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JOINT SELECT COMMITTEE ON THE REPUBLIC REFERENDUM

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JOINT SELECT COMMITTEE ON THE REPUBLIC REFERENDUM

Thursday, 22 July 1999

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

Senators and members in attendance: Mr Causley, 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.

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Committee met at 9.07 a.m.

RAPER, Mr Matthew Benjamin, President, University of Newcastle Law Students Association

ACTING CHAIR (Mr McClelland)—Ladies and gentlemen, I will open the committee proceedings this morning. Thank you for coming along, Mr Raper. As a matter of formality, I need to advise all witnesses that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of 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. What we propose doing is asking you questions but, before we do that, would you like to give us a brief summary of your views to point us in the direction that your submissions are coming from.

Mr Raper—Yes, I do have some opening remarks to make. Unfortunately I must admit to the committee that I have not prepared a written submission on which to expand. You may think of me as coming from an oral and not a written tradition.

My initial remarks today will attempt to take something of a different slant on things. Those people who know me realise that I do this regularly. You may think of this particular issue, the republic, as something of a symbolic issue, given that I know in my studies I have found that Australia has de facto become something of an independent nation. I think the High Court's recent declaration on one of the people elected to the parliament in the last election—

ACTING CHAIR—The Heather Hill case.

Mr Raper—Yes, Hill's case, recently declaring the British Isles to be a foreign power, would tend to indicate that de facto things have changed in Australia since 1901. However, my view of this issue is something a lot more than symbolic.

I wish to take you today to something that I believe is much more realistic than the name or the title that we give to our head of state. Coming from a position, as I do, in charge of an organisation that represents, by and large, people under the age of 24 and above the age of 18, I see it as a very basic, fundamental issue in our lives. I want to draw the committee's attention to those young people that they know. They may be children of theirs, they may be relatives or they may just be people that they know through their general life. Something that I see in those people as a whole today is a lack of direction or something that we might say is the question, 'Why?' It is something that I get asked a lot. It makes me wonder what it is that those people require, what it is that those people really need in their lives to make them ask the question, 'Why not?' For me, it comes down to an air of self-determination about their lives and the culture that they live in. This issue is about changing our culture from one of dependency to self-reliance.

You can imagine the appalling problems that face our youth today. It is something that has been discussed at length. What I believe is at the heart of that, the core of that, is a real lack of a feeling of empowerment, of self-determination, of believing that if they put their

nose to the grindstone something will come to them. This, for me, is a large determining factor in youth unemployment, for example, and also in the great mental health issues that we have with our young people today, especially in regional Australia.

I would, if I may, like to change your direction somewhat, or at least the motivation thereof, from something of a symbolic discussion, a symbolic issue, to something of realism and something of particular importance to this nation, our youth and our future. Thank you.

ACTING CHAIR—So the thrust of what you are saying is that you think it is significant from the youth point of view to have an Australian head of state. Is that the thrust of your submission?

Mr Raper—Yes.

ACTING CHAIR—And in terms of the model to achieve that, is that a major consideration or a minor consideration? Where do you come from from that point of view?

Mr Raper—Speaking plainly, I would say a minor consideration.

Ms HALL—You have seen the long title of the bill?

Mr Raper—Yes.

Ms HALL—I wonder whether you can comment on whether or not you think that young people would see the relevance of that when they went along to vote:

A Bill for an Act to alter the Constitution to establish the Commonwealth of Australia as a republic with a President chosen by a two-thirds majority of the members of the Commonwealth Parliament.

What do you think of that for a question to put to the Australian people?

Mr Raper—I must admit that I have been, to a certain extent, corrupted. I actually know what a long title is and I would probably have read it by the time that I got in there. I must say that most young people that I know probably would not. However, should they have turned their mind to it, and there is a significant portion of today's youth who probably would have—I study with some people just like that—they would probably think that is something of an anachronistic title.

Ms HALL—Have you got a suggestion of a title that may be better?

Mr Raper—I have not written one out or drafted anything, but I might just point out that reference to the particular procedural aspects of the model will probably be considered irrelevant by most young people. The fact of the matter is that the head of state will change from someone from a foreign power to someone from this nation.

Ms HALL—You would like to see that?

Mr Raper—That should be forcefully stated.

Ms HALL—Thank you.

Mr CAUSLEY—I would like to follow up on your opening statement. You said that you believed that the young people would find a role in life if they saw Australia as having an Australian head of state. You also replied to Mr McClelland by saying that you did not really care about what type of republic or what method we adopt as long as we achieve that. We are talking about changing the Constitution of Australia. Are you also concerned about the fact that the freedoms that we enjoy in this country today are also protected?

Mr Raper—Yes, definitely.

Mr CAUSLEY—Therefore, it is important that we look at the model that we are going to adopt.

Mr Raper—It is important, yes; you are right. I think the question in substance was whether it was a major or a minor consideration. That was in response to a vein of thought that I had, which was that it did not matter primarily how we did it as long as we did it. But it does matter.

ACTING CHAIR—Thanks very much, Mr Raper, for coming along to make that contribution. Jill, do you have any further questions?

Ms HALL—No. Thank you, Matthew. It was great to see you here.

Mr Raper—Thank you to the committee.

[9.15 a.m.]

BARNWELL, Mr Norman Edgar (Private capacity)

ACTING CHAIR—Thanks very much for coming along, Mr Barnwell. As a matter of formality, I need to advise all witnesses that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Have you put in a written submission?

Mr Barnwell—No, I have not.

ACTING CHAIR—Before we ask questions, would you like to give us a brief statement of your opinion?

Mr Barnwell—Yes. I am not here to argue the case for the republic even though I am an ordinary member of the Australian Republican Movement. That is obvious because I have my little badge on. I believe in the movement but I am not here in any way, shape or form representing that group. In fact, they told me not to appear but, being the kind of person that I am, I did not take any notice of that.

What I want to put forward is a suggestion that you might like to consider; namely, that the form of the question should be thought about rather more than it has been. In other words, it is my opinion that the form of the question being put to the Australian people should be as simple as possible and should only have about two or three words in it—that is, people are asked to say yes or no. My particular desire would be that, when we went to vote in November, we would have the question in front of us: 'Do you want Australia to become a republic—yes or no?' Underneath that there would be: 'Do you want the Australian head of state to be an Australian person—yes or no?'

That does not say anything about what will happen if people say yes. It is my submission that, if the bulk of Australian people say yes to that simple question, it is then necessary for them to vote a second time in, say, about six months time in the year 2000. They would be voting the second time on a proposition put forward by another Convention which had thrashed it out. The second Convention—say, in the year 2000—would consist of all those people who are in favour of a republic.

Because the Australian people voted in November this year that they were in favour of a republic, they do not have to make up their minds about what kind of a republic it is going to be. But they want some sort of a republic. Then, if the people who were at the previous Convention—all those who were in favour of a republic—were to meet again in the year 2000, they could thrash out a proposition that could be put to the Australian people and then the people would have the choice of whether they liked that form of a republic. All those who were against the idea would have a second vote. They would all vote no, presumably, the second time. But that would give the people who were not in favour of either electing a republican President or nominating one a chance to get the numbers up.

In the first instance they would say, yes, they want a republic. In the second instance—say, six months later—they would have another vote on what kind of a republic they wanted. That generally covers what I wanted to say. The question should be simple. The people will get two votes: one on whether they wanted a republic or not and the second, six months later, on what kind of a republic they wanted. That would then be rather more involved than the first time.

ACTING CHAIR—Do you not think too much water has run under the bridge in the sense that there was one line of argument that, prior to the last Constitutional Convention, there should have been an indicative plebiscite to get the views of the Australian people and then to hold the convention? Things have moved on since then and the nature of any amendment to the Constitution requires a specific proposition, a specific bill being put before them. Do you not think too much water has run under the bridge?

Mr Barnwell—No, I do not think so. I think it is about the most important issue that any of us have ever had to face in our whole lives. It is a monumental opportunity, which my father certainly never had, to do something and that we will not get for another 100 years.

The point is that if the will is there the means can be found. I do not think that is a stumbling block at all. I think the time slab is reasonable in that, if we say clearly that we want a republic at this next election in November, then we are giving six months to those who are in favour of a republic to work out what is their most desired option, and people could vote again. I cannot see any difficulty in that at all. I do not think the bill would have to be changed in any way. We are only arguing about the form of the letter, the yes or no business, and I am sure it would be possible to organise another Convention in six months.

ACTING CHAIR—The bill proposes actual amendments to the Constitution to bring about a particular form of republic, one whereby the President would exercise the same powers as the Governor-General. The President would not be directly elected but rather selected through a process where community representatives propose names to the Prime Minister. The Prime Minister would have the power to nominate from the short list, and the nomination must be seconded by the Leader of the Opposition before two-thirds of parliament vote on whether they are prepared to accept that nomination. That is one model which is contained in the bill. So, in answer to your question, the bill is quite detailed in respect of the model it proposes.

Mr Barnwell—I am only talking about the referendum question, not the bill itself. Couldn't the bill be changed or modified in any way, shape or form? Does the bill necessarily have to be included in the question of the referendum?

ACTING CHAIR—No. A lot of people do not have regard to the nature of a referendum. Under section 128 of the Constitution the Australian people vote on a proposed law and that law is actually one which has been passed by parliament, so the law itself must have been through the parliament before the Australian people either give a tick or a cross to it. It must be an actual bill that has gone through the parliament.

Mr Barnwell—Well, how does it come about that there is still some debate as to what form the question will take?

ACTING CHAIR—Again, there is a misunderstanding of the nature of a referendum. A referendum is not a canvassing of views such as you get in a plebiscite; it is whether people support or object to a proposed law.

Ms HALL—There possibly is the ability to change the long title of the bill a little bit to make it more easily understood by people. That is probably the degree of flexibility we have—just to change the long title, as long as it reflects the legislation in some way.

Mr Barnwell—If that is the case, it is impossible, because of the fact that it is enacted as a bill, to take up my suggestion. All I can say is that I am desperately in favour of making the question as simple as possible. Even while you were talking and explaining it to me, you got a bit lost. You found it difficult to explain exactly what you were trying to say and I got lost in trying to understand what you were trying to say. So, if all that is included in what we have to vote on, we do not have much of a chance of getting the referendum through.

If that is the case, if that is the deliberate ploy of the government to make it so obfuscating that people do not understand what they are voting for, I think that is dastardly. If it is at all possible, the government should at least take the opportunity to make it as simple as they possibly can under those circumstances.

Mr PRICE—It is always difficult to work out what is the best method to progress the referendum but I want to say that a number of people have approached the committee with the same view that you have expressed. That is, it would have been a much neater way to go to have an indicative plebiscite—do Australians really want to have a republic?—and then get down to the business—following, presumably, a positive vote on that question—of fashioning what sort of republic we have. But, as the acting chairman has explained, we are locked in to this process now and it is a bit hard to shift and whack into reverse gear.

Mr Barnwell—Under those circumstances, all I can say is that I urge the government of the day to understand the symbolic nature of the situation they are in; that is, it is going to be 100 years since federation and this is a beautiful symbolic opportunity to get a republic. There is a majority for a republic and, if they let the opportunity go, history will show that that is the way they operated. They should take the opportunity to make it as simple and straightforward as possible, if that is at all possible at this stage. I do not think I can add any more than that.

Mr CAUSLEY—Traditionally the long title of a bill has been detailed to explain what the bill is about. In fact, the Australian Republican Movement have argued before this committee that we should put more into the long title so that it clearly identifies what is happening in the bill. That has been the debate as to what should be the words of the long title. I presume you are saying that we should have a title that says ‘a bill for an act to amend the Australian Constitution and become a republic’ or something like that.

Mr Barnwell—Yes, that is exactly what I am suggesting. I do not know whether that is possible. If it is possible, let's have it.

Mr CAUSLEY—That is possible, I would say, but not everyone would agree.

ACTING CHAIR—You do not think that begs the question as to what sort of republic we have? Do we have one where the President is directly elected, or do we have one where there is community consultation as proposed in this bill? Don't you think many Australians would say, 'You are not giving me the details. You are trying to pull the wool over my eyes'? Don't you think the Australian people are entitled to as much information as is reasonable to let them make an informed decision?

Mr Barnwell—My own reaction is that it has been made difficult deliberately. I fear that is what has happened. It has been a process which has ended up with that result. In the event that that is the end result, I am prepared to hope that the Australian people will want a republic so much that they will accept the kind of proposition that is put, even though some members of the public who are in favour of a republic are opposed to that idea.

ACTING CHAIR—It appears that you were not fully aware of the nature of the changes proposed in this bill to bring about—

Mr Barnwell—It does not mean that at all. It means I do not understand the ramifications of the bill. I understand the question—

ACTING CHAIR—Don't you think the Australian people are entitled to know what the ramifications of the bill are, and, if there is a simple question 'Do you want a republic?'—and it begs the question of what the ramifications of this particular bill are—that there will be many Australians who feel that there is an attempt to pull the wool over their eyes?

Mr Barnwell—No. The opportunity was presented at that Convention in Canberra, and in debate, which has not been encouraged by the government, to get people to understand the situation that they are voting on. If you have to be educated when you go in to vote, it is a bit too late then. When you go to vote at an election you do not have all the policy statements of all of the candidates and all the parties in front of you to decide on. You have made your mind up that you will vote Labor, Liberal, Democrat or whatever. You do not have to sit down there and then and think out what the ramifications of the policies are, and I do not think you should have to do that in a referendum either.

ACTING CHAIR—The previous witness said that, in respect of young people under 24, it is unlikely that many of them would have read the material, so the question will be very important to them.

Mr Barnwell—Yes, but they understand the simple situation that we are discussing; that is, whether Australia should be a republic or a constitutional monarchy.

ACTING CHAIR—But that begs the question as to what sort of republic, does it not? This is the argument that the Australian Republican Movement put before us: if you simply

refer to Australia becoming a republic it begs the question as to what form it is going to take.

Mr Barnwell—Not necessarily. I do not agree with that at all.

ACTING CHAIR—All right.

Mr Barnwell—There are some people who are in favour of a republic who want to have an elected President, but most of the people in favour of a republic would be prepared to have a republic of any sort rather than a constitutional monarchy. I do not think it begs the question at all.

Mr PRICE—Could I read out a suggested form of words offered by Michael Lavarch yesterday:

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.

How does that grab you?

Mr Barnwell—Sounds good to me.

Mr PRICE—Thank you.

Mr Barnwell—Does that cover all the requirements of the bill?

Mr CAUSLEY—Not all. Some people argue that, in fact, the method of dismissal should also be included because that is rather unique—a method of dismissal.

Mr Barnwell—All of those, in my view, are peripheral to the basic question of whether we want a foreigner as our head of state or an Australian born and whether we want a republic or a constitutional monarchy. I can see all those questions that you are worried about can be solved in time. As conventions have grown up in the last 100 years to govern the way parliament conducts its business, in the same way there can be conventions which would develop after this. In fact, the more you write things down the more difficult it is to follow your Constitution.

ACTING CHAIR—Thanks for coming along to express your point of view, Mr Barnwell.

Mr Barnwell—Thanks very much.

[9.30 a.m.]

HORKAN, Mr David Rory (Private capacity)

ACTING CHAIR—Thank you for coming, Mr Horkan. As you heard me formally advise all witnesses, 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. Would you like to make a brief statement as to your point of view?

Mr Horkan—Yes, thank you. I have written something down because I am not very used to this. My submission relates to the question specifically. It is my opinion that the currently proposed question is adequate. As I understand it, it is: do you agree to an act to alter the Constitution to establish the Commonwealth of Australia as a republic with a President chosen by a two-thirds majority of the members of the Commonwealth parliament? It establishes the fact that the Constitution needs to be altered and makes it clear that a President would be chosen by parliament rather than directly elected. It is, however, perhaps possible that the question could be improved by mentioning the dismissal procedures.

ACTING CHAIR—Thank you very much. Do you have a proposed title that you would like us to consider?

Mr Horkan—I am fairly happy with the title as it stands. It is very important that it is spelled out that the President would be chosen by a majority of parliament rather than being directly elected. As the previous gentleman said, a lot of people might want one kind of republic and not another, and there is still some confusion in the community about how the President would be elected. It is such an important thing that it should be specified as far as possible what people are voting for.

Ms HALL—Mr Horkan, if you believe this question should really describe the nomination process and the appointment process, don't you think it would be fairer if it also mentioned the community committee that would be considering the nominations and then making recommendations to the Prime Minister? The fact is that the nomination is made by the Prime Minister and the Leader of the Opposition must second that nomination. Also, rather than, as the long title says, being chosen by a two-thirds majority of the Commonwealth parliament, it is really being ratified. That is what the situation is. It is ratified by a two-thirds majority of the Commonwealth parliament rather than chosen, because it goes through that nomination process, with the committee of 32. The Prime Minister and the Leader of the Opposition actually nominate the person to the parliament and then the parliament ratifies it.

Mr Horkan—Yes, I would not particularly object to that. It just depends how long you want the question, really. It could go on for pages. I think it is essential that it is clearly specified that the President is not being directly elected, and I think it could be worth considering including the dismissal procedures because, in my opinion, it is the dismissal procedures which are the big problem with this model.

Ms HALL—Do you see the dismissal procedures as being different to the current dismissal procedures?

Mr Horkan—Yes.

Ms HALL—How do you see them as being different?

Mr Horkan—My understanding is that the current procedures would take a certain amount of time to actually come into effect—I have heard five or six weeks quoted, but I cannot be specific—whereas my understanding of the proposed procedures is that the President can be dismissed on the spot, and the Prime Minister would then have 30 days to explain it to parliament. My understanding is that while the nomination has to be ratified by a two-thirds majority of both houses, the dismissal can be ratified by a simple majority of the lower house.

Ms HALL—Would you agree that currently the Prime Minister does not have to justify his decision to sack a Governor-General? All he needs to do is send a letter to the Queen saying that the Governor-General is being sacked. We actually had Malcolm Fraser address the committee in Melbourne, and he was most adamant that, under the current Constitution, the moment that the Governor-General is served with that letter he is in effect sacked.

Mr Horkan—It is difficult for me to argue with Malcolm Fraser, but in my opinion, in looking at it in practical terms were the situation to arise with our current system, it could not happen on the spot. I think there would be such a public outcry that the Prime Minister would have to think rather more carefully before making such a decision and he would have to do a lot of explaining before it actually came in to effect. I do not believe he can just pick up the phone and speak to the Queen and get the Governor-General dismissed quite as quickly as that.

Mr PRICE—The point is that the public outcry does not diminish. If our Prime Minister, Mr Howard, were to get on the phone and request the dismissal of Governor-General Deane, I think there would be an outcry. But if Prime Minister Howard were to seek the dismissal of President Deane, I do not think any public outcry would be diminished. I think it would be the same. The big difference is that he needs to go back into the parliament and get the approval of the House of Representatives. If he did not, his Prime Ministership would be over. So in effect there is a safety net—there are even more safeguards under the model proposed than we currently have.

Mr Horkan—Yes. But my argument—perhaps I did not explain myself particularly well—

Mr PRICE—You are doing pretty well, I reckon.

Mr Horkan—A great deal has been made about the way in which the President is chosen, and it all sounds very nice and I have got no particular objection to those procedures—particularly the fact that it should be a decision made by both sides of parliament after all sorts of consultation. I have not understood why the dismissal procedure should not be treated in the same way. Some people argue that the dismissal procedures are

no worse than what we have at the moment, and they might even be better—that is a matter of opinion—but I think they could be a lot better still. I am not here to argue for any particular republican model, because, as you might have gathered, I tend to be opposed to a republic anyway.

Mr PRICE—I got that impression.

Mr CAUSLEY—On the dismissal issue, would you prefer that, if the Prime Minister were trying to remove a President, the President could only be suspended and the parliament must decide within 14 days with a 60 per cent majority of the House of Representatives required to ratify?

Mr Horkan—On the face of it, without giving it much consideration, I would have thought that might be a preferable alternative. But it is not clear to me why the same method could not be used for dismissing the President as is being used for selecting him in the first place, because surely any vote in the lower house with a simple majority would be along party lines—that would be the reality of the situation.

Mr CAUSLEY—Yes, it would. But with 60 per cent it would not be, because you would have to get some of the opposition across. I think the Constitutional Convention argued, about the dismissal going to a joint sitting of the two houses, that if the reason for removal of the president was that there was an impasse with the Senate, then it was unlikely to be resolved at a joint sitting.

Mr PRICE—The other point is that Prime Ministers get their commission by virtue of their party's numbers in the lower house. Joint sittings traditionally are to pass bills. If a Prime Minister fails to get a bill passed at a joint sitting, he would not necessarily resign—far from it. So you run the risk if you have a joint sitting that a Prime Minister can say, 'I didn't get approved but I'm not accountable to a joint sitting, I'm accountable to a House of Representatives and that is where I win confidence or lose confidence, where my government rises or falls.' So certainly I have the concern that you might lose that accountability. If the House of Representatives did vote against the Prime Minister, in my mind it would be clearly a question of confidence and he would be required to resign and either a new leader chosen from the majority party or ultimately an election and the people deciding the matter. But a joint sitting, I do not think, would guarantee such strong accountability.

Mr Horkan—Yes, I can understand that there are a few options, any of which would be an improvement on what there is. But my original point was not so much what is going to happen after a republic might be called, because I think that is in the legislation. It is just a matter of letting people know when they vote as far as possible exactly what is being proposed in this model.

A good many people will be aware of the selection procedures but not so many will be aware of the dismissal procedures. The important thing is to make sure that people understand, for one thing, what a big change it is. It is not a minimal republic or a minimal anything; it is an enormous change. It should be spelled out as clearly as possible. I do not think the question should be made more simple than it should be because it is a very complex thing. We do not want to over-elaborate it but I do not like just waffles about heads

of state and things like that. It should be at least spelled out, as I said in my original submission.

ACTING CHAIR—Thank you for coming along. We will be handing down our report on 9 August.

[9.42 a.m.]

CRAKANTHORP, Mr Timothy (Private capacity)

ACTING CHAIR—Thank you very much for coming along, Mr Crakanthorp. As I have advised all witnesses, as a matter of formality, 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.

You have seen the earlier format where we have asked witnesses a number of questions on the points that they have put to us. At the outset would you like to make a few points?

Mr Crakanthorp—Yes. By way of introduction I want to start with a small story. The last time I was in a beautiful sandstone building like this was in South Africa as a Rotary exchange scholar. I was there representing youth and I was going around to schools. I was going to beautiful sandstone buildings which housed white public school students. They were all very happy to talk to me about rugby and cricket. They knew I was from Australia. I had brought my beautiful flag along and draped it across the back of the blackboard. That was great. Then I went to Soweto to other schools, black schools, where I needed permission to go in. I had my blazer and my badges and my flag. I put up the flag and I would start talking. Some of them did not know where I was from. Quite a few of them thought I was from New Zealand and some of them thought I might have been from Fiji.

I think they were just looking at my flag. It was symbolic of my identity, and the fact that that was confused really quite upset me. They alluded to their flag, which had a British flag, a flag from the Netherlands and also a Boer flag on it, and how it disenfranchised them. On the point of disenfranchising, I think we are disenfranchised having a foreign head of state in our country as monarchy. It is great that we have come to the point, particularly at the turn of the century, where we can look ahead. I hope, in another 100 years, that when people walk into this beautiful building Australia is a republic and we have a president.

My main thrust here today is, firstly, simplicity. The reading age of the major printed media in this country would be around 10 and 15 for things like the *Daily Telegraph* and perhaps the *Herald*. With illiteracy, which people tend to ignore, the simple form of the long title, in particular, is perhaps the best form. Initially it is better to just make it simple and have people express a view either for or against a republic, and perhaps get down to more detail later. Secondly, people participation is paramount. People have to feel like they are participating, as in this sort of forum, and as in a forum where people nominate a group of people to the Prime Minister that is agreed to by the Leader of the Opposition.

In the long title one amendment which could be good is replacing the word ‘chosen’ by a two-thirds majority of the members of parliament with the word ‘approved’ or ‘ratified’ to give people a bit more of a feeling that they have participation in the process and they are not merely having someone else decide for them, since it is pretty well decided by the Prime Minister and the Leader of the Opposition. They are my two main thrusts. With youth, keep it simple, because a lot of young people do not understand long words and largesse,

particularly when it comes to referendums and given Australia's record on rejecting them. The simpler it is, the better.

ACTING CHAIR—Do you think there should be a reference to the process of community consultation? Would that be of interest to young people?

Mr Crakanthorp—I think it is of interest. If it is simply stated, yes. The first issue is whether we are going to have a republic, and the format.

Ms HALL—What do you think of the long title: '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'? It is the one that Mr Price read out earlier and the one that Michael Lavarch presented to the committee yesterday.

Mr Crakanthorp—That seems quite simple and quite good.

Ms HALL—Would you support something like that?

Mr Crakanthorp—Yes.

Ms HALL—The other thing I wanted to pick up on that you spoke about was the simplicity issue. Do you think the education campaign should be geared towards young people and that there should be some specific education package or approach that would be relevant for young people?

Mr Crakanthorp—Most definitely. A very important part of the whole process is involving youth. The involvement of youth in the previous meeting on the Constitution at the Old Parliament House was great, with the participation and input of youth. Young people are extremely interested in this issue. If we can pursue that and follow up with educational packages it will be well worthwhile.

Mr CAUSLEY—Have you a preferred model for a republic?

Mr Crakanthorp—Initially a republic, but a preferred model? No, I have not delved enough into that.

Mr CAUSLEY—You are aware that referenda dealing with the Constitution do not have a very good record in being passed. If you are thinking about getting any republic and then having further referenda to fine-tune that, it is going to be fairly difficult, isn't it?

Mr Crakanthorp—Yes, it would be difficult. You necessarily have to have a referendum for all the other changes that need to be made.

Mr CAUSLEY—So if we are going to change the Constitution it is rather important that we get it right.

Mr Crakanthorp—It certainly is. You do not want to get people, particularly young people, confused by too many complicating phrases, words or issues at the same time. Given the record, it should be simple.

Ms HALL—You are familiar with the model that is encapsulated in this legislation—the process of being appointed by the committee, the nomination being considered by the committee and then presented to parliament. Are you happy with that model?

Mr Crakanthorp—There could be a higher percentage of parliament that has to approve it.

Mr CAUSLEY—The dismissal?

Mr Crakanthorp—Approving the President in the first place, that is, two-thirds of a joint sitting. Is it 66?

Mr CAUSLEY—Yes.

Mr Crakanthorp—That is fairly good, 66.

Mr PRICE—I guess young people do not too often dwell on the exotica that exists between a Governor-General and a Prime Minister. But would it be fair to say that by and large they see it working well now?

Mr Crakanthorp—The dismissal of Gough Whitlam is very prominent in our history. Apart from that, it works reasonably well. We were very worried about that sort of thing.

Mr PRICE—I suppose in some ways there was a dilemma to absolutely replicate the current system faithfully. In some ways this has not been done because there are now new accountability processes that Jill has referred to like the nomination committee—citizens having the right to nominate who they want to be considered as a President—whereas at the moment a Prime Minister could appoint his chauffeur, if he so wished, to be Governor-General. There is no process and there is no check, other than that of public opinion, on his decision. In a sense this model, whilst it replicates the current system, actually has more safeguards in it for people than the current system.

Mr Crakanthorp—I think it is good that people have participation, that they do not feel disenfranchised.

Mr PRICE—Have you any suggestions regarding targeting youth for the forthcoming referendum? There will be two. There will be a public education campaign to inform people about the referendum and, in addition, there will be the 'Yes' and 'No' cases. In terms of the first have you got any thoughts on how youth should be targeted with information on this?

Mr Crakanthorp—Like the neutral publicity program, not the 'Yes' or 'No'?

Mr PRICE—Yes.

Mr Crakanthorp—Yes, particularly in schools and TAFEs. A lot of people who do not have a high level of education are in TAFEs. Through every possible government outlet perhaps, in work-for-the-dole, where people have less literacy—I think everyone is interested in this issue—and through as many points as possible, through government agencies and through NGOs as well.

Mr CAUSLEY—A previous witness was saying that if the government is going to put out information, particularly to younger people—not all younger people—the information needs to be simple and readable so that they understand what it is about, not in legalese.

Mr Crakanthorp—Absolutely. People get turned off very easily by legalese.

ACTING CHAIR—Thank you very much for coming along and giving us your contribution. It is valuable to get that opinion. We will be handing down our report on 9 August.

[9.55 a.m.]

MAWDSLEY, Mrs Betty Elaine (Private capacity)

ACTING CHAIR—Mrs Mawdsley, thank you very much for coming along to give evidence. As I have advised earlier witnesses, 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. But before we ask questions would you give us a brief summary of the points you would like to make?

Mrs Mawdsley—I support the idea of Australia becoming a republic. I feel we are a nation in our own right and we should not be dependent upon another country, any other country, for our head of state. I support the recommendations of the Constitutional Convention for the setting up of a committee made up of members of parliament and the community who will nominate the list of candidates for President to be presented to the Prime Minister, and with the endorsement of the Leader of the Opposition; one final name to be presented to parliament, to be voted on by a two-thirds majority.

However, the question to be put to the people does not explain that clearly enough. I know we have to make it as simple as possible, as the previous person said, but this is rather off-putting for people. If they feel they have no input into the election of a President, I think they will reject it outright.

ACTING CHAIR—So you think it is important that there is a reference to the community consultation process?

Mrs Mawdsley—Yes, maybe along the lines that Jill has said previously. Reading Kim Beazley's speech, I am not opposed to what he has put forward:

A bill for an Act to alter the Constitution to provide for an Australian citizen chosen for nominations submitted by the people and approved by a two-thirds majority of a joint sitting of the Commonwealth Parliament to replace the British monarch as Australia's head of state.

That explains to people that there is at least some community involvement in the election of a President. I feel that is very important.

Mr PRICE—I know it is a hypothetical question, but should the republic be successful at the referendum, do you feel that a number of Novocastrians would be nominated to be considered as the first President of the republic—apart from Andrew Johns or Matthew?

Mrs Mawdsley—I would support them. However, I do not know about a number of people.

Mr PRICE—You would have the freedom to nominate them, of course.

Mrs Mawdsley—Yes. That was rather facetious. I do not know about those two.

ACTING CHAIR—That would be difficult if you get a two-thirds majority of parliament. You would get all the Aussie Rules supporters.

Mrs Mawdsley—And all the other Rugby League teams. Somebody could be nominated from Newcastle but I cannot see a number of people being nominated.

Ms HALL—Is that different to the situation now? Maybe the system would be more open, more accountable and people would know a lot more about what is happening than is currently the situation.

Mrs Mawdsley—Yes, I think so.

Ms HALL—Currently the Prime Minister makes a nomination and as my friend and colleague Roger Price has said many times, the Prime Minister currently could nominate his chauffeur, gardener, or whoever and would not have to explain to anyone why.

Mrs Mawdsley—And then dismiss him if he were not happy with him.

Ms HALL—And still be not accountable—is that what you are saying?

Mrs Mawdsley—Yes.

Mr CAUSLEY—Don't you think that, when it comes to the process—even with this model, you have to get the support of the Leader of the Opposition to put a nomination forward to the House—the person nominated would be a very responsible person? Obviously, you are not going to get agreement on someone political unless they are someone who is pretty clearly down the middle of the line. To get that agreement between the Prime Minister and the Leader of the Opposition, some prominent person would have to get that position.

Mrs Mawdsley—Yes. That is what they are presenting, isn't it?

Mr CAUSLEY—Yes.

Mrs Mawdsley—That it is agreed to by the Leader of the Opposition.

Mr CAUSLEY—In the past, I do not think we have got it wrong with governors and governors-general.

Mrs Mawdsley—That is debatable.

Mr CAUSLEY—I know there is a great partisan debate about 1975 but, given the fact that the Senate had denied supply and there was no money to run the country, what could—

ACTING CHAIR—It deferred; it had not denied.

Mr CAUSLEY—But there was no money available. The Governor-General had to make a decision, and the President would have to make a decision, too.

Mrs Mawdsley—But, apart from that, there were many occasions when Sir John Kerr really did not present himself as a very good Governor-General or role model. I do not think it was just the dismissal.

Mr CAUSLEY—Has there been any other Governor-General or Governor that you consider was a bad—

Mrs Mawdsley—I think the present Governor-General is an excellent person. I would support him being President.

Ms HALL—It has been put to us that, if the referendum question were passed, he would be a very appropriate person to be the first President of Australia.

Mrs Mawdsley—He seems to be a very unbiased type of person and a very sympathetic person. I think he appeals to a lot of people.

ACTING CHAIR—Do you think it is more likely that someone who has been nominated by the Prime Minister, from one political party, and seconded by the Leader of the Opposition, from the other major political party, is likely to be a person who is above party politics?

Mrs Mawdsley—It states that they must not be a member of a political party, doesn't it?

Mr CAUSLEY—He could have resigned, though.

Mrs Mawdsley—Yes. My husband said that last night.

ACTING CHAIR—Is it more likely that a person who is acceptable to both sides of the political spectrum is above party politics and more of a unifying influence?

Mrs Mawdsley—I would hope so, yes.

ACTING CHAIR—Thanks very much for coming along today.

Mrs Mawdsley—Thank you.

[10.03 a.m.]

PATTON, Mr Warwick David (Private capacity)

ACTING CHAIR—Welcome. Thank you very much for coming along today. As I have advised earlier witnesses for the record, 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 submission?

Mr Patton—The advice I received yesterday from the secretary to this committee stated that the committee would consider whether the bills reflect the recommendations of the Constitutional Convention. It is that issue which I initially wish to address in this submission, but from it follow implications with respect to the constitutional propriety of the proposed legislation as presently framed.

The parliament of the state of Queensland recently passed an act entitled Queensland Constitution (Requests) Act 1999. Amongst other things, this act requests the Commonwealth parliament, under the provisions of the Australia Act 1986, to amend the Commonwealth of Australia Constitution Act 1900 of the UK by omitting the preamble and repealing sections—and they use that word; I think they mean clauses—2, 3, 4, 5, 6, 7 and 8. The commencement date for the Queensland Constitution (Requests) Act 1999 is defined as being on a day to be fixed by proclamation but not being before the day on which the Constitution Alteration (Establishment of Republic) Bill 1999 receives the royal assent.

The foreshadowed alterations to the Commonwealth of Australia Constitution Act 1900, whilst not proposed in the bill before this committee, are thus intimately linked to its passage. There is a problem here which this committee, and indeed the whole Commonwealth parliament, should consider. At first sight, the problem is that a recommendation of the Constitutional Convention would appear to be going to be ignored. That recommendation contained in paragraph 30 of the convention communique was that the existing preamble before the covering clauses of the Imperial Act, which enacted the Australian Constitution, would remain intact.

How, this committee may well ask, is an act of the Queensland parliament bearing upon a Convention recommendation relating to the preamble issue a matter of relevance to the Constitution Alteration (Establishment of Republic) Bill 1999? It is relevant in two ways. The first is that, putting it very briefly, even if passed at referendum, the Constitution Alteration (Establishment of Republic) Bill 1999 could well be rendered ineffectual by the overriding effect of the existing preamble whilst it remains in place. The second is that the Queensland Constitution (Requests) Act 1999—as with similar legislation in all other states—was, I understand, drafted in accordance with terms laid down by the Commonwealth Attorney-General's office and would thus appear to reflect a Commonwealth government initiative to remove the existing preamble, despite public statements to the contrary.

Given that the whole legislative program associated with the republic issue is being presented as being non-partisan, there is every reason for the parliament to take all steps

possible to ensure there is no attempt, or even the appearance of any attempt, to evade the constitutional constraints or requirements that must be met for these unprecedented proposed changes to our national polity to become law. The attempted separation of the existing preamble removal issue from the establishment of a republic proposal does have the appearance of an attempt to circumvent such constitutional constraints. My reasons for saying this are set out in more detail in submission No. 442 on the exposure draft of the Constitution Alteration Preamble Bill.

If it is simply the case that the Constitutional Convention, albeit unbelievably, made a self-defeating recommendation in stating that the existing preamble should be retained, it would not be unreasonable for the government to propose in its Constitution Alteration (Establishment of Republic) Bill 1999 that the existing preamble—notwithstanding the Convention's recommendation—be repealed, just to set things right. This is not the course that the government, in preparing the legislation, has so far taken. Perhaps a reason for that could be that any proposal incorporating alterations to the preamble would require passage in each and every state at separate state and Commonwealth referenda to become effective. Notwithstanding the perceived difficulty of such a course, if it be the only legislatively sound way of seeking the proposed changes to the Constitution, such is the course that the committee should recommend to the parliament.

A more careful consideration of the Queensland Constitution (Requests) Act 1999 leads me to ask: if the Commonwealth parliament can, under the provisions of the Australia Act 1986 in response to states' requests, repeal the preamble and clauses 2, 3, 4, 5, 6, 7 and 8 of the Commonwealth of Australia Constitution Act 1900, what is to prevent it repealing clause 9 of that act or any part thereof? Clause 9 is the Constitution itself. It seems we have the ludicrous situation of a piece of ordinary legislation in the form of the Australia Act 1986 purporting to be paramount to that of the Constitution. Surely that must mean that the Australia Act 1986 is unconstitutional legislation and that anything done in dependence upon it is liable to be legally flawed.

As things stand, the bill which this committee is considering is dependent for its proposed effectiveness upon the Australia Act 1986. I put it to this committee that the operation of the Australia Act 1986 in relation to the giving of effect to the constitutional alterations proposed in this bill constitutes nothing less than sabotage of the Constitution inasmuch as it holds out the prospect of ordinary legislation, enacted at the request of the states, being able to alter the Constitution itself. The requirement to obtain the approval of the electors by way of a referendum could be circumvented or even abolished. I put it to the committee that it, and the parliament at large, has a duty and a responsibility to ensure that this bill does not become an occasion for such sabotaging legislation to take effect. The committee can do that by recommending that the proposal that the existing preamble be repealed be incorporated into this bill.

I suggest that the committee's duty does not end there. I believe the committee has good reason to believe the recommendations of the Constitutional Convention to be so flawed and, indeed, so facilitative of sabotage of the Constitution that it should recommend that the entire republic legislative program be shelved indefinitely. It is necessary to delay, delay and delay again so that a slowly awakening public opinion can come to realise the enormity of what is proposed and, without insisting that there should be no change, see that whatever

changes might be proposed should be deeply and well considered and measure up to such eventualities as may emerge in the course of time.

In suggesting the recommendations of the Constitutional Convention and the legislative program flowing from them be shelved, I bring to the committee's attention that, in doing so, it would be giving effect to a course already approved by a very large majority of Australian electors. The republic proposal being presented is not a proposal supported by a majority of the Convention delegates. The Australian Electoral Commission advises that, of 11,989,682 electors enrolled as at the close of rolls for the election of delegates to the Constitutional Convention, only 5,430,830 voted. It is difficult to say how many of the 6,558,852 electors who did not vote took that course believing that, in good conscience, they could not participate in such an enterprise through an instinctive honouring of the obligation of loyalty to the Crown or, indeed, through knowledge of the provision of the Commonwealth's Crimes Act 1914. But it is reasonable to impute that motive to the majority of those who failed to vote. These electors, through fault only of their loyalty and knowledge of the law, were effectively disfranchised in this highly questionable enterprise.

Thus, not only are the Convention recommendations demonstrably faulty and dangerous to the Constitution and Australian democracy in general but also they are the recommendations of a minority of a minority. The parliament has a clear mandate to abandon any commitment to give any opportunity for those recommendations to become law.

ACTING CHAIR—Thank you for that.

Mr CAUSLEY—I have a couple of questions. First of all, you are saying to us that, in fact, an act that has been passed through the state parliaments has an ability to change the Constitution. Is that what you are saying?

Mr Patton—I am not saying that. What I am saying is that an act passed by the Commonwealth parliament at the request of the states has the ability to change part, or all, of the Constitution.

Mr CAUSLEY—Only if put to a referendum of the people.

Mr Patton—No, without being put to a referendum of the people.

Mr CAUSLEY—What part of the Constitution do you rely on?

Mr Patton—On what part? I am not relying on the Constitution for that. What I am saying is that a piece of ordinary legislation, unrelated to the Constitution, purports to be able to do that. What the government has already apparently embarked upon is a course of encouraging or soliciting the request and consent of the states to future legislation by the Commonwealth to repeal the existing preamble and covering clauses 2, 3, 4, 5, 6, 7 and 8, without any reference whatsoever to the people either in the states or at a Commonwealth referendum.

Mr CAUSLEY—I am not a lawyer, and I am sure the acting chairman will pull me up if I am wrong, but I would have thought that the acts that have been put through the state

parliaments at the present time are really part of a process that was developed at the Constitutional Convention in that it was in fact left to the states to decide which direction they wanted to go themselves. They could either remain with representatives of the Crown as the head of state or have a presidential style themselves. This legislation, to my understanding, is part of that. I am not a lawyer, as I said, but I am sure the acting chairman will correct me if I am wrong.

Mr Patton—I am certainly not a lawyer either, but I have studied the actual or potential effects of the legislation as opposed to having a vague and general understanding. I am asking the question; I am not asserting that I have the answer to it. If, as a consequence of these request and consent acts—and they are now a matter of public record; they are not a matter of my opinion—the Commonwealth can enact legislation to give effect to those requests, then what—

Mr PRICE—Not without the referendum being approved.

Mr Patton—It might be that they would never think of it without the referendum being approved in the present circumstances. In law, what would stop this or a future government from using this legislative power—which now would appear to be an absurd and unconstitutional one—to, for example, remove section 128 from the Constitution? They could just say, 'No more referenda. Sorry about that, ladies and gentlemen.'

ACTING CHAIR—Are you aware of what section 8 of the Statute of Westminster Adoption Act 1942 says? It states:

Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of the Act.

This is the Constitution Act and the Constitution. In the Australia Act 1986, section 2 is entitled 'Legislative powers of parliaments of states' and section 3 is entitled 'Termination of restrictions on legislative powers of parliaments of states'. Section 5 expressly says:

Sections 2 and 3(2) above—

(a) are subject to the Commonwealth of Australia Constitution Act and to the Constitution of the Commonwealth; and

(b) do not operate so as to give any force or effect to a provision of an Act of the Parliament of a State that would repeal, amend or be repugnant to this Act, the Commonwealth of Australia Constitution Act, the Constitution of the Commonwealth or the Statute of Westminster 1931 as amended and in force from time to time.

How can you get any clearer than that? While the states certainly have the power to refer state powers to the Commonwealth, the states do not have power to alter the Constitution. The Constitution can be altered only by section 128.

Mr Patton—Again, I seem to have been misunderstood. I am not asserting or suggesting that the states have any power to alter the Constitution; what I am saying is that existing, ordinary Commonwealth legislation purports to give the Commonwealth parliament, subject

to requesting legislation from the states, the power by ordinary legislation to override the Constitution.

ACTING CHAIR—No, it does not. This is a matter where legal experts will come on. That section which I read says that the Commonwealth receiving a request from the states can amend the Australia Act. The Australia Act expressly states that nothing in that act overrides the Constitution.

Mr Patton—How then are they able to remove the covering clauses with that act?

ACTING CHAIR—The Constitution starts at clause 9 of section 9 of the Imperial Act 1900, and they cannot touch it. That can be amended only via the route of section 128—namely, a referendum submitted to the people.

Mr Patton—I may stand corrected. My understanding is that the Statute of Westminster refers to the Commonwealth of Australia Constitution Act in totality.

ACTING CHAIR—Anyway, you defer to legal advice on the matter.

Mr CAUSLEY—We will check that out.

Mr Patton—Of course. That is why I am bringing it up in this committee. As I say, I am not a lawyer myself.

Mr CAUSLEY—The other point I wanted to raise with you was that I think you said that the bill before the parliament at the present time to change the Constitution was non-partisan. In fact, there is not general agreement in the houses on the bill before the House, and that is why there is a no case.

Mr Patton—Let me clarify it. What I am suggesting is that it is non-partisan to the extent that there is, if you like, a conscience vote or an intention to allow members of the major political parties to exercise conscience votes in terms of whether they support or oppose the submission of issues to referenda and so forth. I am not trying to suggest that there is unanimity of opinion within the parliament by any means. But precisely because it is not, if you like, divided along traditional party lines, there is very good reason for the parliament to give consideration to this matter in a way that they might not be prepared to on ordinary legislative matters.

Ms HALL—Mr Patton, thank you very much for coming today. I was most interested in a comment you just made. You said, 'No more referendum questions,' meaning that we, as Australian people, could never consider referendum questions in the future under section 128. Would you like to expand on that for me a little?

Mr Patton—Obviously I am doing so in difference to the opinion just expressed by the acting chairman. My concern is—and certainly this issue cannot be settled here; indeed it might be settled only in very great length in the High Court—that it may be correct that there is a risk that ordinary legislation passed in the Commonwealth parliament could amend the Constitution or could amend clause 9 of the existing Commonwealth of Australia

Constitution Act, because I really cannot see how, if it can amend any of the other clauses, it cannot apply to that clause too. Given that that is a possibility, I believe that it is something that the parliament, in considering this bill, should very carefully guard against. I am saying that this committee could recommend to the parliament, and the parliament could then consider, that instead of having the covering clauses repealed by the Australia Act process it put right up front to the Australian people that we are going to, in the establishment of a republic bill, require you to agree to remove the existing preamble to the Constitution Act and remove the covering clauses.

Ms HALL—Thank you, I understand your point.

ACTING CHAIR—Thank you very much for coming along, Mr Patton.

[10.22 a.m.]

BUCK, Mr Andrew Richard (Private capacity)

ACTING CHAIR—Thank you very much for coming along, Mr Buck.

Mr Buck—While I am appearing as a private citizen, it is in the light of the fact that I lecture in politics at the University of Newcastle. So I appear as a private citizen who attempts to inform, and even enthuse, his students in Australian politics.

Mr PRICE—Can you give us a few tips?

Mr Buck—I may be passing out a test at the end.

ACTING CHAIR—Before you do give us those tips, I should warn you as I have earlier witnesses as a matter of formality 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 we ask questions, would you like to make a brief submission on the points?

Mr Buck—Indeed I would. As I said, while I am appearing as a private citizen, it is as somebody who teaches Australian politics. I would like to make a very brief submission in the light of the lessons I think I have learnt in trying to teach the Australian Constitution to university students. I would also like to make some points about my potential concerns as to the referendum, the bill in particular and its implications for a new Constitution.

The first point that needs to be made is that the current Constitution was drafted at the end of the 19th century and it is very much a product of its time. The second point is that, under the proposals before us, we are not proposing a wholesale revamping of that Constitution. We are proposing the most minimal possible alteration to a Constitution which was, as I said, very much a product of its time.

One of the things I try to communicate to students about the Australian Constitution and about constitutions in general is that they have a specific rationale and a specific purpose. One of those purposes is to provide a fresh start, in a very dramatic sort of way, for a nation. Another of those is to express some fundamental moral values about the political system. One of those is also to express, in a very clear and forthright manner, the sovereignty of the people. What I think that means is that rhetoric and language, in the formation of a constitution, is extremely important.

When one looks at the preamble to the American Constitution, it has very powerful rhetoric. When one looks at the preamble to the existing Australian Constitution, it has less than powerful rhetoric. So when one wants to enthuse not only university students but also the Australian public, and when one wants to get a handle on why the Constitution perhaps has an emotional power in American political culture that the Constitution in Australia lacks, it may well be that things like rhetoric in the formation of the preamble are extremely important.

I will not take up much of your time, but I am a teacher and I have a tendency to tell little moral tales in the form of lessons. As I am sure you are all aware, not only is the Australian Constitution a product of its time but it is a mixture of two different constitutional types. It is a mixture of the English Westminster system and it is a mixture of the American bicameral federal system. It is neither one thing nor the other.

The American Constitution was drafted in very peculiar circumstances at the end of the 18th century. In the light of a fight for independence, the Americans emphasised the principle of liberty. Their point of reference in drafting their Constitution was contained in those principles of liberty, which they believed had been inspired by the English Glorious Revolution of 1688—the last time that constitutional theory and practice had undergone any sort of profound revolution.

Back in that settlement of 1688, that principle of liberty, it was believed by the framers of the American Constitution, was embodied in two institutions above all: the rule of law and the separation of powers. The maintenance of the rule of law required the separation of legislative and executive powers such that a government which had the right not only to exercise the powers attached to its office but also to amend the law prescribing those powers would sooner or later abuse the privilege and use the legislature to give itself absolute power.

Related to that, a legislative body which possessed the power not only to make laws but to administer them would also, it was argued in the context of the time and the concerns of the American founding fathers, soon succumb to the temptation to legislate not on behalf of the maintenance of liberty but on its own behalf. Consequently, when the American founding fathers drafted the Constitution at the end of the 18th century, they consciously created a written document designed to preserve individual liberty and to adopt those aspects of the constitutional structure, such as federalism and the separation of powers, that were designed to achieve that end.

But, of course, in Australia the story was very different. Our founding fathers in Australia drafted the Constitution at the end of the 19th century. Their point of reference was not that of the Americans, even though they adopted elements of the American Constitution, but the state of constitutional thought and practice operating in Britain in the second half of the 19th century. The issues of 1688 had obviously changed and, by the late 19th century in British constitutional thought, parliament had assumed a far greater role than it had in the 17th and 18th centuries. That growth in the importance of parliament was reflected in two important ideas about the Constitution. Firstly, the House of Commons, the House of Lords and the Crown, while technically separate, were collectively sovereign. Secondly, the laws were understood as expressions of the will of the sovereign.

That developing British constitutionalism was drawn together most famously by constitutional theorist Albert Venn Dicey in his book *An Introduction to the Study of the Law of the Constitution* in 1885. He made three points: firstly, that the British Constitution embodied two principles, which were parliamentary sovereignty and the rule of law; secondly, that those principles did not conflict with each other but supported each other; and, thirdly, that to a large extent the Constitution consisted of conventions.

The appeal of Dicey's analysis was that it allowed Britain of the late 19th century to combine the rule of law, the sovereignty of parliament and traditional liberties in a way that would be secured, so it was believed, through a respect for conventions. While this was a political idea and the constitutional reference point of the founders of the Australian Constitution, they adopted those ideas prevalent in late 19th century British thought but also a federal structure along American lines. The fact that there might, in the future, be a conflict between the British principle of responsible government with an emphasis on conventions and the American bicameral federalism did not necessarily worry our founding fathers since, by incorporating the British culture for the respect for conventions, it would mean that constitutional crises could be avoided. But, of course, one of those conventions, as opposed to a written constitution, was that an opposition-controlled Senate would not block supply, and so on—and we all know the story of 1975.

What is the point of this brief historical exegesis? It is in order to ask whether we really want to simply tidy up a constitution that was very much a product of its time—the late 19th century—and very much a mixed bag or whether we want to pursue what I, as a teacher of constitutions, perceive to be an extremely important rationale for constitutions, and that is to provide a fresh start, to express fundamental moral values and to express the sovereignty of the people in a relatively dramatic way—in a way that enthuses the population. Consequently, as a private citizen, I would personally be very much in favour of rewording the preamble in a way that captured some of the passion of what a constitution under a republican system of government should be about: a constitution that people could relate to rather than simply a dry document which tries to redraft an out-of-date constitution—a product of its own time—which is perceived, therefore, by the general public at large as simply a dry, administrative document.

Finally, I should just point out a couple of concerns about the specific bill under question. Like lecture notes, these particular notes seem to have gone missing. However, I noted when I was examining the bill under question that a number of previous witnesses have expressed certain concerns, and I would reflect those concerns. Those concerns have been expressed both by witnesses who are in favour of a republican system of government and those who are opposed to a republican system of government, and one should not confuse their political allegiances with the gravity of their concerns.

Specifically, schedule 1, section 62 of the bill concerns itself with the power of the Prime Minister to remove a head of state. Like a number of previous witnesses, I too have concerns about that. It is, of course, the job of parliamentary legal advisors to draft it in such a way that we should never even have the vaguest possibility of ending up in a Boris Yeltsin like situation. I, like a number of other witnesses, would have concerns with section 63, which presumably allows for an indefinite tenure of office of a head of state.

ACTING CHAIR—Thanks very much for that. So the first part of your submission was directed more towards an appropriate preamble than the terms of the bill?

Mr Buck—It was directed towards an appropriate preamble and it was said in the light of the fact that the government is going to undertake a public relations campaign in the lead-up to the referendum. My concern, as somebody who attempts to communicate the importance of the Constitution, is how we overcome the almost stultifying apathy of so

many people about our Constitution. That is why I am arguing that, in some capacity or other—it may very well be the preamble—we need to inject some passion into this new Constitution.

Ms HALL—Thank you for coming today. I would just like to talk to you a little bit about section 62 and the removal process. You have previously made statements that it should be a total revamp rather than a minimalist change. Given that the bill that we are considering is going to be a minimalist change, do you see that section 62 actually makes the Prime Minister a little more accountable than he or she is at the moment?

Mr Buck—I can see that that may well be the case. My concern—a concern that has been expressed by witnesses such as, I believe, George Williams and Justice Handley—is that, unless it is drafted extremely carefully, it may lead to a situation of political instability. While I have enormous respect for and belief in the ability of parliamentary legal advisors to draft the clause effectively, I would simply be concerned that there could be political instability resulting from a sort of Mexican stand-off between a President and a Prime Minister who felt that one had to get rid of the other one first in order to avoid a political problem.

Ms HALL—Do you see that that is different from the current situation? If so, how?

Mr Buck—I am not necessarily saying that it is better or worse than the current situation; I am saying we have the ability to improve on the current situation. All I am arguing is that we should do everything in our power to ensure that we improve on the current situation, not simply continue the current situation.

Ms HALL—I actually suspected that that was what you were going to say.

Mr PRICE—But you concede that a Mexican stand-off can happen now?

Mr Buck—I can, but that is no excuse for us to retain the situation.

Mr PRICE—In fact, we have not, have we? For a Prime Minister to dismiss a President he needs to get approval of his actions from the House of Representatives. There is no such accountability measure now. I agree that we have had no experience of a Prime Minister dismissing a Governor-General, but were that to occur there is no accountability other than the court of public opinion.

Mr Buck—No, but we are in the process of agreeing to a completely new Constitution with a head of state who is not simply a representative of a foreign power but who is going to carry a certain degree of moral as well as legal authority, and that does not exist at the moment in the eyes of the people. As far as my reading of section 62 goes, it does seem to me—as it does to a number of other witnesses—that there is the ability for a Prime Minister to simply decide that the President will be dismissed. At that point, there is a degree of accountability brought in and I think there is a 30-day cooling-off period.

Mr PRICE—Some would argue to narrow that time down, which I think could be done quite reasonably.

Mr Buck—Or indeed whether or not it should be redrafted in such a way that the Prime Minister does not initiate such a dismissal alone but only after consultation. I think a lot of people are concerned that it does appear to give one individual, in the form of the Prime Minister, who is not directly elected by the people, more power than a lot of people would like.

Mr PRICE—I think you can mount a decent argument that the Prime Minister has less power by virtue of the accountability process that is now built in because, given that such a vote—in my view at least—would be a confidence motion, should he fail to secure the numbers, his government would be finished.

Mr Buck—Of course. That may well be the case and I am not disputing that. You may well be right. I think that one of the concerns that previous witnesses have expressed, and I would echo, is whether we want not so much a situation that could not be resolved—you may well be right that it could be resolved—but a situation that could lead to a degree of political instability which in the eyes of the world, as much as anything else, would not be to the benefit of the nation. So there is that reason alone, as well as the unease that some people might feel about the perceived power of the Prime Minister. All I am suggesting is that it is extremely carefully worded and/or extremely carefully justified to the general public in this lead-up to the referendum.

Mr PRICE—I suppose one element that we really have not canvassed as a committee is, in a sense, why would a Prime Minister want to dismiss a President, or a Governor-General for that matter? Apart from the obvious illness or mentally ill capacity, I suppose you could have a Phil Coles-type scenario where it might be legitimate but, in terms of the actual power of a President, he has very little. Someone may perform less satisfactorily than you had hoped or not meet your expectations, but heaps of ministers survive on the same basis, as I understand it. I am only surmising that latter part about the ministers, by the way.

Mr Buck—I could throw that question back to you in the light of the largely ceremonial power that you are admitting that this new President will have. Surely what we want to avoid is a situation either on the basis of power to dismiss or power to appoint almost perennially where we have a President who is simply a lap-dog of a powerful Prime Minister. Is that really the type of head of state we want?

Mr PRICE—There is nothing in the present system that would prevent a Prime Minister appointing his chauffeur or gardener as Governor-General—absolutely nothing other than, again, public opinion.

Mr Buck—I go back to my original point: is that an excuse for not improving the present system?

Mr PRICE—I suppose I am a little bit lost. The present system is improved because the most powerful individual is actually the Prime Minister. We have set up a process so chauffeurs are not going to become short-run favourites. Every citizen in Australia will have a fundamental right to nominate who he or she thinks should be President. There will be a committee that will sift through it and a final list submitted, parliament approving the Prime Minister's nomination by two-thirds; and then, in the dismissal scenario, the Prime Minister

being forced back into the House seeking approval. All these things are, I think, maybe not big changes but significant changes to the current system.

Mr CAUSLEY—Could I ask you some questions rather than debate you?

Mr PRICE—How very unkind. I never got to do politics at uni.

Mr CAUSLEY—Mr Buck, in fact, if the bill before the House is passed by the referendum then it becomes our Constitution, and one of our terms of reference is whether it is workable. What is your opinion on that?

Mr Buck—From what I have read of it and from an analysis of legal minds far brighter than mine, my impression is that yes, it probably is a workable Constitution. But of course you are asking someone who premised all his questions on the point that his major concern was not the workability of the Constitution, but what it meant to the Australian people. It may well be a workable but an extremely dry document. While I take on board Jill Hall's point that we will not be completely revamping the system, we will be making minimalist change. We all know that a week is a long time in politics. We all know that changes can be made even within the confines of the Constitutional Convention. To some extent, I am trying to be one lone voice to make it a workable but passionate document.

Mr CAUSLEY—On the point of minimal change, in teaching your students, on what precedent do you rely as to how the palace might act in a crisis?

Mr Buck—I am sorry?

Mr CAUSLEY—In teaching your students, in the situation where you said, 'It is obviously a minimal change', on what precedent do you rely as to how the palace might act in a constitutional crisis? What do you rely on for the fact that the palace would act instantaneously?

Mr Buck—Did I say that it would?

Mr CAUSLEY—You said it was minimal change. There would be no difference.

Mr Buck—No.

Mr CAUSLEY—Because under the bill the Prime Minister has the power to instantaneously dismiss the President.

Mr Buck—Right.

Mr CAUSLEY—Now if it is minimal change, then surely—

Mr Buck—I take your point. I am sorry, yes. One of the reasons why I focused on sections 62 and 63, like a lot of other witnesses, they seem to have drawn attention to the fact that these two sections seem to be the point where it moves beyond minimal change in their eyes. I wonder whether they are in fact right. In many respects it does seem to be a

minimalist one. While I take on board Roger Price's point, in terms of perception section 62 does seem to be the point where it is not minimal in the eyes of a lot of people. So at that point I would say it is a minimal yes, but there are concerns about whether or not section 62 is really within the spirit of that minimalist change or whether it is slipping in a degree of power that was not really there before—with respect to everything that Roger said.

Mr CAUSLEY—There is really no precedent, so we can only surmise.

Mr Buck—We can only surmise. But all I am saying is that we have the opportunity to be able to draft a brand new Constitution. We do not want to draft one which would even allow the possibility.

Mr PRICE—I guess I would share two views you have expressed about updating the Constitution and the preamble. But could I ask you, in terms of getting the essentials of a referendum understood—and that is no easy task—do you consider it a good thing to have a new preamble as a separate question or included in this referendum?

Mr Buck—Whether it is separate or whether it is included in this, my answer would be that it definitely has to be there.

Mr PRICE—It definitely has to be there?

Mr Buck—Has to be there in some capacity before the people. I would strongly oppose a referendum and a new Constitution that avoided—

Mr PRICE—Updating and reprinting.

Mr Buck—Updating and reprinting the preamble. Personally, as I tried to explain earlier, I think that rhetoric in politics is extremely important.

Mr PRICE—I think you made a very good point.

Ms HALL—I have two questions. One is, do you have a draft for a preamble? Have you thought about that?

Mr Buck—I could certainly supply the committee with one.

Ms HALL—That would be good. It would be great if you could do that. Secondly, I was not going to push section 62 any further, given the fact that I understand that you would really like a revamp, but seeing Ian Causley brought it up again I will have to come back to it. When we were in Melbourne we had Malcolm Fraser come along and talk to the committee. Malcolm Fraser put to us that he believes that under the current Constitution at the moment, a letter is given to the Governor-General, that Governor-General is sacked, and that he is, in effect, out of office. Any talk about the Queen ratifying it is purely only a rubber stamp. Historically, the Queen has always accepted nominations and terminations of terms of governors-general. Would you disagree with this?

Mr Buck—No, I would not necessarily disagree with it, but I think it is related to Roger's point which is, in what way is this worse than the present situation? I go back to the original point I have been making.

Ms HALL—I understand your position. You believe that a new Constitution should actually be much more vibrant.

Mr Buck—I think we would all agree that one of the factors behind 1975 was the confusion in a lot of people's minds as to whether we follow the written word of the Constitution or whether we abide by conventions. With the opportunity to draft a new Constitution, do we want to place ourselves in the same degree of potential confusion?

Ms HALL—Can I ask another question which is getting right away from the dismissal procedure? It is dealing with section 59, the third paragraph where it talks about conventions and the reserve power of the Governor-General. Do you have any opinion on that? I am not being very fair asking you that question when you do not have a copy of the bill in front of you. That has been brought up in a number of our hearings and I am really interested to hear your opinion.

Mr Buck—This is the one that says the President shall act on the advice of the federal government.

Ms HALL—It is paragraph 3.

Mr Buck—As far as I recall, there was a concern expressed by Justice Handley about that, and a number of people.

Ms HALL—Yes, we have had a number of questions.

Mr Buck—I have no particular strong views myself, but the fact that a number of people have expressed concern should surely give one pause for consideration as to whether this is indeed the best wording. But, do I have a firm opinion on it? No, I do not.

ACTING CHAIR—Thank you for coming along to give us your point of view.

[10.59 a.m.]

VAUGHAN, Mr Adrian Rex (Private capacity)

ACTING CHAIR—As a matter of formality, I should 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. Would you like to make some opening comments?

Mr Vaughan—First of all, thank you for the opportunity to attend this committee on the proposed forthcoming referendum. For the purposes of this I have looked at purely the amendments in both the acts, the Constitution Alteration (Establishment of Republic) Bill 1999 and the Presidential Nominations Committee Bill 1999. I have not tried to add to or detract from what is already in the bill that may alter some other matters in the Constitution. I have purely looked at it from the point of view of what is being proposed and whether that in fact is squared up.

The first matter I would like to speak about is section 60 which gives a sole person—the Prime Minister—the power of veto of presidential nomination. Personally I think that this function would be better placed in the hands of the duly elected representatives of the people, that is the parliament. I believe that the concept for the election and dismissal of a President by Australians through a 60 per cent majority of their elected representatives is a very good compromise between the extremes that are being proposed of a totally public election and a selection by perhaps a very small minority of the population. I can see difficulties in public elections with politicising it, campaigns and big money being involved. The other end of the spectrum is the clarity and the transparency of the selection.

Part B refers to an Australian citizen. I would like to suggest that the committee considers the term 'Australian born citizen' for this particular amendment, because I believe it would further enhance the status and allegiance of that person to the nation and, of course, when he is abroad. I think that is a valid point.

Part C refers to a member of a political party. I have difficulty agreeing with this one. I think 'political party' should be defined, because it appears to be in conflict with the concept of freedom of legitimate association. One of the great things in Australia is this freedom of legitimate association. I do not think we should be free to associate without recourse to law in illegitimate organisations.

Part D allows the duly chosen President to carry on even though it is found that the person was not qualified. I do not completely understand this. If a person is unqualified, or is found to be unqualified, under a codified list of qualifications—in other words not something that somebody has just dreamed up—they can say, 'We do not think you are qualified now', and move him out.

ACTING CHAIR—On that point, it is validating any acts that they have undertaken, as opposed to validating their holding of the office. I think it is designed to ensure that any

bills, for instance, which have received the President's assent are not invalidated simply because it is subsequently found out that the President may not have been qualified to hold office. As I read that section, I do not think it is intended to give the person an immunity or enable them to continue in office if they are not qualified.

Mr Vaughan—Yes, maybe that is what it means.

ACTING CHAIR—You think it needs clarifying?

Mr Vaughan—I have tried to read this as just an ordinary Australian.

ACTING CHAIR—You think that point needs to be clarified?

Mr Vaughan—That is not what it says, and if we are to put this to the vote of the people at a referendum, then these points need to be quite clear as to what it means.

ACTING CHAIR—I will let you continue.

Mr Vaughan—It is not specific in section 61, and there is nowhere in the bill that provides for the post of Vice-President or Acting President with the qualifications of the President, or procedures applicable to the President. Again, to make it clear, the person acting in the place of a person should fundamentally have the same qualifications and observe the same procedures as the incumbent.

Section 61 implies an unlimited term as President. When I read it, it looks as though it is to be one term, but when you read on, you find it can be more than one term. If it is to be more than one, that needs to be spelt out, as well as the reappointment procedure. There does not appear to be any reappointment procedure. It just seems to be that the person is nominated as President, his term expires and he then proceeds on at the will of the Prime Minister—or it appears to be at the will of the Prime Minister—for a further term. There is no qualification in there as to how he gets to renew a second term in office. Maybe it needs to revert back to the initial procedure. For example, six months before his time expires the President goes along with all the other nominees into the committee, and the committee then decides whether this President continues or whether in fact someone else does. That allows the confidence of the people in the President to be expressed by their representatives again. The confidence after one term is reinforced or restated by the parliament agreeing by a two-thirds majority to continue this person's position.

Section 62 deals with the proposed method of removal of the President during the presidential office. To me, this is very dangerous in respect of the nation and the parliament. Great care must be taken to have a legitimate and transparent procedure for this type of action to take place. The removal must be as democratic as the appointment, that is, approved by a two-thirds majority of the parliament. The bill seems to be mute on legitimate dismissal and its consequences. What I am saying there—and it has been said before many times—is that there appears to be this position where the Prime Minister can dismiss the President. However, if it is found later by the parliament that the President is not legitimately dismissed, or the reasons given by the Prime Minister to dismiss him are not acceptable to the parliament, then the deed has been done. The President is out the door; he cannot come

back in, and it is left up to other processes to deal with whoever made the decision, being the Prime Minister. All the Prime Minister has to lose is his position. You could see a Prime Minister coming to the end of his term, not liking the President and saying, 'I am going to dismiss you. I don't care what happens now. It is towards the end of my term, and that is it.' The President is out the door and he has no recourse for coming back into the position if the parliament finds that the dismissal was inappropriate.

What I mean when I talk about entitlements is that, if a person is dismissed legitimately, the amendments are mute on what is required of the parliament in terms of remuneration. Do they pay out his contract for the period of time that is remaining? Is he still entitled to superannuation and all the other benefits that come along with it, or is it just a shut-off? Can they say, 'You are sacked. That's the end of the day. There is nothing more for you to do. You worked up till last Friday. Here's your pay. Off you go.' It seems to be dead on that point.

Subsection 85(i) is a repeal and a consequent substitution that does not appear to be in the spirit of transitional provisions. This is the bit that talks about the land that belongs to the Commonwealth and the land that belongs to the state and it being transferred. I cannot see how that has got anything to do with just minimal changes to the Constitution in relation to the Queen or the Governor-General. Land does not seem to have any relationship. Do you know that section? Are you familiar with that section?

ACTING CHAIR—What is the section?

Mr Vaughan—It is 85(i). There is mention of the Governor-General there, but it says 'for such time only as the Governor-General in council may declare to be necessary.' That is the original.

ACTING CHAIR—Yes, it may well be. There are a number of redundant or inoperative sections in the Constitution and that may well be one of those which is inoperative. Indeed, it is possibly the case that an earlier Constitutional Convention has recommended review of that section.

Mr Vaughan—But, again, it just seems to be totally separate from the minimal approach of the government. As I say, it deals with land and the transfer of land between states and the Commonwealth. That, to me, does not seem to have anything to do with the Queen or the Governor-General or the republic.

In schedule 1, I do not believe that the oaths and affirmations completely impose a single undivided loyalty. I believe that the addition of the word 'only'—that is, 'I will be loyal only to the Commonwealth of Australia'—would be more appropriate. Somebody could stand up and say, 'I will be loyal to Australia,' and in two weeks time they can put their hand up and say, 'I will be loyal to something else,' or 'I will be loyal to my association,' or 'I will be loyal to my wife,' or whatever. The inclusion of the word 'only' implies that is the only oath that person has and that they are bound then by being loyal only to Australia.

There are other possible amendments in the Constitution that do not seem to have been looked at. In section 49, from 'until declared', it talks about the privilege of the Houses. It states:

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

ACTING CHAIR—This is one of those now redundant provisions, because the powers have been set out in standing orders of both the House of Representatives and the Senate. Other provision has been made, hence, that is now a redundant section.

Mr Vaughan—But it is not being deleted, is it?

ACTING CHAIR—No. There are a number of sections of the Constitution which are redundant or inoperative. Have you got a point of view as to whether there should be an ongoing procedure of constitutional review?

Mr CAUSLEY—I understand the Constitutional Convention took the position that, rather than repeal these redundant clauses, they would leave them there at this time so they could say that it was a minimal change. They also took a decision that they should have a further Constitutional Convention, where it could be considered as to whether there should be further change to some of these clauses and others.

Mr Vaughan—It might seem redundant, but it still refers to the United Kingdom. I would personally think that any sort of mention of the United Kingdom or anything related to the United Kingdom should not be something that is just considered as being redundant and left to a later time. It is the time now to remove this so as people are quite clear that there is no reference in our Constitution to anything of the United Kingdom. Section 51(xxxviii) again talks about the United Kingdom. It is virtually the same argument as for the previous amendment. It talks of 'any power'. That is another one.

Again, in section 73 the Queen is mentioned three times and the proposed amendment to section 73 does not repeal the mention. Section 73(ii) refers to 'the Queen in Council' in three paragraphs, and nothing has been done to eliminate that. The last point on this particular bill is a very minor one, that is, the word 'admiralty'. Do we have an admiralty or do we have a navy? 'Admiralty' is more a traditional British term.

ACTING CHAIR—There is no mention of the Air Force either, because, of course, in 1900 we did not have one.

Mr Vaughan—There was no Air Force when the Constitution was written. It was the Army and the Navy. We have a defence force, which is the Army.

So the first one dealt with the alteration to the Constitution and the second one deals with the Presidential Nominations Committee Bill 1999. There are only four or five points on that one. In section 4(2) of this proposed bill, there appear to be no safeguards to prevent the stacking of community members to the presidential committee. That is, the Prime

Minister appoints them, and there does not seem to be any clarity or clearness about how that is done.

Ms HALL—How would you like to see the community members chosen and appointed?

Mr Vaughan—To me, the first stage—that is, that they be nominated by groups of citizens or a number of citizens—is in order. The second stage is how you select those people. I get a list of names and I can pick him, him and him. I think a lottery would be a better process of selection. If the candidates for the committee are of equal standing and you have 60 of them—

Ms HALL—So you could draw their names out of a hat.

Mr Vaughan—Yes. That then gives people the opportunity to say, 'I didn't have any dealings in selecting that particular person. It was purely luck of the draw. They were as entitled as the next person to have a position, and they were fortunate enough to be drawn out of a hat.' That is how I see that one.

Ms HALL—Thanks.

Mr Vaughan—Section 6(2) talks about the convenor of the committee having a casting vote. That does not apply in parliament. If there is an equality of votes, it will be found to be in the negative. Along with the Constitution, it is one person, one vote. You cannot say, 'We are in a difficult situation. We have half the people wanting one thing and half wanting another and one person having the ability to jump either way and cast a vote.' I think that needs to be addressed.

Concerning section 9(2), I believe that all members of parliament are equally representative of the Australian electorate and should be equally entitled—and this gets back to the freedom of association of a legitimate entity—to be allocated places, even if the draw is by lottery. Excluding members of parliament who are either not of political parties, or of political parties that do not have a certain number of seats, is not democratic and I do not think it applies. In that circumstance, there may have to be a limit to the number of party people that are drawn for consideration to be nominees.

Section 12 deals with the selection of the convenor of the committee. I think that needs to be clarified. The way I read it is that, if the committee needs anything to undertake its function, then the committee has the power to do that. If the convenor is to perform a function of the committee, then section 5(2) gives the committee the power to select its own convenor. But another part of the amendment says that the Prime Minister will appoint the convenor. So you immediately have perhaps a conflict in the selection process. You could have the committee saying, 'We want this bloke,' and the Prime Minister saying, 'No. I want this other person.' I hope that makes a bit of sense.

ACTING CHAIR—It is a matter of statutory interpretation if an express power is given whether—

Mr Vaughan—All I am doing here is trying to get it clarified, so that when a person reads what is going to be presented to them they can understand it and there is no double interpretation. Maybe in a republic that is what we need, an amendment to a lot of the acts that can be understood by the people and not just by lawyers.

Section 16—and I have only this and another one to go—is mute on the prerequisites of a replacement appointment in relation to community members. I could possibly suggest here that in the nomination process, if it is by lottery, there be 10 stand-by members made so that, if a vacancy does occur, then there is an immediate replacement available. This avoids the time factor and the lack of numbers on a committee.

Section 17(2) deals with vacancies, and it should be necessary for a far greater number to be appointed. It says the committee can proceed if there are 16 on it. I think it ought to proceed if there are at least 30 on it. But then again, for the purposes of a quorum, 60 per cent of the members are to be present. I also believe that all 32 should be present to vote on the short list for the candidates.

ACTING CHAIR—Thanks very much for that. Does any committee member have any questions?

Ms HALL—No, thanks. Adrian, I think you have a written submission there. Would you like to hand that in?

Mr Vaughan—Yes.

Ms HALL—That would be great. Thank you.

[11.24 a.m.]

CROWE, Mr Stephen Robert (Private capacity)

HYDE, Ms Jeni (Private capacity)

ACTING CHAIR—Welcome. As I have formally advised other witnesses, 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. Would either of you like to make a brief opening comment before we start?

Mr Crowe—Although we are here in our capacities as private citizens, a lot of our recommendations reflect those of the Australian Republican Movement, and in particular three lines of argument, I suppose. Basically, the bill reflects very closely the recommendations to come out of the Constitutional Convention, as the Prime Minister, of course, promised to do. That is the basis of our recommendations, that as much as it is appropriate and practical we stick very closely to those recommendations.

We should make it as clear as possible to the public—those who are voting—exactly what they are voting for and should try and dispel some of the confusion that is out there in the community. As you are probably aware, being on this committee, there is plenty of that. I think we can clarify the questions to be put to the people. The priority from our point of view is to make sure they know exactly what they are voting for, and that there is not a President replacing a Prime Minister, et cetera, which has been a concern I come across every day.

There are three areas we would like to speak about. Firstly, the long title itself, making sure that it reflects as closely as possible the recommendations of the ConCon and also that it reflects that fundamental change that the Queen of England or Australia will be replaced by an Australian citizen. At the moment it does not mention that at all. It just mentions that it will be a republic with a President chosen by a two-thirds majority of members of the Commonwealth parliament.

The other point of contention from my point of view is the fact that the parliament will be approving and not choosing the President. Again, there is a perception in the public arena that it has been hijacked by parliament and we need to make it very clear that that is not the case, and that the community has a very important role to play in the nomination process. It is a bipartisan decision. Obviously the Prime Minister and the Leader of the Opposition will be nominating a President to be approved by a two-thirds majority of parliament. That is fundamental and not a big ask, considering that that was one of the most contentious issues at the Convention, that is, just how much of a role the community would play. Many republicans at Canberra were disappointed at the degree to which the community was being involved in the process, so the bipartisan model that came out of that Convention clearly laid down the fact that there is a nomination process involving people from across the breadth of the community. Of course, there would be parliamentarians on that committee, but 16 members of the community will be on that committee.

The other point I would like to raise is that we are a little bit more explicit in the exact make-up of that committee, and that it must reflect the cultural and racial diversity of Australia, and also sex and age. That is not mentioned. We should make it very clear that it is a truly consultative process and that the community has a big part to play and has plenty at stake in this republic. If there is an opening statement, that is probably it. I have probably gone a bit farther than perhaps I should.

Ms HALL—You have more?

Mr Crowe—Just a little bit. I have touched on the main key areas. They are reflecting the ConCon and making it very explicit to the public exactly what we are asking and leaving no confusion out there in the public arena.

Mr CAUSLEY—We have had a number of submissions about this long title. It has been quite discussed. You said you want that changed to say that an Australian citizen should replace the Governor-General and the Queen, but are you saying that the Governor-General at the present time is not an Australian citizen?

Mr Crowe—He obviously is, but the Queen is certainly not, and she is the head of state.

Mr CAUSLEY—If we are going to replace the two of them with a President, why don't we say so?

Mr Crowe—Why don't we say so with an Australian citizen just to clarify it? There are people I have come across day to day who think we are replacing the Prime Minister with a President. We need to clarify that we are replacing the Queen and the Governor-General with a President. That is the point that I want to make.

Mr CAUSLEY—How much of this is driven by the description of a bill and how much of it is driven by opinion polls?

Mr Crowe—This is the question that people will be faced with. I am talking about people I meet in the street every single day. They honestly think there is going to be a republic in the manner of the US style of government. That is obviously not the case and we need to clarify that. This is what they will be faced with when they enter that ballot box, and they have to be under no illusion at all about exactly what sort of republic we are talking about. We are talking about replacing the Queen and the Governor-General with an Australian citizen, an Australian President.

Mr CAUSLEY—You want a republic. Therefore, you want to make sure that the question ensures that people vote for it and they might not be frightened off.

Mr Crowe—I want to be sure that they know exactly what they are voting for and that there is absolutely no mistake with regard to what sort of government we are talking about. We are not talking about change in our Westminster system; we are talking about replacing the Queen with an Australian citizen as our head of state. Currently, that is not explicit enough and it is not clear enough for the public.

Mr CAUSLEY—Effectively, at the present time the only time the Queen is ever even asked about a decision in Australia is if we get a constitutional crisis. The Queen never has any say in the day-to-day governing of Australia.

Mr Crowe—All the more reason to replace her with an Australian, I would have thought. However, as I said, we need to make it very clear that it is the Queen, our head of state, being replaced with an Australian President, and not in any way a Prime Minister or our current system of government. If you think that there is not a perception of that out there, then you are incorrect, because it is one of the concerns that I come across most often when speaking to people in the public. You haven't come across that?

Mr CAUSLEY—No, I do not think people are that confused about the type of republic we are proposing.

Mr Crowe—The people in Newcastle perhaps are. I do not know if we are reflecting all society, but I imagine we would be.

Mr CAUSLEY—Not really.

Mr Crowe—We are not? My point is that I think it is pretty clear that that long title is not explicit enough. I cannot see what monarchists would fear, if they have opposition to what I am talking about, about it being explicit and open in order to clarify exactly the question we are talking about.

Ms HALL—I would like to push it a tiny bit further. What you are proposing is not a question that is going to be put to the Australian people that will guarantee that there is going to be a republic, rather one that is an open and honest reflection of the legislation and what will occur if people vote for or against the republic.

Mr Crowe—It would be irresponsible to do otherwise. I am sure you would all agree that this is a very big decision for the Australian public to make. It is perhaps a once in a lifetime opportunity. If people would like to retain the status quo, that is fine, and if they would like to change to a republic, as the opinion polls perhaps suggest, then let us make sure that they are under no illusion as to exactly what we are asking come November.

Ms HALL—Once again I will refer to the long title. You have no problem with the words 'President', 'republic' or such being mentioned in the long title?

Mr Crowe—No, that is what we are advocating. Again, we need to clarify that and mention the words 'President' and 'republic', because that is exactly the recommendation that came out of the Constitutional Convention. Everything I am suggesting here is based on the recommendations and the resolutions that came out of that convention. It is important that we stick to what the Prime Minister suggested and that we stay very closely aligned to those recommendations.

Ms HALL—Going to the last part of the proposed long title, where it talks about the method of appointment, you were saying that the phrase 'chosen by a two-thirds majority of

the members of the Commonwealth parliament' does not actually reflect the way the nomination and appointment process will work.

Mr Crowe—That is right. There are two issues there. Firstly, the long title does in fact say that the President will be chosen by a two-thirds majority of parliament, which is incorrect, as we all know. They are the last step in the process. They will approve the nominations which will have come about after consultation with the community at large. There is a committee being formed precisely for that purpose and then, of course, a bipartisan nomination from both sides of politics. They are approving that nomination. If there is an incorrect perception out there, it is that parliament is taking too big a role in the choosing and the nominating of that President. We need to make it clear that, yes, they have a very important role to play, but we are not going to overstate their role and say that they are choosing the Australian President.

Ms HALL—Given that you are appearing as a private citizen, I sent back to you a copy of the proposed long title that was handed to the committee yesterday by Michael Lavarch. What do you think of that?

Mr Crowe—It is a lot simpler and it certainly gets straight to the point. The only thing that it does not mention which I think is important is the role of the community in a committee nominating the President. The Australian Republican Movement has in fact put together an alternative long title which has already been placed before the committee, so I will not read it in full. However, it does include the words 'following consideration of nominations submitted by the people and approved by two-thirds majority of a joint sitting of both houses'. That forms the major part of that long title. People reading that are left in no doubt as to exactly the type of process we are talking about. The community is involved, parliamentarians are involved and it is a bipartisan choice, a bipartisan nomination.

Ms HALL—My final question relates to a possible change that you would like to see in the legislation in relation to the community committee. You would like written into it more detail about the diversity, sex, age et cetera. Is that correct?

Mr Crowe—I would, because at the moment it just mentions that there will be 16 members of the community, which is great and that is a fact, but I think we could reflect the recommendations from the Convention by having a very diverse community group. Although that is not going to make or break a republic, there are concerns that the community is not heavily involved in the nomination process, and again I think the bill should reflect the fact that they indeed are.

Ms HALL—Thank you.

ACTING CHAIR—Jeni, have you any comments you would like to make?

Ms Hyde—I want to talk about some of the words in the long title, like the word 'chosen'. That word gives the assumption that the parliament can just choose somebody, and that is why I do not like the words 'chosen by the parliament'. They are not chosen by the parliament. The parliament cannot say, 'No, we don't like Rob McClelland, we want Ian Causley.' It is not the way the process works, but the wording of it makes it sound like the

parliament does have a choice on who they say yes to. The Nominations Committee has a choice on putting someone forward but the parliament does not have a choice, they can only approve who has been put forward.

ACTING CHAIR—You think the current wording is misleading.

Ms Hyde—I think the words 'chosen by the parliament' just do not reflect exactly what came out of the Constitutional Convention in that it is not a process of someone being chosen, it is a process of nomination and appointment. It is a very complex issue and it is going to be very hard to educate all Australians about the issue so that they can make an educated, informed decision about whether or not they should vote yes for this bill. I think that we could make it more understandable.

Mr Crowe—The least we can do is to make sure that the question is not ambiguous and that we know exactly what we are talking about.

Ms HALL—On the education campaign, as you are both fairly young people, have you any suggestions as to what the education campaign should include and how it should be made relevant to younger people?

Mr Crowe—I think the core arguments or the core suggestions need to be the ones that we focus on. The first is that, as I said earlier, we are replacing our current head of state, being the Queen, with an Australian citizen. That needs to be very much clarified because, despite what Ian has said, there is a lot of confusion in the community about exactly what type of republic we are talking about. Up until this point, when people talk of presidents, from watching Hollywood they are thinking of the United States President. We need to clarify that as an absolute priority. Secondly, as Jeni suggested, we should make sure that people realise that they do have a role to play in the nomination of that President.

Ms Hyde—Every person in Australia has a choice in this and every vote counts. So many Australians think, 'I can't be bothered going and voting because my vote doesn't mean anything,' and I think we have to educate young people and make them realise that their vote does count. It is 50 per cent plus one; your vote can make this happen. If you do not vote, it might not happen; or, depending on what way you want to vote, keeping the status quo, your one vote can make the status quo stay. I think that the education process needs to ensure a high participation rate and make people in the community aware that this is a decision that we can all make.

I know it is going to be very difficult, but one of the things in the education process when we are talking about a president is that a lot of Australians—although they think a popularly elected president would be wonderful—do not understand how our system of government works. I feel a popularly elected president would not work well with the Westminster system of government. A lot of Australians do not understand that the type of republic that Ted Mack and Phil Cleary are advocating does not work with our wonderful Westminster system of government. I do not want to see it replaced by anything else, because at the moment our checks and balances, and the way that our parliament exists, is very good for the citizens of Australia. That would be diminished by having a popularly elected president.

In that education process people have to realise why the Constitutional Convention came up with a model that has a bipartisan appointment by a Nominations Committee, rather than a popularly elected President. That really did not come out in the ConCon. Why did you choose a bipartisan appointed person over a popularly elected President? One of the reasons was that it did not fit in with our system. The average Australian who will vote for this does not understand that. They do not realise that the two things really do not match and that Ted Mack is really advocating totally throwing everything out, and we are just going to start again.

They also do not realise that the American system of government did not start off with a popularly elected president. After the Civil War, they nominated the person that was there. It was through a process of constitutional change, and the Constitutional Convention also recommended that, within three to five years after we become a republic, we have another Constitutional Convention to keep our wonderful living and breathing Constitution growing because of the type of country we are. That is what the American system did. Perhaps 400 or 500 years down the track we will have enough people here to sustain a popularly elected president. It would not be something I would advocate. People do not realise that the American system did slowly move towards a popularly elected president. They did not start the way they are now.

Mr Crowe—We are still basing our concerns on the same criteria. Let's make sure everybody is aware of exactly what type of republic we are talking about. Let's make them aware of why that model was arrived at and let's be totally explicit in describing exactly what they will be voting for in November. If we focus on those key issues, then whatever the result is, it will be a fair one.

ACTING CHAIR—Thanks very much for coming along and giving us that contribution. We will be tabling this report on 9 August, so it will not be far off.

Mr Crowe—Thank you very much for your time.

[11.44 a.m.]

HOBSON, Mr Nicholas William (Private capacity)

ACTING CHAIR—As a matter of formality, I have advised all previous witnesses that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the Houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would you like to make a brief opening statement?

Mr Hobson—Yes. It will be more like dot points so that we can get into the debate proper rather than dribble on with some lengthy dissertation. You might care to note these down as I go, because we can come back and deliberate on them. Firstly, the long title, if it is going to exist in its current form, I believe that we should be putting something along the lines of 'to include the Queen of Australia and the Governor-General of Australia to be replaced by a President of Australia'. That backs up what the previous speaker said. We have to identify the Queen as the Queen of Australia, and the Governor-General as the Governor-General to be replaced by a President of Australia. Having said that, I would be more than satisfied for the short title to be the actual question, but that is a matter for others to decide.

Section 59 covers the executive powers. I challenge the notion that the President would have the powers that the Governor-General has now, and I would like you to ask me questions on that.

Section 60 is the nomination and election of the President. There are two things I would like to point out here straight away relating to the bill. Firstly, the bill is currently before the parliament. The people of Australia have yet to decide whether or not they want a republic. There is no self-destruct nature in that bill should Australia become a republic. I believe that the commencement date should have some form of self-destruct device in it should Australians choose not to have a republic come 6 November.

Ms HALL—Could you expand that a little bit for us? Is it this bill?

Mr Hobson—No, the Presidential Nominations Committee Bill 1999.

ACTING CHAIR—It will never come into effect.

Ms HALL—Yes.

Mr Hobson—Can we get back to that and we will discuss that closer? Also, because it is a bill, that means that any changes are subsequently made by the parliament. So people out there might be under the belief that whatever comes up, day one is going to be what will always happen. I do not know why there are not some core elements from the Nominations Committee Bill actually moved into the Constitution itself, so the people have more control over it if they want a republic. Otherwise, the bill could be repealed or amended at the will of the parliament, and I do not see that as being a democratic process. As for the removal of

the President, I am still not sure what a vote of no confidence in the Prime Minister achieves. What is the punishment?

Ms HALL—He is out of there.

Mr CAUSLEY—He is turned out. The convention is that, if a Prime Minister loses a confidence vote in the parliament, they resign.

Mr Hobson—Isn't that the government, or is it the Prime Minister?

Mr CAUSLEY—No, the Prime Minister. The government may appoint a new leader who would become Prime Minister.

Mr Hobson—So that may happen then. With the Acting President and deputies, I am not so sure that a politician could not be an Acting President.

Ms HALL—No.

Mr Hobson—The qualifications seem to be askew on that, and I would like to come back and talk about that later. Section 70A, the continuation of prerogative powers, states:

Until the Parliament otherwise provides . . .

I think that is just taking powers away from the people. We either leave it without that prefix 'until the parliament otherwise provides', or if there is a problem then you should go back to the people to get the Constitution amended accordingly.

As for the requirement for a President to be an Australian citizen, I believe that should be 'only an Australian citizen'. That would be more fitting with republicans' distaste for the fact that our current head of state is a citizen of another country. If you allow for a dual citizen to be a President, than that just nullifies the republican argument of having a dual citizen. You end up with a ridiculous situation as happened in Ireland where the current President of Ireland, Mary McAleese, is a subject of the Queen of the United Kingdom and Northern Ireland.

If I read it correctly, the existing preamble in the Constitution Act was to be kept according to the Constitutional Convention. Am I right or wrong on that, do you know? There is legislation already under way in the states to remove that preamble as it now exists, so we should be made aware of that.

I will now touch on some lesser items which may or may not have been a part of the Constitutional Convention. I will just leave them with you to think about and you can take them on board as you so wish. Will the provisions of the Governor-General Act 1974 be carried over in a republic? Do all the relevant provisions of the current letters patent relating to the office of Governor-General flow through to the proposed Constitution? Section 67 mentions the appointment of civil servants. I thought we had public servants. I know it is a mute point, but whatever it is, we should make them consistent.

Another gentleman brought up the matter of naval and military forces before. If we cannot add air forces in there, we should replace it with defence forces, which makes it more generic and probably more suitable. As an ex-air force officer, I do not mind that.

In the definitions, I believe you should now add in there 'head of state'. Head of state is not part of our current Constitution or in any of our constitutional documents. I think you need to define what a head of state is. I also believe, because the Prime Minister is now going to be mentioned in the Constitution, that you would want to also define who the Prime Minister is and how that person gets to be the Prime Minister.

The other thing is that I would just ask some cursory questions about the President. Does he get to vote at elections? Will he pay taxes, and will the President be in receipt of any duty free or excise free goods?

Ms HALL—Like the Governor-General.

Mr Hobson—Like the Governor-General. I will hand that to you. It is basically what I listed. I might close by saying that last night I was wondering aloud and I thought to myself how successful this proposed Constitution may be if we listed it on the Australian Stock Exchange. Do you think people would buy up the shares in it?

Ms HALL—Would they buy up shares in a number of things that are very successful or unsuccessful?

Mr Hobson—That is all I have, and I am free now to open up for questions.

Mr PRICE—I was interested when you raised the issue of the emoluments of the President. Do you think it is important for the success of the current office of Governor-General that he pay no tax and no custom duty? Do you see it as important that, if we were go to a republic, that should continue? Or would you favour the President paying taxes and custom duties like any other citizen?

Mr Hobson—I think that should be the case now, and it should be the case in a republic, that everybody pays their way. They should not get any freebies along the line, other than directly associated with his duties.

Ms HALL—I have a couple of questions. You were talking about an Australian citizen only.

Mr Hobson—Yes.

Ms HALL—Could I point you to the requirements for a person to actually be nominated for the position? They must satisfy the conditions of section 44(iv). They cannot hold any office of profit under the Crown or any pension payable during the pleasure of the Crown. In other words, it would be impossible for a member of parliament to be an acting president by that section of the Constitution. Plus there are other requirements: that a person must not be a public servant; and they cannot be a member of a political party. So that would remove a

politician's ability to be the President or an Acting President, wouldn't it? It sets it out in section 63 of the proposed legislation.

Mr Hobson—Yes, it does. At lines 27, 28 and 29 it states:

The provisions of this Constitution relating to the President, other than sections 60 and 61, extend and apply to any person acting as President.

Is it section 60 that deals with the President?

Ms HALL—Yes, section 60.

Mr Hobson—Line 10 states:

(ii) the person must not be a member of the Commonwealth Parliament or a State Parliament or Territory legislature, or a member of a political party.

That is not required of the Acting President, is it, because that is excluded?

Ms HALL—It also sets out the procedure for appointing an Acting President, which is the longest serving governor of each state, and it is very explicit on who can and who cannot be an Acting President.

Mr Hobson—Yes, but you will note that paragraphs 1, 2 and 4 of section 63 are prefixed with the phrase 'until the parliament otherwise provides'. Once again I get back to the fact that the parliament can change these. If this gets to be law, the parliament can then amend these without reference back to the people. Isn't that true?

Ms HALL—Amend what? This is part of the Constitution.

Mr Hobson—No, but if it says 'until the parliament otherwise provides'—

Mr CAUSLEY—They can replace governors-general or governors with another person. That is what it refers to.

Mr Hobson—It says:

Until the Parliament otherwise provides, the longest-serving State Governor available shall act as President if the office of President falls vacant.

What if the parliament provides otherwise? What could they provide otherwise?

Ms HALL—There would be an outcry. It is a set procedure. I will move on to the next one, because I really think that you are boxing at shadows rather than dealing with something that is an actuality.

Mr Hobson—I do not believe I am.

Ms HALL—Could I bring you on to 'an Australian citizen'? As you would be aware, the High Court has recently ruled on the fact that anyone who has dual citizenship or citizenship of another country—including England, which I might say was deemed to be a foreign power and, if I could say, we do have a head of state that is a foreign power at the moment—could not sit in parliament. Therefore, it is the same requirement for the President.

Mr Hobson—The Queen is sovereign. She does not vote. I know she does hold UK citizenship, but it is purely as a handy thing in terms of moving about. She does not have a passport. I have checked all of that out with the UK. So I think there is a lot of misapprehension with that. The Queen is—

Ms HALL—Are you saying she is not a British citizen?

Mr Hobson—I did not say that at all. I said she does have British citizenship but it is not full citizenship as you and I understand it: she is not allowed to vote. That is the very reason why I asked: will the President be voting at elections normally?

Mr PRICE—Mr Hobson, you say that the current situation, where the longest serving governor acts as Governor-General—

Mr Hobson—As the administrator, yes.

Mr PRICE—is not underpinned in the Constitution.

Mr Hobson—No. But it is—

Mr PRICE—So, in other words, the parliament could determine that the longest serving lord mayor of a capital city, or lord mayor of any city, could act as the administrator or, in the case you are saying—

Mr Hobson—In fact, it could be even worse if you really want to know. The letters patent relating to the office of Governor-General deal with that particular issue under certain sections of the Constitution—namely, sections 4 and 2—but the letters patent are issued by the Queen on advice from the Prime Minister. So it is actually worse. It would not worry me, say, if those things were made actual law in our Constitution as it is now.

ACTING CHAIR—To amend those letters patent, wouldn't it involve the Prime Minister ringing up the Queen and saying—

Mr Hobson—That is what I just said. I just said the Prime Minister advises the Queen on the letters patent.

Mr PRICE—If you wanted to characterise what fuels our current arrangement—which, by and large, people have been satisfied with—it is really what is unwritten rather than what is written in the Constitution. Why do you, for example, see that, in the bills that try to say as much as possible, we are not changing anything other than having an Australian as a head of state? We wish to continue on that legacy which we currently enjoy today. Why do you

envisage that there will be all these problems, when the potential for the problems has been with us for 100 years?

Mr Hobson—I am just addressing some things here that I believe the committee should take on board. As I said, I do not believe everything is the same. I reject the notion that the President will have the same powers as the Governor-General, because you have now inserted the word 'on' in the executive powers. At the moment the federal executive—

Mr PRICE—What powers will he not have? Do you believe he will have more powers or less powers?

Mr Hobson—I believe most of the powers that the Governor-General now holds, save the reserve powers, will essentially be administered by the federal executive council.

Mr PRICE—But the constitution of the council does not operate. The way the executive council functions does not change between the situation now and in the republic.

Mr Hobson—Yes, it does.

Mr PRICE—Please explain to me how.

Mr Hobson—At the moment the federal executive council advises the Governor-General—

Mr PRICE—That is true.

Mr Hobson—In your republic, the President will be required to act on—and I say the word again: 'on'—the advice of the Governor-General.

Mr PRICE—On the executive council?

Mr Hobson—On the federal executive council, I am sorry.

ACTING CHAIR—Or the Prime Minister or a minister.

Mr Hobson—Yes. That is another issue that I would like to bring along. It does not say in what capacity these people would be advising. I believe that, if you are going to do that, you should be advising what capacity because what is to say that, in a fit, Peter Costello does not go out to Government House and advise the Governor-General to dismiss the Prime Minister?

Mr PRICE—It really raises the question about how it operates. I cannot recall—and I certainly have not checked up—whether there has ever been a full meeting of the executive council. When the executive council is in meeting it is usually either two ministers or ministers/parliamentary secretaries. They form the council. When the Governor-General has queries about bills for which he is required to give the royal assent he asks questions and they are answered by those individuals. That is the nature of the advice that he receives.

Mr Hobson—I understand that, but—

Mr PRICE—That is being replicated.

Mr Hobson—No, it is not. There is a difference between me advising you and you going away and doing your own thing and me giving you advice that you must act on. There is a clear, distinct difference. It is not the same thing. Let me give you the acid test.

Mr PRICE—That is a fair point.

Mr Hobson—The acid test to this is: would you be happy to have the word 'on' removed from the appropriate section, which is—

Mr PRICE—If it is causing confusion, there may be a good argument to do that, but could you give me an example where a Governor-General has rejected the advice of the ministers who attend an executive council meeting?

Mr Hobson—I do not know because I have never attended any.

Mr CAUSLEY—Do you want me to give one?

Mr PRICE—In the Commonwealth?

Mr CAUSLEY—I have not been in a Commonwealth executive council meeting, but I have in the state. Yes, the—

Mr PRICE—A Governor-General has asked for more information or, indeed, even required that the relevant minister come to a further meeting to satisfy his inquiries. But, at the end of the day, the Governor-General has no power to reject that advice.

Mr Hobson—I understand what you are saying, but now you are actually physically or literally putting a word in to make that so, and I see that as muting the umpire's whistle. I am talking about the executive powers. There is a distinct difference. The acid test to my argument is: would you be happy if the word 'on' was removed? If you say that you would not be happy, then you obviously agree with me that there would be a difference. I see this as a clear shift from the Governor-General to the federal executive—which is, in principle, Prime Minister and cabinet, I guess—of the powers that the Governor-General currently holds.

ACTING CHAIR—In so far as you may be correct that there has been a change, does it not further enforce the principle of responsible government whereby the executive or the President would be responsible to the elected representatives?

Mr Hobson—I do not know. I think most people probably feel fairly remote from parliament, politicians and government now. If there are more distinct and literal powers placed on the federal executive council, I think that will become more so.

ACTING CHAIR—What if the Governor-General went around the bend and he was sitting down having a beer one Saturday afternoon and, as the Commander-in-Chief of the Armed Forces under section 68 of the Constitution, says, 'I think I will call them out on the streets because I do not like all this talk about a republic at the moment'? Surely, when we look at section 68, and he is Commander-in-Chief of the Armed Forces, we would say, 'Well, there's no problem under that because custom has it that the Governor-General will exercise his powers on the advice of the parliament of the day or the Prime Minister and cabinet of the day.'

Mr Hobson—I agree with what you say. That could happen, but do not forget that the Governor-General can also have his commission withdrawn. So you have that 'tricirculatory' thing between three individuals. The Prime Minister could have the Queen withdraw the Governor-General's commission or ask Her Majesty to write up another commission appointing a new Governor-General which would supersede the existing one.

ACTING CHAIR—On the Sunday after my thought process, the Governor-General sacks the Prime Minister of the day and then physically takes on his role as Commander-in-Chief of the Armed Forces. Would that not be contrary to all the conventions, that is, that the Governor-General currently acts on the advice of the executive council?

Mr Hobson—I agree with you. But what I am saying is that, now that you have actually in put the word 'on', it is now no longer a convention per se, is it? It is now a constitutional law.

ACTING CHAIR—You do not think that gives greater safeguards to the parliament of the day?

Ms HALL—Or the High Court?

Mr Hobson—I suspect it gives more powers to the parliament.

Mr CAUSLEY—But what powers? Legislation, for instance, has to go through both houses of the parliament.

Mr Hobson—Yes.

Mr CAUSLEY—It has to be approved by both houses of the parliament—

Mr Hobson—Except referendum bills.

Mr CAUSLEY—then it goes to the executive council for approval. Even if it did get through all those processes and it is still an unpopular law, there is the next election.

I do not really see your concern.

Mr Hobson—I would like to see the word 'on' removed. As this young lady said earlier, we have a marvellous Constitution that is working and we want it to be the same. It cannot be the same if you literally change the words, can it?

Mr CAUSLEY—I have been in executive council in the state and in practice what Roger Price has said is true. I have seen governors ask for more information but when given more information they have signed off on the bill. They have been through both houses of parliament. So, in practice they do act on the advice of the government.

Mr Hobson—Yes, I understand that. That is good. That is what they should do. I do not have a problem with that philosophy. What I am saying is that the President would not have the option to ever say no.

Mr CAUSLEY—So you think that that subtlety just removes that little—

Mr Hobson—That subtlety reveals that. It is a very subtle thing. It is one two-lettered word. I believe if that is totally and utterly ignored, you make the document completely different. I might add that I believe that the executive powers are very important powers.

ACTING CHAIR—You made a point earlier that the referendum bills do not have to be passed by parliament. In fact they do before they are submitted to a referendum.

Mr Hobson—Referendum bills do not necessarily have to go through both houses. I think if you read further on in section 128—

ACTING CHAIR—They can go through one or other, but after a process of three months coming back around the loop—

Mr Hobson—Yes. It is not totally true to say that a referendum bill does have to meet both house requirements.

ACTING CHAIR—It would have to go through one or other.

Mr Hobson—Yes.

ACTING CHAIR—Thanks very much for coming along Mr Hobson.

Mr Hobson—I appreciate very much the pleasure of being able to do so.

[12.10 p.m.]

STEENSON, Mr William Robin (Private capacity)

ACTING CHAIR—As I previously advised all witnesses today, 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 we ask questions, would you like to make a brief opening statement to your submission?

Mr Steenson—As I have indicated in the submission, I do not intend my points to be exhaustive. I have certainly not gone through and addressed every section of either of the bills chapter and verse. I have highlighted particular issues, such as the long title and a couple of sections of each of the bills.

In terms of the long title, it needs to obviously reflect not only the Constitutional Convention communique but also what is contained in the bill because, clearly, the long title is what is going to go up as the referendum question. Therefore, as a question that is going to be put to the entire electorate, it really needs to reflect the system that is actually going to be put into place. I have indicated in the submission that certain things, such as the words 'chosen by a two-thirds majority', do not accurately reflect the model that has been put up. Likewise, the importance of including words such as 'Australian citizen' or 'Australian head of state' are fundamental to the issue itself. In terms of section 60 of the establishment of a republic bill, my issue there is in terms of the word 'may'. I think it should in fact be a definitive '"shall" move a named Australian citizen' rather than 'may'.

ACTING CHAIR—From the list of names proposed to the Prime Minister, you think that should be a mandatory requirement.

Mr Steenson—My view is that we have to have a head of state. So having a word such as 'may' there is inappropriate—it should in fact be 'shall'—to appoint the head of state. I certainly think that one of the nominations from the Nominations Committee, if not one of the short list of people, should in fact be mandated as the candidate. That way you can ensure that a person who has actually gone through the nomination process is the person who is proposed by the Prime Minister in the House.

Ms HALL—If no-one in that short list were suitable, would you suggest that, rather than the Prime Minister being able to select someone from a non-existent list, it should go back to the committee and they should come back with another short list?

Mr Steenson—As I understand the provisions of the bill, the committee considers all of the nominations that it receives and then puts up the report, which would include a short list of names. What I am suggesting is that, if there were not anyone suitable in the short list for some reason, then surely in the names that did not make the short list, there may be someone who is.

Ms HALL—Submit another short list?

Mr Steenson—Yes.

Mr PRICE—If they publicise the short list, wouldn't that of itself compel the Prime Minister to select one amongst the short list? Do you favour publicising the short list, by the way?

Mr Steenson—I certainly think that, at some point in the process, it needs to be publicised. It is important to acknowledge, though, that the Prime Minister and, in my view, the Leader of the Opposition need time to consider the list prior to presenting a nomination. Clearly, it is a much tidier process than doing otherwise.

As far as publication of the list is concerned, I certainly think that it need not be secretive. If the nominees are willing to have their names put forward, then I do not see any great danger in releasing it. I think the question then becomes: at what point in the process do you do this? Do you release the short list prior to a selection being proposed to parliament? That is an issue on which I do not have any firm views, but it is certainly one that we need to consider carefully.

Mr CAUSLEY—Any nomination must be seconded by the Leader of the Opposition.

Mr Steenson—That is correct.

Mr CAUSLEY—You are concerned that, if the Prime Minister and the Leader of the Opposition could not find a suitable candidate in the members who were put forward by the committee, you would not risk the fact that the Prime Minister and the Leader of the Opposition could come up with a suitable candidate.

Mr Steenson—They could certainly come up with a suitable candidate, but surely they should be able to come up with a suitable candidate from amongst those names that the public has put forward. The very beginning of the process would see members of the public nominating people to the Nominations Committee. As I understand it, the committee would then consider the nominations, obtain the consent of the nominee to put their name forward and proceed with the process in that manner. Of all the people who are put forward, if there is not someone on the short list, by some chance, who is a suitable candidate, who can be agreed to by the Prime Minister and the Leader of the Opposition and who can get two-thirds majority support of the parliament, then surely there must be someone on the remainder of the nominations list who did not make the short list. This is so that whoever is endorsed as the President has originally come as a nomination from the public, and I think that is fundamental to the system.

Mr CAUSLEY—Let me put a scenario to you. As with your suggestion, there were nominations from the public of suitable candidates. One was a candidate that suited the Leader of the Opposition, and he refused to accept any other nomination until they got to the end of the list.

Mr Steenson—I think that is an unusual circumstance. That is obviously inferring that there is a single preferred candidate that the opposition would support and no other—a sort of spoiling mechanism. I certainly think that it is the sort of practice that the electorate would clearly have an opinion on. While it would frustrate the process of appointing the new President—assuming it is one some time in the future—I do think that there are provisions in the legislation for the office of head of state continuing until such time as there is some form of resolution.

Ms HALL—Could that still happen even if the Prime Minister were not taking it from the list? That sort of scenario could happen if the Prime Minister nominated anyone and the opposition leader was being obstinate. As you say, he would receive a response from the public that was none too favourable.

Mr Steenson—I certainly agree. While that sort of scenario could come up with a nomination that purely comes either from the Prime Minister's head or from someone who is publicly nominated, it is fundamental that someone who has originally been nominated by the public does hold the office. Obviously, it would be a little messy, in terms of the system and how it looks from the outside, to have a person in that acting capacity as President or, as the legislation currently suggests, to have the former President continuing on until such time as this could be resolved.

I do not think that going through the entire list of every single nomination that has been put in, and throwing them out until the very last one is accepted by the Leader of the Opposition, is a process that is appropriate. I think that while the Prime Minister and the Leader of the Opposition should draw someone from the list of nominations, that does not necessarily mean that you have to go through and exhaustively nominate every single person on the list.

I wanted to also indicate that I do think that a definitive start and finish to the President's term of office of five years is desirable. There are acting arrangements in place for any period between one President leaving office and the next being sworn in, and I do not think it is entirely desirable to string out the head of state's term when it is a set period of time. I think also there should be a limit on the number of terms of office the President should serve. My personal view on that is two terms, which gives them 10 years in office. I do think that some limitation is necessary.

Section 62 also particularly concerns me given the clear intention that the convention had about removal of the President. It has to be endorsed by the House. If it not endorsed, then it is viewed as a vote of no confidence. That is not specifically stated in the bills as they are at the moment. I certainly think that it is something that needs to be there, given that otherwise you are just going to have the case of the Prime Minister removing people willy-nilly. If the President has made a public statement that the Prime Minister does not particularly like and he thinks that it is undermining his government's position on something, it is just a case of saying, 'Right, I've got a personality conflict with you; you're out.'

This is why I also suggest that specific grounds for removal are not undesirable by any means. If you are going to have someone who is appointed by a two-thirds majority of the

parliament, then at least having some grounds for their removal—if not identical provisions to the ones that apply to judges—is something that is highly desirable.

Section 63 needs to make specific reference to the Acting President having the same qualifications as the President. All you would be doing would be removing the possibility of a non-Australian state governor from acting as President. I think that that does not necessarily restrict the states in their choice. It simply suggests that someone who is not an Australian citizen cannot be or act as the President. That is it for the establishment of a republic bill.

I have a couple of brief points on the Presidential Nominations Committee Bill 1999 itself. Section 6 at the moment gives the convenor of the committee a deliberative and a casting vote. I firmly believe that each committee member should only have one vote. My preference would be for them to have a deliberative vote. If there is a tied vote, then clearly the resolution is not carried.

Mr PRICE—Suppose this parliament is influenced by committees where the chairs have a deliberative and casting vote which they exercise ruthlessly?

Mr Steenson—I am not suggesting that that is something that is unusual, but I think that likewise it is not unusual for a chairman to have either one or the other. Usually, in circumstances I think that most of the public are familiar with, they do have a deliberative vote. Tied votes are just not carried, because if they could not get a majority, they could not get a majority. I also think that the principle of 'one person, one vote' is something that you need to reinforce to the public, given that the model does not provide for direct election, and that someone having two votes when people may take the view that they have no vote in this process would be something that would grate on them.

Likewise, in terms of the composition of the committee, I am of the view that the number of community members should in fact be greater than the parliamentary members on the committee, partly by virtue of the fact that the parliamentary members—certainly from the Commonwealth—get an opportunity to participate in the process later on anyway, and I think a more visible community contribution is useful.

Mr PRICE—Would you argue for a larger committee? Is that your point?

Mr Steenson—It may have to be a larger committee because I do not know of a particular way of reducing the committee without in fact eating away at the specific state and territory parliamentary representatives, unless of course—as I have suggested in section 11—there is an obligation on the Prime Minister to choose people with geographical and other considerations, thereby giving each area some say. While I am reluctant to become an advocate for states rights and to say that particular states should all have the same representation, I certainly think some sort of geographical diversity as well as other diverse aspects of the community—gender, age and culture—are all things that are important. If it is going to be the one person who is appointing this committee I think you do need to specify those sorts of things.

Mr CAUSLEY—Without leaving it to commonsense because, if you are going to specify exactly how many are going to be on this committee, it is going to be very difficult. You may leave someone out.

Mr Steenson—I am not suggesting in fact that there would be a quota. If, for instance, there are 30 members of the committee and hypothetically 20 of those were community members, you would not then say, 'Right, this many have to come from New South Wales; this many from various other states.'

I am saying, though, that there should be some obligation on having someone from each of those areas on the committee, and then let commonsense prevail as to appropriate people, the balance between the states and those sorts of issues. I certainly do not want to become prescriptive in terms of every state is entitled to a certain amount of things, partly given my views on states rights and issues such as that.

Ms HALL—Have you finished your submission?

Mr Steenson—Yes, that is basically it.

Ms HALL—Could I take you back to the long title of the bill? To your right you will see a long title that the committee was given yesterday by Michael Lavarch in Brisbane. Would you like to tell us what you think of that, and whether it better reflects the type of question that should be put to the Australian people, or could you give us some recommendation as to how you think that could be changed, or the long title that we are currently looking at?

Mr Steenson—I certainly think that that long title covers the aspects that I was talking about in terms of mentioning a republic, mentioning a President and mentioning an Australian head of state. I think, as far as issues such as mentioning the powers remaining the same, or mentioning the system of election, they are not things that I am particularly passionate on. I certainly think, though, that if you have Australian citizen, republic and the title of President, then other things, as long as they are accurate and they reflect what is in the bill, I would not have an objection to.

Ms HALL—Could I take you to section 62? You said that under the current proposal the Prime Minister would be able to sack the President willy-nilly. Do you think that this differs from the current situation? That is part one of the question. Part two: don't you think, even though you may believe that there is room for improvement, that the fact that the Prime Minister does have to take it back to parliament in effect is making the Prime Minister more accountable than under the current Constitution?

Mr Steenson—I certainly am not going to deny the fact that at the moment the Prime Minister could, based on the notion of advice to the Queen and the Queen agreeing with the advice, remove the Governor-General on whatever circumstance they chose. I am not denying that that exists, nor am I suggesting that that is in fact a desirable set of circumstances. It concerns me that you could have a head of state, and indeed we have had instances in the past where the Governor-General has come out and made public statements

on particular issues—not just the current incumbent—that have not accorded with the views or the position that the government of the day has taken.

While at the moment I suppose that they are protected in the sense that it is notionally a vice-regal position and they are there to represent the sovereign, I do think, though, that if you take away that sort of concept and simply have a President who can be removed when the Prime Minister disagrees with a particular public comment, or who, on issues where he does not necessarily have to follow the Prime Minister's advice, makes a decision that the Prime Minister does not agree with. Then obviously the implication is that if the Prime Minister cannot get the endorsement of the House of Representatives for his decision to remove the President, I think then, in effect, you are talking about a want of confidence in the Prime Minister. I do not see a problem with spelling that out.

While it indicates that the failure of the House of Representatives to approve the removal does not operate to reinstate the President, and the Constitutional Convention communique suggests that they are still eligible for reappointment, I think that really the dismissal procedure that is spelt out—and it is only a fairly brief one—in the communique does in fact cover it all. If in effect that is what is going to happen, then surely, to be faithful to the communique, you could almost use the dismissal procedure that they have suggested word for word.

Mr PRICE—On the spelling out of the Nominations Committee membership—that is, trying to get a balance geographically and in different aspects—a suggestion has been that, rather than picking up your comment to specify it in the legislation, we might put in the words that 'the Prime Minister be required to consult with the major parties', that is, the Leader of the Opposition and any party with more than five representatives in either house. If his or her good judgment would not dictate a good balance, in any event the consultation process would throw up further names that would reflect a good balance of community representatives on that committee. What would your response be to that suggestion?

Mr Steenson—It is certainly an argument that has merit, given that, while you may not always be able to rely on the choice of a single person to bring about a diverse composition of the committee and/or a diversity of views, by its very nature, if you had multiple people involved in the selection of the Nominations Committee, you would ensure some more diversity. I do not know that it is necessarily guaranteed. Nothing is, I suppose. It would give greater input to the process. In particular, while the committee is substantially being drawn from the community, they do not have any direct input to the process.

Mr CAUSLEY—Mr Steenson, would the move to a republic in Australia mean that Australia would become a truly independent republic?

Mr Steenson—I certainly accord with the view of the Convention, which is that, were we to move to a republic, it would not preclude membership of the Commonwealth of Nations, given that the bulk of members of the Commonwealth are in fact republics now. I think it is very much the end of a long process rather than a violent change over the last century. Since the Constitution Act was passed in 1901, you have had the Statute of Westminster Adoption Act, and the Australia Act in the 1980s, both of which have clarified

in practice Australia's position with respect to the United Kingdom and the position of other dominions as well.

I think this is simply the last step in the process of severing the legal and constitutional links with the United Kingdom. I do not think it is going to bring about a vast change in the legal system, given that appeals from the High Court to the Privy Council and from the state supreme courts went some years ago and that we can in fact legislate in terms that may not be in accordance with British law. I just see this as the final step in the process. If we no longer have legal and political links to the United Kingdom other than through our head of state who, in fact, is a head of state in absentia and in practice allows her representative to exercise the powers, it is a fairly simple step. It is obviously for the community to decide in November whether they are prepared to take it.

Mr CAUSLEY—Given what you have said and the fact that we need simplicity—otherwise Australians will not read it—why shouldn't the long title simply be 'A bill to amend the Australian Constitution to provide for Australia to be an independent republic'? It should be something that people can understand. Once you go past one sentence, they will not read it.

Mr Steenson—I am certainly very conscious of that. In my comments on the proposal that Ms Hall referred to, while I indicated that the words 'Australian citizen', 'republic' and 'President' ought to be in there, one of the reasons I am not particularly passionate about lots of references to the current powers, the Queen and the Governor-General is simply that it does take it out to several lines. While people are asked to give a yes or no answer and I think the simpler the question, the better, I do not think that simplicity should override every other consideration. I think you can get a reasonably short long title that serves the purpose of an appropriate referendum question that people can understand.

ACTING CHAIR—Thanks very much for coming along, Mr Steenson. We will be reporting on 9 August. We appreciate your contribution.

Proceedings suspended from 12.35 p.m. to 1.57 p.m.

HALL, Ms Shayne Gina (Private capacity)

SCOTT, Ms Michelle (Private capacity)

ACTING CHAIR—Welcome, Ms Scott and Ms Hall. I have advised all witnesses today as a matter of formality 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 we ask questions, would you like to make a brief statement?

Ms S. Hall—I would like to thank you for allowing Michelle and me to talk to you today. We are young people for a republic. We will be doing a joint presentation. I will be speaking first on why young people are for a republic, and Michelle will be talking about the proposed referendum question and the bills.

We believe Australia's future is as a republic. We are the future generation of this nation, and we do not identify with the monarchy. We see Australia as an independent nation. We no longer rely on Britain for trade; we trade now with the Asia-Pacific region. I see the monarchy and the United Kingdom as a foreign power and believe Australia has grown as an independent nation. At one time, being part of the British Commonwealth was needed but today it is no longer required.

It seems silly that we have a foreigner as our head of state. We should have an Australian citizen who, when they go around the world, can represent Australia. The Queen does not represent Australia when she travels around the world—she represents Britain. I also find it ridiculous that the Queen—or her representative, the Governor-General—has such enormous power over our parliament with the power to dismiss our Prime Minister. Under section 59 of the Constitution, it says that the Queen can disallow laws within one year of the Governor-General's assent. This is a foreigner having enormous power over our independent parliamentary system.

As a young person, I personally believe—as do the majority of Australia's young people—that Australia is a nation, separate from England, that deserves its own head of state. We may seem apathetic about this discussion; this is not a lack of opinion but our general disillusionment with the whole political system. This is why it is important that the question that is being proposed be simple and be something that we can identify with and not be caught up in the political process, which confuses young people. Many young people do not have the same knowledge that we have on how bills and acts are created, so it is important that the words that are used to describe the intention of these bills are as simple as possible.

The republic is the next obvious step for Australia after the Australia Act which ruled that no United Kingdom institution could exercise any judicial or legislative powers with respect to Australia. I see this debate as not about flags or whether we are able to compete in the Commonwealth Games in the future, but about Australia formalising what we all

know, that is, that Australia is independent of England and no longer requires England's guidance and assistance.

Michelle and I support the recommendations of the Constitutional Convention and believe the proposed bill generally reflects these recommendations. However, we are concerned about a few important points. Michelle will now talk to you about them.

Ms Scott—We have three areas that we would like to address. Firstly, the proposed question; secondly, the establishment of the Presidential Nominations Committee Bill 1999; and, thirdly, the Constitution Alteration (Establishment of Republic) Bill 1999, section 62 concerning the removal of the President.

Firstly, the question. We believe that the title is too long and confusing to younger people. The title should clearly specify that the President, an Australian citizen, will in fact replace the Governor-General and that Australia will continue to operate as a federal system with a Prime Minister. The title needs to clearly state the purpose of the act, that is, that an Australian citizen will be head of state. The recommended bill is not about changing the way we are governed; it is about allowing Australia to move into the 21st century as an independent nation.

As we feel that we no longer have close ties with England, we propose the following question: a bill for an act to alter the Constitution to establish the Commonwealth of Australia as a republic with an Australian citizen as President, replacing the Governor-General. It is important to make the question and the issue as explicit as possible to accommodate the fact that a lot of young people do not understand what the whole debate is about.

I would now like to move on to the second issue: the establishment of the Presidential Nominations Committee Bill. We believe that the Prime Minister should be required to take into account gender, age and cultural diversity in appointing committee members as recommended by the 1998 Constitutional Convention. We also think that the bill should require there to be adequate representation from not only political members, but also community members and that the committee be comprised of equal numbers of men and women. We strongly believe that there should be a bipartisan approach to the process of nominating the President and selecting the committee. The Prime Minister and the Leader of the Opposition should appoint the committee together.

Finally, section 62, the removal of the President. Presently, the Governor-General is subject to removal by the Queen acting on the Prime Minister's advice. The proposed section 62 establishes a similar mechanism in relation to the removal of the President. This section gives power to the Prime Minister to dismiss the President rather than giving the power to the appointing authority, that is, the parliament. In other words, the decision to sack the President should be ratified by parliament before the removal of the President takes place, say, within seven days.

We believe the Prime Minister is given too much power in relation to the removal of the President. If the House of Representatives does not vote for the removal of the President, then we believe that the President should be reinstated. If the House of Representatives did

not approve the dismissal of the President, then it would appear that there is a leadership problem with the Prime Minister and it could constitute a vote of no confidence. Under section 62 the Prime Minister does not have to give grounds for the dismissal of the President. However, we believe that public notice with the grounds for dismissal should be given. That concludes our presentation to the committee.

ACTING CHAIR—Thank you very much. Are there any questions?

Ms HALL—Yes. For the public record, I must say that Shayne is my daughter. She argued with me that, even though she was my daughter, she was entitled to make a presentation. So I am stating that for the record.

Mr PRICE—And the committee agreed with you.

Ms HALL—Thank you. I have asked for a copy of a long title that was handed to us yesterday in Queensland by Michael Lavarch. Shayne, you might like to show that to Michelle. I wonder what you think of that for a long title and whether or not you think that that would be a title that young people would be able to identify with?

Ms S. Hall—That would probably be okay. We are just a bit worried about using the word 'President' because people have the assumption that the President is going to replace the Prime Minister. There is a lot of confusion about that out there. If you stated directly that the President is going to replace the Governor-General and the Queen, that would be what we want.

Ms Scott—The only thing I think it lacks is that it does not say the President would be an Australian citizen, where we made the point of the Australian citizen. Otherwise, it does definitely say that the President will replace the Queen and the Governor-General, so that is clear.

Ms HALL—Do you think it should say anything about the nomination process?

Ms S. Hall—Not necessarily.

Ms HALL—That brings me to the issue you raised about the dismissal. You say that the President should be reinstated or that dismissal should be approved by the House of Representatives. Isn't the procedure set out in the proposed legislation stronger than the legislation that exists at the moment—the current Constitution?

Ms S. Hall—Yes, it is, but we still think it should make it so that the Prime Minister does not have that absolute power to dismiss the President.

Ms HALL—I will touch on something that is specific to young people. You said that this debate has not got a lot of relevance to young people. How do you think the education campaign should be geared towards young people, and how should the parliament be involved in making young people more aware of the issues?

Ms Scott—I think there is a lack of knowledge among young people generally. I think you can educate children in schools but, being university students, we do not get as much exposure to the republic debate. I think it is a media thing as well. There has not been that much coverage of the republic debate.

Ms S. Hall—They should use simple words and make what they are saying directly understandable so that everyone knows it is for a republic and that the President is going to replace the Governor-General, and not get into the flag, the anthem or stuff like that. People are thinking it is all about that, too, when it is not about that at all.

Mr CAUSLEY—I do not want to be too hard—so assume my bark is worse than my bite—but you did say you agreed with the bill before the parliament, which was being brought forward after the Constitutional Convention. Then you went on to say that you had some concerns. Isn't it contradictory to agree with the bill and yet have concerns?

Ms S. Hall—I thought we said we generally agreed with the bill, and we definitely agree with the recommendations of the Constitutional Convention. But the bill does not absolutely reflect what the Constitutional Convention recommendations were, and we want it to reflect them completely.

Mr CAUSLEY—If we are going to change our Constitution, it is a very important document to us and we need to protect the freedoms that we enjoy at present. It is very difficult to change the Constitution, and there is no guarantee that this referendum will be carried, or subsequent referendums if we need them. So don't you think it is important that we try to get it right before we change the Constitution?

Ms S. Hall—Yes, we agree with that, and that is why we say we have these concerns about it. We want these words to actually spell out in the act what should happen, such as with the dismissal of the President. With the establishment of the committee, we want it to be all set out properly in words in the act and not just assumed.

Ms HALL—What about the appointment of the Nominations Committee? Are you happy with the process of nomination and the community representation that is set out for that Nominations Committee?

Ms Scott—We are. We do think that the number of members—that is, 32—may be a bit much but, if there is a balance of community and political members, we do not really have a problem.

Ms HALL—I noticed that the Constitutional Convention actually recommended diversity, gender balance and cultural balance. Would you like to comment on community diversity—sex, age, et cetera?

Ms Scott—We agree that it should be taken into account.

ACTING CHAIR—Do you think it should be specifically included?

Ms Scott—Yes, specifically included.

ACTING CHAIR—Do you think there should be a provision requiring the Prime Minister to consult with other political parties before he or she appoints the community members of the recommending committee?

Ms Scott—Yes. I believe there should be a bipartisan approach to this and it should be the Prime Minister and perhaps the Leader of the Opposition working together, not just the Prime Minister.

Mr CAUSLEY—What about the leaders of other parties of more than five members? No-one is going to guarantee that the political system we have at the present time with two major parties will continue. I belong to the National Party so I am not as major. In the future there may be three or four different parties, so if you are going to consult with another party maybe it should be parties of more than five political members.

Ms S. Hall—It might get to be too many. You will end up having a committee to decide on the committee if you have that.

Mr CAUSLEY—That is the cost of democracy, I suppose.

Ms S. Hall—Yes it is.

ACTING CHAIR—Perhaps if there were an obligation on him to confer, rather than necessarily accepting their views. Thanks very much for coming along and expressing the views of young people in particular. We greatly appreciate it.

[2.11 p.m.]

LEMMINGS, Dr David Frederick, Head of Department and Senior Lecturer, Department of History, University of Newcastle

TREFALT, Ms Beatrice, Associate Lecturer, Department of History, University of Newcastle

ACTING CHAIR—As I have advised previous witnesses, 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 we ask questions, would you like to make a brief opening statement to your submission?

Dr Lemmings—First of all, I thank the committee for the opportunity to appear here, and I particularly thank Jill for the invitation. We appreciate being involved in this process. We think this is democracy in action, so it is very good. I would like to address the Constitution Alteration (Establishment of Republic) Bill 1999 and the Presidential Nominations Committee Bill 1999 separately, starting with the republic bill. When talking about the republic bill, I want to speak broadly about the implications of establishing a republic, rather than address the detail.

When we were invited to appear here I consulted my colleagues in the department, and what I am saying reflects broadly the opinions expressed at that meeting, so I speak on behalf of all those people. We generally support the idea of a republic. I think we are unanimous in believing that this is a good thing and that it is right and proper for Australia to proceed down that route.

Generally, we support the minimalist model which is represented by the republic bill which you have before you, but the department is concerned that the bill as it stands is rather anaemic, if I could use that term. What I mean by that is that we believe the foundation of an Australian republic provides a major opportunity to make a statement about Australia's identity and Australia's values. Surely we think it is necessary to invest the new republic with a symbolic charge, and here I refer to the precedent of the American Declaration of Independence in 1776. Those people who have travelled to the United States will know that almost every American recognises the Declaration of Independence and indeed they continue to be inspired by that message.

We think some statement along those lines is necessary if ownership over the new constitutional arrangements is to be achieved by all Australian people. Indeed, as I am sure you are well aware, it appears doubtful whether the referendum question will pass unless there is some kind of movement along those lines. So that is the first point, and broadly I suppose I am talking about the preamble. I think we all agree that some kind of statement is very important.

We also think there is a need to signal a change in the political culture as a consequence of moving towards a republic. It seems to us that changing from a constitutional monarchy

to a republic means more than just altering lines on a printed page. Historians of Australia have argued that Australian political culture has generally represented or reflected the nature of a monarchy. It is not an accident that Australia has been a monarchy; the culture of politics in Australia has paralleled that. What we mean by that is Australians traditionally have looked to government to organise their lives, particularly in respect of delivering economic and social benefits.

It seems to us, as historians who have some knowledge of the classical republican tradition, that a republic presupposes more active participation by all citizens in public affairs. Again, we believe this is desirable and we urge the parliament to consider how more participation might be achieved under the constitutional arrangement which we recognise as a republic.

Finally, in regard to the republic, more concretely some of my colleagues have noted that the bill would transfer the reserve powers enjoyed by the Governor-General to the President, but no provision is made for defining those powers more closely. Although we recognise that it may not be expedient to act at this point, some of our colleagues who remember the dismissal in the 1970s hope that the constitutional change proposed here will mark only the beginning of a process—a process which will ultimately deal with that important issue.

That is what we want to say in regard to the republic bill. Now I will address the Presidential Nominations Committee Bill 1999. The point I am going to make has been made before. The Constitutional Convention recommended that the committee for nominating the President should take account of considerations of federalism but also of gender, age and cultural diversity. While the arrangements proposed in the bill would certainly recognise Australia's federal structure—that is clearly covered by section 10 of the bill—it is not clear that the bill as it stands would deliver a committee which would fully represent Australia's rich diversity.

In particular, section 11 of the Presidential Nominations Committee Bill simply leaves it to the Prime Minister to nominate 16 community members. We would like to see much more detail in that, certainly including a quota for women. And we would also recommend the establishment of some mechanism for guaranteeing adequate representation of Australia's indigenous peoples. The latter could be achieved either via existing Aboriginal and Torres Strait Islander institutions or by again the imposition of a quota for people identifying themselves as being of indigenous origin.

By way of conclusion, just to summarise, while we are all committed to the establishment of a republic—all of those in the department, that is—and we recognise the need to proceed cautiously, we urge the parliament to use this opportunity to make the process genuinely inclusive and inspirational. You have the chance here to mark a new beginning in the history of the Australian people which we believe will allow us to move forward together into the new millennium.

ACTING CHAIR—Beatrice, would you like to add anything?

Ms Trefalt—David has said that he represents the views of the department. Certainly, the department is concerned that section 11 of the bill for the presidential nominations is not

saying anything about the representation of diversity, perhaps not only of our indigenous people, but of all the people who have migrated to Australia. Various ethnicities, genders and perhaps age as well should be represented, and that should be clearly indicated in the bill. That is what we agreed on.

ACTING CHAIR—I think the explanatory memorandum says something like 'in so far as it is reasonably practical, the Prime Minister should have regard to things such as gender, race, age and concepts of federalism.' Do you think that should be specifically included in the bill as opposed to the explanatory memorandum?

Ms Trefalt—Yes, I do. I am sure I reflect the department.

Dr Lemmings—Again, we do not want to be mistrustful of our Prime Minister, but why not have detailed mechanisms, such as quotas, to represent those people?

ACTING CHAIR—On the other hand, it has been argued that there may be outstanding women and to limit it to 50 per cent of women may limit some outstanding—

Mr CAUSLEY—Or of any group.

ACTING CHAIR—Or of any group. Your quota could end up being limiting rather than encouraging.

Ms Trefalt—Sure, but historically we would probably find that this is hardly ever the case. If it changes in 50 years time, we can perhaps change the bill again.

Ms HALL—I understand that ATSIC actually made a recommendation yesterday—and I have not seen it—that there be a set number of Aboriginal and Torres Strait Islanders on that selection committee.

Dr Lemmings—We would support that.

ACTING CHAIR—As a mandatory provision?

Ms Trefalt—Yes.

Dr Lemmings—I think so, yes. Again, this is a great opportunity, and mechanisms have to be there to ensure that all Australia's people are represented.

Ms HALL—It could be included in the reconciliation process.

Dr Lemmings—That is right.

Mr CAUSLEY—Could I just follow on from that, because it is a rather important point. This Constitution, if the referendum is carried, might well carry us through for another two centuries. Don't you think it is rather dangerous to put limiting factors in there when what might be relevant in 50, 60 or 100 years time might be quite different from what we are thinking about today?

Dr Lemmings—Historically, constitutions do not last forever. For example, the American Constitution has provisions to make amendments, and of course several amendments have been made. Again, at this stage, as we understand and look forward to the new Australia under a republic, one of the burning issues is reconciliation, as Jill has suggested. So it is important for those of us around at this point to ensure that that issue is carried forward. But I do not see any reason why there could not be further constitutional amendments later on.

Mr CAUSLEY—I might have misled you. This is really the bill, not the Constitution, and so it can be changed.

Dr Lemmings—Yes, that is right.

Mr CAUSLEY—Your answer probably leads to the preamble which you started off with. Other evidence has been that we need some stirring words to motivate the country, or whatever. You might be able to help us, because I have seen about three or four versions already and I do not think there has been universal support for any of them. If you can come up with a model that everyone is going to be happy with, then you might be able to help us.

Dr Lemmings—We would welcome the opportunity to be involved in that process.

Mr CAUSLEY—I have seen about four different models at this stage and, from my reading of the community, no-one has embraced them universally. I have seen divisions within particular groups. It is a real challenge to come up with something.

Dr Lemmings—Sure.

Ms HALL—The ATSIC submission—and I have been given it—supports the inclusion of a provision in section 11 of the bill requiring appointment by the Prime Minister of two indigenous members to the presidential committee. That is in volume 3, if you are interested in picking one of those up.

Dr Lemmings—The other way to proceed, of course—and we are not seeking to make any recommendation in detail here—would be to ensure representation of indigenous people generally through some representative institution, that is, ATSIC or the land councils.

Mr CAUSLEY—I come from the country. Do you realise that Aboriginal people are not all that enamoured with some of their elected members of ATSIC either?

Dr Lemmings—That is why we leave it to your better judgment.

Mr CAUSLEY—You raised a question which I do not know whether I picked up correctly. It seemed to me you were saying that you did not believe a Prime Minister should be dismissed at any stage. When you were talking about reserve powers, et cetera, you seemed to indicate that you were very concerned about reserve powers. We have had evidence about the reserve powers and conventions. Constitutional lawyers have argued before us that they prefer them to be left as not codified. They believe that then restricts the

ability for them to change over time. They have argued fairly strongly along those lines. I do not think we have had dissent on that.

Ms HALL—Yes, we have had a couple people.

Mr CAUSLEY—Constitutional lawyers? I do not think so. Anyway, codification has been argued strongly in the negative. On that point though, are you very reluctant to see those reserve powers, given that in some extraordinary circumstances a Prime Minister can be removed?

Dr Lemmings—I do not know that we would be against a Prime Minister being removed in any circumstances. That is not the point we are trying to make. The concern is the inherent vagueness of the reserve powers and obviously the large amount of discretion which is left to the President as a consequence, as there is still a large amount of unused power by convention in the hands of the Governor-General at present. Several of my colleagues expressed a feeling of unease about that.

Mr CAUSLEY—I asked constitutional lawyers the same question and I think the answer was, 'Well, there are written documents on these.' I am not totally clear in my mind either about the reserve powers or the conventions that are relied upon. The question I asked was, 'Who would a President rely on if they were to exercise these reserve powers?' and the answer, from what I remember, was, 'There are documents that do indicate what they are.'

Dr Lemmings—The concern is with the term 'constitutional convention'. Under the Westminster system we all understand there are conventions which presidents, prime ministers, governors-general and queens are supposed to abide by. But, ultimately, in an emergency situation there really is nothing, as far as I understand, to stop those individuals behaving differently, if they were so minded. Again, it is better left to your judgment, but it is a concern which we picked up.

Ms HALL—Along the line of codification, a number of people have raised concern about section 59, paragraph 3.

Dr Lemmings—Is this of the republic bill?

Ms HALL—The republic bill. Some people were concerned that it was not clear enough and, therefore, the logical step is the codification. I understand that Wayne Reynolds supports the codification, does he not?

Dr Lemmings—That is right, yes.

Ms HALL—And other people thought that it should be left like that and other people thought that that third paragraph should actually be left out. Would you like to comment on that? I think they are the three positions that we have had put to us as a committee.

Dr Lemmings—I can only speak personally. This is not a question which we have discussed. I feel that certainly the last part of that sentence indeed does place a large amount of discretion in the hands of the President and that is a concern.

ACTING CHAIR—The argument, however, has been that currently in the Constitution the Governor-General has a very broad discretion as to the exercise of the reserve powers, the Crown prerogative and even the specific powers that are given under the Constitution. Indeed, there is no obligation under the current Constitution for him to act on the advice of anyone other than the Queen's representative. So do you think, in so far as it is now made specific that other than in respect of the reserve powers the President is to act on the advice of the executive council, Prime Minister or ministers, it is some greater accountability?

Dr Lemmings—You are right, yes. Your knowledge is greater than ours on this. Yes, certainly it is an improvement.

Mr CAUSLEY—Could I ask another question on the reserve powers? I do not know whether you have discussed this but it certainly has been raised with the committee, and that is the justiciability of the reserve powers. In other words, could a government challenge in the High Court on decisions? From my knowledge—and Rob will correct me if I am wrong—at the present time it is considered that they are not justiciable. But, the way the bill is written at the present time, there is some debate as to whether they are or they are not. I do not know whether you have discussed as to what your opinion is on that?

Dr Lemmings—We have not. I do not know how Beatrice feels. I personally am a great advocate of high courts or supreme courts; checks and balances, as there are in the American Constitution. Therefore, to have formal procedures whereby individual processes could be brought before a supreme court would be a useful mechanism. I think it works very well in the United States.

ACTING CHAIR—The argument against that is that the reserve powers are traditionally regarded as the power to appoint or dismiss a Prime Minister or the power to dissolve parliament or call for an election. It is said that, if the President for one reason or another found it necessary to dismiss the Prime Minister, then to have several months delay while it was resolved in the court would cause paralysis to the system. Hence the Governor-General—or the President as it would be if these bills were passed—should have the power to resolve it there and then.

Mr CAUSLEY—As long as it goes back to the people. I suppose they will be the final arbiter.

Dr Lemmings—In other words, there will have to be an election if it goes back to the people. That is something I do not think I can comment on.

Ms HALL—Could I take you to the dismissal process? What is your opinion of the dismissal process set out in this referendum bill?

Dr Lemmings—Is this section 62 that we are looking at?

Ms HALL—Yes, section 62. Sorry, I should have said that.

Dr Lemmings—I think you had a view on this issue, didn't you, Beatrice?

Ms Trefalt—Yes. It seems that the Prime Minister can dismiss the President without the approval of the House of Representatives, and this is something we discussed when we came in. This is my personal opinion, but I would like to have a check placed on the Prime Minister in some way in that regard so that he had to get some kind of approval.

Ms HALL—Malcolm Fraser actually addressed the committee down in Melbourne. He said to us that, as far as he was concerned, the moment the Prime Minister handed a letter to the Governor-General, the President would in effect be sacked. Even though under the present Constitution it could be said that the Prime Minister has to wait for a letter to come back from the Queen, et cetera, there has never been a case where the Prime Minister's recommendation to approve or remove has not been followed. Do you see what is put forward in this legislation as being stronger than that? Or do you just think that, yes, maybe it is stronger—as the last witnesses said—but that we need something better still?

Dr Lemmings—It is obviously stronger than the existing arrangements.

Ms HALL—But you would still like to see something stronger than what is written there?

Dr Lemmings—I think our concern was the final part; the fact that the failure of the House of Representatives to approve the removal of the President does not operate to reinstate the President. There was more confusion than anything else about that sentence. We did not entirely understand the thinking behind that.

Ms Trefalt—Perhaps it should be clarified.

ACTING CHAIR—Thanks very much for coming along and giving your views. They are valuable. We will be presenting our report on 9 August.

[2.39 p.m.]

MAWDSLEY, Mr Terrence Robert (Private capacity)

ACTING CHAIR—Welcome. As a matter of formality I should advise 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. Would you like to make a brief opening statement before we ask you some questions?

Mr Mawdsley—I would just like to say I did not come along prepared to make a submission here this afternoon. Actually I came along to pick up my wife. But I support the committee in its endeavours to establish some criteria which will lead to, I hope, a successful solution to the vexed problem of republican versus monarchy. So I make my position quite clear. I am a republican through and through and have been since the time when I was about three years old and during the whole course of my lifetime.

We have had difficulties in coming to grips with why should somebody on the other side of the world be the supreme commander, as it were, of a country like Australia. We have seen some great trials and tribulations since the early founding days of this nation. Sometimes some of those tribulations have not been very correct, and I refer to the particular involvement of us going to save Great Britain in its times of conflict, rather than another country coming to support us as one of the fledgling nations in the world.

However, be that as it may. It seems to me that this committee is doing a good job because it is putting to the general public—to the people of Australia—the opportunity of saying something about the republic and the monarchy, and all those views will be no doubt thoroughly analysed before you finally make the recommendation to go to the parliament.

But I would like to say this. One of the things that I have been confronted with all my life is simply understanding some of the jargon which goes along with this legislation. The lawyers have a field day when they are interpreting legislation, and I would suggest that in its recommendations the committee should indicate that it ought to be written in simple English, or, if that is not the case and cannot be done, then there ought to be an explanation of what it is about underneath each of the submissions.

That gives people about my age who have accumulated a wealth of experience over the years the opportunity, and for that I am truly thankful. But, by the same token, I am not up to date with everything that is happening in the world, and people of my age will be in the same position. So they will have to have some assistance in understanding what this legislation proposal is all about and what will be the likely effects of it if it becomes law. When that happens I think that people will then be more confident of being involved in the process.

I expected, when I spoke to my wife about coming in here, that there would probably have been a queue a mile long of people wanting to give evidence. I think the evidence that

I have heard so far is very good, and it does represent a fairly wide viewpoint. For that reason I think it is very good.

I also want to indicate that one of the problems that people around my age encounter from time to time is the frightening experience of exuberant youth. I am not putting that in any derogatory terms. I am saying the exuberance of youth is what I used to be involved in when I was a young person. It is the same—one thing that is done today that could be done tomorrow—and I would not in any way try to denigrate the efforts of young people of today to make change.

This system has been with us now for some considerable time—for 200 years. It is time it is renewed. It is time that changes are made, and it seems likely that there will be some changes made. But how far those changes will go will depend on the enthusiasm and the involvement of a whole range of people other than what we have today.

I am very pleased indeed that, when the republican movement started, at least it turned the first sod. My eternal thanks go to those people who initiated it for their efforts to do something about change. As I said, I did not make any notes, but all the things that I should have been saying were running through my mind. When you come up here and you are sitting in the chair, they go by the book.

ACTING CHAIR—We appreciate what you have done. Would you like us to bounce a few questions off you?

Mr Mawdsley—Sure.

Mr CAUSLEY—I do not know whether you have read the bill. Have you read the bill that is before the parliament?

Mr Mawdsley—I have partly read it.

Mr CAUSLEY—We have two terms of reference. One is to ask whether the bill represents the wishes of the Constitutional Convention. The second one is: if it became our Constitution, would it work? I dare say that the questions we have been asking around here today are dealing with some of that. From the amount that you have read, would you be happy and comfortable with that as our Constitution?

Mr Mawdsley—The Constitution will need amendment, of course. I am not too sure whether the proposals fully meet the circumstances or the bill. I suppose, by and large, I would have no real basic objection to it. Again, like everything else, until you have been in the debates and you have heard what other people's views are about this issue, you really do not form any real firm conclusions about whether you support or disagree with a certain proposal. At this stage, I would say that I cannot confirm that I would fully support either the bill or the Constitutional Convention, but I leave it open to be convinced of the merits or otherwise of the proposals.

Mr CAUSLEY—Would you support minimal change, or would you prefer another republican model?

Mr Mawdsley—I think it should be progressive. It should not be cast in stone or concrete. There ought to be an ongoing convention or organisation which is charged with the responsibility of overviewing and overseeing the Constitution, as it applies and when it applies. There are a couple of things about it that suddenly crossed my mind. Is there protection in the bill for the President elected? Is he protected in any way from, say, an unruly parliament? Are his rights protected? Is his continued office protected? I know we have heard about the Prime Minister and his rights, but what about the President's rights?

There are a couple of things that need to be said about that. It is going to be an erroneous task. Whoever ends up being the President of this country is going to have the mantle put on him like the presidents of other nations throughout the world. It is a very high level of integrity and trustworthiness. If that breaks down at all, what protection or redress has he got to preserve his rights? Can he go to the High Court of Australia? I think not. From what I gather from the debate this morning, he has not got many rights at all. I know the procedure you go through to sack the President but, by the same token, if he is sacked, what right of redress has he got to a public hearing to express his views about his public position?

I want to make the point, too, that there ought to be a biannual report by the President to the constitutional committee or review board—whatever is elected—that will continue to oversight the development of the republic, if there is a republic. He would also report back to them so that they knew exactly what was going on. I know he has to report to parliament, but you need to go broader than parliament. It needs to be outside parliament.

Citizens of this country need to be elected to oversee and work with the government on the constitutional changes that need to be made for the future. When you throw up one idea, others invariably raise themselves at the same time. Instead of dealing with one, you are dealing with two or three problems. My own view is that that needs to have at least some form of regulatory body.

ACTING CHAIR—That is not a bad point.

Ms HALL—Yes, that is a really good idea. That is something we have not had.

Mr PRICE—That is a very interesting idea. I have not heard that before.

ACTING CHAIR—Thanks very much for coming along, Mr Mawdsley. We appreciate the short notice, and we appreciate the contribution that you have made.

[2.51 p.m.]

CLAYDON, Ms Sharon Catherine (Private capacity)

ACTING CHAIR—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. Would you like to make a brief opening statement before we ask questions?

Ms Claydon—I will be very brief. Like the gentleman before me, I did not come with the intention to address the committee at all but to listen to some of the debate. I came here to become a little better informed.

ACTING CHAIR—I hope it has been successful.

Ms Claydon—It has, which brings me to one of the points that I would like to make. That is with regard to community education. I am somebody who genuinely seeks out information, but I have not found it incredibly easy to come to terms with all of the issues in this debate. It is certainly not something that people at the local footy club are talking about at the moment. It is very difficult to ask people to make a contribution when very few people are across the issues of our Constitution and our parliamentary systems. It is not something that we learn in our schooling system. Only the quirky ones amongst us think of reading the Constitution for bedtime reading or something.

ACTING CHAIR—It is like watching sport. When you are familiar with the rules of the game, it is more interesting, isn't it?

Ms Claydon—Yes, exactly. I know we have struggled for some time to get things like civil studies up in schools, but it is at moments like this when I realise how fundamentally important something like that is. It puts a lot of people in the public at a distinct disadvantage to make a contribution. That was the first observation that I would like to make.

With regard to the specific issues of today, the thing that has concerned me most—and I find myself in agreement with most of the witnesses I have heard today—is with relation to the Presidential Nominations Committee and the composition thereof. I think the people representing the history department earlier on made the comment that this is an incredible opportunity. I can see that this debate links in so many ways to the issues of reconciliation and other issues of national importance now. This is an opportunity to begin to shape a new kind of Australia and something that is more reflective of the lived realities of people now.

The Constitutional Convention made very clear recommendations with regard to the composition of the Nominations Committee. I think it is essential that that is reflected in the bill. As much as I would like to be able to rely on the goodwill and good intentions of current and successive prime ministers, I would like some very clear guidelines to ensure that we have a guarantee—as protection—that that committee would be made up of people

taking into consideration the issues of federalism, gender, age and cultural diversity, as was stressed in the people's Constitutional Convention.

ACTING CHAIR—They are good points.

Ms HALL—I am really pleased that you raised the point of education, Sharon, because I think that is of vital importance. The point also about the Presidential Nominations Committee is one thing that has come up at just about every hearing we have had. It is important that we look at those issues. I do not think the legislation actually reflects the recommendation of the ConCon.

Ms Claydon—No. I listened before when we had a bit of a tangle up about the possible problems of having quotas and that sort of thing. I think that we need only look at the list of governors-general to date. I am not rubbishing them in any way. I happen to think that William Deane is doing a fantastic job actually, which puts me in a kind of a bind being a republican. He is obviously a man of integrity. But it seems to me that, without those sorts of guarantees, we may never see women or an indigenous person occupy that position. It is no longer really good enough to just have middle-aged men or retiring aged men, as is often the case in those positions. I do not speak for the youth; I am in the middle-aged bracket myself these days.

ACTING CHAIR—Although with the nature of the short-term appointments to the office—five years—you are more likely to get someone who is towards the twilight of their career than someone who will take five years out of their career.

Ms Claydon—Yes, that is quite likely.

ACTING CHAIR—Ian, do you have any questions?

Mr CAUSLEY—No, I have nothing.

ACTING CHAIR—Thanks very much, Sharon, for making that contribution on short notice. It has been valuable.

Ms Claydon—Thank you for having me. It is good to be able to participate at some level in this debate. I look forward to being able to get access to some more information.

Mr CAUSLEY—You will get a report now.

ACTING CHAIR—Yes, you will.

Ms HALL—Sharon, if ever you want to access any information, I do not know whether you are in the Shortland electorate, but you are always free to give me a call and I will see that you can get the information you need.

[2.58 p.m.]

HESPE, Mr Frederick Stewart, New South Wales State Chairman, Australian Monarchist League

ACTING CHAIR—I welcome Mr Stewart Hespe and thank you for coming. I have to advise all witnesses that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the 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 Hespe—Yes, I would. I thank the select committee and its secretariat for enabling me to give evidence before you. I want to also place on record the concern, alarm and frustration that I have and that the Australian Monarchist League has at the way this issue has been dealt with by successive governments.

Very briefly and chronologically, after six or so years of republicanism by stealth under the Hawke and Keating Labor governments, the electorate went to the polls in 1996. At the Labor Party's campaign launch, the then Prime Minister, Paul 'the putative president' Keating, said that the central issue of the 1996 election was whether or not Australia should become a republic, or words to that effect. The result was a landslide victory for the coalition. But, did the incoming Prime Minister do as his counterpart in New Zealand later did and say, 'A republic is not on the agenda'? No. He said, 'We're going to have a Constitutional Convention.' One can only presume that this was a result of pressure from his own frontbench, and the politicians who believe what they read in the newspapers and therefore thought that a republic was inevitable.

We were led then into a Constitutional Convention. This in itself was a set-up. Half of those delegates were appointed, and, on our count, about two-thirds of those were professed republicans at the time. The other half were elected by a system which left itself even more open to electoral fraud than is usually the case, and that is saying something. As a result, the Convention, as I said earlier, was a farce. It would have been comical if it were not so serious.

What happened there, of course, was that the republicans could not decide what they wanted. That is not surprising, because if you get 10 republicans gathered together and ask them what they mean by a republic, you will get 20 different answers. The Convention eventually came up with what was clearly a minority decision. But again, did the Prime Minister take the opportunity of reading the runes and say, 'If all you can come up with is a minority decision, let's forget it'? No. He said, 'We'll go to a referendum, and I'll take this model to the people.'

From there on, if anything, the situation has become worse. What has happened is that the Prime Minister has appointed two committees to carry forward—ostensibly, anyway—the media advertising campaign for both sides. But what we find on the no side is that there are five republicans on the committee of 10. The remaining five are from one organisation representing the no cause, but our organisation and others who have joined with us in the

Vote No Alliance have been completely shut out by the government. Nevertheless, of course, we will be campaigning strongly for a no case, and we will be cooperating with the Australians for Constitutional Monarchy, who are represented on the government's no committee. We will work very strongly with them, but we do resent having been shut out of the deliberations by the government.

We found that looking for information about what is going to happen during the lead-up to the referendum has been like trying to find hen's teeth. In particular, as far as your committee is concerned, we have had to virtually extract information from the various government departments to find out what has been going on. Here again, let me advert to the question of failure for an even-handed approach to it when we look at the constitution of your committee. With respect, Mr Chairman, of the committee of 18, we find it very hard to find more than three or four non-republicans. So we ask ourselves: are we going to get a fair shake out of this particular aspect of it? In the words of the well-known poem, we believe 'no b- fear'.

Finally, not only did we have trouble getting information about your committee, but we find that the timing of it changed after the original publication of dates. When we finally did find out where the regional New South Wales hearing was to be heard, we hear that it is in Newcastle. Is that regional New South Wales.? I come from south of Bathurst, and it has taken me six and a half hours to get here. I am sorry for those who might have wanted to have come from Dubbo, Wagga, Tamworth or further, who do really represent regional New South Wales, instead of the northern end of the Newcastle-Sydney-Wollongong conurbation.

With those preliminary remarks, I would like to very briefly touch on the bill. I will not rehearse our written submission, which you all have. As far as the bill is concerned, there is not much point in us talking about the provisions as such because the whole thing is repugnant to us. But I do say that the one thing that is pleasing is that the long title—and I will not rehearse that—is at least an honest statement of the situation: a bill to alter the Constitution to form a republic where the President is chosen, et cetera. I note that the republicans are not very happy about that because it tells the truth. We would very strongly object to any change of that title which, I understand, is to be the actual question at the referendum itself. I believe at least that that is an honest question.

I will just touch on the first section of the bill, which says, 'The parliament of Australia, with the approval of the electors . . . ' That is not a usual—hardly a preamble—opening statement for bills, as I understand it. It is false and misleading because the approval of the electors has not been given. The parliament is doing this, and that is its prerogative, but to say that it is with the approval of the electors is hardly an honest statement.

Moving on to schedule 1, under the heading of 'Executive Power', which is part of section 59, and to section 60 regarding the President, it is interesting to note that it says the Prime Minister, after considering the report of a committee, may nominate a person to be President. The Leader of the Opposition may second it and, if it is affirmed by a two-thirds majority of the joint houses, that person will be chosen as President. I ask: what if the committee in the first place does not make a recommendation? Secondly, what if the Prime Minister does not so move? Thirdly, what if the Leader of the Opposition does not second?

Finally, what if they do not get a two-third majority? The bill seems to be silent on what happens if any one of those things fall over.

Mr PRICE—What would happen if the Prime Minister did not nominate anyone to replace the Governor-General? All of those things that you raise can happen in the current Constitution.

Mr Hespe—I will come to this later. That comes under the whole question of the difference between the Prime Minister and the Governor-General. I will advert to that later on.

Ms HALL—Prime Minister or President?

Mr Hespe—A President and a Governor-General. Please remind me again; I know what you mean and I will come to that.

The actions of a person otherwise duly chosen as a President, et cetera, is on page 4 of the bill under schedule 1. One simply asks: does this mean that someone who, as far as the Constitution is concerned, is not qualified to be chosen as President may become President nevertheless? So anything he does is all right until he is found out? It seems to me a very strange provision.

We then come to the point that you have just raised, which is that the Prime Minister may remove the President with effect immediately. In the 17th century we got rid of the proposition of the divine right of kings. It seems now that in the 20th century, or at the end of it, we are coming into the proposition of the divine right of politicians. That to me seems to be a very strange sort of thing to be enshrining.

Mr PRICE—Mr Hespe, you said that that was my point, but it was not my point. The point I was making is that you raised the issue of the Prime Minister failing to appoint a President. My point was that that is precisely what can happen at the moment.

Mr Hespe—To that extent, yes. But we have a different situation because, at the present time, the Prime Minister appoints and always has appointed a Governor-General, or has recommended the appointment of a Governor-General to the Queen, who would normally and in the provisions of the Constitution accept that recommendation. If the Prime Minister failed to recommend a Governor-General to the Queen, that would be for a number of reasons, not the least of which would be the unavailability of a suitable person. In the course of Australian history, this has never happened. The reason, I would suggest to you, is that there has always been somebody available who, by obvious choice, became the appointee because of his position, if you like, above politics and because of his obvious acceptance by the people and so on.

Mr PRICE—Some have been involved in politics.

Mr Hespe—I was just going to say that there have been a number of notorious situations where a politician has been appointed and the precedent and the general attitude to that

position has been such that those people, despite their previous engagement in politics, have risen to the occasion.

Ms HALL—Mr Hespe, I am interested in the point that Mr Price made previously. If the Prime Minister does not appoint a Governor-General—and I do not think that you have really answered that—would you see the Queen then appointing somebody if that was the situation? Maybe it is a fantasy, but if the Prime Minister failed to appoint somebody, would you see the Queen doing that?

Mr Hespe—I do not know. How could I know?

Ms HALL—Would you support that?

Mr Hespe—Given time to reflect, I might. The Constitution is silent on that particular issue, although I think the reserve powers probably would cover that.

Ms HALL—Do you believe Australia is an independent country?

Mr Hespe—Of course it is.

Ms HALL—If the Queen could appoint a Governor-General, don't you think that that would mean that Australia was actually still a colony?

Mr Hespe—Of course not.

Ms HALL—Even with the Queen of England appointing a Governor-General?

Mr Hespe—With respect, that is an absurd statement. The Queen is Queen of Australia, as she is Queen of 16 other Commonwealth countries.

Ms HALL—You just said that she is not an Australian citizen.

Mr Hespe—She is not a citizen of any country.

Ms HALL—Given whether or not you support this proposed legislation, one of the requirements of it is that whoever is our head of state is an Australian citizen. Would you support somebody who visits Australia every couple of years having the right to appoint our Governor-General?

Mr Hespe—Let me take that point first. The Queen comes by invitation, by protocol. She has not been invited by a number of successive governments because, as I say, of their predilection for a republic. So the question as to the number of times that the Queen is in this country is irrelevant to the question. As I said before, the Queen is Queen of Australia, and that is very clearly stated. The relevant act was enacted in 1953, but that was simply because it was realised—

Ms HALL—No, it was the Whitlam government that made the Queen the Queen of Australia.

Mr Hespe—No, that is a commonly held misapprehension. All that that act did was to reiterate what had already been done in 1953. Read your statute book.

ACTING CHAIR—You in fact deal with that in your submission.

Mr Hespe—Yes, thank you, Mr Acting Chairman. In relation to the continuation of prerogative in proposed section 70A, I can only comment and say that this is an attempt to enshrine the fiction that a President will in fact be the same as a Governor-General. I will come back to that later. As far as the rest of the bill is concerned, I only want to touch on one other point, and that is on page 15 under 5 and 6, 'The States'. If a referendum is carried, it infers that notwithstanding the fact that at least two states could not vote for a republic these will somehow or other come into line because the wording is 'until it has so altered its laws'. It is silent on the question of what if they do not so alter their laws.

ACTING CHAIR—Do you think it should be 'unless and until'?

Mr Hespe—Yes, it should be 'unless and until', the inference being, of course, that everything would be nice and smooth. The reality is, and I would like to mention this particular point now, that this is the most divisive issue that has ever been put before the Australian people. It astounds me that politicians who are always whingeing about divisiveness and criticising people for saying and doing divisive things are hell-bent on what I say is the most divisive issue that has ever been put before this country. It is an unnecessary proposition into the bargain.

What is happening is that these sections of the act are trying to cover, or gloss over, the very real possibility that at least two states—at most in the situation that I mentioned before, and that is in the event of a republic being agreed to—could decide to continue as constitutional monarchies. The whole business of the unified federal system becomes a joke because those two states could very easily secede. I think it is improper to infer that everything will be nice and smooth if in fact the referendum is carried, because it will not necessarily be so. Our main concern is the explanatory memorandum. As I said before, the bill is something that we would argue against in whatever form it is published. But the explanatory memorandum is something which could be used, if you like, as a—

ACTING CHAIR—To assist as an aid in the construction of the document?

Mr Hespe—That is correct, but it also could be used as a piece of propaganda mechanism, or part of the argument, let us say. It is on those terms that we are most concerned.

ACTING CHAIR—You might get more value out of an exchange with the committee to clarify the concerns that we may have, but I should let you know that we have to pull up stumps at 3.30 p.m. The terms of reference are specifically at the bill. The explanatory memorandum, as a matter of law, can be used as an aid in the construction of the bill, but you may find it more constructive to focus on the bills themselves. It is up to you. If you think there is some distortion in the explanatory memorandum—

Mr Hespe—Yes, that really is the main thrust of our argument. As I said, apart from the points that I have just covered, the bill—

ACTING CHAIR—I do not want to cut you short; complete what you wanted to say.

Mr Hespe—I am sorry; I do not mind at all. In fact, I thank you for your guidance. There are a number of issues in the explanatory memorandum. There are two things here that I would have wanted to have read into the record, but I have them in print.

ACTING CHAIR—Yes, if you would like to hand those to the secretary.

Mr Hespe—Yes, I will tender those. I apologise for not having more copies of those. I was going to read them into the record but I thought that in terms of time it would be quicker to hand them over. I have already touched on the question of the Convention and its minority report. In 1.1 of the explanatory memorandum, this is again not properly explained because it says that the Convention supported the adoption of a republican system. To most people, 'supporting' means that there was a majority in favour. The reality of it is that there was not a majority in favour. I think it would be more honest to say that in the explanatory memorandum. Section 1.3 again adverts to this question I mentioned about the continuing states. The inference is that they will all come into line. I think it would again be more honest to point out the reality. If the referendum was agreed to, there could be two states that would in fact continue as constitutional monarchies.

ACTING CHAIR—There could be more. All of them could.

Mr Hespe—That is very true.

ACTING CHAIR—As specifically provided for in the bill. They may elect to continue as constitutional monarchies.

Mr Hespe—That is true, but that is not clearly explained. The citizens of Australia would rightly be concerned about a split-up of the country, and the provisions of this bill enable that to happen. I think that should be clearly set out as a risk.

Mr PRICE—If the referendum is carried, it allows Australia to become a republic and each and every state to choose whether to continue with their present constitutional arrangements or to change them.

Mr Hespe—That is right. That certainly is the case.

Mr PRICE—But how is that splitting? The only danger in my mind is whether Her Majesty would agree, if the referendum were approved, to allow the states to continue to have that arrangement. You may recall with the imperial honours that, once they were abolished at the federal level, it was on the Queen's initiative to abolish them at the state level.

Mr Hespe—With respect I do not think it was. The Queen was invited to accept that position. It was certainly the case in New South Wales. I know that the Queen did not ring

up Nick Greiner and say, 'I do not want to have any more honours.' It was the other way around. The Queen in the normal course of events agreed to what the Premier recommended.

Mr PRICE—Yes, but some states wanted to continue and she declined. In Nick Greiner's state you are quite right, but not all states wished to abolish the imperial system of honours and it was the Queen who declined to have a mixed system.

Mr Hespe—As I say, my understanding is that that is not the case. My understanding of it was the other way around.

Mr PRICE—I agree in New South Wales. That is not disputed.

Mr Hespe—No. I mean universally. That is a side issue. But getting back to the substantive point that you made, you asked the question whether the Queen would agree to the states continuing. I do not think under the constitutions of the various states that she would not agree, because in that respect the constitutions of the various states are very similar to the Australian Constitution.

ACTING CHAIR—It is probably speculative as to what Her Majesty would do. We will move on.

Mr Hespe—You are quite right. That would have been my first reply. How could I tell what Her Majesty would do? The constitutions of the various states are nevertheless pretty clear on that point.

On the question of the powers of the President, in one of those documents I have adverted to the reserve powers. In the explanatory memorandum on page 3, under the heading 'Powers of the President', it says the President's powers are the same as the Governor-General's. Again, this is misleading because it is trying to enshrine the fiction that the President's powers are going to be the same as the Governor-General's. What is worse is that, if they are, this is a very dangerous situation and that is one of the crucial and central issues and why we as constitutional monarchists do not approve of the question of a republic. If, in fact, the President is going to have the same powers as the Governor-General—putting aside for the moment the Prime Minister's ability to be able to slip down the road and say, 'You are sacked'—these powers are so sweeping that without the precedents, protocol and constraints that surround the reserve powers of the Governor-General, they become very real and very dangerous.

ACTING CHAIR—Aren't they specifically preserved in the third paragraph of section 59?

Mr Hespe—That is the point that I am making.

ACTING CHAIR—For the first time isn't it specifically stating that the President must act on the advice of the executive council—the Prime Minister or the ministers—in the exercise of his discretion, other than in respect of reserve powers? How can you say it is more dangerous than a situation where there is no restriction at all on the Governor-General exercising discretion?

Mr Hespe—With respect, there are two powers of the President. The first are expressed in the Constitution and the others are the reserve powers which are not expressed. That is the way it is at the present time. All I am saying is that to enshrine the reserve powers that exist with all the constraints that surround them in the hands of a President where those constraints are removed is a very dangerous situation. On that particular point, and further on—

ACTING CHAIR—We are running out of time so you might focus on your major points.

Ms HALL—Don't you want us to ask you any questions?

Mr Hespe—By all means; I thought you had been.

Ms HALL—We are waiting for you to complete your submission.

ACTING CHAIR—Are there any other major points? We do not want to deprive you of that opportunity.

Mr Hespe—I think I may have covered most of them. There is something that I think people should be very seriously concerned about and that is dealt with under 'financial impact statement', which is a very nice way of putting things. The government has apparently seen that there is $102 million involved in getting to the point of a referendum but has not estimated the cost of the actual change nor further costs as the thing runs on.

ACTING CHAIR—If you have some more information regarding the actual financing, you might want to tender a supplementary submission on that. It is very difficult and perhaps not appropriate to speak from the top of your head unless you have some figures, but you might like to put in something supplementary.

Mr Hespe—Yes.

ACTING CHAIR—I will open it up to questions now if you have finished the substance of your points.

Ms HALL—Thank you very much, Mr Hespe, for making the trip from Bathurst. But we in Newcastle tend to think that Newcastle is actually a regional area, and a very important regional area. I feel the committee has fulfilled its obligation by coming to Newcastle. As somebody who represents Newcastle I feel very strongly about that. I need to put that on the record and, I must say, state my own bias for the importance.

The question that I would like to ask you is about the long title of the bill. You say it is a very honest representation of the situation. We have had a lot of people come along and talk to us about the long title of the bill. I would say that the majority of people feel that it actually does not represent the situation or the legislation.

It has been put to us that the President is approved, or his nomination is ratified, by two-thirds of the majority of the members of parliament. It goes through the nomination process,

as I am sure you are aware, because I can see that you are extremely familiar with the legislation. The Nominations Committee with 32 members on it consider nominations throughout the country. The Prime Minister then selects a person whom he or she—in the future we may have a female Prime Minister—feels they might like to nominate. It is put to the parliament and the Prime Minister nominates a person and it is seconded by the Leader of the Opposition.

ACTING CHAIR—Roger was going to ask the witness what his comments were with respect to the Lavarch submission. Would that short cut the procedure?

Ms HALL—We will put this first. I do not think that Mr Hespe would probably support that one.

Mr PRICE—I would just be interested, Mr Hespe, if you would read that and see whether you would have difficulty with that proposition or whether that would be agreeable to you.

Mr Hespe—For a start, the President would not have the same powers as those currently exercised by the Governor-General, if for no other reason that the Prime Minister can simply sack him on the spot.

Mr PRICE—You would have a difficulty with that?

Mr Hespe—I would have difficulty with that part.

Mr PRICE—What about the first part then: 'A Bill for an act . . . '?

Mr Hespe—What in fact you are doing is replacing 'a President chosen' et cetera, with the words 'with the Queen and Governor-General being replaced by an Australian President'. There are two things about that. The fact is that the Queen and Governor-General are not being replaced by an Australian President—on two counts: the business that I adverted to before about reserve powers and all that is concomitant with those, and the fact that the Governor-General is already an Australian and the inference here is that the Governor-General is not an Australian. As far as the Queen is concerned, certainly when it is all said and done, the whole thrust of the core of the republican movement is to remove the Queen from the Australian Constitution. One asks, of course, why that should be, but that is another question. Generally speaking, I think that the main argument I would have against this proposition is—

Mr PRICE—The latter part of it.

Mr Hespe—The latter part but also the quasi emotional thing. It is a rewording in nice sanitised words of 'a resident for President'. That is what that amounts to.

Mr PRICE—Can I just express my thanks to you for coming all this way. We would have liked to have visited a lot more centres, and I agree with you. Unfortunately, there is a deadline on this bill and it has been done at a screaming pace. That is the only reason that we have not done more extensive travelling.

Ms HALL—Mr Hespe, would you be happy with changing the long title as it appears here to 'nominated by the Prime Minister, seconded by the Leader of the Opposition' and then having what was there and then 'ratified by two-thirds majority of parliament'?

Mr Hespe—I would not necessarily object to that, no, but I cannot see the point of it.

Ms HALL—Because it is a more honest description?

Mr Hespe—No, not really. At the end of the day, according to the bill—and if it becomes enacted, according to the act—if two-thirds of the parliament do not agree to it, he is not a President.

Ms HALL—But they only ratify the nomination.

Mr Hespe—I have no fundamental objection to what you are saying.

ACTING CHAIR—I think we will move on to the next issue.

Ms HALL—I have no other questions.

Mr CAUSLEY—Mr Hespe, just one quick point—seeing I am the only representative of the government here today. First of all, I heard what you said about the fact that you believe you have not had a fair go. Even though half of those on the no committee are republicans, they are in fact republicans opposed to this referendum. So they are probably going to help you more than you can help yourself.

Mr Hespe—That might be the case. Certainly there are republicans opposed to this particular type of republic. That opens up Pandora's box of argument, and I would certainly like to talk to you about it if you have the time.

Ms HALL—That is the problem. The acting chairman is getting very agitated because he is going to miss a plane.

Mr Hespe—I do thank you for your patience in listening to me, Mr Acting Chairman and members. I just hope that I have not ruffled too many feathers.

Ms HALL—No feathers ruffled.

Mr PRICE—Thank you for coming such a long way.

ACTING CHAIR—Just before you leave I should say that this committee is a joint select committee of both houses. It has representatives of all the major political parties—the National Party, the Liberal Party, the Australian Labor Party and the Democrats. It has been a very constructive process. In so far as you have expressed concern about this issue being divisive in the community, we have not seen that. All witnesses—bar two, perhaps—have been very constructive in their contribution in a rational and balanced sense without any sense of fanaticism or emotion, and that has been a very constructive process for this committee.

Other witnesses from both sides of politics have expressed their admiration for the work of the secretariat. The committee members were finally appointed on 21 June. We had our first meeting on 22 June. Your submission indeed is dated 1 July. In terms of the venues that we have selected, we had to choose those venues in accordance with where the majority of submissions were coming from. That was why it was a moving feast. As soon as those determinations were made, all witnesses were notified. Speaking from the point of view of, I am sure, all political parties, we take our hat off to the secretariat and, indeed, to *Hansard*, who have accommodated us so readily.

Mr Hespe—I certainly agree with what you say. It is certainly not the committee's and certainly not the secretariat's fault that the thing has had such a tight schedule, but the tight schedule is the fundamental problem, isn't it?

ACTING CHAIR—Thank you very much, Mr Hespe. I thank *Hansard* and I thank witnesses who have given evidence today.

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

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

Committee adjourned at 3.35 p.m.