



**AUSTRALASIAN STUDY OF
PARLIAMENT GROUP
(Queensland Chapter)**

***Citizen Initiated
Referenda: The Case for
and Against***

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The CHAIRMAN (Dr Paul Reynolds): On behalf of the Queensland Chapter of the Australasian Study of Parliament Group, I welcome you to this meeting. We may have a few more people coming in, but I think that, in the interests of keeping faith with those of you who have turned up at the appointed hour, we should start.

I want to make a couple of small announcements and deal with some housekeeping matters. For those of you who are members and have not renewed your subscription, the membership is due. Mr Blake, who is our Treasurer, is more than happy to relieve you of \$25. As you know, that entitles you to two copies of Legislative Studies. Of the \$25 that you pay, \$20 of that goes to Canberra, largely to finance Legislative Studies and to keep the national show on the road. We retain \$5, which funds our work here. The money that we charge at the door each meeting covers only the catering costs. So effectively we are not double whacking you; it is just that, in order to afford these beautiful facilities for our meetings and a convivial time afterwards, we do need to charge a little extra at the door to cover our costs.

The last annual meeting of the Australasian Study of Parliament Group was held recently in Hobart. Why everybody goes to Hobart—including the Labor Party after their experience in the 1950s—is totally beyond my comprehension; but everybody tells me that they get a good deal at the Wrest Point Casino. In any case, we were confirmed as the second-largest Chapter in Australasia next to Victoria. You can imagine the difference in population—particularly Melbourne versus Brisbane—but as the most active Chapter, we do more on a year-by-year basis. We publish more and we have a higher profile than any other Chapter. I do not say that to criticise our colleagues elsewhere but to say that we have made a conscious effort, since our formation in 1993, to try to put the study of Parliament on the map in Queensland. And while we will always have a niche market and only be dealing in fairly specialised groups, I am very pleased to be able to say that we have linked up with cognate organisations, such as the Constitutional Centenary Federation and other groups, over the last couple of years. I am thrilled that we are laterally involved in that.

The only other announcement that I need to make is that, at the conclusion of the meeting, we are going across to the Strangers Bar, where tea, coffee, savouries and a cash bar will be available. I invite you all very sincerely to come to that. This is the way of meeting, mingling with and bending the ears of the speakers about the questions that you did not ask or could not ask or somebody else asked, but you want to have your go as well. They will not get out alive if they do not come to the Strangers Bar, but most of them would come anyway. So please join us for that.

The format of the evening has had to be changed, unfortunately, since we first arranged it. David Russell, QC, has had to bow out owing to a bereavement in the family. So we are very conscious of and sad that that has been his situation. To rearrange the format, therefore, we have Dr Macklin to speak in favour of the proposition tonight and Mr Hewitt to speak against it. Ms Lavarch, the member for Kurwongbah, will sum up in an even-handed fashion; that is to say, she will comment and critique and put into perspective the pro and con arguments that our other speakers have presented, and then I will throw it open for questions and comment from the floor.

I think I will do all the introductions now. Our first speaker is Dr Michael Macklin, who was Senior Lecturer in Education at the University of Queensland before he was elected as the first Australian Democrat Senator for Queensland. Dr Macklin held with distinction that position in the Federal Parliament for a decade. On his retirement from the Senate, he has been a consultant in the educational industry, particularly in tertiary education and for foreign students. We are very privileged to have Michael with us tonight. He has been a long-term supporter of the Australasian Study of Parliament Group both here and on the national stage and has always been a very good and supportive member for us.

Our second speaker probably needs no introduction to at least some of us who are older, and that is Bill Hewitt, who was for many years the member for Greenslopes and a Minister in the last coalition Government, which expired in 1983. Bill was Minister for Administrative Services. He has been, along with me, the only person who has served continuously on the Executive Committee of the Queensland Chapter since our formation under Mr Speaker Fouras in 1993 and has been an indefatigable worker for the cause here—for the Chapter. He is a source of great ideas. He first broached this subject as a matter for us to discuss about 18 months ago. We received that with enthusiasm, but put it on the backburner until its time had come; and we felt that this was the occasion to do it, since Mr Wellington's Bill has been presented to Parliament.

Our third speaker, and the one who will critique this, Ms Linda Lavarch, is the member for Kurwongbah. She won this in a by-election in 1997. She is currently the Chair of the Parliamentary Scrutiny of Legislation Committee, before whom this Bill will come—if it has not already—because the Parliament has referred it to her committee for further study. So it is entirely appropriate that Ms Lavarch should be here to give us an overview about this very important matter.

So without further ado, I will ask Dr Macklin to address us. Each speaker will speak for 15 minutes, after which time I will throw it open for questions and comment, and we will stay here as long as you want to question and comment.

Dr MACKLIN: Essentially, what we are looking at tonight is the notion of citizens' initiated referenda—a basic do-it-yourself version of democracy. It is the direct democracy idea that has been around for an extremely long time and, from time to time in the Australian political context, it has seen the light of day as a major issue. This State, for example, got quite concerned about the issue in the federation debates, and there was a very strong movement in Queensland to try to stop federation unless citizens' initiated referenda was included in the final Constitution. That came to naught along with a number of other movements at the time.

Nevertheless, the centenary of our federation is an interesting one, because it was very intimately tied up with the notion of where the popular vote was to be. The Australian context, of course, was somewhat in front at that stage in terms of reform and democratic progress compared with a lot of other parts of the world. So I think it is a fitting time, along with the Bill being introduced into the State Parliament, to be discussing this particular matter.

The right to ask questions and the right to give answers is really what we are talking about. The popular initiative, put simply, is about allowing voters to ask the questions—remembering, of course, that if we take at our federal level the Federal Constitution, the only people who get to answer those questions are, in fact, the people. At the federal level, if we wanted to have this particular proposition in place, they would get to ask the questions. At the moment, of course, the Federal Parliament is the only one which is able to ask the questions. That is essentially what we are talking about. It is not some Machiavellian device; it is to allow the people in at the first stage and then to allow them to carry that through themselves.

Let us put in that context a hypothetical question. Let us say that the founding fathers—and fathers they were—ever distrustful of the people—and, of course, they were—gave the right to change the Constitution to the Federal Parliament, since it alone had the ability to deliberate on these matters in all their depth and complexity. If that had been the case, tonight we would probably be having a debate about giving the people the right to change the Constitution. Reform was ever thus: difficult to achieve; but once it was achieved, most people feel that it was actually written on stones and handed down from God.

It is difficult to remember that the only question here is really who gets to ask the question, particularly when you see the demonisation of this particular activity. Popular conventions, of course, have come somewhat into vogue. We have even had one here in Australia in the last little while, proposed and put forward by a conservative Prime Minister. But that is basically to allow yet another group of people, chosen in part by the Parliament there and in part by a vote of the people, to have a further deliberation; but again, not to allow the people themselves that type of overall deliberative vote with regard to a particular question, despite the fact—with regard to that one—that the people are going to be the only ones who get to answer the question.

The major criticism of the popular initiative in the Australian context, I believe, boils down to a reasonably simple argument, and that is that the people do not know enough, or they do not care enough, or they are not wise enough, or they are not careful enough, or they are not unemotional enough; and it goes on—the litany. They are not any of those things, so the people would say, about their own State and about their own country and about the way it is run to be able to ask the right questions. I think this is essentially a paternalistic argument, and it is one which has been used fairly constantly with regard to the growth of democracy. It was used to stop working-class men from getting the vote.

Again, let us hypothesise. I am a male, I am wealthy, I am living in England, and I am certainly not going to allow the rabble to get the vote. I mean, after all, they cannot work strongly enough to be able to make a decent living, and they are not well bred. And if you actually gave them the right to vote, it was fairly obvious what they would do; they would actually take over and run the country, and they would probably expropriate all the property to go along with it, and they

would actually get us into wars with countries that we should not be at war with, and so on and so forth. So let us not give working men the right to vote, or non-property owners the right to vote. Remember, this august Chamber used to elect by that method the people who sat on those very seats you are sitting on. So we are not talking about something all that long ago.

What about the rights for women? It is argued that it is fairly obvious that women should not be involved in Government. They do not know about these matters. They ought not be doing anything outside the home, which is their proper God-given place. Go back and read the arguments put forward in the Parliaments about these matters. They are the paternalistic put-down that runs through the whole thing. We see them now that way, but in the time they were seen as right and proper types of arguments. It was obvious that, if you let women have the right to vote, what was going to happen was they would throw themselves under horses at the Melbourne Cup or at the appropriate British event.

Stopping that growth of democracy and using those types of arguments has been used at all spots, and it is used with regard to this one. I think it has about as much worth as their arguments have, and perhaps we ought see it as such. Perhaps we ought to try to put ourselves on the other side of what would happen if this passes and see whether or not it is going to be quite as bad as we think it might be. What is it then that we are talking about? Let us focus on the issue. We put this particular proposition to the people for a vote—whether or not they should have this right to ask the question. That is a simple enough proposition. The people answer "yes" or they answer "no". In terms of my opponents, there is no problem, of course, if they answer "no", because that was the right answer. But if they answered "yes", what does one say? Does one say they should not have done, they ought not have done, or they were wrong in doing so? What particular type of argument do you use on the other side of putting this question to the people and then saying "yes"—for saying, "This was not the answer we were looking for. Go back again and vote again until you get it right"? Would it be the result of the immature? Would it be a triumph for moneyed interests? Of course not! At that stage, on the other side of a successful vote for such an instrument, everybody would be clamouring to have been on the bandwagon and not off it.

The context in Queensland is probably that it is only the people of Queensland who can vote to give themselves the right to ask the questions on which they would then vote. And it seems to me a reasonable democratic proposition to put that to the people—do you wish to have this as part of the instrument of our democracy in the State, or not—and let the people decide. After all, we do allow the people to decide to vote for our Government. We trust them with that. We trust them to change our Federal Constitution—the basic document of our federation and of the way in which we govern this country. Only the people can change that. We seem to trust them at selected spots. But with this—with asking the questions—not at all.

It certainly was terrifying to give the votes to working men. It certainly was terrifying to give the votes to women when they occurred in the time. But now, in hindsight, we see those moves as the saviour and as a growth in the democratic movement, not its nemesis. We will see the same with this. If, in fact, the people of Queensland are given the vote on this, and they do it, it will be seen to be yet another development in our constitutional history—a way forward.

In most of these debates there is a long dwelling on either overseas experience or Australian experience. Quite frankly, I have no idea what those experiences mean for where we are going. What do they actually say? I have just taken some figures at random in terms of capital punishment. In the United States, 29 legislative Chambers introduced capital punishment. Two were introduced by citizens' initiated referenda. Does that say anything as to why we should or should not do it here? No legislature has repealed capital punishment in the United States, but CIR has had one success so far. Does that say anything of what we should do in Queensland? The Swiss have a referendum every three months and enjoy the highest standard of living in the world. That is obviously linked together. It is difficult to know what any of these mean.

Let us come to the Australian experience. The people of Australia voted against conscription in 1916 and 1917, against outlawing the Communist Party in 1951, and in favour of counting indigenous people in the census in 1967. In the latter case, I was on the winning side, but on the losing side when they voted against daylight saving and our current national anthem. I was one of 14% who voted for Waltzing Matilda. It is difficult to know what any of that means in terms of the principle. In fact, I do not think it means very much at all. We ought, in fact, concentrate on the principle involved and seeing whether or not it is a good principle to have in place. After all, democracy could well be condemned because it enabled Hitler to come to power;

but we do not do that. Indeed, all the Christian churches in Queensland could be closed on the ground that some of their clergy abuse children; but we do not do that.

Drawing on those types of very strange parallels, I think, avoids the issue. So at the end of my argument I want to finger the basic opposition. I think that it is the feeling that people will decide contrary to one's beliefs as to what is best. As a founder of a political party in the State that I represented in the Senate throughout the eighties and which never enjoyed the vote of a majority, I can probably say that the people always got it wrong. Let us say that, despite the lingering doubts of my opponents, I believe that Australians, probably almost as a national characteristic, have a sense of fairness and, I think, instinctively understand that the respect for minorities is as critical to our democratic way of life as is the rule of the majority. They are really two linchpins upon which our democratic traditions are based. Remembering those in England who firmly believe that the poor would in fact confiscate private property and that women would in fact never go to war, when one looks at subsequent history one sees that they are, in fact, both wrong. I think that the types of scares that we put into ourselves about this, once it is voted on and accepted, will be seen as that—merely ghosts that we have frightened ourselves about in the dark—and that what we ought to have done instead is trusted in the will of the people.

Mr HEWITT: Mr Chairman, ladies and gentlemen, when one opposes the institution of CIR, one can take the risk of being accused of not wanting to listen to the people's views—to believe that political parties impose their will upon the people, and the people should not be listened to. I would not want that type of criticism attached to me. I believe very firmly that the will of the people should always be taken into account, it should be measured and, when possible, it should be reflected in appropriate legislation. But sometimes the wishes of the people cannot be so reflected.

Dr Macklin referred to some positive attributes of CIRs in other countries, and I accept those positives. However, there are numerous negatives. For example, Switzerland, which is held as the high-water mark for CIRs, as I understand it, used them for something like 100 years to the middle 1970s to deny the vote to women. And in the United States, a great number of CIRs have been used to reverse anti-discrimination legislation to the detriment of minority groups. I have heard that, in more recent times, some CIRs have been carried which limit to six years the period a person can serve in a legislature. When I have told my friends about that one, they have said, "Hey, what a great idea." But I found it necessary to set them back on their heels and tell them that it is absolute nonsense. How could we ever produce a Premier or a Prime Minister or a leader of any kind if that person's whole political career, as set out by a CIR, was limited to six years? I am told that the adverse effects of that CIR are now being felt in some of the United States. So while one can cite positives from overseas experience on CIRs, one can equally cite negatives.

I have a strong reservation about CIRs, mainly because I have an enormous faith in the existing parliamentary system. I believe that the parliamentary system we have, with particular emphasis upon the adversarial style, has served this nation incredibly well. We are one of a handful of nations in the whole of the world that have enjoyed unbroken democracy for over 100 years. Only in 1975 did we come anywhere close to a real crisis. And even then, blood was not spilt on the streets, and the issue was resolved very, very quickly. There are those who say that the parliamentary system is no longer relevant and, in many ways, has fallen into disrepute. I acknowledge that its reputation is poor. And if you asked me to apportion blame, I would say to you that, with a few very noble and distinguished exceptions, Speakers in our national Parliament have served this country very, very badly. If we want reform, I think we need a meaningful Speaker who understands his rights of discipline and exerts them.

I digress to tell you an anecdote that I had from the late Johnno Mann, whom I met 32 years ago and who was a Speaker in this Parliament—a Labor Speaker in the last Labor years before 1957. Reminiscing on his years as a Speaker, Johnno said, "You never forget you're the boss, and you never let anyone else forget you're the boss." I often think that if someone could get that message through to a Speaker in Canberra, maybe the whole process would improve.

But putting aside that aspect, I believe that Parliaments and parties have remained relevant. I draw your attention to current policies on whatever side of politics you care to look. What political party would dare to go to the country these days without meaningful laws on the environment, on pollution, on consumer protection, on the regulation of companies and other contemporary issues? They are contemporary issues, and the political parties have responded. They remain relevant.

My greatest reservation about CIRs is the argument that I hear of so many people, particularly on open-air radio, which is, "We vote once every three years and we have no further say." I can only say to those people, with the greatest of respect, "You have no further say because you choose to have no further say." It is a vibrant democracy out there, and if people choose to sit on the sidelines, that is their option; it is not inflicted upon them. So may I explore some of those rights which are all too seldom used?

The obvious ones are: people could join a political party or they could join a pressure group. The advantage of joining a political party is the right to influence policy, to select candidates, to be a candidate and to work for the party of your choice. The advantage of joining a pressure group is to work for and advocate particular arguments that you strongly support. Now, there are the opposite reasons for those, of course. With a political party, you may find that you do not want to commit yourself to one side of politics; you want to reserve your judgment and make that decision when an election looms. And with regard to pressure groups—you do not want to be associated with organisations that are sometimes over the top, which maintain high-pressure tactics and involve themselves in high-profile activities.

Having said that, the less obvious ways that a person can continue to exert his or her influence are—and these are really stating the obvious—to take a serious interest in issues and arrive at a considered and not emotional opinion; to seek information from MPs that may not be easily available elsewhere; to let your representative know of your opinion; and even if your politics do not coincide with those of your local member, let your local member know of your range of interests and ask to be kept informed. I am sure that there are those of you who are already saying that that is stating the obvious, and that is very true. But the lamentable fact is that very, very few people seem to exercise those rights.

If I can cast my mind back on a 17-year parliamentary career, I can recall many people coming to my electorate with district problems or personal problems. I can recall very, very few people coming into that office and saying, "I have a concern about this issue. Will you keep me informed?" That is a response notwithstanding the fact that politicians did and do regularly send out questionnaires asking people to indicate their range of interests and wanting to keep them informed on what is happening. So I say again that if people say that they have no influence, that is their option, and they choose not to exercise their rights.

I pose a question to you: if public opinion counts for nothing, will you explain to me why Bob Hawke dropped the Australia Card proposal; why Joh Bjelke-Petersen retreated from the proposition that parts of Lindeman Island should be privatised; why the Goss Government did not proceed with the new road to the Gold Coast; and why, in more recent times, John Howard saw fit to substantially change his legislation on nursing homes? Now, all of those—and plenty of other examples that could be cited—are evidence that public opinion is listened to. Indeed, I would put to you that the argument for CIRs has reached its high-water mark and passed. There would have been a greater validity for the argument 30 or 40 years ago; but these days, with a more educated electorate, with the exposure of issues on open-line radio which is listened to and monitored by all political parties, and by people's opinions being sought and listened to, then the call in many ways for CIRs has passed and the weight of public opinion is very, very strong indeed.

So those are the reasons why I believe that, in many ways, the call for CIR is now passed. But there are, nevertheless, substantial reasons why I do oppose CIRs per se. I have already cited some of the examples from the overseas experience. I believe in the old saying that Governments are elected to govern. I believe that the mere suggestion of CIRs will create uncertainty, hesitation and timidity in the ranks of Government. Is something going to happen to the people moving on this issue if we make this move? Is it likely to be countered by CIR? Those are all the things about which Governments may well concern themselves.

Let us consider Governments when they do unpopular things. We cry constantly for leadership in this country. Real leadership comes about when things that are deemed necessary to do are done even if there is a high level of unpopularity and political risk in doing it. If there is the threat of a CIR always around, then I think that the strength of leadership is eroded and those issues are less likely to take place. Politicians are not masochists. They do not enjoy being kicked to death. They do not enjoy being abused every day. I ask anybody to make a judgment: if a Government is doing something that is highly unpopular, then the chances are the Government deems it very necessary so to do. Politicians love to be loved as much as anybody else, and they

would love to hear in their own lifetime those beautiful words "he was loved by all" rather than wait for those words to come forward in a funereal oration.

I believe also that, with the possibility of CIRs, you have the prospect of laws being introduced that are not necessarily in the long-term interests of the whole of the State. I think that my friend Michael would say that even if people make mistakes, they are entitled to make them. I suppose that is a valid argument. But you could well envisage CIRs on such things as major capital works, public roads, dams, airports and the like; and when those public works have an impact upon the lives of many, many people, then it is reasonable to assume that the NIMBY syndrome—not in my backyard syndrome—will prevail and there will be even greater difficulty in doing the harsh but the necessary things on behalf of the people.

My central argument is that we have a vibrant democracy that serves us well. Governments and Parliaments are answerable to the people on a very regular basis—theoretically three years, but usually less than three years. In my own opinion, that is too short; they should be four, but that is another argument, and I will not digress. But because Governments are so accountable—and these days the weight of public opinion is so obvious—the time for CIR is passed and we should be lending our efforts to reforming our parliamentary process even more and making it work better, making it work more vibrantly and, in any way we choose, making sure that we participate therein. Thank you.

The CHAIRMAN: It may be a case of: "You have heard the rest, now you hear the best." We will now hear the overview.

Mrs LAVARCH: Thanks, Paul. Good evening. You have heard the saying, "A week in politics is a long time." Over the last week, I found that a more apt saying is: "What a difference a week makes." In the public sphere we have the by-election coming up in Mulgrave. For me personally, I was co-opted to do a debate last week. It was one of those mystery debates. I do not know whether anyone else has come across one of those, where you are the after-dinner entertainment. As you come in, they hand you the debate topic and then you draw for affirmative or negative. I went along and everyone was having their pre-dinner drinks. I drew and got affirmative. The debate topic was: television is better than sex. I struggled for a while, because I did not think they were mutually exclusive. Of course, here I am tonight, a week later, and the debate is a much more serious topic. It is a debate of substance and a debate of importance about our political system and the way that we are governed. It is a debate that raged in this Chamber 80 or so years ago—not once but four times in two years. Each time it was defeated. Really, the debate topic for tonight is: is direct democracy better than representative democracy? Dr Macklin is arguing, of course, that they are not mutually exclusive, that they can work together. Bill Hewitt has presented an argument that representative democracy serves us well; therefore, it is better than direct democracy. My role tonight is to critique and sum up the arguments for an against.

In a nutshell, Dr Macklin's arguments for CIR and what it is about was that it is the right to ask questions and the right to get answers. The questions I would like to ask are these: will CIR improve the living standards of Queenslanders? Will it strengthen or weaken our basic institutions of society. Will it protect the rights of the disadvantaged, the poor, the weak—or make those rights more vulnerable? Would it have saved the 6,000 jobs that have been mooted to be lost in Centrelink? In arguing the CIR case tonight, Dr Macklin concentrated solely on the constitutional reform question from a Federal point of view and the ability to ask those questions to change our Federal Constitution.

Of course, the genius for having this debate tonight came out of the Bill that is presently before the Queensland Parliament, which is Peter Wellington's Bill for CIR. Peter Wellington's Bill is not just about constitutional reform; it is setting up a mechanism to make laws that bypass Parliament. It is a reform of substance. That is the best way to put it. If you are looking at a direct democracy from that angle and the arguments that are proposed as to why that direct democracy would be better than representative democracy or add to or enhance democracy, in a nutshell the arguments are about Executive accountability, arguments about the Parliament dodging those hard issues, arguments about voter dissatisfaction and alienation.

Looking at the arguments presented here tonight and critiquing those—I will start with the argument on the Executive dominance over Parliament. As a result of having scrutinised the Bill before the Parliament with the Scrutiny of Legislation Committee, it has occurred to me that it is a public law-making Bill. Public law making, I believe, is a singularly cumbersome if not totally ineffective means of scrutinising the Executive activity.

As to the arguments presented by Dr Macklin tonight—I do not believe that by constitutional reform we can overcome that scrutinising of the Executive activity. If you really wanted to scrutinise Executive activity, you could do it through a CIR mechanism. You could do it by a CIR mechanism that would set up an institution to scrutinise individual rights vis a vis the Executive or examine the exercise of Executive power. But in his Bill, Peter Wellington Bill has set up some prohibitions about what CIR laws could be voted on. One of those prohibitions is in relation to the spending of public moneys. As an argument against CIR, Bill raised that there is a danger that we could have a majority of people not allowing roads, dams, etc., or moving to have roads, dams, etc. In the Bill presently before Parliament, there is a prohibition on that. Coming back to the argument about Executive control—if you wanted to use CIR to really scrutinise the Executive and set up that institution, the present proposal would actually prohibit that.

To Dr Macklin I would like to say that the fact that he has been a proponent of CIR for many years—perhaps 10 or 12 years—and the fact that he is committed to Australia becoming a republic demonstrate to me that he can think outside the square. If he is really committed to delivering to people a method of scrutinising the Executive—taking away Executive dominance from Parliament—then perhaps it is time that he could actually step outside that square. I do not know whether he has read David Solomon's book "The Coming of Age". In that book, for those who believe we need more scrutiny of our Executive, he sets up a proposal where you take the Premier and the Ministers out of Parliament. They are directly elected by the people. All Parliament becomes is a law-making Chamber. In that way, he also argues, you take question time out of Parliament. A lot of the public dissatisfaction with Parliament is about the images they see of politicians on TV. Of course, the only images we see are images of question time, where, they say, we act like kids, scream and yell and show poor form. By having the Executive outside of Parliament, you would not have a question time; therefore, you may present a different image of Parliament. Perhaps Dr Macklin may want to consider going the whole hog with those reforms.

On dodging the tough issues—Bill Hewitt probably hit the nail on the head. The argument about dodging the difficult issues is that politicians do not listen to people, that they are frightened that, if there is a proposal for gay law reform, they will put offside the religious conservative views. If they put forward capital punishment, then they will put offside the civil libertarians, and that is not mainstream opinion. Parliament does dodge those hard issues, but it does not do it for fear of upsetting some interest groups or sections of the community. It probably does it because of the divisiveness of those issues. An argument for CIR is that it allows members of the public to take on each of the cases that Parliament is unwilling to take on. That has been advanced tonight. You often hear people say "The Government doesn't listen to me", or "Politicians are always pandering to minority interests." In truth—and Bill pointed this out tonight—Governments do listen, but they hear contradictory messages. Not doing what one group wants or asks does not necessarily mean that the other group has not been listened to. Governments have to be like the good Lord and answer all prayers. Sometimes the answer is: no. I do not see that CIR would be any different in that respect. It would not deliver what the proponents say it would deliver.

The other argument that was advanced tonight and is always advanced in relation to CIR is that you cannot ignore the will of the people, that you treat them with contempt in arguing against it and that people cannot be trusted. Like Bill Hewitt, coming from a Lower House and having an electorate, I can tell you that the last thing we would even think of doing is treating our constituents, the electorate, with contempt. I think the Senate has a little bit more luxury on that score. My observation is that a Senator's day-to-day work is a little bit different from someone in the Lower House. Parliamentarians are more than a conduit for the transmission of public opinion. We have to be decision makers. That means that the decision may not be what a majority of people want. CIR argues for the majority prevailing. I know that no model was put forward tonight. There are a variety of models of CIR. The model that we have before us in the Queensland Parliament does not accept a majority view prevailing.

In his second-reading speech, Peter Wellington went to great lengths to point out that we should not have the mass population in south-east Queensland swamping the more remote areas in northern Queensland, so it is a proposal that is a majority of people in a majority of seats. The differences in our community are far greater than just geographical differences; we have cultural, social and economic differences just to name a few. There are educational differences and a lot of others. Putting a geographical mandate into that CIR is no different from what we have in representative democracy anyway. Accepting a geographical mandate is really accepting what representative democracy is in the first place. The concept is that

parliamentarians do more than reflect majority opinion; they provide a filter for that opinion and ensure that the weak are protected. That has been pointed out tonight.

The one strength that CIR has—although I have heard Dr Macklin speak on it before, he did not advance the argument tonight and perhaps should have gone into that—is that there is hope that it will engage public participation in the political debate. My only problem with that is that I have seen no research about that. We can look at Switzerland, the United States and even New Zealand—all countries that are cited as examples that the sky will not fall in if we have CIR—but none of them can show any qualitative research—and none was advanced tonight—to show that it overcomes that apathy. I think that is because the apathy goes far deeper than just being engaged and getting to vote on some issues. Some of the arguments are that this empowers people. Empowering people to vote on those issues generates more activity, which then generate more participation and, over time, we will have an actively engaged population. It would be correct to say that you are here tonight because you are already actively engaged. You are already interested in the political system. I do not think that, of itself, CIR will engage the general masses as such. I think that what will happen is that people who are already interested—people who are already participating—can embrace CIR. That was a point that Bill made tonight. I think that is a very valid point.

The other core reasons given for CIR deal with the alienation and disempowerment of our community. I think that is the central argument. That is the argument that has caused CIR to reach its high-water mark. We have come over the hill where CIR was seen 10 years ago—when the dissatisfaction was starting to be recognised—as a way of overcoming or meeting that dissatisfaction. If you look across all our western countries and if you look at works like Francis Fukiyama's "Trust", the point is made that it does not matter whether you are in a country with CIR or a country without CIR: there is alienation, dissatisfaction and a feeling of disempowerment. That comes from the very complex issues of the depletion of social capital over the economic imperative. It is not about democracy deficits or structures of democracies. It is about what is happening, not just in our backyard but outside our own State. It is about globalisation. It is about the rates of social change and technological change. It is about the long-term viability of the nation State itself. All those issues are wrapped up into a feeling of insecurity and uncertainty. I do not really believe that what is being cried out for is a better structure or a different structure; I believe that results are what are being asked for. In an analysis of whether we should have CIR or not, the question really has to be: can it give the results? I do not think there has been any argument advanced there. However, from a representative democracy point of view, there are also questions raised, because Governments of the day in the single State are also struggling with those issues and demands upon them. I do not propose to give an answer to it, but I raise that and ask you to think about how that fits in and how CIR will overcome that. I do not believe it will. I believe it will widen the gap and we will have further alienation, because I do not believe it can deliver on all the hope and promise it gives. I believe it is a limited-value change.

To give a quick summing up, I do not think CIR—and I do not think it was advanced by either side tonight—will end our system of government. I honestly do not believe that it is impossible that good cannot emerge from it. I believe it can; but, at the same time, things have moved on greatly since the CIR debate. In a nutshell, it is an another search for simplistic solutions to difficult, complex issues. It is inconsistent with our model of representative democracy. I think everyone accepts that. It is not necessarily, of itself, a bad thing. It is just not far reaching or meaningful enough to change or deliver what it is hoped it will change or deliver. I will conclude tonight by letting you be the judge of whether CIR offers the gift of a stronger, better society or whether it is no more than an empty promise. Thank you.

The CHAIRMAN: I have not the remotest idea whether television is better than sex, but sex and television might be better than CIR. I will ask Ross if he would like to take up the microphone and throw it open to you. We have as long as you like—half an hour, anyway. I ask that you direct a question, if you can, to one of the three speakers. Or if you want them all to comment, or two or three of them to comment, perhaps you could make that clear when you ask your question.

Ms Vlada Kassabian: It certainly warms the cockles of my heart when I think about CIR. It is something that seems to add something to what we have. Having said that, I also know the other arguments that were advanced. They are, of course, the fear—and that has always been the fear—against CIR. I still go back to the view that whilst tyranny by the minority is difficult to combat, tyranny by the majority is far worse. And it is that particular fear that always drives the

wedge between that. Dr Macklin, we had a referendum not long ago in regard to daylight saving. People voted against it. But because the businesses involved suffer great loss by that referendum, it is back on the books. What is to say that CIR, initiated by people, would not be just another driving force by other interest groups?

Dr MACKLIN: Nothing at all. The dynamics of any democratic society are going to leave open every type of interest group to make use of whatever devices are available to them. Of course, they can also make use of an election. They can make use of political parties. They can make use of pressure groups. They will make use of the media, the television—whatever happens to fall into their hands. It would be absurd to think that, if CIR was another element in the armory, it would not also be used by people to push their points of view. That is precisely what it is about. Indeed, that is precisely what democracy is about—allowing the people to have a point of view instead of the ruling elites getting the complete say.

In a sense, what one has to do is identical to the other types of historical antecedents that I drew upon. There has to be a certain amount of trust that, if you give the vote to people who do not have property, they will not take property away from you; that if you give the vote to women, they will act as wisely as the wise men have been doing. The elements in all those types of developments are always the same. There has to be an element of trust on this side to say that the device will be used in a way that will further the interests of the entire State rather than militate against them. But there is absolutely no guarantee—in the same way as I used another historical precedent: that a democratic election brought Hitler to power. These types of things do happen, can happen and will happen. It is basically important that all people keep an eye on all matters constantly to make sure that the right outcome is the one that actually occurs, not the one that occurs by default.

Mr John Pyke: I have a point that I want to make to Bill Hewitt. First of all, let me take up a point that Vlada made. She said that a lot of the argument, particularly against CIR, is based on fear of what acts might be passed. It seems to me to reveal a curious feature of the Australian character—that a lot of people who discuss CIR, and particularly those who are opposed to it—and I exempt Bill from this, because he made it quite clear that he was not addressing the horrible alternatives of what sort of legislation might be passed—but they are matters of principle and how Parliament works and could work better. But some of the fears that you hear expressed about CIR are from the religious conservative side—here we go out by CIR, and immediately legalise prostitution, abortion and everything else.

From the civil libertarian side, there are fears that we would immediately propose and then support the death penalty, so-called truth in sentencing laws, etc., and that we might repeal anti-discrimination laws. I think that what has happened in America is not so much that they repealed anti-discrimination laws but that they have repealed positive affirmative action laws, rather than those prohibiting discrimination. Recently, from the National Party—who have suddenly realised that they represent a minority of the voters of Queensland—something incidental occurred in four or five places. There was a fear that perhaps we would impose daylight saving in Queensland or shock, horror, that we might outlaw animal cruelty (inaudible). The quicker we can use CIR for that, the better, as far as I am concerned.

But what this seems to show is that everybody assumes that they are, first of all, right and that they are, secondly, in a minority; that if you give the right to vote by CIR to the majority of people, they will immediately rush through all sorts of legislation that a particular speaker is opposed to, and everybody seems to be lost in this little cocoon of minority of thinking, "I and a small group of people like myself know what the right answer is. Out there, there is a great sea of Queenslanders who think differently from us."

Particularly from what Bill Hewitt was saying, it seemed to me that you were trying to have it both ways. At one stage, when you were talking about the Government not being responsive, you gave a series of examples where pressure had stopped the Government from making changes. In the very next sentence you say that Governments are elected to govern, and Governments must have the right to do things which are unpopular. It seemed to me that some of the things which Governments were doing which were locally unpopular could, in fact, be encouraged to occur by CIR—not the Wellington proposal, which leaves out anything which might have an effect on taxation or appropriation—but the NIMBY effect. I was not quite sure whether you were mentioning it as an argument for or against CIR. The problem with the NIMBY effect is that Governments will cave in to a lot of very intense local campaigns. And maybe if we had a mechanism whereby a majority of the people could vote across the State or across the

metropolitan area, there might have been a lot of people from other parts of south-east Queensland telling the Goss Government that they really would have liked the South East Freeway.

Mr HEWITT: It is undoubtedly true that, if the question had been broader in south-east Queensland, the answer might have been different. I am sorry if I appear to be in conflict with myself. I was clear in my own mind. When I spoke about NIMBY, that was a criticism of CIR. I believe that the "not in my backyard" syndrome is strong, alive and well. I think that, on many occasions, it works against the ultimate good. There used to be a saying in public life which is not used any more. I think it is a shame it is not used. They are very simple words: for the greater good. Things often have to happen for the greater good, even if they are inflicting disadvantage or injury on a few. That is called progress. I do not know what more I can add.

The CHAIRMAN: Since the last questioner chose to raise the National Party's position, it is only fair to state that Mr Russell explained to me, when he accepted our invitation, that the National Party, as a party, does not have a position on this issue at the moment. But he, as an individual, does favour CIR. In that capacity, he was prepared to speak for it. But I would not want you to be misled that the National Party, through its due process, has its position made up on this matter.

Mr Clem Campbell: Many examples have been given about America and the effect of CIRs there. However, my concern is that, at the last election, only 38% or 39% of people voted. So a CIR could have been carried with only 19% of the people actually in favour. Often when you have CIRs or referenda in Australia, the question has to be put very simply. But the question is actually very complex. So when you go to it, it becomes a very complex piece of legislation. How do you overcome that problem if you are going to get benefits out of CIR?

Mrs LAVARCH: In a nutshell, I do not know. I actually find some attractions with CIR—given that I think it would be a great vehicle to get a Bill of Rights up. But I do not know that you could do that, given the huge public outcry and debate over the convention on the rights of the child and all the nitty-gritty there. You would end up with a huge public debate. You would end up with huge costs in relation to people arguing for and against on little issues. But the only way you could get it through CIR is to put up the whole of those reforms, which would be the whole question of the changes or the amendments to our Constitution.

Mr HEWITT: Somewhere in this devious little mind of mine, I can see a booklet: yes/no. I think there was a seven-point referendum in the Hawke days, and Peter Reith led the campaign against it very vigorously. As I recall it, the questions were reduced to very simple terms, but there was a very substantial argument for and against in the booklet, which was posted to every elector. To me, that would seem to be the way out. Certainly, you have to reduce the question to very concise and economical words, but the supporting cases can be printed in greater detail.

Dr MACKLIN: Since this is a study of Parliament group, I will refer to that. Basically, the vote is a second-reading vote. If you do not get past the end of the second-reading vote, you do not get into Committee to have a look at the clauses. So we are talking about a second-reading vote. You take the Bill as a whole: "Yes" or "No". That is the standard parliamentary procedure in all the western legislatures, including the Americans. So what would you do? Quite simply require that any vote that went to people had to be in the form of a Bill—nothing more, nothing less.

Mr Damon Blake: A difficulty I have with the legislation, having read Peter Wellington's Bill—and I probably will need to direct this primarily to you, Linda, as Chair of the Scrutiny of Legislation Committee, if I posit a hypothetical—and not any particular issue, for example—but hypothetically, if a citizens' initiated referendum were passed, the Government of the day were hostile to the Bill—and as you said, Michael, it would need to be put in the form of legislation—but then any Bill is going to impact on legislation, especially if it is something like the death penalty or legislators being able to serve only two terms, or something like that—if you have a hostile Government and possibly even a hostile Opposition, how is it possibly going to be scrutinised and turned into effective legislation that is then going to dovetail in with the rest of the State's legislation?

Mrs LAVARCH: Under the Wellington proposal, when the Bill is actually put to the people—and say the answer is: yes—it actually bypasses Parliament completely. It does not come back to the Parliament. It goes straight to the Governor, and the Governor then gives his or her consent to the Bill. So what it is setting up is an alternate or additional law-making process. Under his Bill, I presume that Peter Wellington wanted to address a concern of a hostile

Parliament. There is a provision in the Bill before the Parliament that with any Bill that is voted on and given royal assent, the Parliament cannot amend that legislation for 12 months.

Our committee looked at the constitutional question of whether that was constitutionally valid and I know that John Pyke may have comments on that. The concern was basically centred around that prohibition of Parliament being able to amend the Bill. We saw it at its least a power void. Because it has not been scrutinised clause by clause, there may be a necessity for amendments for unforeseen reasons. Then you have this power void for 12 months while Parliament cannot touch it. The middle view was that maybe even having that in the Constitution of Queensland—that Parliament cannot repeal or amend that Act for 12 months—it is a constitutionally invalid section, anyway, and that if Parliament ignored it—this may be a matter of getting three opinions from two lawyers—and amended it, one may ask whether there is anything anyone could have done about it. The highest is that it is constitutionally invalid. And perhaps the question should really be for the proposer—for Peter Wellington and his proposal: is he prepared to leave it to the political arena and allow politics to decide? Because I think it would be a very game Parliament or a very game Government—given that, under his proposal, he is on the lower end of a number of voters—it is two and a half per cent to initiate the Bill, or to initiate the referendum on our Bill or proposal—I think that in his second-reading speech he said that is about 53,000 Queenslanders. So it would be a very game Government to ignore or to be hostile to it.

Questioner: (inaudible)

Mrs LAVARCH: There is another whole question about taking away the Parliament. Under our Constitution, it is the Parliament that makes the laws in relation to that.

Dr MACKLIN: In terms of the matter of scrutiny—I think that once a piece of legislation is issued, in almost every jurisdiction where CIR operates there is a time frame between when a particular piece of a referendum is put up and when it is allowed to be voted upon. I believe that, if we are talking about scrutiny—and the scrutiny of Bills committee that you chair actually came from the federal one—in the Senate, mind you.

I think that any Bill and CIR is actually going to be scrutinised more deeply than a Bill through a Parliament. I will not embarrass either the serving members or the past members here by asking them how much of the legislation they read that they voted upon. I think most of us know what that is. Much goes through Parliament—much goes through every Parliament in this country—completely unscrutinised. If a piece of legislation that went out there to the people was published, for example, in the Courier-Mail for everyone to read, every academic in the world—with genuflections to my friend here—would be at it and at it. It would be pulled apart like no other piece of legislation ever has in terms of the history of this State. So I am not at all concerned about scrutiny. I think it would be overscrutinised. But one of the main things about that might be that somebody might start looking at the Bills that go through this place.

Mrs LAVARCH: I just wanted to make one other comment and raise it by way of observation: at the end of the day, if a Bill is passed by a CIR law, but it requires the expenditure of public funds, I question then how that comes about. Where in the parliamentary system—and Government has its Budget—there is no compulsion, of course, for the Government to take it under its budgetary programs.

Mr Briskey: I have a question for Dr Macklin. Imagine that I am a corporation and I am going to use CIR to get through something that I want to get through. I am going to use my economic clout. I am going to use my editorial ability. I am going to use the ownership of a television station and use a lot of money to sell the question so it is answered the way I want it answered. How are you going to ensure that CIR is not abused by a corporation?

Dr MACKLIN: In terms of the first question that we had, I think the answer is very similar. You cannot. I take everybody's mind back to a very recent election we had in Australia, with the leader of one particular party embracing a very powerful media man. Was that a proper use of that person's power and influence or not? Come on—we all live in the real world. The people with power and influence are definitely going to have power and influence. What one is looking at is whether or not that is going to overwhelm the situation. I suppose the belief that I have stems from my own personal experience. I will give a little history if I may. In 1977, when the Democrats were founded, there was another party founded at exactly the same time by John Singleton called the Progress Party. It had a full-page ad in the Bulletin every week. In the last 21 years the Democrats have never been able to afford to have one in. Where is the Progress Party now and where are the Democrats? They are about to get back the balance of power. What we did have, I

believe, was a well-targeted exercise. In terms of what I ran on, it was certainly minority interests in 1977. It was environmental reform. We did not even know what the word was in those days, remember. It was gay law reform. You try that out west in 1977 in Longreach and see if you get out alive. It was 14 years' hard labour in those days.

Mr Briskey: In Longreach?

Dr MACKLIN: In Queensland—that is what the law was. It was Aboriginal land rights, which are still not settled. However, I got a quota. I knew it was on minority interests and I knew what I was doing. That has been done ever since in Australia's political life. In a sense, I am asking, at the end of the day, how do you actually run a democracy? Certainly certain people throw up ideas. What you hope is that, by and large, at the end of the day, those ideas will become majority concerns. That is what I was interested in doing. Some of them do, and some of them do not. In a sense, it is exactly the same with CIR. Many of those debates fail. In fact, the vast bulk of those debates around the world fail; CIR just does not get up. The major reason for that is that people by and large are reasonably happy with the way that things currently are and they are not about to change anything. In terms of referenda, Australians have shown that that is generally the position that they tend to take on major issues. I would not imagine that there would be a big glut of these getting through. What you would find is, I think, some very interesting debates taking place. Unlike talkback radio, which, unlike Bill, I cannot listen to—it actually chills my bones, my marrow; my stomach turns over every time; I cannot listen to it any longer, because I get so agitated—my view is that the more debates we have on the more things and the more information we have the better. I do not know whether it is. My belief is a bit like my belief in education: the more of it the better. I do not think it is actually a foolproof method; neither do I think CIR is a foolproof method. It is one of the devices that could be used to assist us in getting more debates going in a community about more things in more detail.

The CHAIRMAN: In the light of the dearth of questions, I think we have probably reached the end of this particular section of the meeting. I thank you very much for your attendance. Before I thank the speakers, I want to make another point of clarification since his name has been mentioned and his Bill has also been mentioned tonight. Of course, our first option was to ask the member for Nicklin to speak to you. He was the first speaker I invited before I approached anybody else. Unfortunately, he could not be with us owing to a prior engagement. That is why he is not here. He apologised for not being here. Of course, he realised that he would be discussed in his absence, but so be it, because we did not want to void the meeting because the protagonist at this stage could not be with us.

On your behalf, I want to thank the three speakers. Tonight we have done what I hope as a Chapter we will do and do well, that is, air all sides of a popular debating topic to put the issues before people for people to make up their own minds and for that to get communicated and have a ripple effect out into the community. It is an issue that has strange bedfellows. I never thought that I would chair a meeting where potentially the President of the National Party and a former Democrat Senator would be lined up with a Labor person. It is in the nature of these sorts of issues—what we in the trade of political science call the crosscutting issues—that they bring people together and drive people apart as well. Thank you for your attendance. I invite you to sample our hospitality in the Strangers Bar.