

Long title of the Constitution Alteration (Establishment of Republic) 1999

- 2.1 The manner in which referendum questions are put to the electorate is regulated under the *Referendum (Machinery Provisions) Act 1984*.¹ A referendum question must set out the title of the proposed law to alter the Constitution, and then ask whether the voter approves of the proposed law. For previous referendums the relevant title was the long title. Hence, the language used in the long title of a proposed law to alter the Constitution to describe that proposed law assumes great significance.
- 2.2 The long title of the Republic Bill presently reads:
- 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.
- 2.3 The Referendum Taskforce expressed the view that the present long title 'gives sufficient indication of the purpose of the Bill and its content without being unnecessarily long'.²
- 2.4 While some witnesses before the Committee considered this long title to be satisfactory,³ the Committee was informed of several concerns. These related to:

1 See s.25 and Schedule 1, Form B.

2 Referendum Taskforce, *Submissions*, p. S76.

3 For example, The Rt Hon Malcolm Fraser, *Transcript*, p. 220.

- reference to the replacement of the Queen and Governor-General by an Australian President;
- the use of the word ‘chosen’;
- use of the words ‘republic’ and ‘President’;
- possible reference to the Nominations Committee;
- possible reference to the process of bipartisan nomination;
- possible reference to the removal provisions; and
- possible reference to the powers of the President.

Use of the word ‘chosen’

2.5 Many witnesses and submissions expressed an objection to the use of the word ‘chosen’ in the long title—‘with a President chosen by a two-thirds majority of the members of the Commonwealth Parliament’—on the basis that this fails to accurately describe the function performed by Parliament in the process set out in the Republic Bill leading to the selection of a President.⁴ For example, Dr Richard Herr stated that Parliament’s role in the process is one of affirming, not one of choosing, and that the two are not identical.⁵ Several witnesses suggested that the word ‘chosen’ should be replaced with ‘approved’ or ‘affirmed’.⁶ It was argued that this wording would also more closely reflect the recommendations of the Constitutional Convention.⁷

Possible reference to the Nominations Committee

2.6 Other witnesses suggested that it was misleading to only refer to one part of the selection process. These witnesses suggested that the long title should mention the process of public consultation undertaken by the Nominations Committee, as well as the process of bipartisan nomination.⁸

2.7 On this point, the Committee notes that, on a literal reading of the Bill, the Prime Minister is not bound to select a candidate from the Nominations Committee short list, only to consider its report. Evidence, however, was given of the political reality that a Prime Minister would be loathe to depart from the recommendations of the Nominations Committee and the

4 Dr Tony Cocchiaro, *Transcript*, pp. 272–273.

5 Dr Richard Herr, *Transcript*, pp. 428, 432.

6 Mr Jason Yat-Sen Li, *Submissions*, p. S610; Australian Council of Trade Unions, *Submissions*, p. S365; The Hon Michael Lavarch, *Submissions*, p. S545; Professor Jan Pakulski, *Transcript*, p. 410; Dr Richard Herr, *Transcript*, p. 428.

7 The Hon Michael Lavarch, *Transcript*, p. 529.

8 Mr Bernie Treston, *Transcript*, p. 473.

leader of the Opposition would be unlikely to second a nomination if the recommendations of the Nominations Committee had been ignored. The requirement for two-thirds of the Members of Parliament to approve the President is mandatory as a final check on the selection of the President but it cannot take place without the earlier processes. The Committee considers that the reference in the draft long title to the two-thirds majority of the Members of Parliament gives an incomplete picture of the essential feature of the nomination process which involves public consultation and a process for bipartisan nomination by both the Prime Minister and the leader of the Opposition.

Possible reference to the removal provisions

- 2.8 Other witnesses felt that the long title should include reference to the manner of removal of the President as provided for in the Republic Bill.⁹

Use of the words 'republic' and 'President'

- 2.9 Many submissions and many witnesses expressed concerns about the emphasis of the long title. Some witnesses advocated a long title that would simply refer to the establishment of 'the Commonwealth of Australia as a republic'.¹⁰ Others argued against the inclusion of the word republic on the basis that the term 'may be both confusing and misleading. ... "Republic" is a term that carries political and historical connotations that are irrelevant to the referendum'.¹¹ There were proposals for preferred words such as 'A Bill for an Act to alter the Constitution to provide for an Australian citizen to replace the Queen as Australia's Head of State'.¹²

9 Australians for a Constitutional Monarchy, *Submissions*, p. S559; Mr Harry Evans, *Submissions*, p. S38; Senator Andrew Murray, *Submissions*, p. S519.

10 Professor John Warhurst, *Transcript*, p. 23; Professor Leslie Zines, *Transcript*, p. 23; Mr Stuart Hamilton, *Submissions*, p. S306; Mr Terry Wiltshire, *Transcript*, p. 512.

11 Mr Jason Yat-Sen Li, *Submissions*, p. S609.

12 The Hon Michael Lavarch, *Submissions*, p. S545; Australian Council of Trade Unions, *Submissions*, p. S365; Dr John Hirst, *Submissions*, p. S282; Senator Jan McLucas, *Transcript*, p. 471; Mr Bernie Treston, *Transcript*, p. 472.

Possible reference to the powers of the President

- 2.10 One suggested approach was to focus in the long title on the outcome of the proposed changes rather than the intricacies of the appointment and dismissal processes, and to make it clear that the President would replace the Queen and Governor-General and would have the same powers as the Governor-General has at present.¹³ It was argued that this version would reflect the view that the powers of the President is the 'core issue'.¹⁴

Conclusions of the Committee

- 2.11 As discussed above, the Committee received many suggestions about the appropriate content of the long title. These suggestions addressed issues ranging from the replacement of the Queen and Governor-General with a President, the powers of the President, and the selection and the dismissal of the President, all of which are dealt with in the Republic Bill. To list each of them would be to create a very long, complex and unreadable long title. To mention only one, however, might give undue emphasis to that aspect. The Committee therefore prefers amendments to the long title of the Republic Bill that would avoid such complexity.
- 2.12 The Committee concludes that the most appropriate long title for the Republic Bill would be one that presents clearly and simply the essential purpose and outcome of the proposed legislation. The Committee recommends, therefore, that the Republic Bill's long title be amended to refer simply to the outcome of the amendments included in the Republic Bill.

Recommendation 1

- 2.13 **The Committee recommends that the long title of the Republic Bill be as follows:**

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

13 The Hon Michael Lavarch, *Transcript*, p. 542; Mr Michael Stokes, *Submissions*, p. S643, *Transcript*, p. 415.

14 The Hon Michael Lavarch, *Transcript*, p. 542.