proposed law—is dictated by section 128 of the current Constitution. Are you aware of that?

Mr Elliot—I am, but my feeling is that once this decision is taken—once you decide upon the one form of the republic—and knowing the nature of our system and our culture, it will be very difficult to amend or change it again. I think this is restricting the freedom of Australian people, and it needs to be explained what is going on.

ACTING CHAIR—But you can do no more than explain section 128 of the Constitution.

Mr Elliot—I think it is the job of the government and of our parliament to explain it. We are going to spend money on an educational campaign, we are going to have educational material, and we have an expert panel. I would like to think that this committee and the expert panel would lay down the basic principles which that campaign should follow and what the material should be. I think there are certain principles here.

The bills are not that important, really; they are only important in terms of what they do for our democracy, and I think this is what the educational campaign should be about. Time is very short. I would like to think that there will be a very dynamic report coming out of the committee which would stimulate our bureaucrats and our leaders to do something about this.

Finally, I am sure that the committee will reaffirm the principles which underpin our democracy and ensure that they are enshrined in the two bills and in the process.

Ms JULIE BISHOP—Mr Elliot, what outcome would you like to see as a result of the referendum?

Mr Elliot—I would like to see more freedom given to the Australian people to select. I think there should be more options. I think there should be more than just one republican option.

Ms JULIE BISHOP—But would you favour a position where the yes case or the no case were to succeed? Which would you like to see succeed?

Mr Elliot—I can answer the question, but I do not think that is important and that is not what I am here for. I am here to argue the principle of democracy and participation of the Australian people in developing a more mature system.

Ms JULIE BISHOP—But there will not be a plebiscite on 6 November; there will be a referendum.

Mr Elliot—That is right. I understand that.

Mr CAUSLEY—The bill is before the houses at the present time.

Mr Elliot—Yes.

Mr CAUSLEY—If the referendum succeeds, that will become our constitution.

Mr Elliot—That is right.

Mr CAUSLEY—So do you favour that or not?

Mr Elliot—Not really; not because I am arguing for or against it but because I do not think the Australian people have been given a free choice. They just have not been given the choice. It is like going to the butcher shop and being given the choice of only beef when you would prefer mutton, lamb or chicken. There is just not a choice being given to our people, in my opinion.

Mr CAUSLEY—You can take it to extremes, but would you favour a CIR—a citizens initiative referendum? That is the ultimate choice.

Mr Elliot—I think there are numerous models and ways of doing it, but I come back to the feeling that there has not been enough attention given to the basic factor of giving as much choice as possible to our people. At the moment we force people to vote, and that is fair enough—that is the system. But I think we ought to be giving them more freedom to choose and more options to choose from, and this is why I think the educational campaign is so important.

Senator STOTT DESPOJA—My predictable question is: would you expand on your comments in relation to the Senate having a role in the dismissal process? You did not expand on that in your opening statement, but you did pose the question along the lines: is the Senate any less democratic or unrepresentative than, say, another house?

Mr Elliot—I found that clause rather unusual. Is the Senate part of the Australian parliament or is it not? Does the Senate represent the Australian people or does it not? I know about the

Senate and its background, but as a student of political science and the democratic process I think that the Senate should be involved. I find it very odd.

Senator STOTT DESPOJA—I would just like to go back a step. In relation to your concerns about the low esteem in which politicians and political institutions are held, do you think—and you may not know the answer—this will add to or decrease the cynicism or perhaps the lack of faith that people have in political institutions? Does it help to have the Senate involved or does it not? I genuinely ask that because, while I have a preferred position that the Senate be involved, I do not know whether the rest of the community is going to say, 'I don't think it is an appropriate process because the Senate is not involved,' or vice versa. As a former lecturer of political science, do you have any views on that?

Mr Elliot—I think it is regrettable. The Senate is part of our system. It has had a very high profile for many years now, which I think is a good thing because it has been against the government. The government has not controlled the Senate, and I think that is a definite plus in our system. In some respects, the Senate is highly regarded because of that position. Whether you agree with the political system or not is another matter, but that is part of democracy. I think the Senate should be fully involved in anything to do with the appointment of the President or the dismissal of the President.

Ms HALL—I want to touch a little bit on the Senate too. I think you were here this morning when I asked about whether or not a situation could develop where the Senate could be used by the opposition to get rid of the Prime Minister and to bring down the government instead of acting responsibly and in the way that you are recommending. I can see that you have a very responsible approach to government, in increasing the participation of people in the democratic process and in openness, et cetera, but do you see a situation where that could actually work against effective government? I suppose I am opening a can of worms here, but how democratic is the Senate when Tasmania has the same number of representatives as New South Wales or Victoria?

Ms JULIE BISHOP—Where are you from again?

Mr CAUSLEY—New South Wales.

Ms HALL—I prefaced my statement with 'I suppose I am opening a can of worms'.

Mr Elliot—My feeling is that the government is there to govern, and it should be able to govern. I think the Senate's function is a different function. The function of the Senate—of an upper house, for that matter—is to scrutinise and, in a sense, to control but not to govern and certainly not to be able to overthrow the Prime Minister or the Premier. I do not see that as the role of the Senate. I would see the Senate as being a very powerful part of our democratic system, as being able to scrutinise to the fullest possible extent the executive and in a sense to control—like controlling a horse with reins and so on—but obviously not to stop.

Senator STOTT DESPOJA—To check.

Mr Elliot—Yes, to check—to scrutinise and check.

Ms HALL—And the second part of my question?

Mr Elliot—The second part?

Ms HALL—The can of worms.

ACTING CHAIR—That is moving further from—

Mr Elliot—I am sorry, I forget what it is.

ACTING CHAIR—It was an expression of a personal opinion by the member.

Mr Elliot—I am sorry, I just forget.

Mr CAUSLEY—I may have missed your explanation, but I am still interested in your position on the President and how you think it is anachronistic to have state presidents—or they could still be governors—come and stand instead of the President. What if you did not have that proviso? Who would be there if the President were sacked? Are you disagreeing again with the model that we have before us?

Ms JULIE BISHOP—Even if you are overseas, you have to have someone to act.

Mr CAUSLEY—Yes, someone who is standing in.

Mr Elliot—What I am questioning and am critical of is the idea that the state governors, as they are at the moment, would act. I think that is very questionable in terms of a democratic, mature system. There are better ways, I am sure, that are more democratic and more representative of our people. If the new form at the state level is for an elected person or whatever—I do not know—maybe that would be the answer. As it stands at the moment, I cannot see any point in having that. It is certainly not democratic.

Mr CAUSLEY—So you disagree with the proposal in the bill?

Mr Elliot—Yes.

ACTING CHAIR—As there are no further questions, Mr Elliot, I thank you very much for coming along.

Mr Elliot—It has been my pleasure. Thank you for very interesting periods this morning and this afternoon.

Resolved (on motion by **Senator Stott Despoja**):

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

Committee adjourned at 2.47 p.m.