AUSTRALASIAN STUDY OF PARLIAMENT GROUP

(Queensland Chapter)

The Future of Parliament in the New Millennium

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Hon. E. G. WHITLAM: Chairman and citizens, thank you very much for asking me here. I am told that I am to speak for 45 minutes and after that there will be light refreshments. I do not think I will go for 45 minutes. There are copies of the authorised version of my presentation here. I thought that it ought to be checked against delivery. There may be some asides which, for various reasons—for prudence or decorum—I may insert. If I put them in the authorised version in advance, then people might pick those out, and that would do nothing for what else is in the text. Because this is a gathering of people who are interested in public affairs, I will not go into too many details. I thought I should encourage you at the end to ask me questions about any other things which you think I might have a view on. That helps me, of course, to see what interests you as well as tell you what interests me. So I have spoken in fairly general terms. If at times it is somewhat elliptical or sharp, then you should not be deterred from elucidating those things in your questions afterwards.

It is appropriate that the future of Australia's parliamentary systems should be discussed in Queensland, because in two respects Queensland differs from all the other States. Queensland is the only State with a unicameral Parliament and has, therefore, produced the largest percentage of ill-informed contributors to the debate on Australia becoming a republic. Queensland is the only State with a Parliament which is limited to a three-year term and which is precluded from extending that term without the consent of the electors at a referendum. There is a preponderant view in Australia that Australia should have an Australian as its head of State. If Australia is to have an Australian as its head of State, the basic alteration which has to be made in the Constitution is to remove the present Schedule to the Constitution. There is an oath and an affirmation. The oath says—

> "I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. SO HELP ME GOD!"

And there is similar wording for the affirmation. Then there is a note—

> "(NOTE—The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.)

Section 42 of the Constitution of the Commonwealth of Australia provides—

> "Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution."

If the Schedule remains unaltered, the Prince of Wales will automatically on the demise of the Crown become King Charles III of Australia. The only disqualification there would be for him becoming King of Australia is that he has to remain an Anglican. If he becomes a Catholic or marries one, then he forfeits the job. Those are the provisions, you will remember, of the Act of Settlement of 1707. Since 1929, every Head of State—George V, George VI and Elizabeth II—has nominated as Governor-General the man—it has always been a man—nominated by the Prime Minister of Australia. Every Prime Minister who has nominated a Governor-General has been the Leader of the Labor Party or of the Liberal Party or of the Liberal Party's precursor, the United Australia Party. Six of the 14 Governors-General were nominated by Labor Prime Ministers, one by a UAP Prime Minister and seven by Liberal Prime Ministers.

The only duty that the Governor-General of the Commonwealth of Australia has to perform or that the president of the Commonwealth of Australia will have to perform and that no other person can perform is to commission another Prime Minister if the existing Prime Minister loses the confidence of the electors at an election of members of the House of Representatives or loses the confidence of the members of the House in a vote in the House. Someone who is resident in Australia, preferably a citizen of Australia, has to perform that duty. That is the central point in considering whether Australia should retain an absentee Monarch with a resident viceroy called the Governor-General or should become a republic with a resident president. If the president was directly elected, he or she would be the person nominated by the Labor Party or by the Liberal Party. In the United States of America, Ross Perot has twice failed to defeat the candidates nominated by the Democrats and Republicans. The point is: however rich you are, if you are as rich as Croesus or a Packer or a Murdoch—although he would have to become an Australian citizen—you still could not employ people to staff the polling booths. You could not do it. Ross Perot was comparable to the gentlemen I have mentioned. But he could not beat the people of the two parties. I concede that the two-party system has been considerably diluted in this Parliament and in every other Parliament in Australia—State, Federal and Territory. But the

fact is that a person can become Prime Minister or Premier only if he or she belongs to the major party in the House of Representatives or the major party in a coalition. That is why it would have to be a person nominated by the Liberal Party or by the Labor Party.

In Australia, a directly elected president would win if he or she received just a single vote more than the other candidates. The president, who would be either a Liberal or Labor nominee, would be seen or tempted to meddle in disputes between the Senate and the House of Representatives. That is the point, you see. Where there are bicameral Parliaments, people know the risk; Queensland does not. There is nobody in Queensland—certainly nobody in public life—who can remember when there were two Chambers. You cannot restore the other Chamber unless a referendum supports it.

Under the model preferred by ConCon in February last year and to be submitted to the electors in November this year—and there is a view it will be Saturday, 6 November—the President will have to be nominated by the Prime Minister and supported by the Leader of the Opposition and elected by a two-thirds majority in a secret ballot at a joint sitting of the Senate and the House of Representatives. The presidency is a political office. Whoever is president is a politician. You will not avoid having a politician, because the Head of State is a political office. Under direct election, the president would be a partisan, that is, he or she would have been nominated by the Liberal Party or Labor Party. Under parliamentary election, the president would be bipartisan.

Queenslanders have had the great advantage since 1922 of having the only State legislature with a single Chamber. They therefore have no experience of the problems of bicameral legislatures, such as the Federal and Western Australian Parliaments, where the Upper Houses can still stall money Bills and, it is said, reject them, although, in fact, neither has rejected them. Of all the elected and appointed delegates to ConCon, the Queenslanders were the most vociferous, persistent, irresponsible and ignorant in advocating direct election of the president. I will not name the people concerned. Some have been lawyers. Some have come from Ipswich. Some have been Lord Mayors. Some have been academics. But some of them have been very longstanding and close friends of mine, so spare me if I do not identify them. Academics must bear some responsibility for the widespread ignorance of Australia's constitutional processes. Even they must have been embarrassed by the pranks of the ponderous lightweight Paddy O'Brien, Associate Professor, Department of Political Science, University of Western Australia.

At ConCon many delegates—not all the limelighting lawyers and academics came from Queensland and Western Australia—spoke and acted as if the convention could compel the Federal Parliament to pass a particular Bill and compel the Federal Government to advise the Governor-General to submit a particular Bill. They spoke and acted as if different proposals on the republic could be passed by the Federal Parliament and submitted to the electors. To be effective, reformers must be clear about the reforms which they advocate and the processes which they must pursue. Some lawyers and political scientists may well believe that the Constitution should be flexible enough to permit the electors to vote on alternative proposals at the same time. They should at least know and explain the only process by which the Constitution can be altered to accommodate their views. Many academics know more about the politics of their European backgrounds than about the politics of the United Kingdom and the United States on which Australia's Constitution was based.

I must therefore explain the method for altering the Constitution of Australia. I have here a few copies of section 128 of the Constitution and of the Schedule which gives the oath or affirmation of allegiance, the only Schedule to the Constitution of Australia Act. If you want the text of the section which prescribes the way you alter the Constitution and of the oath or affirmation, I can give you them. I have quoted the oath and I have also summarised the process of change, or at least I am now about to. I must therefore explain the method for altering the Constitution of Australia. There is and always has been a single method of altering the Constitution. The Federal Parliament has to pass a Bill proposing specific words to be added to or excised from the existing words. It is just like any other Act of Parliament; that is what it is. The only difference between an ordinary Act of Parliament and the Constitution of Australia is that any alteration has to be brought about by a referendum, whereas other Bills, of course, can be changed in the ordinary process of the Parliament itself. As things stand now, the Federal Government has to advise the Governor-General to submit the Bill to the electors.

Some of the proposals which were raised at ConCon would not have been submitted by the Government to the electors. Prime Minister Howard made that quite plain. The people who

were proposing this should have known that whatever they passed there on direct election would not have been submitted to the Governor-General by the Government. The Governor-General then submits it, but he does not do it unless the Government advises him to do it. That is all very plain if you look at the section. These academics and the others that I referred to should have known that, but they did not. If they want that to take place, then they have to propose to change the Constitution to permit that. That is, the Parliament has to pass the Bill; the Government has to present it to the Governor-General; and then the Governor-General has to submit it. A majority of the electors in the whole of Australia and a majority of the electors in a majority of the States have to approve the Bill.

The Constitution permits several proposals on different subjects to be submitted to the electors at the same time. That has often happened. There have been three or four proposals on different subjects submitted at the same time, but there is none that has had different proposals on the same subject. The Constitution does not permit alternative proposals on the same subject to be submitted at the same time. The Federal Parliament is itself a standing constitutional convention. Any member in either House can propose a Bill to alter the Constitution, but only the Parliament can pass it and only the Government can advise the Governor-General to submit it to the electors. That is, if a person stands for the Federal Parliament in either House, that person should understand that he has the possibility—the obligation, if you like—to propose alterations to the Constitution. Any person who stands as a candidate for the Federal Parliament, Reps or Senate, should realise that he has that opportunity—if sufficiently motivated, the duty—and then has to persuade the people in the way I say.

I have not discussed the terms of the preamble which may be submitted to the electors in November. I will not parse it and I would not repeat some of the phrases. I merely point out that there is not a preamble to the Constitution of the Commonwealth. There is a preamble to the British Commonwealth of Australia Act 1900. The Constitution of the Commonwealth is section 9 of that British Act.

Australians cannot attribute the shortcomings of their constitutional arrangements to shortcomings in the UK and US political systems on which it is based. In brief, the parliamentary aspects come from Britain; the Federal aspects come from the US. Our Constitution took effect at the beginning of this century. Australians have themselves to blame for not making the alterations to their Constitution which the British and Americans have made in their political systems in this century. In Washington in 1845, the election date for Federal officials was fixed as the Tuesday after the first Monday in November in even-numbered years. By the end of last century, the State legislatures had adopted the same election date. Senators continued to be elected by legislatures of the States until 1913, when the 17th amendment provided for them to be elected by the people of the States. Perhaps you can remember the 17th amendment, because the following one, the 18th amendment, was the prohibition one. So everybody remembers the 18th amendment, but they should remember the 17th. Since 1913, the same date has been used to fill the vacancies for Senators, who have fixed six-year terms; for Presidents and Governors, who have fixed four-year terms; for Congressmen, who have fixed two-year terms; and for State legislators. In some States the legislators have fixed four-year terms and in other States the legislators have fixed two-year terms. There is only one State which has only one Chamber, that is, Nebraska. But the elections are all held on the Tuesday following the first Monday in even-numbered years. In most States, mayors and local councillors are also elected on that day. But in some States, such as New York, they are elected on that date in odd-numbered years.

At Westminster in 1911—two years before the 17th amendment was adopted in the US—the Parliament Act forbad the House of Lords to reject or hold up money Bills. In Washington the President, the Senate and the House of Representatives may all propose different annual Federal budgets. After much wrangling, a single budget is passed and all elected persons complete their terms.

The 1975 coup would not have occurred if Menzies, Australia's longest-serving Prime Minister, had held fewer elections and more referendums in the 1950s and early 1960s. The failure to hold referendums to incorporate the provisions of the UK Act of 1911 and the US amendment of 1913 directs attention to the continuing defects in our Constitution and the continuing failure of our Labor and Liberal leaders.

After becoming Prime Minister, Malcolm Fraser realised that coalition Governments would be put in jeopardy, as my Government had been, if there continued to be gaps between election

dates for the House of Representatives and the Senate and if State Governments were still free to break the convention which Menzies brokered in 1951 on filling casual vacancies in the Senate. The situation I recall to you is this: the House of Representatives elections were held on 2 December 1972. Half of the Senate had been elected five years earlier and had taken office four and a half years earlier, that is, on 1 July. The other half had been elected two years earlier and had taken office on the following 1 July, one and a half years before. There is no doubt that if elections had been held for half the Senate in 1972 and had been held for half the Senate in 1969, that is, the previous House of Representatives election, the Government elected in December 1972 would have had a majority in the Senate.

In the first period, 1972 to April 1974, several Bills were defeated in the Senate. One was on Medibank and one was on one vote, one value in the House of Representatives and so on. Another was on votes for the Territories in both the Senate and the House of Representatives. Because those were defeated in the Senate twice, there was a double dissolution. At the election which followed, there was a majority for the Labor Party in the House of Representatives, a comfortable majority. My Government was never defeated in the House of Representatives. In the Senate, there was a majority of about a quarter of a million for Labor over the coalition. The DLP—I do not know if anybody remembers them—were all eliminated. And there were two people who were Independents. One was Steele Hall from South Australia and one was Townley from Tasmania. Thereafter, there were two vacancies. One was when Senator Murphy went to the High Court and the other was when Senator Milliner died. In each case, the State Governments—the coalition Governments in New South Wales and in Queensland—appointed non-Labor successors; that is, the composition of the Senate was changed from the Senate which had been elected at the double dissolution election in May 1974. It was changed by the State Governments and then by the State Parliaments. I perhaps could recall to you that when Milliner died the Liberal Ministers voted for the Labor candidate—Colston was his name—to be elected. But Joh Bjelke-Petersen and his Ministers—the Country Party I think they were still called—and the rank and file of both parties voted for Field. I want to make it quite plain: the Liberal Ministers voted as Menzies had arranged in 1951, that is, that when there was a vacancy in the Senate, which by then was elected on a proportional system, the new Senator should belong to the same party as the former Senator had belonged to at the time of the election of that former Senator. I do not brand everybody in the coalition; the Liberal Ministers voted for Colston.

Malcolm Fraser realised the same thing could happen to him as happened to me. Quite frankly, there is no bad blood between us, because we communicate not infrequently. He is a republican, too. So is Doug Anthony. Malcolm Fraser certainly would have acted differently on matters such as apologies to the Aboriginal people. There would have been no doubt about that. He realised that the same thing could happen to him as happened to me in 1974 and at the end of 1975. Accordingly, in May 1977, these two subjects—simultaneous elections and Senate vacancies—were among four proposals introduced by the Fraser Government, passed by the Parliament with the Labor Party's support and submitted to the electors with the Labor Party's support. The Constitution Alteration (Senate Casual Vacancies) proposal was approved by 5,478,000 votes to 1,993,000 votes and was carried by majorities in every State. The Constitution Alteration (Simultaneous Elections) proposal was approved by over 60% of the electors in the whole of Australia, but by a majority in only three States. This is the reason: Sir Joh Bjelke-Petersen, Sir Charles Court and the Tasmanian Liberals campaigned against their Federal colleagues, with this result: overall in Australia there were 4,648,000 in favour and 2,823,000 against. Overwhelmingly it was carried. In Queensland it was narrowly defeated: for was 535,000; against was 591,000. In Western Australia, for received 292,000 and against received 311,000. In Tasmania, it was almost two to one against—83,000 and 159,000. If those propositions had been put at the same date as an election was being held, they would have been carried, because Sir Joh Bjelke-Petersen and Sir Charles Court would not have opposed their Federal colleagues at a Federal election. But because it was not put at an election time, then they were able to oppose it and defeat it. I may tell you that still rankles with Malcolm Fraser, as it does with me. I will illustrate how you can amend Constitutions by quoting the figures in New South Wales, where it has been done four times in the last 10 years.

The Constitution of Australia envisaged the holding of elections every three years. Until 1949, elections were, in fact, held every three years. Elections for the Senate always took place on the same date as elections for the House of Representatives. You might remember there was a double dissolution in 1914. The elections were held together. In 1929 there was an election for

the House of Representatives alone; but the Senate elections, which were held in 1928 at the same time as the Reps, were also held at the same time as the Reps in 1931. So I repeat: until the 1950s, Senate elections had never been held except on the same day as elections for the House of Representatives. That was how it was intended to be. Menzies' opportunistic use of the Prime Minister's right to dissolve the House of Representatives in 1955 and again in 1963 threw the elections for the two houses out of kilter. There were separate elections for half the Senate in 1964, 1967 and 1970. That meant that no Senators were elected concurrently with the House of Representatives in December 1972. That was the root cause of the subsequent difficulties. In 1975, 1983 and 1987, there were double dissolutions on spurious or faulty grounds. The Parliaments elected in 1990 and 1993 were the first to run the full three years since the Parliament elected in 1958. I have here a table which gives all the voting dates—Federal, State and Territory—since World War II. You will notice that there is no rhyme or reason for their being held on different dates. Even in contiguous States, they were not held on the same dates.

The rest of the world is losing patience with the deficiencies of Australia's legislative processes. In no other democracy are election dates so frequent and so unpredictable. The House of representatives and the Queensland Legislative Assembly are the only Houses of Parliament in Australia that are still limited to three-year terms. In each case, the term cannot be extended without a referendum. I set out in a recent classic, Abiding Interests, what happened when the referendums were put to increase to four years the term of the Queensland sole House of Parliament. It does not give much credit to the various people who were manoeuvring there. It can be held—I believe it should be held—but the time to do it is at an election, because if you do it at an election time, the Opposition—whoever it may be—cannot say it will be disadvantaged, because it then says that it will not be elected. So if you put a proposal to permit or require four years instead of three years at a referendum on an election date, then no Opposition can oppose it. It cannot say the Government will get an advantage, because if it says that it will be conceding the Government will be re-elected. So that is the time to do it.

The composition of the Senate and the New South Wales Legislative Council cannot be changed without a referendum. The terms of all the other Houses of Parliament in Australia have been changed in the 1980s or 1990s by the State legislatures themselves. First of all it happened in South Australia, Dunstan, then in New South Wales, Wran, and then in Victoria, Cain. In Tasmania it has happened in the last couple of years. I will not go into details there. In a couple of years from now, every House of Assembly election will also be the election date for seats in the Legislative Council.

Neither the Labor Party nor the Liberal Party has pursued a coherent policy in such matters—changing the dates. Each goes to Federal and State polls with inconsistent policies. In the US, the Democrats and Republicans have to go to Federal and State polls on the same predictable date. Therefore, they have to put forward coordinated Federal and State policies. The buck-passing between Federal and State parliamentarians is the major reason for electors losing confidence in politicians in Australia. Electors feel that they cannot ascertain which Government—Federal or State—is responsible for present conditions and possible changes. If we accept that poor perceptions of established parties and politicians have contributed to this phenomenon, we can see the damage done by the manipulation of election dates. It distorts the role of Parliament. It impedes the serious development of policies at both parliamentary and party levels. Federal/State conferences are routinely abandoned because an election is in the offing. In Australia, they are perpetually in the offing. The manipulation of election dates entrenches the power of the party machines and the non-elected officials who monopolise the modern methods of measuring the public mood. It reinforces the media superficiality in the coverage of political affairs. The cost and frequency of elections are the major likely causes of corrupt conduct in this country.

In Australia throughout this century, electors have gone to the polls on any Saturday between 1 February and 14 December. In the US for the past century and a half, electors have gone to the polls on the Tuesday after the second Monday in November. The Labor and Liberal Parties should now set a goal of holding the elections for all Federal and State Houses of Parliament on a fixed date every four years. They should begin by repealing the section of the Commonwealth electoral Act 1918 which prohibits State elections being held on Federal election dates. I must say that the political machines on each side are not keen on having Federal and State elections on the same day. On my side of politics, the Federal officials believe that if they were on the same day, the State machine would concentrate on the State elections instead of the Federal. Would you believe it: in Western Australia the coalition has the same view because

of Crichton-Browne. In Western Australia they say that if Federal and State elections were held on the same day, then the State officials would concentrate on the State elections and forget about the Federal ones. I think their fears are misguided.

There is also the feature in Western Australia in particular that it is such a large State that the State conferences are not always attended by people from the State electorates. In each case, the conferences are based on representatives of State electorates. They are held so frequently that you cannot get representatives from each of these far-flung electorates to come to a State conference. Whoever ran the machine—it used to be Joe Chamberlain; it is now Crichton-Browne—would always get people acting as proxies for the distant electorates. You therefore had the situation that the State conferences were manipulated by whoever controlled the State machine, because they would line up people in the capital who could act as proxies for people in the distant electorates. Of course, it would never happen in the eastern States; we know that!

We must now recognise that the multiplicity of dyschronous elections in Australia is not a manifestation but a manipulation of democracy. All the States except Queensland have adopted four-year terms. I have told you the Premiers under whom that was achieved in each of the States. Since 1965, elections for both Houses of the Western Australian Parliament have been held on the same day. The one good feature of the Western Australian Parliament is that they do have elections for both Houses on the same day. They have had that since 1965. Furthermore, in Western Australia in 1987, the maximum term for the Assembly was extended to four years and the Council was changed from a body whose members were elected for fixed six-year terms—half every three years—to a body whose members are all elected for fixed four-year terms.

Is there any reason why Upper Houses should be half composed of people who are elected at the election before last? In Western Australia at least they have seen that both Houses should be totally elected on the same day. The size of the electorates is, of course, grossly distorted. At least in Queensland it has been modified. There used to be five electorates that were grossly under numbers; now there are only four. I do not want to interfere in domestic matters. At least it is an improvement. I remember very well when Ed Casey was there as our leader. He banned me from the State because I said, "At least the party policy says there ought to be, as far as possible, equal numbers of electors. Everybody male and female, wherever they live, whatever they do, should have votes of equal value." He banned me. Thank God the lawyers here asked me up to speak about it, and I got better coverage than I would have if I had done it in a party forum.

In 1995, the people of New South Wales overwhelmingly approved a fixed four-year term for both Houses. They removed from the Executive the power to terminate Parliament at will. They withdrew the prerogative that Prime Ministers and Premiers of all parties have abused. I have not put this in the text here, because, if I had, it is possibly the only thing that would be reported. I ask you to look at the position of the Federal Parliament. In 1990, 1993, 1996, the elections for the House of Representatives and the Senate were all on the same day in March. As you know, the terms of Senators date from 1 July following the election. They can be elected at any time in the previous 12 months. There have been cases when there have been elections for the Senate taking place in about August or September one year and they do not take their places until 1 July following. At the election in 1996, the Senators then elected took their places on 1 July 1996. They retain their places until 30 June 1999. Under the Constitution, the House of Representatives can last for three years from the date it first meets after an election.

The House of Representatives was elected in March 1996. It first met in April 1996. It did not have to face the people again until April 1999. There was no reason to do so. The Government had not been held up in the Senate. There was no case for a double dissolution. The House of Representatives could have gone until last month, or this month in fact. Then the members of the House would take office about a month later and the Senators would take their places as they are in any case on 1 July. What happened, you will remember, was that it was decided to hold an election for both Houses last October. One knew that the Senators would not take their places until 1 July, but one knew that the members of the House of Representatives would take their places within about a month. The idea was that the GST would be more likely to be passed by the Senate that was in place until 30 June 1999 than it would be likely to be passed by the Senate that would take office on 1 July 1999. So, of course, the GST was brought forward early, not sufficiently explained. Accordingly, there is the talk about people having a mandate because the Government was returned with a majority—considerably reduced in the House of Representatives and, of course, in the Senate, with the lowest vote that a Government

has ever received in the Senate. That seems to have miscarried. Of course, it was facilitated by the fact that one of the Queensland Senators was suborned after the 1996 elections. So that is the basis there.

The incentive to get the GST through was to repeat what had been done with the sale of Telstra. You might remember that in 1996 the great dodge was: "We"ll get conservationists' support by saying the proceeds from the partial sale of Telstra would go to conservation issues." I do not think it has happened; nevertheless, that was the great inducement. They said, "Right, the introduction of the GST will finance reductions in income tax and the replacement of several State taxes." They said that it would be a simplified system. The argument that there was a mandate is considerably reduced when one sees that there was no reason whatever to have a premature Reps election. It could have been held last month with complete propriety or even this month, as happened in New South Wales. There they had a fixed election date. That meant that people had four years in which to devise and explain policies and to choose candidates and leaders. There was no excuse for not being prepared on policy, personnel and leadership grounds. In New South Wales one side knew that and the other side disregarded it.

In New South Wales, the Wran, Greiner and Fahey Governments have shown that it is possible to persuade the electors to change the State Constitution, especially if referendums are held on the same day as the State elections. I know it is tedious to give these figures but they are quite convincing. In June 1978, the electors voted by 2,251,000 to 403,000 in favour of members of the Legislative Council being elected directly by the electors. Before that, ever since 1932, members of the Legislative Council had been elected by existing members of the two Houses. There was no direct election of legislative councillors at all. That was done overwhelmingly in June 1978. At the elections in September 1981, the electors voted by 1,951,000 to 875,000 in favour of elections for the Legislative Assembly taking place at four-year intervals. At the elections in May 1991, the electors voted by 1,865,000 to 1,365,000 in favour of reducing the number and terms of members of the Legislative Council. For the first time in my life, I voted against the ALP, which opportunistically opposed the referendum. At the elections in March 1995 the electors voted by 2,500,000 to 796,000 in favour of a fixed four-year term for the State Parliament. The first two referendums were done by the Wran Government, the third by the Greiner Government and the fourth by the Fahey Government. It was all done, as you can see overwhelmingly, on election dates. So you can change Constitutions like your one in Queensland, where you have to get the people to approve a four-year term. You can do it if you put it at an election date.

I thought I would put here two other matters. The first is what arises from the GST debate, that is, the finances and functions in Australia's Federal system. The rejection of the State's tobacco, liquor and petrol taxes—all the States except Queensland had all three; Queensland had only two—by the High Court has had a greater effect on Federal/State finances than any of the court's decisions since its approval of uniform income tax half a century ago. The judgments should have led to a reallocation of Federal/State functions. Specifically, the State Parliaments should delay no longer in transferring their remaining responsibilities in health and hospitals—which are very big costs to the States—to the Commonwealth Parliament. In a 1946 referendum, the electors gave the Federal Parliament the power to provide medical and dental services, but not so as to authorise any form of civil conscription. You do not have to change the Constitution to permit the Federal Parliament to provide services. It can already do it.

It cannot be claimed that hospitals are traditionally and intrinsically State responsibilities. They accounted for minuscule proportions of Government expenditures by the Australian colonies and, for the first decades of federation, by the Australian States. It is inevitable that Federal involvement will increase in hospitals, just as it has in the case of universities. The residents in any Australian State cannot develop their scientific and medical skills in isolation from other Australian States. The age of my partner and me is such that we are going to cost more and more in health expenses. This is a very large expenditure of which the States could be relieved by the Federal Parliament taking a responsibility that it got in 1946. I am expressing no general view about the GST, but the real con job there was to tell the States that if they got the GST—"You've got a tax of your own. It will be a growing tax. If you insist, it can be increased. But it will be sufficient for all your costs in transport and health and education." That is nonsense. However much you increased the GST, it would not pay for the costs that Governments have to undertake in Australia in respect of transport, education and health. One big step you could take straightaway is for the States to give over to the Federal Government their health expenditures.

I will give you chapter and verse. In the 1974 budget, the Whitlam Government commenced a five-year program of capital assistance for the provision, expansion and

modernisation of public hospitals. There were two Queensland Ministers involved: Bill Hayden and Doug Everingham. A joint hospital works council was established in each State to coordinate the use of State and Federal funds. Premiers of both sides of politics cooperated. The Fraser Government terminated the contribution of Federal funds in the 1978 budget. The Hawke and Keating Governments did not restore a joint works council in any State. The Howard Government shows no inclination to do so. Perhaps I might here recall the fact that Joh Bjelke-Petersen, the Premier, was very reluctant to sign the hospital agreement under the Medibank legislation in 1975. Gordon Chalk, the Liberal leader, who had been very briefly Premier of the State in the interregnum before Joh was elected, persuaded the Cabinet—he tossed Joh. He said that they should sign the hospital agreement under Medibank, and he did. The casket funds, which had always been used for hospitals, were then put into the cultural fund. That is the basis on which all those great institutions on the South Bank have been financed. Because Queensland signed the hospital agreement at that time, the casket has given you all those things on the South Bank of the river, which are a great credit to this city and this State.

Federal legislation to collect tobacco, liquor and petrol taxes and then to pass the revenues back to States can be no more than a stopgap measure. No Federal Government will concede that State Governments can spend Federal revenues better than the Federal Government can spend them. The Federal Government should accept responsibility commensurate with its revenues. Under current arrangements, State officials and institutions irresponsibly shift health treatment into forms provided or subsidised by the Federal Government. Any State can make an agreement with the Commonwealth to transfer its health services and hospitals to the Commonwealth. Agreements between the Commonwealth and other States would soon follow, as they did in 1975.

The final issue that I will deal with is human rights throughout Australia. In Melbourne on 16 September last year, the British Lord High Chancellor described the Blair Government's legislation to enact human rights in Britain. Whatever may be said about the Blair Government's foreign policy, its domestic policy is very good. The chancellor pointed out that Canada had adopted a charter of rights and freedoms in 1982 and New Zealand had passed a Bill of Rights Act in 1990. He stated -

> "It takes an average of five years to bring an action in the European Court of Human Rights. ... The new bill will allow the British people to enforce their human rights in their own courts."

The British Human Rights Act, which received assent on 9 November last year, gives further effect to rights and freedoms guaranteed under the European Convention on Human Rights.

The proper and proven method of extending human rights throughout Australia is to enact the conventions adopted by the United Nations. Through the Racial Discrimination Act 1975, my Government secured the enactment of the International Convention on the Elimination of All Forms of Racial Discrimination, which had entered into force generally on 4 January 1969. Aborigines and migrants have benefited from that legislation. Through the Sex Discrimination Act 1984 and the Affirmative Action (Equal Employment Opportunity for Women) Act 1986, the Hawke Government, pressed by Australia's greatest woman legislator, Susan Ryan, secured the enactment of the Convention on the Elimination of All Forms of Discrimination Against Women, which entered into force generally on 3 September 1981.

Through the failure of the Fraser, Hawke, Keating and Howard Governments to enact the International Covenant on Civil and Political Rights, which entered into force generally on 23 March 1976—23 years ago—all Australians are losing their rights to legal aid and Western Australians are still deprived of their rights to equal franchise. If that convention were enacted then all Australians would have rights to legal aid and the residents of Western Australia would have their rights to equal franchise in each House of the Western Australian Parliament. As it is now, you have in each House voters with voting rights only one-third as valuable as voters in other parts of the State. It is done this way: the metropolitan area is given seats in both Houses that make the votes of people there up to one-third as valuable as people in the rest of the State. Accordingly you get some country ones, like Kalgoorlie, grossly overrepresented. If you want to keep legal aid or get it back, if Western Australians want to have equal franchise as everybody has in every other House of Parliament in Australia, then the Howard Government ought to enact the International Covenant on Civil and Political Rights, or the present Federal Opposition ought to promise to do so.

The CHAIRMAN (Dr Paul Reynolds): Thank you, Mr Whitlam. We have been treated to something old and something new. I think Mr Whitlam has been talking about a lot of those issues for some time. They are issues that need to be addressed and brought before the public. An elder statesman of Mr Whitlam's stature can certainly do that. While you are thinking of questions and comments for him and while he is taking his breath, I have an anecdote that he may not have heard. I thought of it when he was talking about the referendums that can be called and should be called to constitute a Parliament lasting for four years.

In 1968, the New Zealand Parliament put before the electors of New Zealand two referenda proposals. One was for the 6 o'clock closing of hotels to be extended to 10 p.m. The other was for Parliament to be extended from a three-year term to a four-year term. A correspondent to the New Zealand Herald, which makes the Sydney Morning Herald look positively like a Labor paper, wrote a letter to the editor in which he said that he had done a poll of his mates at the local pub and that he would predict the results of the referendum: Parliament would close at 6 o'clock and the pubs would stay open for four years. In fact, the pubs did open until 10 o'clock and Parliament stayed at 3 years. So he got it wrong.

We will take questions now.

Mr Ryan: I am from the Courier-Mail. Was there anyone in particular you were referring to in regard to the Queensland delegates of ConCon? You have pretty much said you will not say who they were.

The CHAIRMAN: Even the Courier-Mail can work that out.

Mr Ryan: What makes you say there is widespread ignorance of the Australian Constitution?

Mr WHITLAM: I do not want to offend people by citing the names. It is quite a long list. I think any reader of the Courier-Mail—I must confess that I do not have that advantage—would know whom I mean. Probably reading the Ipswich Times would also give an idea. I say there is ignorance because people, not having had experience of a bicameral system, do not realise the mischief that Government-appointed Governors or Governors-General can wreak or that directly elected ones can wreak. There are always going to be disputes in bicameral Parliaments between the Senate and the Reps or between the Legislative Assembly and the Legislative Council. In those cases, if you have a Governor-General or a Governor who has been appointed by the Prime Minister or the Premier or elected by the people as the nominee of either of the parties, then that Governor-General or Governor would be tempted, or thought likely, to discriminate in favour of the party whose leader nominated him or the party which supported his election. Whether that would be the case or not, that would be thought to be the case.

If you have a Governor or a president chosen by the Parliament in the way that is proposed, that is, nominated by the head of the Government, supported by the Leader of the Opposition and elected by a two-thirds majority of the two Houses sitting together in a secret ballot, then you are more likely to get a bipartisan person; you are more likely to get a man or a woman whom both sides of politics trust. Everybody in the other States and federally understands that, because they all have two Houses. But in Queensland there is no living person who can remember a legislative councillor in Queensland. They do not realise that, if you have the situation that you have now, where the Premier decides who will be the Governor or where you might have a Governor elected because he or she was nominated by the Labor Party or the Liberal Party, then you will get a person in that job who is suspected of favouring the side that supported him. That is clear. If there is a dispute between two Houses, you need to have a person who has the respect—following a secret ballot and a two-thirds majority—of both sides of politics. Queenslanders do not have that experience, because they do not have two Houses. I am not surprised if Lord Mayors or councillors or academics pontificate on those things in Queensland, because nobody has had any experience of it. They ought to be sensible enough; but they are ignorant, aren't they?

The CHAIRMAN: Indeed, even the academics.

Mr WHITLAM: They are not as bad as in Western Australia.

Ms Charlton: If you are advocating the four-year fixed term, should we also then consider adopting the American idea that one is allowed only two elected terms?

Mr WHITLAM: You could do that if you like. There are very few Houses of Parliament around the world where people are elected for only two years. It is true that members of the

House of Representatives in the United States are elected for two years. In some of the American States, one or other of the Houses—

The CHAIRMAN: She is referring to the president being limited to only two terms.

Mr WHITLAM: I think that is a wise thing. Let us be specific: if Thatcher or Hawke had retired after two terms, they would both be respected very much more than they are. If you cannot do in two periods what you want to do, you are not going to do it. I would imagine that it is unlikely that people would be elected by the Parliaments for a third term; they could be elected for a second one.

Mr Hinchliffe: You have spoken eloquently tonight about the timing of Senate elections. I wonder whether you might comment on some proposals that we hear are in the wings from the Federal coalition about changing the method of the Senate's election?

Mr WHITLAM: I think what is generally understood there is that in many Parliaments, particularly in Europe, where the proportional system of voting is quite prevalent, people's preferences are not distributed unless they get a minimum number of votes. In Germany, the minor parties' preferences are taken into account only if they get 5% of the votes. As you know, under our Federal system—and I think it could be changed by legislation—you could set a minimum number of votes to be secured before your preferences could be distributed. The situation in New South Wales, as you know, is quite farcical at this time. I think the situation in New South Wales is made difficult because anything dealing with the method of electing the Legislative Council has to be approved by the electors. I forget the details. What is proposed is that there should be a larger deposit required for people to nominate.

The whole idea in New South Wales has been to tee up the preferences. You get people being elected for eight years, after which they get a pension for life, even if they have received only 1% of the votes. The skill comes in teeing up the preferences from other minor parties. That is quite farcical really. They never have to turn up. Once they are elected to the Legislative Council in New South Wales, they are there for eight years, and they have a pension at the end of the eight years. They never have to do a damn thing. I think they have to turn up a certain number of times, because if they are absent for a certain period, their seat may be declared vacant.

The way to approach it, I would imagine, is to do what is done in Germany, which is a democracy. Whatever you might think of it in the past; it is a functioning democracy. You do not get your preferences distributed. In the Lower House, the Bundestag, everybody votes twice. One is for the first past the post, the other is for the list. The minor parties never get a member elected directly for their own district, but they can get positions on the proportional system applying to the whole of the State, the whole Land. The same sort of thing, I think, applies in the proportional systems in the Baltic countries and in the low countries. In Europe there is a great deal of proportional voting—list systems. However, the preferences are not distributed if you do not get a certain minimum number of the total votes.

Mr Campbell: Other than yourself or your dear wife, who do you think would make a very good first president of Australia?

Mr WHITLAM: I do not think we are sufficiently mobile to do the job. A person like the present Governor-General would obviously be an excellent president. I am not so sure that he would get that much support from the coalition, but there could be no question of the dignity, propriety and vision with which he has conducted the job. There might easily be other people. I do not want to speculate on it. Thanks for the suggestion. I do not think I can persuade her to do it.

Mr Christiansen: With the push for non-compulsory unionism in Australia, do you see a decline in the political power of unions in the very near future?

Mr WHITLAM: I would think that, for one reason and another, the arbitration system with which we have been familiar in Australia since about '93 has been very much weakened. What I suggest that trade unionists should do—and, in fact, what employers, employees and Governments should do—is work for the ratification of International Labour Organisation conventions. The International Labour Organisation is composed of delegates from each member of the ILO. There are representatives of the Government, of the employers and of the workers. Those are the terms that are used in the English version of the ILO constitution. That has worked very well, I would think. There are a considerable number of human rights, of course, which depend on ILO conventions—freedom from discrimination, the right to organise and so on.

I am glad you raised this. Employers and workers—to use the ILO terms—should concentrate on ratifying ILO conventions so that, if the employers or the workers feel disadvantaged by any practices in any country, they can go to the ILO itself to have those things dealt with. As you know, there have been employers who have appealed successfully to the International Labour Organisation against some employment practices in Australia. There have been some unions that have gone to the ILO to complain about some features. The point is this: it will not be possible to dismantle the ILO system in the way the arbitration system has been considerably dismantled in Australia. That is what I advocate. I do not imagine that the situation can be again established, which existed under the Hawke and Keating Governments, in which the ACTU had a very great say in industrial relations. The union movement will not recover that situation if there is a change of Government federally.

The difficulty is that, under the Federal system, which we have in common with Canada, the United States, Germany and India, you have to have the provincial or State or Lander laws complying with conditions in ILO conventions before you can ratify those conventions. There has been a lot of foot dragging in that respect in Australia. State Governments should see that their legislation conforms with ILO requirements. Then, if they all do that, they can ratify those conventions. For instance, my Government ratified about nine ILO conventions in three years, which is a very large number. We put it to the States, including the Queensland Government, that they should make their laws conform with the international standards. We got nine done, including all those ones, say, on freedom of association, which is obviously a basic human right, and on discrimination. It can be done if a Government is intent on doing it.

There are many standards on particular things. Asbestos is one that occurs to me. There are asbestos ILO conventions that deal with safety standards required in building or mining where asbestos is involved. Some of the State Governments—Western Australia, for instance, where asbestos was mainly mined—are dragging the chain on that, although it is a very real problem. State Governments should see that their laws comply and people ought to see that they do. I have given you a case which is very clear, asbestos, and the standards do not apply in Australia equally, because the State Governments have dragged the chain. They ought to be exposed in that respect.

There is one other feature about that. One of the difficulties we have in our neighbourhood is that there are very few ILO conventions that have been ratified by the countries in our region. Australia has not done badly. The United States has ratified only about 11 ILO conventions. They say, "We are superior to any international standards." You tell that to the blacks in America. They do not want to do it because people could then appeal from the United States to international bodies in an open way. One of the troubles we have in Australia is that we are always talking to our neighbours—the lot of them—as if we are superior, because we are British or American. But if we point out that all we are doing is adopting international conventions in relation to women, race, religion and so on, that is, things that all of them have subscribed to, we are not telling them that we are doing it because we are predominantly Christian in origin or civilised or developed. We can say that we are adopting these international conventions because they have been adopted by all of us, including yourselves. All we are saying is, "You ought to do as we do: ratify these international standards."

Ms Tannot-Bland: I am with ANTAR of Queensland—Australians for Native Title and Reconciliation. Given that tomorrow is National Sorry Day, this question is perhaps not as far off the point as it seems. Do you notice that there is the beginning perhaps of a people's movement in Australia that has been growing over the last few years? If so, do you think it is important? What do you see the role of ANTAR or an organisation like ANTAR being when the Reconciliation Council becomes defunct?

Mr WHITLAM: All such organisations should urge their Governments to follow these international standards. I point out: you can do it. The fact that my Government got the Racial Discrimination Act through shows that it can be done. It was mainly meant for migrants; but, in fact, as you know, the Constitution refers twice to people of the Aboriginal race, so you cannot say that racial conditions do not apply to Aborigines. Every case that has come before the High Court—Koowarta in 1982, Mabo 1 in about 1986 and Mabo 2 in 1992, Wik and so on—has been on the basis that Australia ratified that racial discrimination convention of 1965. Of course, Susan Ryan did the sex discrimination one: equal rights, equal opportunity in employment in 1986 and, previously, the Sex Discrimination Act. You can do it.

I think the point that you have to get across is this: organisations have to persuade members of Parliament to do it. National non-Governmental or international non-Governmental organisations cannot do these things themselves; they ought to exist to persuade members of Parliament to do it. We kid ourselves if we think that these things can be done just by agitation. You have to persuade members of Parliament—Federal and State, male and female—to stand up.

The CHAIRMAN: Before I ask Mr Hewitt to move the vote of thanks, I do sincerely want to thank all of you for your support and interest in turning up and showing that there is still a body of opinion out there which is interested in these matters, which are not on the table and on everybody's agenda every day. Thank you for that. I would remind you that the Queensland Chapter of the Australasian Study of Parliament Group exists to promote the study and the appreciation of Parliament in our democratic institutions. Although we will only be a niche organisation with a small market, we are here, nevertheless, and we are here for good. I call Mr Hewitt, a Minister of the Crown in the previous coalition Government, to move the vote of thanks.

Mr Hewitt: Paul refers to me as a previous Minister of the Crown. He gets my credentials entirely wrong and out of priority. My greatest claim to fame is that I was Jim Killen's campaign director in 1961. I would respectfully suggest to you that, if you ever have a couple of spare hours on a balmy Queensland afternoon, I would love to blow the froth off a couple of ales with you and share some of the tales. Seeing that more than 30 years has passed, I will share one little secret with you about the 1961 campaign. In retrospect, I think we made a few mistakes. When Menzies did not tell Jim that he was magnificent, he could well have recalled some of those mistakes, and I will tell you about one.

When we put the campaign together, we decided to ask Sir Arthur Fadden to open the campaign. We decided that we would do it on the back of a truck outside of the Rocklea Hotel on a Friday night. On more quiet reflection I am bound to say that, Fadden having brought down the horror budget only weeks before, I am not satisfied he was an ideal choice. If you knew the geography of Brisbane in 1961, you knew that sensible Liberals did not go outside the Rocklea Hotel, particularly on a Friday night. Nevertheless, it happened. We had the truck there. We all arrived, and Killen said, "You go first, Bill, and warm them up." I said, "Yeah, thank you for that Jim!" In the fullness of time, Fadden got on the back of the truck and, putting politics aside, I have to say that he was a wonderful performer particularly at that level. The drinkers came out of the hotel. I am glad to say that, while they were vociferous, there was no great aggression. One person kept talking at some length, and Fadden played him like a fish on the line until finally he said, "Listen, my friend. If we put a tax on brains we would owe you a refund."

All of these years later, it is possibly a little bit corny, but I state it to say that, in many ways, the great vigour and enthusiasm of politics has gone. I am old enough to say that I was at some of the great rallies of Menzies in City Hall in the 1950s. To be there with 5,000 wonderful supporters and about 300 wharfies screaming for his blood is an experience that you never forget and you feel very privileged to have been there. I say all these things because, if television has done one thing, it has killed the vigour of politics in this country.

When I was a candidate and a member, it was part of your campaigning discipline to do six street corner meetings in the late afternoon, to cover all the shopping centres on a Saturday morning, to get out and meet people and press the flesh. If you could not put a few words together without depending totally upon written notes, you probably did not have much of a political future. I think you would share the view that a good deal of the colour has disappeared out of politics. That is matter of great regret.

I will share another memory with you. I travelled from Townsville to Brisbane with our honoured guest on one occasion. I forgive you for not remembering the lesser minions. I made my way down the body of the plane and I introduced myself. I was respectful because I have always respected you. You invited me to sit beside you. May I ask a question: have you ever been physically to Timor?

Mr WHITLAM: Yes.

Mr Hewitt: It must have been on this occasion that you were coming back from Timor. You had a notebook in your pocket. On the trip from Townsville to Brisbane you opened it and, from the meticulous writing, you took me through the whole saga of Timor. I have always looked back on it. I have always seen it as one of the great highlights in my politics. I enjoyed the experience; I enjoyed the flight; and I enjoyed the company, which leads us to tonight's function. We are very privileged to have you here tonight. While politics of necessity differ, we can and we

should recognise and honour people who have made a significant contribution to the parliamentary process. You will always be remembered as a great parliamentarian. With a couple of small blemishes best left unmentioned tonight, you always showed great respect to the House. You conducted yourself with dignity in the House. I still remember that, when there was any impropriety with your Ministers, they were dispensed with forthwith, to such a degree that Jim Cairns, as I recall, is still the only Federal Treasurer who never actually introduced a budget. That was because you had decided that, because he had signed a document without acquainting himself with the contents, he really should not be Treasurer any more. Those would be enormously difficult decisions to make. You did make them.

Because of the controversy that enveloped you in 1975, because of the way you restructured the Labor Party and because of the significant reforms you brought in in 1972-75, you will always command a position of great dignity, respect and honour in this community. It is for those reasons that we in the Australasian Study of Parliament Group, which has the distinction of being the most vigorous chapter in Australia—we should not miss an opportunity to bring out our own credentials—are particularly grateful to you tonight. I would ask all of those attending to support this vote with acclamation.