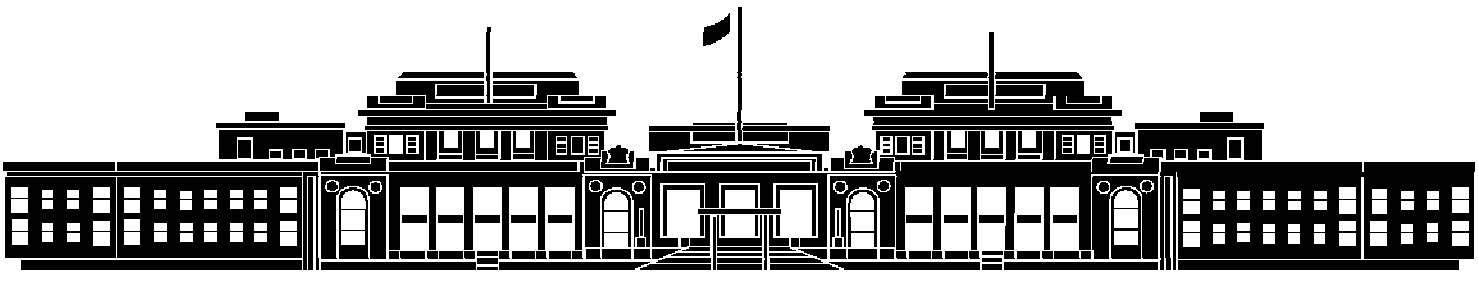
CONSTITUTIONAL CONVENTION

[2nd to 13th FEBRUARY 1998]

TRANSCRIPT OF PROCEEDINGS

Tuesday, 3 February 1998



Old Parliament House, Canberra

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CONSTITUTIONAL CONVENTION

Old Parliament House, Canberra

2nd to 13th February 1998

Chairman—The Rt Hon. Ian McCahon Sinclair MP

The Deputy Chairman—The Hon. Barry Owen Jones AO, MP

ELECTED DELEGATES

New South Wales

Mr Malcolm Turnbull (Australian Republican Movement)
Mr Doug Sutherland AM (No Republic—ACM)
Mr Ted Mack (Ted Mack)
Ms Wendy Machin (Australian Republican Movement)
Mrs Kerry Jones (No Republic—ACM)
Mr Ed Haber (Ted Mack)
The Hon Neville Wran AC QC (Australian Republican Movement)
Cr Julian Leeser (No Republic—ACM)
Ms Karin Sowada (Australian Republican Movement)
Mr Peter Grogan (Australian Republican Movement)
Ms Jennie George (Australian Republican Movement)
Ms Christine Ferguson (No Republic—ACM)
Mr Alasdair P Webster (Christian Democratic Party (Fred Nile Group)
Ms Glenda Hewitt (ungrouped—I Care About Australia's Future)
Dr Pat O'Shane AM (A Just Republic)
Brigadier Alf Garland AM (Australian Monarchist League)
Mr Andrew Gunter (Ethos—Elect the Head of State)
Ms Hazel Hawke (Australian Republican Movement)
Mr Jason Yat-Sen Li (ungrouped—A Multi-Cultural Voice)
Ms Catherine Moore (Greens, Bill of Rights, Indigenous Peoples)

Victoria

Mr Eddie McGuire (Australian Republican Movement)
The Hon Don Chipp AO (No Republic—ACM)
The Reverend Tim Costello (Real Republic)
Mr Bruce Ruxton AM OBE (Safeguard the People)
Ms Mary Delahunty (Australian Republican Movement)

Ms Sophie Panopoulos (No Republic—ACM)
Mr Steve Vizard AM (Australian Republican Movement)
Ms Poppy King (Australian Republican Movement)
Mr Lindsay Fox AO (Australian Republican Movement)
The Hon Vernon Wilcox CBE QC (Safeguard the People)
Ms Moira Rayner (Real Republic)
Ms Misha Schubert (Republic4U—The Youth Ticket)
The Hon Jim Ramsay (No Republic—ACM)
Mr Kenneth Gifford QC (Australian Monarchist League)
Mr Phil Cleary (ungrouped—Phil Cleary—Independent Australia)
Mr Eric G Bullmore (Shooters Party)

Queensland

The Hon Sir James Killen KCMG (No Republic—ACM)
Dr Clem Jones AO (Clem Jones Queensland Constitutional Republic Team)
The Hon Michael Lavarch (Australian Republican Movement)
Dr Glen Sheil (Constitutional Monarchists)
Mr Neville Thomas Bonner AO (No Republic—ACM)
Mr David Alexander Muir (Clem Jones Queensland Constitutional Republic Team)
Ms Sallyanne Atkinson AO (Australian Republican Movement)
Mr Thomas Bradley (No Republic—ACM)
Lady Florence Isabel Bjelke-Petersen (Constitutional Monarchists)
Ms Mary Kelly (Women for a Just Republic)
Ms Sarina Russo (Australian Republican Movement)
Cr Paul Gregory Tully (Queenslanders for a Republic)
Cr Ann Bunnell (Clem Jones Queensland Constitutional Republic Team)

Western Australia

Ms Janet Holmes a Court AM (Australian Republican Movement)
The Rt Hon Reg Withers (No Republic—ACM)
Professor Peter Tannock (Australian Republican Movement)
Mr Geoff Hourn (No Republic—ACM)
Mr Graham Edwards (Australian Republican Movement)
Ms Clare Thompson (Australian Republican Movement)
Ms Marylyn Rodgers (No Republic—ACM)
Mr Liam Bartlett (ungrouped—An Open Mind for the Future)
Professor Patrick O'Brien (Elect the President)

South Australia

Mr Kym Bonython (No Republic—ACM)
Dr Baden Teague (Australian Republican Movement)
The Right Reverend John Hepworth (No Republic—ACM)
Ms Linda Kirk (Australian Republican Movement)
Ms Victoria Manetta (No Republic—ACM)
Dr Tony Cocchiaro (Australian Republican Movement)
Father John Fleming (No Republic—ACM)
Ms Kirsten Andrews (Australian Republican Movement)

Tasmania

Mr Edward O'Farrell CVO CBE (No Republic—ACM)
Mr Julian Ormond Green (Australian Republican Movement)
Mr Michael Anthony Castle (No Republic—ACM)
Ms Marguerite Scott (Australian Republican Movement)
Dr David Charles Mitchell (The Australian Monarchist League)
Mr Eric Lockett (ungrouped—Voice of Ordinary, Fair-Minded, Thinking Citizens)

Australian Capital Territory

Ms Anne Witheford (Australian Republican Movement)
Mr Frank Cassidy (Australian Republican Movement)

Northern Territory

Mr David Curtis (A Just Republic)
Mr Michael John Kilgariff (ungrouped—Territory Republican)

APPOINTED DELEGATES—NON-PARLIAMENTARY

Ms Andrea Ang (Western Australia)
Ms Stella Axarlis (Victoria)
Ms Dannalee Bell (Victoria)
Ms Julie Bishop (Western Australia)
Professor Geoffrey Blainey AO (Victoria)
Professor Greg Craven (Western Australia)
Ms Miranda Devine (New South Wales)
Mr Gatjil Djerrkura OAM (Northern Territory)
Ms Mia Handshin (South Australia)
The Hon Bill Hayden AC (Queensland)
The Most Reverend Peter Hollingworth AO, OBE (Queensland)
Ms Mary Imlach (Tasmania)
Major General James AC MBE (Queensland)
Mr Adam Johnston (New South Wales)
Mrs Annette Knight AM (Western Australia)
Dame Leonie Kramer AC (New South Wales)
Ms Helen Lynch AM (New South Wales)
The Hon Richard McGarvie AC (Victoria)
Mr Donald McGauchie (Victoria)
The Hon Dame Roma Mitchell AC (South Australia)
Mr Carl Moller (Tasmania)
Councillor Joan Moloney (Queensland)
Mr George Mye MBE, AM (Queensland/TSI)
Mr Ben Myers (Queensland)
Ms Moira O'Brien (Northern Territory)
Dr Lois O'Donoghue CBE, AM (South Australia)
Sir Arvi Parbo AC (Victoria)
The Most Reverend George Pell (Victoria)
Ms Nova Peris-Kneebone OAM (Northern Territory/Western Australia)
Mr Peter Sams (New South Wales)
Professor Judith Sloan (South Australia)
Sir David Smith KCVO, AO (Australian Capital Territory)
Professor Trang Thomas AM (Victoria)
Mr Lloyd Waddy RFD, QC (New South Wales)
Professor George Winterton (New South Wales)
Ms Heidi Zwar (Australian Capital Territory)

APPOINTED DELEGATES—PARLIAMENTARY

Commonwealth

Government

The Hon John Howard MP (Prime Minister)
The Hon Peter Costello MP (Treasurer)
The Hon Daryl Williams AM QC MP (Attorney-General)
Senator the Hon Robert Hill (Minister for the Environment)
Senator the Hon Jocelyn Newman (Minister for Social Security)
Mr Neil Andrew MP
Mrs Chris Gallus MP
Mr Kevin Andrews MP
Senator Alan Ferguson
The Hon Tim Fischer MP (Deputy Prime Minister)
The Hon John Anderson MP (Minister for Primary Industries and Energy)
Senator Ron Boswell (Leader of the National Party of Australia in the Senate)

Australian Labor Party

The Hon Kim Beazley MP (Leader of the Opposition)
The Hon Gareth Evans QC MP
Senator Sue West (Deputy President of the Senate)
Senator the Hon Nick Bolkus
Senator Kate Lundy

Australian Democrats

Senator Natasha Stott Despoja

Independent/Green

Mr Allan Rocher MP

State/Territory

New South Wales

The Hon Bob Carr MP (Premier)
The Hon Peter Collins QC MP (Leader of the Opposition)
The Hon Jeff Shaw QC MLC (Attorney-General and Minister for Industrial Relations)

Victoria

The Hon Jeff Kennett MLA (Premier)
Mr John Brumby MLA (Leader of the Opposition)
The Hon Pat McNamara MLA (Deputy Premier and Minister for Agriculture)

Queensland

The Hon Rob Borbridge MLA (Premier)
Mr Peter Beattie MLA (Leader of the Opposition)
The Hon Denver Beanland MLA (Attorney-General and Minister for Justice)

Western Australia

The Hon Richard Court MLA (Premier)
Dr Geoffrey Gallop MLA (Leader of the Opposition)
The Hon Hendy Cowan MLA (Deputy Premier)

South Australia

The Hon John Olsen FNIA MP (Premier)
The Hon Michael Rann MP (Leader of the Opposition)
Mr Mike Elliott MLC (Leader of the Australian Democrats)

Tasmania

The Hon Tony Rundle MHA (Premier)
Mr Jim Bacon MHA (Leader of the Opposition)
Mrs Christine Milne MHA (Leader of the Tasmanian Greens)

Territories

Mrs Kate Carnell MLA (Chief Minister, Australian Capital Territory)
The Hon Shane Stone MLA QC (Chief Minister, Northern Territory)

PROXIES TABLED BY THE CHAIRMAN

PRINCIPAL	PROXY
Mr Howard	Senator Minchin
Mr Carr	Mr Iemma
Mr Borbidge	Mr FitzGerald
Mr Olsen	Mr Griffin
Mr Rundle	Mr Hodgman
Mrs Carnell	Ms Webb
Mr Stone	Mr Burke
Mr Bacon	Mrs Jackson (4-6 February)
Mr Collins	Mr Hannaford
Senator Alan Ferguson	Mr Abbott
Mr Kennett	Dr Dean
Mr Beattie	Mr Foley (4-6 February)
	Mr Milliner (9-10 February)

COMMONWEALTH OF AUSTRALIA

CONSTITUTIONAL CONVENTION

Hansard

1998

OLD PARLIAMENT HOUSE, CANBERRA

2nd to 13th FEBRUARY 1998

Tuesday, 3 February 1998

The CHAIRMAN (Rt Hon I. McC. Sinclair) took the chair at 9.00 a.m. and read prayers.

CHAIRMAN—In accordance with the resolutions passed and amended yesterday morning with respect to the revised rules of debate and order of proceedings, I table, and will ensure they are circulated, amended rules of debate and orders of proceedings for today's conduct of business. In addition, I table a list of 827 submissions to this Convention received from members of the Australian public. In so doing, I explain that there is to be a summary of each of those submissions provided to all delegates. The full submissions are available in the secretariat and will become part of the proceedings of this Convention. I also extend to members of the public who have sent those submissions our thanks for their input into our deliberations.

I also will table three proxies that have been received. The first is from the Premier of Victoria, the Hon. Jeff Kennett MLA, wishing to advise that he has requested Dr Robert Dean MLA, the Victorian Parliamentary Secretary for Justice and the state member for Berwick, to be proxy on his behalf. The second is from Sue Napier appointing the Hon. Michael Hodgman QC, MP to represent Mr Rundle, the Premier of Tasmania, instead of Mr Groome, who had been the nominated proxy. The third is from Senator Alan Ferguson, who has had a recent death in his family, appointing the Hon. Tony Abbott MP to act as his proxy until the end of this week.

On a procedural issue, we have had a request from the media to take shots of a working group in session. I know this will disrupt the proceedings of working groups and recognise that it is not terribly practical but, unless there is any objection, I propose to agree, subject to the invasion being brief, to arrange with one working group at its commencement of proceedings this afternoon a brief photo session. The secretariat will make arrangements with the convenor of one of the working groups for this purpose.

The first item on today's agenda is endorsement of the membership of the resolutions group. There were 25 nominations to the resolutions group, five of whom are women. We had one list with only four women, and we found that one group had not had nominations received, so two additional names have been added to the resolutions group. In view of the resolution suggesting gender equality in the constitution of the resolutions group, the Deputy Chair and I accepted all the nominations of women and have chosen six men in order to provide a balance, with an odd number to allow resolution. I also propose that Barry Jones be the non-voting chairman of the group.

The Resolutions Group will be delegates Lloyd Waddy, Malcolm Turnbull, Wendy Machin, Jeff Shaw, Pat O'Shane, Moira Rayner, Daryl Williams, Julie Bishop, Stella

Axarlis, Gareth Evans and the Most Reverend George Pell.

The motion moved by the Hon. Neville Wran and seconded by the Reverend Tim Costello is:

That the proposed arrangements for membership of the Resolution Group be endorsed.

Motion (by Mr **Wran**) agreed to without dissent:

That the Convention endorse the proposed membership of the resolutions group.

CHAIRMAN—We now move to receive reports from yesterday's working groups. We have allowed, as you will recall, 15 minutes for each report. Each working group can use that whole 15 minutes. If you wish for the rapporteur or the chairman alone to speak for that 15 minutes, you may do so. If, on the other hand, three of you wish to use five minutes or some other multiple within that 15 minutes, that is at your discretion so to do. You have 15 minutes within which to debate the report.

Issue 1: If there is to be a new head of state, what should the powers of the new head of state be and how should they be defined?

CHAIRMAN—I envisage that in the course of today's proceedings we will have the general debate on the subject of the working groups—that is, if there is to be a new head of state, what should be the powers of the new head of state and how should they be defined. The course of the general debate on that subject will enable each of the delegates to comment on any aspect of any of the resolutions, or all, if they wish. The actual moving of the motions will be a formal process at 3 o'clock.

At 3 o'clock, we are going to allow some dialogue. We will have multiple resolutions so that, unlike an ordinary meeting, we will have a series of resolutions with each of the amendments that have been proposed. I know it is a bit of a disfigurement of this beautiful old chamber, but we have two screens, and it is intended that the resolutions can be displayed on the screens. If there are amendments, they can be included on the screens. It expedites the deliberation. We will have each resolution, with each of the amendments, so that by 4 o'clock we will all be aware of what the resolutions are and what the amendments are. Then we will proceed seriatim to consider each of the resolutions.

It is more than likely—in fact, it is inevitable—that a number of the resolutions will either be in conflict or might well be complementary. However, we intend to take a vote on each resolution. You will recall that they are, under our rules of debate, provisional resolutions. Those that receive more than 50 per cent support will then go as provisional resolutions to the resolutions group. They will be returned at a later stage of the Convention when other resolutions have been considered, and we will consider each of the resolutions as final resolutions, hopefully producing one on each of the principal subjects. At this stage, it may well be that we have several resolutions that go forward for reconsideration as final resolutions. That way we have some chance at producing the recommendations that it has been suggested is our task.

I invite each of the working group reporters to report to us. Working Group No. 1 suggests, with respect to the head of state, the same range of powers with existing constraints on their use, no express provision to be made at the Convention as to the guide to the use of the reserve powers. The first speaker of Working Group 1 is Professor Greg Craven.

Professor CRAVEN—Thank you, Mr Chairman. As has been said, our working group began with the proposition that there would be no change in the range of powers. I have to say at once that the working group had a satisfying, almost sickening, degree of unanimity in its views. We reached a strong consensus on our position and my instructions are to put it with the strength that the working party felt it. While we were not absolutely unanimous on absolutely every issue, there was a strong consensus. If I get it wrong, I am confident it will be pointed out to me loud and long for the rest of the Convention.

I was instructed by my working group to start from the central proposition not of theory in relation to the powers of the head of state but of practicality, and brutal referendum

practicality at that. It was felt that the issue before this Convention is the issue of achieving, so far as possible, a consensual republican model. That, the working group strongly believes, is achievable without any degree of codification whatsoever. Codification is an unnecessary add-on to any plausible model—subject to some exceptions that I will come to—to which this Convention may agree. For this reason, this working group is strongly opposed on the grounds of practicality to codification of powers. We firmly believe that any such attempt to codify will be all but fatal to the chances of a republican proposal at a referendum. We believe that to bring forward a codification in a substantial sense—a total codification or something approaching a total codification—would come very close to dooming any republican proposal.

The reason for that is simple: the conventions of responsible government surrounding the powers of the head of state are complex, contentious and emotive. Any attempt to codify them would involve re-fighting battles so old that many of us here can scarcely recall that they occurred. The best example is, of course, the conventions and the powers concerning the blocking of supply by the Senate. But there are many others that could be pressed into service in a referendum campaign. The working group wished to make it absolutely clear that we understand the history of referenda in this country and that any attempt to put forward a strong codification would excite inevitable opposition, dissension, confusion and antipathy and would gravely imperil any attempt to put forward a consensual republican model.

That is the practicality. The working group did not see this as a view, or as arguable or possible. The history of referenda in this country proves that in the event of confusion, dissension, or serious opposition proposals fail. So why put forward a matter that is bound to have that effect in relation to the republic? As it happens, we did not devote our time entirely to practicality. We also looked at the question conceptually and we were delighted to find that the conceptual arguments against codification are as compelling as the practical ones.

The first point that I would like to make is that the working group did consider the question of why it is that so many people are in favour of codification. The view was put, although it was not unanimously agreed to, particularly by some of the lawyers present, that it represents the lawyer's natural desire to believe that no rule can possibly work or indeed exist unless it is written down in black and white, preferably by a lawyer, and that this comfortable expectation, while understandable to those of my own profession, is not in accord with the reality of our constitutional system, which is not a rule book but an organism, a subtle and evolving organism which does not require being—nor can it be—reduced to the status of a telephone directory.

Corresponding with that point the working group formed the view that one will never be able to codify all the conventions of a system. There will always be constitutional conventions. A constitutional system without constitutional conventions has never existed. Were we to write them all down now, ambiguities would arise. How would they be fixed? Not by difficult constitutional amendment but by the evolution of other conventions. So codification, it seems, is an illusion, and it is a double illusion because not only is it the case that there will always be conventions but also it is impossible to reduce conventions of the Constitution to writing for at least three reasons.

The first is that, as we all well know, we cannot agree on most of them, and certainly on the most important. If you have, as the old joke goes, three constitutional lawyers talking about the Senate's power to block supply, you will get four views. I had dinner with George Winterton the other night and between us we had about six views. There is no way we will ever agree on that. Nor will we agree on relatively minor conventions, like a deputy prime minister succeeding a prime minister when a prime minister dies.

A second problem is that these conventions are complex. It has been suggested that that is a convention—there are those here, I am sure, who would assert that that is a convention. The point that conventions are complex and hard to reduce to writing is not well

appreciated. There has only been one real attempt in recent times to comprehensively codify a convention in the Australian Constitution. That is section 15 dealing with the minute question of casual vacancies in the Senate. That section is two pages of densely drafted gobbledegook. It looks terrible in the Constitution. I can remember showing it to a Canadian academic and she laughed and said, 'How could you put that in your Constitution?' Of course, the real joke is that it does not even work, even though it is two pages long. Are we seriously going to do that in relation to other conventions?

The final point that we wish to get across is this: there is a dreadful danger with conventions that you will get them wrong and, best of all, you will not know that you have got them wrong until the unique situation arises some years down the track and then the codification does not work and is practically impossible to fix. Perhaps that leads into the next point that appealed to the working group: a concern over the loss of flexibility. It is true that conventions evolve, and evolve for the better. For example, the convention that the Australian Prime Minister provides advice to the Governor-General after losing an election on the identity of his or her successor is not part of the Westminster system of government. It evolved well and in the interests of stable government in Australia. It should have evolved and that was a good thing. If one looks at the attempted codification of conventions by the great lawyer, the late Herbert Evatt, written in the 1930s, and imagine that they were to apply now, had they been codified as he wished, one realises how dangerous and futile an exercise it is.

The working group addressed the issue often raised in favour of codifying conventions: transparency—we must have a Constitution that everyone can read and everyone can see what the basic rules are. The working group would make two points in relation to that. One is that, as I have said, it is impossible to codify all conventions and so one will never have a completely transparent Constitution. That degree of transparency is an illusion. But secondly, the working party found that when one looks at the so-called ignorance of the Australian people about the Constitution, the bits that they understand best—and I can assert this as a teacher of young people in areas related to this—are the bits that are not written in the Constitution. If you ask the average young Australian person about section 92, they will, with all appropriateness, look at you blankly. If you ask them what is in section 51, they will tell you that they do not care. But if you ask them who the Prime Minister is and how you get into that unpleasant position, they will know the answer. Where does that come from? Convention. So it does not seem to us that transparency is the argument that it is sometimes put forward as.

The working party was very much opposed to writing unenforceable conventions into the Constitution in some sort of hortatory statement for a number of reasons. One was that there seemed to us to be some sort of moral contradiction in formally putting rules into a Constitution and then saying, 'Ah, yes, but they are not really binding or enforceable.' Secondly, for those of us who are addicted to transparency, the Constitution is certainly less transparent if people read rules that are not in fact going to be as judicially enforceable as other rules. Finally, there was a concern in the working party that, even if you stated those rules to be non-judicable, one could not guarantee that the courts would not at some point become involved; that, even if there was a statement that they were not to be enforced, there might be some indirect future attempt to enforce them.

The working group was strongly of the view that conventions should not be enforced through the courts. To do so would involve judges in high politics, to which they are unsuited, and would attract an odium that should not be imposed upon them. We were concerned by such spectres as the possibility of a prime minister seeking an injunction to prevent his or her dismissal by the head of state.

In short, our view was that the chief protection of the constitutional system in relation to the powers of the head of state was not an illusory codification, beloved by lawyers as it may be, but rather, through the operation of a parliamentary and electoral and social

system of accountability and checks and balances, a good deal more sophisticated and compelling than some of its critics would give credit to.

There is, of course, an exception, as there always is. Were there to be an elected head of state—it would appear at this stage that is unlikely—the working group was unanimously of the view that one would require full codification of powers to deal with the polarities of popular support that would emerge. That is not to say that the members of the working party support that position. I think the position was that they accepted a grim necessity to meet an even grimmer occasion. The working party also considered the question of what would be required if there were an election by two-thirds of a joint sitting of parliament. Again, the working party agreed that full codification would be required. They did not believe that would be the case were a model to be adopted where the Prime Minister or a body answerable to the Prime Minister were to appoint the head of state.

There is one aspect of codification that the working party would support. The working party sees no harm in codifying, if that be the word—perhaps constitutionalising—the universally accepted principle that the Governor-General acts on the advice of his or her ministers, whether in the federal Executive Council or otherwise. That is uncontroversial, I believe; it raises no particular issue. In relation to the scope of powers, the working party also would support the removal of the otiose powers of reservation and disallowance, but beyond this the working party would not be prepared to go.

In summary, I suppose the working party has got to a twin position of practicality and principle. Practically, an attempt for substantial codification leads in only one direction: a defeated referendum for a republic. If it leads in another direction, from a personal note may I say it is in a sense the first test of consensus in this Convention because I believe that there will be a number of delegates, of whom I am one, for whom this will be the point of departure.

Substantial codification would effectively define out the question of a republic for a number of those people, and I believe the Convention has to think of this very carefully and it has to think of those two issues. It must think firstly: what is the practicality? Do we do this if we do not need to, with the consequences it inevitably must have? It also must consider those strong grounds of principle based on an understanding of our system which equally strongly militate against the codification of conventions.

CHAIRMAN—Just so the delegates will be aware of the way in which we proceed, Professor Craven is the rapporteur of Working Group 1. Having presented his resolutions and recommendations, they will be a matter, when we have come to that stage, of consideration by all speakers and will be addressed for or against—or there will be foreshadowing amendments during that course—when we look at the principal speakers list with respect to the item for today. For Working Group 2 the rapporteur is delegate Julie Bishop. The task of Working Group 2 was to consider the same range of powers with express provision to incorporate by reference the conventions governing the use of reserve powers.

Mr GIFFORD—May I ask one question. I just want to be clear as to what is happening. Do we criticise any defects as we see them separately in each of the resolutions or are we to just have the one after each has gone through this process? We cannot take each one separately?

CHAIRMAN—No, we are going to deal with all of them. We are opening up for the consideration of the Convention all the recommendations, all the reports and all the resolutions of the working groups. When we go to that general stage of debate which is identified as the speakers list, which will cover the item for today, you may talk on any one of the reports or all of them. You do not do it now; you wait until we have this general contribution. Later this afternoon, when we have speakers selected from the floor, there will be a formal moving of the resolutions, amendments will be taken and the voting will not take place until 4 o'clock.

Ms BISHOP—The majority of this Convention felt it necessary yesterday to move amendments to the order of proceedings to

guard against gender imbalance. They need have looked no further than our working group to have their fears dispelled. In our group of eight, the six women quickly took control of the convening, wrestled control of the chair, the discussion, the agenda, the note-taking and the reporting. Our two male delegates were, it seems, singularly underwhelmed by the gender imbalance. Then again, one could not have hoped for a more cohesive and amiable discussion group to give serious and detailed consideration to the task at hand. As we saw our task, it was to take the key issue—if there is to be a new head of state, what should the powers of the head of state be and how should they be defined?—and come up with the arguments in favour of one particular option. We found early in our deliberations that the option we favoured for a head of state elected, for example, by a two-thirds majority of parliament—or indeed the McGarvie model—was not the option we believed to be appropriate for a popularly elected head of state. The option we considered is that the head of state would have the same range of powers as the Governor-General but inserted into the Constitution would be an express provision to incorporate by reference the conventions governing the use of the reserve powers.

I saw this option as our onion, and let me peel back each layer to demonstrate our thinking in reaching this conclusion. Firstly, we determined that the head of state, if appointed by parliament and otherwise not popularly elected, should be given the same powers currently vested in the Governor-General—as it has been most eloquently put elsewhere, a blueprint of the powers of the present office of the Governor-General should be bequeathed to the head of state. Those powers would include both the ordinary and the reserve powers. We did not see a case for dividing the powers between one or more other holders of public office, nor did we consider vesting the reserve powers elsewhere, such as in the House of Representatives. Where else other than with the head of state should those powers rest? We opted for the head of state.

We did not advocate a change to an executive-style head of state, nor did we argue for the head of state to be largely confined to a ceremonial role for the purposes of this debate. We continued to opt for the constitutional umpire role, ordinary and reserve powers intact. We are swayed by the notion that the vesting of the reserve powers in the head of state is one of the pillars of responsible government and it has served us well.

That took us to the next layer of our onion. The Governor-General currently derives powers and functions from the Constitution. A little reading of the Constitution leads one to assume extensive powers are conferred on the Governor-General and that those powers are conferred on the Governor-General as the Queen's representative. In practice, these powers are circumscribed by convention. We took no issue with the fact that some powers are conferred on the Governor-General and some on the Governor-General in Council. We treated it all on the same footing.

The reserve powers—those that can be exercised without or contrary to the advice of the Prime Minister—can be inferred from, amongst others, sections 5, 57 and 64 of the Constitution. We recognise that these are considered to be very limited; as discretionary powers they are powers in reserve. They are exercised only in extraordinary circumstances to prevent a constitutional crisis—supposedly—and they are powers which exist to allow the head of state to ensure that the government is conducted in accordance with proper constitutional principles and that at the end of the day the ultimate supremacy of the electorate is upheld. The conventions that surround the exercise of the reserve powers are unwritten. They are not rules of law, although they are regarded as binding. Some are clear and settled; others are somewhat controversial.

One concern was that the Governor-General's powers are governed by constitutional conventions that traditionally control the exercise of power by the Queen and her representative and that, therefore, with the removal of the monarchy from the Australian Constitution, the conventions may well then not be applicable—they may disappear if the

transfer of powers does not include reference to them.

A transfer of powers without more would leave open the question as to whether the head of state would feel obliged to observe the conventions that currently govern their exercise. The assured continuation of the conventions could be provided in two ways: by amending the Constitution to preserve explicitly the powers and conventions that govern them without specifying what they are or by codifying them in whole or in part. We argued against codification, except in the case of a directly elected president—and I will come to that position shortly—for reasons similar to those expressed by Professor Craven's group, and I will not take up time by going through them again. But we saw strength in leaving the conventions undefined to allow them to retain their flexibility. As the reserve powers are exercised on extraordinary and rare occasions, the conventions are likewise extraordinary and rare and therefore need to be flexible, with the capacity to respond adaptively to unpredictable situations.

We recognise that the mere reference to unwritten conventions in the Constitution may present its own problems, but we saw this as the safeguard or the hook, if you like, to preserve them in the transition to include in the Constitution a clause specifying that the powers of the head of state must be exercised in accordance with existing conventions. We were anxious that such reference not convert the conventions into rules of law—that they remain unreviewable. The reference in the Constitution helps take away the ambiguity that currently surrounds the issue of the reserve powers and the legitimacy, particularly where there is to be a transfer of powers.

We were unanimous in our view that a directly or popularly elected head of state or president raises different considerations. We were not content to leave the status quo in respect of the powers, even with our added clause to the Constitution on the conventions governing the reserve powers of such an elected president. We believed that the powers of a head of state so elected must be specified and, might I stress, must be limited and specified. None of the lawyers present were prepared to even contemplate whipping up a quick code of powers. We leave that to others considering that option.

Finally, one important issue was that of the dismissal of a head of state who departed from existing conventions. We wished the mechanism for dismissal to be swift—short and sweet. Thank you.

CHAIRMAN—Thank you, Ms Bishop. Working Group 3's rapporteur is Mary Delahunty. I call her to the dais. The task was 'Same powers with a written statement of the conventions governing the use of reserve powers as a non-binding guide'.

Ms DELAHUNTY—Thank you, Mr Chairman. I should say that support in our working group for the notion of a written statement of the conventions governing the use of the reserve powers as a non-binding guide was definitely underwhelming. It became very clear, as we waited patiently for the views of the rather small working group, that we were all there, in fact, to hear arguments supporting the notion of a non-binding guide—to hear them with an open mind, not to put them. No arguments were forthcoming. Indeed, none were put in support of the notion of a written statement as a non-binding guide.

There was discussion. There was discussion and, indeed, there were differing views on the challenge before this Convention of codifying the reserve powers, incorporating them by reference or making no express provision governing the use of the reserve powers, as now. These discussions showed an open mind, in most cases, on these matters. However, there was unanimity that if, after discussion at this Convention, agreement could be reached on a written statement—in other words, codification or partial codification—then this written statement should be binding. We held the view that if an achievement of such magnitude were to be made—indeed it would be a sensational breakthrough at this Convention if agreement could be reached on a written statement of the conventions governing the reserve powers—that that achievement should be celebrated and indeed applauded by being incorporated as binding rules in our Constitution.

In addition it was felt that, should this agreement occur on codification or partial codification, such a written statement would in fact render our Constitution more explicable to the political participants and indeed to citizens alike. There was a view in our working party that our Constitution as the written document, which is the structure of our political system, should be explicable to citizens, should be clear, should be concise and should give an accurate guide to the way our political system works in practice rather than a theory perhaps now 100 years old.

There was a view that part of the task of this Convention is to engage Australians in the work that we are involved in, a work that says it is possible—and there is a great sense of excitement amongst the delegates—to imagine renovating the Constitution so that it begins to look the way we are rather than the way we were. So the discussions were rather limited to the notions of that challenge.

Let me say, Mr Chairman, that we dismissed very quickly the idea of a non-binding guide should we agree on a written statement of the conventions governing the reserve powers, and our resolution makes that clear. There was no support for the notion of a non-binding guide. Thank you very much.

CHAIRMAN—Thank you. There is still time within that working group report. Does any other member of the working group wish to comment? If not, we will move to Working Group 4. The rapporteur is Professor George Winterton. The task of this group was 'Same powers with codification of the conventions governing the use of the reserve powers as binding rules'.

Professor WINTERTON—Thank you, Mr Chairman. This group had a rather spirited discussion but achieved remarkable unanimity, and the resolutions have been set out, as you see.

A word of introduction may be helpful on the way the Constitution dealt with the powers of the Governor-General. The powers are conferred on the Governor-General and the Governor-General in Council. The powers conferred on the Governor-General in Council are clearly acknowledged by the Constitution to be powers exercisable on the advice of the Federal Executive Council—in other words, the government. The powers conferred on the Governor-General were intended to fall into two categories: those that are also exercisable on the advice of the government and those few that are reserve powers—powers where the head of state has some independent discretion.

There was debate on the original conventions in the 1890s, particularly from Deakin, suggesting that it would be wiser to clarify those that were intended to be exercisable on the advice of the government—that is, to say this expressly. But this was resisted by certain people, particularly Barton, who thought that you did not write the conventions into the Constitution, rather that the Constitution expressed law not convention. 'We would be laughed at in London,' he said, 'if we tried to draft a Constitution like this. Everyone knows it's drafted against the background of British constitutional history because we are vesting powers in the Crown.' Therefore, the Constitution was left in the present form.

The difficulty in the transition to the republic is that the conventions, which determine and ensure that most of the powers except the reserve powers are exercisable on the advice of the government, are conventions of the Crown—part of British and Australian constitutional history. Once the link with the Crown is cut, one could not assume that those conventions continued. That is why one cannot simply transfer the powers to a republican head of state and say absolutely nothing on the issue.

The first resolution of the working group was the same as that of the first group, and that is that we thought it would be wise for the Constitution to state expressly, for the reasons I have mentioned, that the link with the Crown would be cut and the conventions need not automatically apply. It would be helpful for the Constitution to state expressly that all the non-reserve powers, all the powers exercisable on the advice of the government, such as the command-in-chief of the armed forces, the power of the Governor-General to summon parliament, vested in the Governor-General—not the Governor-General in Council but exercisable by convention solely on

the advice of the government—should be set in the Constitution as a matter of law to be exercisable on the advice of the government. This would greatly clarify the position, and this indeed was recommended by former Prime Minister Paul Keating in his 1995 statement.

Secondly, we were of the view that it is wise that there be some reserve powers. We saw the role of the head of state as acting as ultimate constitutional guardian or umpire. We thought it was desirable that there should be some reserve powers to enable this role to be fulfilled. The essential reserve powers we agreed upon are those that are universally conceded, that is, basically three: to appoint the Prime Minister, to remove the Prime Minister, and to refuse to dissolve parliament; or, of course, in the case of a double dissolution, refuse a double dissolution.

We believe that the current balance of power between the government, the Prime Minister and the head of state should be maintained—that is to say, that the head of state should act as ultimate guardian—and, except where the Constitution makes express provision, the basic convention should continue to apply. We thought it essential that there be a provision, which South Africa adopted in 1961 when it became a republic, that the conventions of the monarchy continue into the republic. This provision would indicate that these were conventions, that they would continue to be conventions, that they would continue to be adaptable and that they would not be brought before the courts, they would not be justiciable.

On the basic question as to whether the conventions should be codified, we took the view, in sympathy with many of the views expressed in some of the earlier working groups, that it was not desirable to seek to codify the conventions entirely; neither desirable nor feasible. It was not desirable because all flexibility would be lost. The future cannot be adequately predicted. Unforeseen circumstances will arise. If the head of state is to act as constitutional guardian, you obviously need some flexibility to adapt to crises that will arise, and they cannot be predicted. That is why it is certainly undesirable. It is impossible really because there is considerable disagreement about the conventions—for example, in particular in regard to what should happen if the Senate blocks Supply. So we thought it was both undesirable and unfeasible to seek to codify completely.

So we agreed with a lot of the conclusions reached by the first working group. But this is not an all or nothing situation. I think this is an important point to emphasise. This is not an all or nothing situation; it is not complete codification or silence. There are advantages in codification. When Dr Evatt, for example, advocated years ago full codification, he pointed out that the advantages include certainty on all sides—not only certainty in terms of a government knowing how far it could go but also certainty in the head of state being able to exercise powers which might not be exercised on the ground of uncertainty. So there is certainty and checks and balances on both the government and the head of state.

Also there is the very important factor that the Constitution should, if possible, provide some illumination to those reading it. The Australian Constitution is often criticised for presenting an inaccurate picture. It is actually only chapter 2 of the Constitution, the chapter dealing with the executive, that presents an inadequate picture. All the other provisions do reflect actual reality. Those on the courts, those on parliament, do not present a misleading picture. Those on the executive do, for the simple reason, as I mentioned a moment ago, that the framers, particularly Barton, emphasised that, although the Constitution was to be read against the background of British and Australian colonial constitutional history, it would be unwise to express these things. These are matters of practice and convention, not of law, and the Constitution should focus on law. So that is why it is misleading. If one can make it a little less mysterious and state what is widely agreed upon, this would be an advance.

We took the view that full codification was unnecessary and undesirable but partial codification was desirable, if possible. Essentially, the view we reached was that what we

should try to do, if possible, was to codify those conventions that are broadly agreed. One may ask what is the point of codifying those that are broadly agreed; if everyone agrees upon them there is no need. But it is not as simple as that because the situation is that, first of all, even those that are broadly agreed upon will, if they are put in the Constitution, educate those reading the Constitution and help to explain to people how the Constitution works.

But it must not be forgotten that Premiers and Prime Ministers, in the flush of ambition, if I can call it that, sometimes try to slip around the rules. We had a good example of that in Tasmania in 1989. One of the universally conceded conventions is that a Premier or a Prime Minister cannot, after losing a general election, ask the Governor or the Governor-General for another election before parliament has met and proved unworkable, for example by not being able to elect a Speaker. Yet Premier Gray of Tasmania basically sought to do that. He essentially said to the Governor, having lost a vote of no confidence as soon as parliament met, 'If I were to ask you for another dissolution, how would you react?' And the Governor very wisely said, 'I would not react terribly well. In fact, I would not approve.' So he said, 'Then I will not pursue it,' which was a completely proper action on his part. That demonstrates that the fact that the convention is pretty well broadly agreed upon is not really a reason for not expressing it. Politics being a hard business, as the Hon. Richard McGarvie has often mentioned, it is essential that there be controls placed in the Constitution and people be restrained in trying to take advantage of the rules.

So, as you see, we concluded that a partial codification was desirable, and there is a partial code in the report of the Republic Advisory Committee which I did have some role in helping to draft. The Republic Advisory Committee in 1993 had a lot of material before it. Not only did it have submissions from the public but also it had the work of the Constitutional Conventions between 1973 and 1985, it had the work of the Constitutional Commission, the work of many authors. It drew up a partial code. Unfortunately, you do not have a copy at the moment but it is coming around and I hope it will eventually be put up on the screen. The partial codification basically seeks to simply express the virtually uncontroversial conventions. The other matters would simply be left to be governed by convention, as they are now.

Perhaps I can just very quickly mention the essential features of the code, basically dealing with the three reserve powers I mentioned. On the appointment of the Prime Minister, everyone would agree that the Constitution should mention the Prime Minister, should say the Prime Minister is the head of government and state the basic, fundamental principle of responsible government—that is, that the Prime Minister be the person able to command the majority of the lower House. That is essentially, as you will see, what this draft provision does. It basically says that after a general election the Governor-General shall appoint the person most likely to command the confidence of the House as Prime Minister.

If I may make a personal note here, I think there is an advantage in expressing it this way rather than actually leaving election of the Prime Minister to the House, which some constitutions do—Ireland, Germany and Japan, for example—because Irish commentators have commented that if the House is closely divided it can be rather difficult getting a resolution through. Also you need a positive resolution of confidence from the House, whereas, if you have the Governor-General choosing the Prime Minister, the Prime Minister needs the confidence of the House to operate but it could be in a sense a passive confidence, lack of no confidence, rather than a positive vote of confidence. It gives greater flexibility without any real loss of the democratic principle that it will be the people's representatives in the lower House that will determine who should be the government.

On the question of dismissal of the Prime Minister, a highly controversial issue, essentially the draft code only mentions two occasions. One is when there is a constructive vote of no confidence in the House. Just one

word of explanation on that. There are two kinds of votes of no confidence. There is a simple one that says, 'We do not have confidence in X.' That has been the normal British practice. But there is also a constructive no-confidence resolution, a notion Germany developed after the Second World War in light of Weimar experience, which basically says, 'We do not have confidence in X but we do have confidence in Y.' The House of Representatives, for example, passed such a resolution on 11 November 1975 saying, 'We do not have confidence in Malcolm Fraser; we do have confidence in Gough Whitlam.' The Tasmanian parliament passed such a resolution in 1989, and so on.

Where you have such a constructive no confidence resolution, the House is not just saying, 'We do not have confidence in the government.' They say, 'We do have confidence in a certain person.' The working party believed that in that case the head of state must appoint the person the House has said they have confidence in. After all, the role of the head of state is to determine who is most likely to have the confidence. If the House says, 'We have confidence in X,' there is not really much room for doubt.

Also we believe that there should be removal on the ground of illegality. This is a bit controversial—the degree to how it might be expressed, whether you say 'gross constitutional breach', whether you include the disobeying of court orders. It embodies the 1932 dismissal of Lang in principle. After a lot of thought, the Republic Advisory Committee drew up a draft provision, which will be put before you. It does involve going to the High Court to get a ruling on the question of legality—not on the question of whether the Prime Minister should be dismissed but whether the government is behaving unlawfully, breaching a constitutional provision. If the High Court says yes, then the Governor-General or the head of state acts accordingly.

Also, in the case of refusal of dissolution, the third one, as you will see in the draft code, it is essentially expressing what is completely uncontroversial. You cannot give a dissolution of parliament or an election to a Prime Minister who has lost a constructive vote of no confidence, nor before the House has met after a general election, nor while a no confidence resolution is pending before the House has determined the issue.

Finally, similar to the earlier working groups, we recommended removal of obsolete provisions such as disallowance by the Queen. That obviously would go if one had a republic. Also, a point that is often not raised is that there is an executive power of prorogation, as those of you who are parliamentarians will be very familiar with. It is executive adjournment of parliament in a sense which wipes out all parliamentary business. This is really an archaic power. We took the view that the constitution would be well served by abolishing it.

Basically, in summary what we urge is that partial codification, not full codification, be adopted. That gives the perfect balance between the arguments put by the earlier groups. It gives flexibility but also certainty and educates the public. We recommended that the Republic Advisory Committee's draft code be taken, at least initially, as the model.

CHAIRMAN—Thank you, Professor Winterton. Working group 5—the present powers of the head of state and the defects of the known republican alternatives. I call on delegate John Hepworth.

Mr RAMSAY—Would it be possible to ask a point of clarification on Professor Winterton's presentation?

CHAIRMAN—No, not at this stage. There will be several opportunities. You can make the comment either in your general address or during the debate across the floor later this afternoon.

Mr RAMSAY—Sir, I am not wishing to comment but to ask a question. The attachment that relates to workshop 7 seems to be the document that Professor Winterton said we did not have. I wanted to be sure.

CHAIRMAN—In those circumstances, Professor Winterton, can you respond?

Professor WINTERTON—Yes. What is attached is the Republic Advisory Committee's draft for full codification. The partial one is not attached but copies are being produced and will be circulated.

CHAIRMAN—It should be headed 5, not 7, I am told. I call on John Hepworth.

The Right Reverend HEPWORTH—This working group might, from its title, be construed as consisting entirely of constitutional monarchists. In fact, it was consisted of a substantial balance of different views from around the Convention. In spite of that composition, it reached a remarkable degree of unanimity. There was not absolute unanimity on the report that is before you but a substantial majority were for this, including the majority from those beyond Australians for Constitutional Monarchy.

It was our contention in the working group that the proper place for beginning a debate on the powers of the head of state is the current status quo. Since that has been somewhat distorted in subsequent debate, we began the resolution by outlining the current status, drawing attention to the fact that the status quo has been substantially modified, particularly by the passing of the Australia Act but also as far back as the passing of the statutes of Westminster, and in fact created a significant repatriation to independent advice by Australian ministers on a range of constitutional matters that could be construed by a bald reading of the Constitution without any reference to Australian constitutional history as having been otherwise.

We went on to discuss a number of potential problems—the one around codification and the second around the tenure of a proposed head of state. The issues around codification often become confused simply because there is a natural process of codification that runs in a constitutional nation such as ours. Some conventions become so well entrenched that, if they are violated, there is a push to codify them. We saw an example of that in the aftermath of 1975. A gradual codification of conventions that become entrenched is something that we believe is a natural process and ought to be continued, but it will normally happen only once those conventions have been fractured by some crisis.

We went on to make the strong point that any form of codification of reserve powers is a contradiction in terms. Reserve powers exist for some future unforeseen constitutional crisis. If reserve power has become so clear that it can be entrenched, then it becomes part of the Constitution, and ought to do so, but it ceases being a reserve power by the process of codification.

Reserve powers must be in a sense vaguely seen because they are designed for crises that are unforeseen. It is absolutely essential that the head of state continues to have powers to resolve crises around the broad convention that the Constitution and effectively the powers and rights of the people reside in the operations of the head of state against executive government, which is a most fundamental principle of the Westminster system.

The further point that we went on to make is that, once codification occurs, it is both our constitutional experience and that of other nations that they become justiciable. The legal practice that arises out of codification leads to understandings of the Constitution completely beyond and often quite different from those which the drafters imagined would flow. In other words, it is quite possible for us to codify but subsequent legal action will lead to a complete distortion of what we might codify. I think it was Alfred Deakin who sounded that warning in 1893, when at the Adelaide Convention he noted that the Constitution that we were preparing was for generations not only unborn but unknown. Therefore, there was an element of casting a Constitution on the waters, and one must be extremely careful who one lets have a subsequent interference in it. The High Court does have a role, and everything that is codified will become part of that.

The further warning that we wanted to sound was the possibility of legal action around the relationship between a President and a Prime Minister, that once one has codified that relationship it will become the subject of action in the courts. No amount of constitutional hedging can remove that possibility.

That raises the problem—not a legal problem; the legal process could run on, as we noted, for years—that the nation is ungovernable in the meantime. So it is essentially a political problem rather than a legal problem. Providing neat legal solutions can lead to the destruction of a political process. It is one of

those moments when, regrettably, lawyers who happen to be politicians have to decide whether to be mainly politicians or mainly lawyers because if they become mainly lawyers they will be very bad politicians—I notice the front row has disappeared as a result.

The final point that I would wish to make in this brief account is the question of tenure. All the republican models before us at the moment, some admittedly in more or less form, give some form of tenure to the head of state—five-year terms even by appointment of the parliament and so on.

We note that at the moment neither the Governor-General nor the Prime Minister has tenure. They do not have tenure because they can dismiss each other, and the Prime Minister does not have tenure for the further reason that his party can get rid of him at any moment, and frequently does. That leads to a situation where they are in the mutual state of uncertainty with each other. Indeed, it balances very nicely. Any account of the debates of the 1890s will show that that was an intended consequence.

Tenure for the head of state gives an ascendancy over the Prime Minister that we ought not to tolerate in a parliamentary democracy, because the Prime Minister under the current model remains without tenure and there is no concomitant proposal, for instance, for fixed terms of parliament which would give to the Prime Minister a certain element of tenure, provided of course always that the party system was not as strong as it is now, which is an unlikely consequence of subsequent change in Australia.

In other words, we were worried—and I think more worried about this than any other matter—that in republican models we are likely accidentally to shift the balance of power in favour of a president, even if none of the powers of a president are spelt out differently to those of a Governor-General. The fact of incumbency and of impregnable incumbency or of the process of dismissal depending on a string of consequent events, such as the unlikely vote of two-thirds of the parliament, or the people changing their minds, or High Court action or some other form of activity, removes the exquisite uncertainty from the relationship which is at the moment an important part of our political stability. We could go in the direction of entrenching prime ministers, which would be the destruction of parliamentary democracy as we now have it, or we could look again at the whole question of entrenching presidents, which would be a novel and, we are suggesting, utterly unhelpful development to our parliamentary democracy.

We finally exercised our minds within that context on who is actually going to own the guns. In other words, this is highlighted if one looks at the issue in that context of the question of who is the Commander-in-Chief of the Armed Forces and on whose advice a series of roles that go around Commander-in-Chief are exercised—the declaration of war power, for instance; the problems of providing Supply once one has a hapless and unforeseen war as a result of the president having a bad morning. In other words, at the moment we quite obviously balance that power once again quite exquisitely, and even so have had problems with it both in the Second World War and in the Vietnam War period, in which the roles had to be spelt out anew. So we were concerned that, if we begin to look at absolutely practical things, that relationship becomes quite important and ought not to be tilted in the direction of presidents.

Finally, one member of the working group suggested that it all becomes terribly clear if we readopt capital punishment. We would then have very obvious and open debates between the president exercising executive power and the ministers advising the person in the way that they do in the United States, particularly in the states. Then the relationship becomes stark and the rights of each become extremely important. Perhaps we need to consider worst case scenarios in order to highlight the importance of getting the balance of power right.

CHAIRMAN—Working Group 6: Broader Powers for a New Head of State. I understand that delegate Andrew Gunter is the rapporteur.

Mr GUNTER—Mr Chairman, I report on behalf of Working Group 6, which has presented its draft resolutions on the basis of

broader powers for a new head of state. Members of Working Group 6 wish to emphasise that the resolutions are compatible only with our head of state directly being elected by the people, as it would be indefensible to confer additional powers of the kind proposed to an appointed head of state lacking the accountability to the public that the public increasingly demands. Mr Chairman, owing to a minor typographical error, I would be grateful for leave of the Convention or a ruling from you that subparagraphs (k)(vii) and (viii) in resolution A be renumbered paragraphs (l) and (m) for clarity and consistency.

CHAIRMAN—We take note of your request and so adopt it.

Mr GUNTER—The purpose of resolution A is to promote the development of a system of parliamentary government which necessarily involves the maintenance of the separation of the role of the executive government, the Prime Minister and cabinet, from that of head of state, although in a significantly modified form from that applying currently. Further, the presence of members of the executive government in parliament as voting members with full legislative rights and responsibilities is maintained.

In resolution A we have summarised a range of provisions that vary, codify and expand on the head of state's powers in a manner that both reflects and requires the greater accountability to the voters that a directly elected head of state has. The powers of the head of state to appoint and dismiss a Prime Minister are generally an inclusive codification of those of the conventions regarding reserve powers on which there is broad agreement. The relationship between the Prime Minister's commission from the head of state and the confidence of the House of Representatives remains. However, more specific provisions based on those developed by the Clem Jones group have been included with regard to the dissolution of parliament as a whole or the House of Representatives alone when contentious events such as the inability to secure passage of appropriation bills occur.

Provisions regarding the holding of joint sittings to resolve deadlocks between the houses have been expanded to embrace a limited form of veto, in effect enabling the head of state to refer legislation presented for assent back to parliament for its reconsideration. At a joint sitting for that specific purpose, the veto could be overridden. The purpose of providing this additional but constrained power is to establish a mechanism for further public debate on legislation the head of state has concerns about, followed by a vote of parliament in the light of any public reaction to the actions of both parliament and the head of state on that legislation.

As one of the head of state's roles is to uphold and defend the Constitution, it is proposed to allow the head of state to refer any bill to the High Court to allow its constitutionality to be determined. This provision is closely modelled on the relevant article in the Irish Constitution, which has been used on average on fewer than one occasion every two years since that Constitution was adopted in 1937. However, half the bills referred by Irish presidents to the Supreme Court have been held to be either unconstitutional or in some way constitutionally defective, which would itself bear out the value of such a constitutional provision.

For similar, though more overtly political reasons, the working group has proposed providing the head of state with the right to refer certain legislation not dealing with the ordinary annual services of the government to referendum. We are of the view that the ability to refer bills in this way as well as by the limited veto set out above would act as a deterrent to any government seeking to legislate on deeply controversial matters without adequate public consultation. The New South Wales parliament's parliamentary superannuation legislation of December 1997 is a prime example of a bill that ought to have been given wide public exposure before it came into effect, in which these suggested provisions would allow for. The provisions would allow the head of state to act as a check on the passage of legislation, particularly of a kind that is so antithetical to any mandate that an executive government in parliament could claim to have.

The remaining provisions do place limits on the powers of the head of state and may appear at first to be contrary to the purpose and title of the working group. However, by making actions that are currently in practice exercised by the Governor-General on advice from the Prime Minister and cabinet instead exercisable by the head of state on advice but also subject to ratification by parliament, the ability of parliament to scrutinise executive action is enhanced, as is desperately needed. We propose that parliamentary ratification be required for the entering into of treaties, the appointment of High Court and other Commonwealth judges and the deployment of the armed forces. As regards those of the current Westminster conventions inconsistent with the above provisions, we propose a provision to repeal them expressly.

The bulk of the provisions in resolution A, whether appearing on the surface to add to the head of state's powers or to detract from them, have been driven by the need to redress the imbalance between the practical repository of executive government, that is the Prime Minister and cabinet, and the parliament, which has occurred as strict party discipline has developed over and around the Westminster conventions of the 19th century. These are the core reasons why so many Australians are asking this Convention to pursue substantive constitutional change rather than facadism.

Resolution B encompasses a substantially different approach based on a rigorous separation of legislative, executive and judicial powers with some parallels to the United States Constitution. Reflecting that character, resolution B provides for ministers not to be members of parliament but for their appointment to be subject to parliamentary ratification. The head of state's executive power under this model is not required to be exercised with the advice of the ministers of state as would be expected under a Westminster based model such as that in resolution A.

Delegates may be concerned about a resolution that proposes placing executive power in a single office, elected or otherwise, when that power is not required to be exercised with the advice of a larger body. However, the benefit of the removal of ministers, members of the executive, from parliament is to free up parliament's role as the most appropriate body to examine and inquire into actions of executive government.

Under the Australian Constitution, in its current form and consistent with Westminster theory, parliament does have the power through questioning ministers and public servants in forums such as question time and parliamentary committees. However, in practical terms, it is the rigidities of the party system, with members of parliament, and of the House of Representatives in particular, disciplined to support executive government in most or all matters far beyond the level of support required to provide stable executive government, that has diminished parliament's role as an effective check on the exercise of executive power.

Resolution B tackles a further problematic aspect of our current structure by removing membership of parliament as the usual path to ministerial appointment. Delegates may recall the comments that Ted Mack, the Convenor of Working Group 6, made yesterday in this chamber along the lines that the ability to become a minister is currently unrelated to the ability to be a minister. The flip side of that is that the desire to become a minister, which is not an infrequent characteristic of members of parliament, erodes an MP's effectiveness as a parliamentarian. Our current arrangements ask too many of the gamekeepers of the system not only to anticipate potential poachers to keep a check on their activities but also to empathise with them and to regard them as a higher form of life. That, of course, constrains a check and balance approach to parliamentary responsibilities.

It is in the interest of any rational MP wishing to make a career that includes ministerial appointment not to be too effective in his or her role as a check and balance on executive action. Such dynamics are the underpinnings of the strict party discipline that has so significantly eroded the more worthwhile aspects of the Westminster system.

The working group also proposed further defined development of the head of state's powers in resolution B. The head of state's capacity to refer legislation presented for his or her assent to the High Court for a ruling on its constitutionality, or in some cases to the voters through a referendum, is a useful check on any major lack of legislative caution. As in the case of resolution A, this model also places sensible checks on executive action. It too requires the entry into treaties, the appointment of senior members of the judiciary and, broadly, the deployment of the armed forces to be the subject of parliamentary ratification.

The members of the working group all wish to see the erosion of the effective checks and balances resisted and a more robust, party-discipline-proof model developed for endorsement by the people. The distinct approaches of resolutions A and B, when they are measured against the practical substance of our current structure, each have real advantages. It is the attitude of the people to the particular character of each model that should determine which of them is preferred and which model is finally adopted.

CHAIRMAN—Thank you, Mr Gunter. The rapporteur for Working Group 7 is Delegate Mary Kelly. The responsibility of that working group was 'Lesser powers of the head of state with codification'.

Ms MARY KELLY—As the chairman said, our title was 'Lesser powers with codification'. That was the first group, I think, created under that request by 10 procedure. There was a rich diversity of views and approaches, but the group was very task oriented and produced clear and, we think, absolutely fantastic outcomes. The participants started with views ranging from not having a separate head of state at all to wanting to clarify powers regardless of what method of election or appointment eventuated. Some wanted to codify powers because it would enhance the chances of popular election and others wanted to codify existing powers but then create new and different ones in a re-invention of the role. We were as dutiful as we could be in sticking to powers and not method of election, and we did that most of the time.

The group benefited from two pieces of detailed preparatory work. The first was by Clem Jones' team, which outlined a very detailed codification not just of existing powers but also of some new proposed powers. I think you were all pigeonholed with a copy of that. The second was a draft resolution from Gareth Evans which set out an in-principle view of codification of existing powers with some details on the broad types of powers and a reference to the Senate's power over supply.

Clem's document reflected a grassroots view of the head of state as the people's champion with new powers, such as being able to ask the houses to reconsider bills already passed and allowing the head of state to address the nation and so on. Gareth's document was a relentlessly logical step-by-step approach which referred to previous work on this issue, including the constitutional conventions of 1983 and 1985 and the Republic Advisory Committee.

Surprisingly, the two approaches complemented each other and did drive us to an agreed outcome, which I will talk about. The first agreement we reached was that codification was a good thing, irrespective of any other changes to the Constitution, that it could stand alone and apart from the method of elected appointment as a desirable exercise. The three part rationale in support of our form of codification is really encapsulated in the first part of resolution 7, which you have. I will read it out to you. It says:

- full codification of the powers of the Head of State in order to eliminate, to the maximum practicable extent—

that is a very important phrase—

uncertainty and ambiguity about their meaning.

In other words, it is a good thing because, in so far as you can do it, it eliminates ambiguity and uncertainty. We supported:

- limitation, in that context, of the powers of the Head of State in order to eliminate, to the maximum practicable extent, the possibility of any conflict with the principles of responsible government;

In other words, the group made a choice about what the major principles that underpinned our system were and put its money on the principle of responsible government in line with other principles, but the primacy of it was up-front in our minds. Thirdly—and as a consequence in some ways—we supported:

- limitation of the powers of the Senate to the extent necessary to eliminate the possibility arising of the Head of State exercising discretionary power to resolve a conflict between the two Houses.

That is the up-front rationale. The details of the full codification were hotly debated, and the outcome was two resolutions. Resolution A, which is attached for you, goes on in four clauses to outline, in a general way, what full codification means to us. It is worth referring to them briefly.

Clause 1 talks about those powers expressly given and stated to be exercisable on advice—the on advice powers. That means to us that they should be retained but clarified. Clause 2 talks about those powers already expressly given but with no current indication about how they should be exercised. We say that they should be spelled out in detail. Good people have done similar work about that previously, some of which is attached.

Clause 3 talks about the reserve powers not expressly stated in the Constitution, and we know what they are. We say that they should be spelled out in detail in such a way that the head of state retains no independent personal discretion. That is not ambiguous; that is the position the group has taken. Clause 4, in dealing with the consequences of that, talks about the Senate's power to block supply and says that we should remove the Senate's right to reject or significantly delay bills appropriating moneys for the ordinary annual services of the government. There was a strong majority support from our group for resolution A.

I will just talk briefly about resolution B, the other outcome, and then go back to some of the arguments that we had. Resolution B is meant to be considered separately from A because it actually adds a new power to the head of state. It says:

Any codification of powers should include a provision enabling the Head of State to refer any Bill to the High Court for a decision as to its constitutionality.

Many of you will recognise its similarity to the Irish model. There was also majority support in the group for that resolution.

For some in the group, A and B were an inseparable package. They wanted to say yes to clarity and limitation and the primacy of responsible government but yes also to the head of state as the defender of the Constitution and defender of the people. For others in the group, A and B are contradictory—A about limiting and B about adding. By putting them separately, it allows you and us the flexibility of working through those issues.

The arguments we had within the group—no doubt they will reflect the arguments we will all have again—were around three issues. One has been mentioned: how, within a full codification model, you deal with the unexpected. We went through as many scenarios of the unexpected as we could possibly think of about how things could go wrong and what would happen, and essentially satisfied ourselves on that point that the unexpected was able to be dealt with when it came up. We satisfied ourselves on that point.

We had a lot of argument about the Senate and restricting its powers. Some members of the group put forcefully that people like the Senate's role as a house of review. To answer that, it was said that that role would continue but this power over money, which apparently is unique in Australia and not available in Westminster, was an anomaly and inconsistent with the power of responsible government. We reached consensus on that point by limiting the Senate's powers not on all money and taxation bills, as was originally suggested, but on, as the words indicate, a narrower range of money bills—'moneys for the ordinary annual services of the government'.

The third area we had arguments about was the overall conception of the role of any new head of state. People expressed concern that full codification essentially might leave only ceremonial duties for the head of state and that people would not be satisfied with that—that that was somehow a second-rate outcome.

But there was a counter view put that those duties which are unifying and symbolic are incredibly important. They are not second-rate duties. They are one of the most vital duties that you could have. It is precisely the exercise of those duties that has made our current Governors-General lovable and that made people admire them.

I guess in conclusion all I can say is that the model that we have come up with is a bit like the much admired Irish model and does preserve the fundamental principle of responsible government. Thank you.

CHAIRMAN—Thank you very much, Ms Kelly. We have now concluded the reports of the seven working groups. Those resolutions we have now before us. The debate that will ensue from now until we move into this phase at 3 o'clock will enable us under clause 21 of the rules of debate to have 10 minutes for each speaker. It will also facilitate a consideration of each of those proposals in detail with whatever amendments or modifications you might feel appropriate. You may support them, oppose them, speak to any one of them or speak to all of them. Before I call on the Hon. Premier of New South Wales, the first speaker, I will table another proxy that I have received from Mr Peter Collins, Leader of the Opposition in New South Wales, for certain days and times, appointing the Hon. John Hannaford MLC in his stead.

Mr CARR—I think I speak for everyone who has listened to the reports of the working groups this morning in saying how extraordinarily impressive they were. I think anyone who might have harboured reservations about the capacity of this Convention to tackle the tasks before it would have those reservations dispelled by the quality of the consideration that has obviously been brought to bear on what up till now has been considered some almost insurmountably difficult challenges.

Can I begin with two personal declarations. One is on the party system, which has been referred to on a number of occasions as we have weighed the advantages of changes and of preservation of features of our system. Let it be remembered that the one occasion on which the Australian political system at large came close to wholesale corruption was in the parliaments of the colonial era, which lacked the discipline of the party system. When coalitions were cobbled together, not least in the Legislative Assembly of New South Wales by Henry Parkes in the 1870s and 1880s, in return for promises of personal financial favours and of 'roads and bridges' politics through electorate after electorate, individual members of parliament, independents without a broader loyalty to a party, without ideological commitment, were prepared to throw their support behind short life coalitions.

It was the party system that arrived in the 1890s that removed that wholesale trading that put together coalitions that supported ministries. It was the party system that meant that individual interest groups were not able to buy slices of an Australian parliament, a colonial parliament, and get their way on the location of a railway line or anything else. Our system has enormous merits but a great deal of it is owing to the strength and the discipline of the party system. That explains a great deal about the effectiveness and the endurance of Australian democracy. That ought to be said.

The second statement of principle I make is this: there is a great virtue in prime ministerial government, in having an executive accountable to a parliament, in having an executive able to survive or fall dependent on what happens on the floor of a chamber like this. I believe in it. I think it serves this country well.

The flaw I highlight in our current system is the fact that our Constitution is laden with imperial references and invocations. It was a document written to flatter Queen Victoria and is quite out of place with the contemporary Australia we know and reflect. That is our starting point for this discussion, as far as I see it: what changes we need to make in the Constitution to have it mirror contemporary Australia without altering and without endangering the great strengths of prime ministerial government; the principle that an executive is in place while it commands support on the floor of a parliament.

That is why I treat with a great deal of caution any arguments in favour of an exec-

utive presidency. Forget comparisons with the United States. People who talk about enhanced powers for a head of state—I will come to the question of what we should name the head of state when I conclude—ought to reflect on the French system, which has a bicephalous executive.

If you are talking about strengthening the power of a head of state while retaining prime ministerial government, you are talking about dividing executive power between a head of state and a Prime Minister. The closest reflection we have of that is in the French system of government. When I look at the suggestions of the working group that contemplate strengthening the powers of a head of state, I see that they give him or her the power to negotiate treaties, for example. You would have a head of state elbowing aside a foreign minister, elbowing aside a Prime Minister, to enter the realm of making foreign policy for Australia.

Look at cohabitation in France. Look at the difficulty of reform in France. When I was in France last, people were talking with admiration about how Australia has achieved structural reform in economics and public administration, and the inability of putting reforms like that through in France because of a bicephalous, a two-headed, executive. So let us steer right away from that notion.

I personally am attracted to the recommendations of Working Group 7, which contemplates quite bold codification of the powers of a head of state. I do so because I am a child of 1975 and I have maintained the rage—Gough is not here to hear this; that's sad. I immediately acknowledge as a republican that we are under pressure during these two weeks to carry a whole load of conservative Australia with us. In other words, if we are going to move towards an Australian head of state, we must do so, to put it in political terms, by carrying with us the people who thought John Kerr acted appropriately and voted for the coalition in 1975.

Therefore, I am prepared to concede that, if we are going to achieve that degree of consensus, what is proposed by Working Group 7, while I agree with it, may be too bold. In other words, we have to look at a more modest codification so that people who are constitutional monarchists feel the model we reach at the end of this two-week exercise is one they can support. That is my position.

An interesting notion that has emerged from a number of the working groups is the question of a reference to the High Court. There was reference to the precedent for this in the Irish Constitution that I found very interesting. I think it might have been Professor Winterton's report which mentioned resolving a question like that confronting Governor Game in 1932 by referring it to the High Court for a determination. That strikes me as not a bad notion. As we move towards codification, but probably not the bold codification contemplated by Working Group 7, that is not a bad notion. It is new to the Australian Constitution but the idea of a reference from the head of state to the court for a quick determination may be something that, with advantage, can be introduced into the Australian Constitution.

A final point—entirely idiosyncratic—is the question of the name of a head of state. Consider the question I touched on a moment ago: the need for republicans in this process to carry with us those whose instincts are conservative and to reach a consensus by the end of these two weeks. It may be reassuring to a lot of Australians who are on the point of moving across on the question of an Australian head of state if we tackle the question of nomenclature. What does it matter if a head of state is referred to, not as president—with its connotations, some of them disturbing for conservative Australians—but as Governor-General? If we can say that we will retain the name Commonwealth of Australia instead of calling ourselves the Federal Republic of Australia, which I guess is more logical, and if we can embrace that concept, why can't we as republicans embrace the concept of referring to our head of state not as president but as Governor-General?

Councillor TULLY—Chairperson and delegates, without question the most defining event in Australia's constitutional history was the unceremonious, unfair and unjustified sacking of a democratically elected government by the Governor-General on 11 Novem-

ber 1975. That one divisive action by the Queen's appointed representative in Australia stirred the national spirit and, although many point to the outcome of the ensuing election as justification for Sir John Kerr's actions, there is no doubt that this Constitutional Convention's very existence had its genesis from that day on. Indeed, when I look around this chamber and count the numbers, I believe that when the final vote on a republic is taken on Friday week, to use the words of that great statesman Gough Whitlam, 'nothing will save the Governor-General'.

Last year, many Australians were astonished by the ongoing claims and assertions of constitutional monarchists that there was no need to change the Australian Constitution because we already had our own Australian head of state. Someone less kind and perhaps less humble than I would describe the proponents of such a view as engaging in the greatest constitutional deception and hoodwinking of average Australian voters since the First Fleet arrived in 1788.

As the reality of our task becomes clearer over the next few days, and as we head towards the inevitable view that Australia must become a republic, the powers we vest in our new president become of the most paramount importance. I have heard much argument in recent months that we should not worry about our current constitutional arrangements because the Queen of England is not our head of state, rather she is really at the apex of our Constitution as the Queen of Australia. In my state, an act rushed through the Queensland parliament in 1977 also declared her to be the Queen of Queensland. The Queensland parliament went further by providing that such title could be removed only by a referendum of the Queensland people. This nation can never proudly walk on the world stage while we have the Queen of a foreign country as our own head of state.

Our Constitution is an act of the British parliament. The preamble to our Constitution states that it is:

> . . . enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons . . .

What a load of monarchical claptrap. It further declares that the people of the Australian and British colonies had:

> . . . agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland . . .

Not the Crown of Australia, not the Queen of Australia, but the Crown of the United Kingdom of Great Britain and Ireland. Is this what we really want to preserve and perpetuate in Australia? I ask one question of the people who want to cling to the past: are you fair dinkum Aussies or apologists for a foreign regime whose actions in dumping us in World War II were proof of its indifference to our nation?

Under our present Constitution, the existing powers of the Governor-General are awesome. Taken literally, he or she is not only the Commander-in-Chief of the Defence Force of Australia but also has the power to appoint and dismiss ministers at will, to appoint justices of the High Court and to withhold assent to any bill lawfully and democratically passed by the Senate and the House of Representatives. This latter power, when read with section 59 of the Constitution, which allows the Queen to disallow any act of the Australian parliament within one year of its enactment, even after it has become law, is the very antithesis of democratic and representative government.

It is totally unacceptable that the head of state of a foreign country has the power to annul our laws. Just imagine telling the people of Ireland, for example, that their laws could be disallowed by the head of state of Bolivia or Venezuela! This is absurd, anachronistic and no longer tolerable to the people of Australia.

If we are to become a republic, our Constitution must reflect an appropriate balance of powers to be vested in an Australian president. It has been said that, unless we move completely to the United States model, a directly elected Australian president must have not only codified powers but also reduced powers. I totally endorse that proposition, but that is only one aspect of this vexed question. If the sovereign power of the people of Australia is to be recognised, the powers of

any Australian president, whether or not he or she is elected, selected, appointed or anointed, must be codified and particularised and reduced—reduced so that the president's position is strictly ceremonial and constitutional and never political.

The so-called reserve powers of the Governor-General cannot be translated across to the position of president. Leading constitutional experts disagree over exactly what those reserve powers are. Some people will argue that this is a good situation so that the Governor-General or the president has the flexibility to exercise undefined reserve powers for changing and unanticipated circumstances. The conventions which have surrounded the exercise of the Governor-General's powers will not automatically apply to a new president. Indeed, it will become a totally new ball game.

Can any delegate here truthfully say that an elected or appointed president of Australia would continue to act in exactly the same fashion as and recognise the same conventions as former governors-general? I am sure that if Bruce Ruxton were our first Australian president he might be tempted to see how far his powers really went. Of course, Phil Cleary, who would make an interesting if not excellent president, might like to show that he and not the Prime Minister was the more legitimate office holder. Indeed, just thinking of some of these possibilities should make all of the delegates realise that the president's powers must be codified. They must be clearly enunciated and appropriately reduced so that the power of the people is vested in the hands of the people.

There is a need for the president to be required to act upon the lawful and constitutional advice of a democratically elected government. Equally, there needs to be a speedy power of dismissal for a president who abuses his or her power. The last vestiges of dictatorial powers must be removed from the Constitution.

In conclusion, I have said earlier that the events of 1975 have inevitably catapulted the people of our nation towards a republic. But there is one person whose belief and passion on this issue and whose enduring enthusiasm for the cause should be recognised as having been prepared to put this issue on the national agenda despite its obvious political ramifications. That person is Paul Keating, who as Prime Minister was prepared to risk the wrath and potential alienation of many voters on both sides of the political fence for elevating this debate to where it is today.

As we move towards the next millennium on the road to a republic, this Convention is duty bound to recommend a proposal for a referendum of the people of Australia which represents the hopes and aspirations of us all. Whatever the model, there can be no deviation from the essential ingredient of a democratic constitution that the ultimate power of the people must reside in the people and not with some unelected, unrepresentative titular head who possesses excessive powers and who might be tempted to exercise such powers contrary to the will of the people. Let us all move forward towards the republic of Australia where our democratic ideals and freedoms are enshrined in our Constitution forever and where the will of the people reigns supreme.

DEPUTY CHAIRMAN—I table a proxy from Jim Bacon MHA, the Leader of the Opposition in Tasmania, appointing Judith Jackson MHA for Wednesday, Thursday and Friday of this week.

Mr CLEARY—It is great to be here. One hundred years ago the founding fathers produced a constitution which was essentially a trade and administrative document. To thwart the will of the people expressed in the people's chamber, the conservatives fashioned a Senate capable of vetoing the House of Representatives. When it was all over, the righteous breathed a sigh of relief, for this was a document that said nothing about who we were or what we aspired to become as Australians. It expressly protected property—not the property of blacks; it protected the property of whites. It did not protect free speech. It alluded to the rights of Christians to worship in their temple or the temple of their choice, but it never suggested that the workers who wanted to gather at Webb dock should be protected. It paid no homage to the history of the continent before invasion. In

essence, it was a timid trade document. How ironic that today the forces of conservatism, as represented at this Convention by the Prime Minister, should be entering into a pact, an unholy alliance, with the leadership of the so-called forces of modernity, the leadership of the ARM, to again thwart the will of the people.

The people want an elected president. They have told us that. They want a president who will act as a moral and cultural arbiter. This alliance wants a puppet; a puppet prised out of the party bureaucrats. The conservatives seek inspiration from the likes of Edmund Burke and a host of 18th century ascendancy thinkers to defend their cause. Theirs is a mean-spirited Hobbsian view of the world that would suppress the enthusiasm of Australians for renovating the political landscape and imbuing it with alternative notions of participation.

Mr Turnbull interjecting—

Mr CLEARY—Maybe you are one of them, Mr Turnbull. The Hobbsian world evoked by the conservatives in this chamber is at odds with the much vaunted Australian notions of egalitarianism and a fair go.

Mr Ruxton interjecting—

Mr CLEARY—It is even at odds with the brash larrikinism of some of the constitutional monarchists who sit on the left of the chamber. Maybe you can call yourself a brash larrikin, if you like. About the time of the last convention one of our greatest poets, Henry Lawson, claimed that Australians would doff their hat to no man and call no biped master. Now the best the conservative wing of the republican leadership can offer the people is an appointed president—a president palatable to the major parties. Their justification is pure scaremongering. It would not stand up in a court of law if Mr Turnbull was defending you—forget yourself. What are they frightened of? Do they fear a creative tension in the political system, or is it more that they fear giving up their power or their loss of influence?

Surely in a robust democracy we should welcome a president prepared to canvass shades of opinion distinguishable from those of the parliament. Democracy depends on a diversity of opinion freely expressed. Now more than ever the people are alienated from the parliamentary process, seeing it for what it is—a rubber stamp for executive decision. I saw it for four years in the House of Representatives—good people forced to vote against their principles. Sure there will be an Australian head of state disconnected from the Crown all right, but he or she will be selected by the major parties, and that is not good enough, with all respect to Governor-General William Deane, who has had a profound effect on the minds of Australian people.

But if we put this other character in, which may be what the monarchists want to do, that will suppress all the energy that exists out there in the community—the energy that Clem Jones, at 80 years of age, talks about. He puts some of you old-timers to shame.

Mr RUXTON—Oh, calm down!

Mr CLEARY—He has young ideas; yours are antiquated, my friends. It is simple really to codify the powers of the head of state. We have heard the same yarn from Mr Craven when he was up here today. We have heard that for years—him writing in his favourite rags, trumped up by Murdoch, to run the deal against democracy. We heard it again today—'No effect whatsoever, Your Honour.'

Who among us would argue that the election of Mary Robinson as President of the Republic of Ireland was a retrograde step, or that it has in any way diminished the workings of that democracy? As we discussed yesterday with the eminent Gareth Evans, it is possible in Ireland for bills to be referred to the High Court. Why should we be unhappy about that?

Mr RUXTON—He's a Melbourne High School boy—give him a go.

Mr CLEARY—Conservatives are trying to tell us that the people cannot be trusted to elect a president—this despite the fact that the major proponents of this argument are here by virtue of a vote of the people and not by appointment; this by virtue of the fact that the people have had their say. Even Bruce Ruxton got here on the people's vote; hard to believe, but it happened.

The conservatives are trying to frighten this Convention into adopting a non-elected head of state by claiming there will be tension between the elected president and the parliament. Surely in a robust democracy we should welcome that creative tension. In a sense we have got it today with Governor-General William Deane. There is a tension there, but it has been good for us because William Deane has actually raised questions that some of the timid were not prepared to raise. He also defended me in the High Court when I was sacked. In fact he said that I should not have been ruled ineligible. I consider him a great man and a wise man.

An independent head of state would truly invigorate the political process, and it is clear the people have already said this again and again and again. But, when the people speak, the conservatives drag out the 18th century philosophies and claim something about the tyranny of the masses; but they will not quite put it in print. What they are really trying to say is that it is a tyranny of the masses. Get specific with us about why you are scared of the people. The conservatives are also trying to frighten this Convention by inventing a raft of complexities which the eminent Gareth Evans tells us just is not true. As we have seen in 1975, the existing Constitution is unclear about the exact powers of the Queen's representative. Why haven't you been complaining for the last 12 years about the powers of the Governor-General? Why haven't we had complaints about that? No reason.

Mr TURNBULL—Come on, what's the answer.

Mr CLEARY—Because you actually like the tension, but we will go a step further by electing a person with a broader mandate. What we need is a clear, simple set of codified powers. We can do that. We would regard ourselves as experienced, some would regard themselves as wise, and many would say that they are up to doing this particular task. I think they are.

Enough of the hand wringing. Whatever my opinions have been of the people here, I never took the people here for hand wringers. I do not take you as a hand wringer, Bruce Ruxton. Leave the hand wringing to—I was going to say merchant bankers; that is a bit unfair. This is our one opportunity for a thorough, meaningful, inclusive renovation of a tired political system. A prerequisite has to be an elected head of state protected and enhanced by a clear, direct and simple set of codified powers. That is what we have to do.

I have been at a couple of meetings with Clem Jones. Clem is 80 years of age, full of vibrant ideas, and what does Clem Jones want to do? He actually wants to enhance the powers of the president. In the meeting last night he suggested that the president ought to have the power to refer legislation back to the parliament. Good. What a novel idea, Clem. Oh yes, don't talk about that, though, Clem, because the constitutional lawyers say it is too difficult. But you can find a way. There are plenty of times when the people would love to see some legislation rethought and there are plenty of times when legislation ends up being rethought because of the will of the people. Legislation has been accepted when party members—and I know that some of them here know this is a fact—stick their hands in the air when they think they shouldn't. The irony or the paradox is that the legislation ends up going back and they say, 'I didn't really support it anyway.'

So, Clem, you have been one of my inspirations at this Convention. I have never met you before, but to find someone with young and vibrant ideas shows that you don't have to be 25 to have vibrant ideas. There is an old Mao Zedong line about saying articulately to the people what they are saying to you confusedly. Clem Jones is saying in a careful and articulate way what the people are saying confusedly. But in amongst the confused message is the notion that the people want to recognise our black history. I want to recognise it in a preamble. I want us in that preamble to say things about who we are and then put a president in, Clem, who will protect that Constitution for us and not a puppet prised out of the party bureaucrats.

DEPUTY CHAIRMAN—I call the eminent Gareth Evans.

Mr GARETH EVANS—As they say in show business, never follow children, animal acts or Phil Cleary; and certainly never, ever

get an endorsement from him. My view of the role of the head of state is and has been so long as I can remember that it should be essentially ceremonial and symbolic: representing the nation at home and abroad, embodying the spirit of the nation about which Janet Holmes a Court spoke so eloquently yesterday, and being available as a source of consultation, advice and warning to the government of the day by all means but having no capacity to do any damage to any properly democratically elected government.

For so long as I have been coming to official constitutional conventions—and, having a masochistic streak, I have been in one capacity or another to every one of these things since 1973—I have supported efforts to codify and limit so far as possible the powers of the head of state, and I do so again today. Those efforts have been spectacularly unsuccessful in the past and may well be so again today. If someone like Ron Boswell has not already quoted me from the early 1980s I am sure they will, so I will get in first. I have said in the past, yes, that trying to come up with a codification and power limitation model that attracts across-the-board support is a labour of Hercules. Yes, I have said in the past that achieving complete consensus on this is a task likely to elude us even if we worked at it for 30 years or more. Nonetheless, despite that obvious feasibility problem, I do believe the effort is worth making again and that the issue should at least be seriously explored by this Convention.

With this in mind and to test the issue, I will be moving later in the day that which Bob Carr called the very bold resolution emerging from Working Group 7 that argues, as Mary Kelly laid it out earlier this morning, for three things: first, full codification of the powers of the head of state in order to eliminate to the maximum practicable extent uncertainty and ambiguity about their meaning; second, the limitation in that context of the powers of the head of state in order to eliminate, again to the maximum practicable extent, the possibility of any conflict with the principles of responsible parliamentary government; and, third, limitation of the powers of the Senate to the extent necessary to eliminate the possibility arising of the head of state exercising discretionary power to resolve a conflict between the two houses.

The resolution itself does not try to set out the actual text of the constitutional changes necessary to achieve this, rather it points the way to how that text might be constructed. So we say, going through each category of powers, that, for example, in the case of the powers expressly already given to the Governor-General and made subject to the advice of the Federal Executive Council, that those powers should be retained as they are, obviously, but with some clarification about the position of the Federal Executive Council, making it clear that that is actually the government of the day. In the case of those powers expressly given to the Governor-General at the moment but about which no guidance at all is given us to their exercise and where conventions simply prevail, we say, 'Yes, the rules governing exercise of those powers should be spelt out in detail.' We do have a model for that in earlier resolutions of previous constitutional conventions and more particularly in the report of the Republic Advisory Committee in 1993.

In the case of the reserve powers, unspecified and certainly undefined in the Constitution in relation to appointment and dismissal of Prime Ministers and dissolution of parliament, we say in this resolution that detailed rules should be spelt out to cover in an appropriate way each situation in such a way as to make it clear that the head of state retains no independent personal discretion in dealing with these matters. Here again one would take into account the report of the 1993 Republic Advisory Committee in that respect.

Fourthly, in the case of the Senate's power to block supply, which is not expressly limited by the present Constitution, we argue that the Constitution should be amended by a provision removing the Senate's right to reject or to significantly delay bills which appropriate moneys for the ordinary annual services of the government.

Attached to the resolution as circulated is the relevant draft from the Republic Advisory Committee in 1993, which does as well as

any other draft I have seen to date the basic job of codifying and limiting the head of state's powers. To round off the whole story, that would need to be supplemented by a further provision directly addressing the Senate power question.

What I suggest is that, if there is sufficient support today which emerges from this model, it would certainly be possible for that working group to reconvene and bring back to the Convention next week a fully developed draft constitutional text.

The question of the Senate's powers is, of course, a particularly sensitive and delicate one and it is likely, I acknowledge, to be the subject of some disagreement; although hopefully not as much as in earlier years when tempers were still very hot and nerves were still very frayed by the events of 1975. But you simply cannot take a position on the head of state's powers without also taking a position on the Senate's power. The two issues, as the Prime Minister said yesterday, are inextricably connected. Given what the Prime Minister described yesterday as the almost unique power enjoyed by the Australian Senate to block supply and the problems that arise if there is a protracted deadlock between the two houses, you can deal with a situation in either of two ways.

You can address the problem in the first place after the event, by giving the head of state the power to dissolve the parliament against the will of the government of the day, albeit perhaps with a few more hurdles to jump over along the way, for example having to wait for an actual illegal payment to occur—something which did not trouble Sir John Kerr in 1975. So you could do it that way: actually give the power in a tightly defined way to the head of state. Or you could avoid the problem arising in the first place by removing the Senate's power to block supply—a power which is effectively unique to the Australian upper house, one that does cut across the whole concept of Westminster style parliamentary government and certainly is not available in Westminster itself, and which is also a power which before 1975 no-one ever would have thought would actually be exercised. It will come as no surprise to delegates that, faced with this kind of choice, I, like Bob Carr, opt for choking off the problem at source by denying rather than confirming the Senate's power, and that is the proposition which is tested in Working Group 7's resolution before you.

The whole question of codification and limitation of the head of state's powers is logically separate and distinct from the issue of how the head of state should be elected or appointed. Whether you opt for direct popular election or parliamentary election or prime ministerial appointment or some combination of these, you can have accompanying that model any model you like on the codification of powers question. That has become clear from the contributions made by the working group convenors this morning.

That said, there is a very important practical and political connection between the two topics. If you go down the path of direct popular election, with all the risk of creating a rival democratic power centre that that implies, then, if you do not want to turn our existing parliamentary system upside down, you simply have to limit or eliminate from the system all those powers which are capable of misuse in the sense of coming into conflict with the principles of responsible government. If, on the other hand, you opt for parliamentary election or prime ministerial appointment as at present, you do not have to anything like to the same extent the problem of rival democratic legitimacy, and to that extent it is less necessary—although in my judgment it is still highly desirable—to go down the path of codification and elimination that is mapped in Working Group 7's resolution.

My own position on all of this is that if we can agree on the elimination of all powers of both the head of state and the Senate which are incompatible with the properly functioning system of responsible parliamentary government, then there is absolutely no reason why we should not opt for direct popular election. If we could have a constitutional system like Ireland's, capable, as Phil Cleary said, of producing a President like Mary Robinson we would be very well served in this country. It would be workable in both law and in practice and it would be a model which would be

responsive to that public enthusiasm, which undoubtedly presently exists, for a direct popular vote.

But let us remember that two essential characteristics, which must never be forgotten, make the Irish system workable and effective. First, the Irish President has effectively no independent discretionary power whatever when it comes to the appointment and dismissal of prime ministers and governments and the dissolution of parliament. Secondly, there is effectively no capacity whatever in the Irish upper house to block supply in a way that could create deadlocks that ultimately force the President to play an umpire role.

My very short concluding point is this: the full codification and limitation of powers model in the Working Group 7 resolution is worth pursuing for its own sake. But the issue has this further consequence: if we can agree on a full-scale codification or elimination of all relevant powers that are capable of misuse, then we do keep alive the option of direct election of the head of state. If we cannot agree, if there is no substantial majority for that position on the elimination of powers along the lines proposed in the Working Group 7 resolution or something like it, then the only viable election or appointment model is a less ambitious one—either prime ministerial appointment as at present or, as I would prefer in that situation, parliamentary election.

Professor PATRICK O'BRIEN—We have just heard Gareth Evans recommending the elimination of all checks and balances on the political executive in parliament. What he has advocated is the abolition of what checks we do have in our existing Constitution on the absolute powers in between elections of our Prime Minister. Our Prime Minister has the absolute power to declare war, to make all treaties and to appoint all ambassadors and all judges in the federal jurisdiction. He has enormous powers of patronage—who gets arts grants, who gets the slices and shares of AUSSAT, et cetera. So he may as well not only abolish the office of head of state but also, in the words of Bertolt Brecht, 'abolish the people'. Because that is what he is advocating. He is advocating what many English constitutional commentators of both conservative and radical persuasions have called 'the full blast of the elected dictatorship of the Prime Minister'. The model he is advocating works in Singapore. Singapore is minimalism in action. I notice that my Premier of Western Australia loves Singapore—law and order, no graffiti, no chewing gum.

Mr RUXTON—No long hair!

Professor PATRICK O'BRIEN—I wish to congratulate those Labor Party state leaders such as Dr Geoff Gallop, Mr Mike Wran, Mr Peter Beattie—and there may be others—for being courageously consistent. They have legitimate ambitions to become heads of government. Gareth Evans is busting to be Prime Minister. He would knock off Kim Beazley tomorrow if he could. But the consistency of the gentlemen I have named is that they seek the direct election of the people to satisfy their ambitions to become heads of government. Yet here we have our own Prime Minister and people sitting here—Mr Court, Mr Olsen, Mr Carr and others—being totally, absolutely fraudulently hypocritical. They want our vote to satisfy their ambitions to be parliamentarians, to be ministers of the Crown and to be premiers and prime ministers, yet they tell us that we, the Australian people, are not morally good enough to elect directly our head of state. They say, 'We want to do that too.' In my view they have exposed themselves before the Australian people in the manner I described.

It is irresponsible and politically dangerous to assume, as have ARM enthusiasts, that there is some sort of magical constitutional quick fix for Australia to become a true republic—the Flick solution. Remember the old ad: 'One flick and they're gone.' The change that we are discussing and addressing at this Convention is a huge task. As with the American colonies of Britain in 1776 and as pointed out at the time by John Adams, the transition from a constitutional monarchy to a republic involves nothing less than the extinguishment of all authority under the Crown as the foundation of government and the reconstitution of all legislative, executive, judicial and bureaucratic institutions under a new authority. The question then becomes the

vital one: who or what will constitute that new authority on which government is to be founded?

The ARM and their supporters, the wielders of the system, want themselves to be the new authority. When you ask, 'Who are the 80 per cent who say that we have a directly elected president as our head of state and who are the 13 to 15 per cent who oppose it,' the answer is simple. The 13 per cent are the politicians—or many of them—who operate and benefit from the system, those former justices of our courts and, in some instances, governors-general who got where they got through the preferment of the present system of patronage. Then there are the moguls and their paparazzi and their glitterati. They are the 13 per cent. The rest are the majority of the Australian people.

Mr GARETH EVANS—What about the powers issue? What about coming back to what you are supposed to be talking about—the powers?

Professor PATRICK O'BRIEN—I did not interrupt you.

Mr GARETH EVANS—I was trying to help you.

Professor PATRICK O'BRIEN—So it is a case of the hierarchical elites wanting the power to elect their head of state. That power must reside in the people of Australia. The Australian people must constitute the new source of authority. We must say that all legislative and executive power resides in the people and that, by the constitutional grant of the people, those powers shall be exercised through particular institutions such as the head of state, the Prime Minister and the parliament. It is ridiculous to talk about rewriting the Australian Constitution and still define the Governor-General or head of state as the source of executive authority. You will not get a republic unless the power of sovereignty is clearly defined in the Constitution—not just in a preamble but in the body of the Constitution—as the sovereign source of all power.

I have taught the Constitution to primary and secondary school students—right the way through. The invariable reply as to why the Australian people will not take an interest in the Constitution is, 'It has nothing in it for us. It is a document that grants power to government over us.' I would bet anyone here that if a referendum was put tomorrow: 'Will Australia become a republic with the Australian people as the sovereign source of all political authority and with the right to elect their head of state?' then it would pass by a vote of something like 75 per cent. We cannot become a republic on the basis of 51 per cent; we need a much bigger majority. I am not saying this for trickery. The ARM people know this. Why do they cling to this hierarchical elitist system which would be far worse than the ACM? Because they are elitist and hierarchist. They are not democrats. That is the simple answer.

Now, I come to the outcomes once the people grant through the Constitution executive authority to a new head of state whom we are happy to call the Governor-General because 'president' tends to be associated with full executive systems such as America's, where the head of state is also the head of government, or more modified versions such as in France. It also maintains continuity.

The proposals that we are putting forward—that is, the group to which I belong in Perth and the group that I have associated myself with here—indicate and demonstrate that the desire of the overwhelming majority of the Australian people to directly elect our head of state is not a radical measure to be feared but a welcome, natural and evolutionary step that can be introduced through simple amendments to our Constitution. If that is done—as Gareth Evans pointed out—by changing the system to a republic you do upset the balance of relationships between the existing offices, but the third rail that all the hierarchical elitists do not want us to touch—'Touch it and you're dead,' they say—is prime ministerial power, the absolute powers of the Prime Minister. They are far more potent than the power of the Senate.

The office of Prime Minister must be made a constitutional office. How can that be done? Very simply. If we are going to codify in order to restrict some of the so-called reserve

powers of the Governor-General, such as the sacking of government, et cetera, we should codify some of the conventions relating to the office of Prime Minister. Let us codify formally the convention that the leader of the majority party in the parliament, the House of Representatives, becomes Prime Minister but let us say in the Constitution that the parliament shall elect the Prime Minister. That strengthens the power of the parliament.

Now, of course, normally it will go to the person who is the leader of the majority party but, as we know, the institutional person who has the power to hire and fire has the real power. So if you give the power of the hiring and firing of the head of state, which is a sovereign power, to the Prime Minister and parliament, you are making them the sovereign authority. To conclude, the first clause in our Constitution must say words to the effect—and I have written it down in proposed amendments here—that all legislative and executive power resides in the people. *(Extension of time granted)*

Mr GARETH EVANS—And you can address the topic for the first time.

Professor PATRICK O'BRIEN—You see, that is the problem.

DEPUTY CHAIRMAN—Will you get on with it.

Professor PATRICK O'BRIEN—Yes, but would you ask this person not to interrupt. The clause that I would recommend goes something like this: the executive power of the Commonwealth of Australia is vested in the Australian people and, by their grant or leave as codified in this Constitution, is exercisable by the Governor-General as their directly elected representative and extends to the execution and maintenance of this Constitution and all laws of the Commonwealth.

As to the duty of the head of state or Governor-General, this is what I would propose: as the delegated and directly elected representative of the Australian people and subject to this Constitution, the Governor-General's sworn duty shall be to honour and defend the integrity of this Constitution and to ensure that its terms and provisions are adhered to by all members and branches of government.

This means that there must be some discretionary power because if advice of the Federal Executive Council means that the Governor-General or head of state must do what he or she is told you are reducing the office to a kennel. You have a lap-dog. Why have it at all? So he must have some discretion to act independently of the advice given to him because there might be things that he knows that the Prime Minister and the parliament have not known, or in the event where you get one party totally dominating both houses of parliament.

In conclusion, I believe the proposals that we are putting forward will have three outcomes: they will lead to increasing the ability of all Australians to have a greater say in the political and governmental processes of our country and who alone will possess the legislative and executive powers of government to be exercised on their behalf by the parliament and the Governor-General as their representatives and not masters; they will have the effect of establishing and strengthening the role of parliament as a true legislator—and we all know it is not a true legislator: it is principally a rubber stamp for the political executive; and they will have the effect of subjecting the political executive, the Prime Minister and cabinet, to greater checks and balances by making it more accountable to the Australian people, the parliament and the rule of fundamental law through its necessary and long overdue incorporation into the Constitution. Thank you, ladies and gentlemen.

DEPUTY CHAIRMAN—I should say that the initial debate that we began yesterday was intended to be—and is continuing as—a broader debate. That is why speakers had 15 minutes and why people really had a pretty broad remit. The chair and I took the strong view—and perhaps I should have acted earlier on this—that, on the specific issues coming up, people are really invited to address the precise subject matter. It is not a broad debate; it is a very narrow, sharply focused debate. I hope other speakers will take that into account.

Dr GALLOP—I cannot resist the opportunity to commence my small speech today by referring to an incident that occurred in 1982 when the rage was still being maintained in respect of the 1975 crisis. It leads me to conclude that, when we discuss the powers of the Governor-General, the powers of a head of state, it is really all a matter of perception.

In 1982 the rage was being maintained in the University of WA. The speakers were myself, then a lecturer at Murdoch university, John Dawkins, then a member of the federal parliament, and Professor Peter Boyce, who has just recently retired and, I believe, has stood on the ARM ticket in Tasmania.

Unfortunately, the rage had diminished somewhat by 1982 and there were not a lot of people at the meeting but there were three elderly gentlemen at the back of the hall with very distinguishable short back and sides haircuts and very dark, baggy suits. We could not quite work out where they were coming from. We all finished our speeches and one of them finally asked, 'It is all very well to be talking about the powers of the Governor-General but I would like to know when the speakers are going to take up the armed struggle against the British empire,' at which point one of the speakers had a call of nature, another hid under the table and I was left facing 150 years of rabid Irish republicanism.

Can I say that 15 years later I believe that the Irish republican model is a very good model and provides a very good basis upon which we can discuss this topic of the powers of the head of state, the powers of the Governor-General. Let me refer quickly to the opposition arguments about codification, which has been the recommendation of the working group that I was on, reported by Mary Kelly earlier this morning.

Opposition to codification seems to be based upon three propositions: firstly, that the conventions are too complex for ordinary mortals to comprehend; secondly, that the conventions are too controversial for there to be agreement; and, thirdly, that history is constantly marching on and creating new and unforeseen consequences. I could address each of those in turn but I would rather like to look at the hard version of that group of objections. I think the hard version of that group of objections really takes shape as an ideology which sees political life, in essence, as a mystery, the guidance and occasional intervention into which of non-elected heads of state is necessary if it is to work.

The only restraint that will act upon those heads of state will be tradition and convention. The hard version of that particular view which was put forward earlier today by one of the working groups I believe creates problems for a genuine Constitution. What constitutionalists try to do is anticipate the future, plan for the future and create a framework of certainty for those that participate in the political process.

As we have seen in Australia, occasionally things go wrong. An example is 1975. It exposed a serious flaw in our system where great uncertainty and, indeed, great disagreement resulted about the reserve powers. Of course, the hard version of that ideology I referred to earlier was used to justify the precipitous use of those reserve powers rather than the resolution of a political crisis through the political process and parliamentary negotiation. That, of course, is called responsible and parliamentary government, which ought to be the basis upon which we build our Constitution.

Our present Constitution, as Professor George Winterton has written so often, simply vests the power to appoint and dismiss a Prime Minister and to refuse to dissolve parliament with the Governor-General in extremely generalist terms. It then relies on these conventions to regulate their exercise. There is only an apparent consensus about the use of those powers. As Professor Winterton himself has said in his many written works on this subject, the boundaries are often indistinct.

If we are to accept the existence of such reserve powers, their replication in any case is always going to be subject to question. We need as a people and deserve as a people more certainty about how our political system operates. Different methods have been proposed to handle such situations—most notably, partial codification on areas of general

consensus. The distinction between partial and full codification, I believe, is not as great as it would appear. But, certainly, I think we should seek as full a codification as is practically possibly.

There has also been a suggestion that we create an advisory body to help the Governor-General or the head of state in the use of their powers, or the so-called 'bee sting model', which would have it that the head of state would automatically lose office in the event that they use their reserve powers.

Let me give three arguments in favour of full codification for the consideration of this Convention. Firstly, to those who believe we need the basis of experience before we take up any constitutional proposition, I think we can safely say that the experience of other jurisdictions, be they monarchies, such as Japan and Sweden, or republics, such as Ireland and Germany, has shown that it can be done, that we can have responsible parliamentary government and non-executive presidencies or monarchs without political interference. We are not talking here of an untried, untested leap of faith but of a constitutional practice that is proven.

Secondly, to appeal to the republicans in the Convention, codification is part and parcel of the antimonarchical ideal of a republic. There are many parts to a republican ideology. But, as Philip Pettit has written, with respect to the antimonarchical, antihereditary elements of a republican ideal:

> This idea is perhaps nothing more than an expression of the deeper idea that republics are meant to be governed by laws, as it used to be put, and not by individuals: that they require the rule of law, in which there is no room for the caprice of the autocrat.

In other words, under a system in which there is reserve power, the potentiality always exists for the application of those powers in ways that reflect the prejudices of those individuals rather than the laws and conventions of the society. I believe that we ought now to move towards a system that goes away from that essentially pre-modern, essentially monarchical view of the world.

Thirdly—and not as important as the first two arguments, but, nevertheless, I believe it is an important argument—codification of the powers of the head of state may very well pave the way for a much more serious discussion in this Convention, and here I am addressing, in particular, delegates from the republican movement, of the direct election of the head of state in a future republic. This is an aspiration that is deeply held by the people of Australia, an aspiration that we should take seriously, an aspiration which should lead us to provide a workable and practical model for its realisation. We do have a responsibility as delegates to this Convention to heed the voice of the people.

A non-executive presidency with codification of the powers and the limitation of those powers paves the way for a very serious consideration of that direct election. I believe that we have an obligation to place that on the agenda of this Convention and to give it serious consideration.

So, Mr Chairman, I believe the arguments against codification ultimately fall down. They are based on a view of the world which I think might apply to life, in general, that there is mystery for which we need some flexibility and some guidance. Certainly, for life in general we need guidance from our most reverend friends here. But we are talking about politics. We are talking about a human creation for which there should be rules. Those rules should be understood by the people that participate in that political process.

So I believe that the anticodification point of view is simply based upon a view of the world which is now antiquated and out of place. Finally, as I said, if it paves the way for a serious discussion of direct election, I believe it will have played a very useful purpose.

DEPUTY CHAIRMAN—Before I call Peter Beattie, I should advise that names for tomorrow's working groups should be handed into the secretariat by 2 p.m.

Mr BEATTIE—Since 1996, the Union Jack has flown over the Queensland state parliament. We are the only state parliament in Australia which has the Union Jack flying over our deliberations. Our Coat of Arms was changed in the 1970s to include a rampant

English red deer. All that is missing in the eyes of some is a furled umbrella. I mention this so that all republicans appreciate the determination of those opposed to an Australian republic and the difficulty of the task facing us.

I say to my fellow republicans: remember that any constitutional change has to be approved by a majority of people in a majority of states. There will be a campaign run by the monarchists in states such as Queensland, Western Australia and South Australia to defeat the move to a republic by defeating any proposition in those states, thus preventing there being a majority of states—in other words, the referendum will fail.

We cannot win the republican argument by winning just in Sydney and Melbourne. I stress: we must win a majority of people in a majority of states. We must, therefore, produce recommendations that result in a convincing referendum question, and that must, in my view, include the popular election of a president. Those who attack that on the grounds that it is populist attack the Australian people.

There are two issues before us. The first is the powers of the new head of state and the second is how those powers are defined. As a strong supporter of the direct election of the president, I support the codification of the president's powers to the maximum practical extent to eliminate any uncertainty—

SENATOR BOSWELL—Gareth says you can't do it.

Mr BEATTIE—I will come to the Senate in a minute—to eliminate any uncertainty or ambiguity about their meaning. As well, I support certain limitations on the powers of the president in order to eliminate any conflict with the principles of responsible government.

We need to be very clear that whatever goes to the Australian people in the form of a referendum question is clear and unambiguous. If it is otherwise then those opposed to a republic will seek to use it as an opportunity to attack the proposition across Australia, particularly in the outlying states. Therefore, codification is a clear way—I will come back to whether it is partial or full in a moment—to give certainty.

I disagree with some of the submissions that have been made this morning that are opposed to codification. Codification provides certainty. It provides certainty in terms of the argument, it provides certainty for the Australian people, it provides certainty for the head of state and it provides certainty for the government. Codification is a key part of this referendum being successful, and that is the bottom line. Those who have argued against codification have used arguments like: existing conventions are unreviewable. Says who? What an arrogant position to take. The Constitution and the system of government we have are there to serve the Australian people—not some archaic view. Therefore, they are up for consideration.

The Constitution is not a dead document, it is alive. It will change from time to time, and it must change. But the final arbiter is always the Australian people, in the form of a referendum. They have demonstrated, on many occasions, that they are unwilling to change without very good cause, and that is the final arbiter—the final break. I see nothing wrong with putting the reserve powers in the Constitution. I have heard no argument here to suggest a contrary view.

SENATOR BOSWELL—Gareth says you can't do it.

Mr BEATTIE—What happened in 1975, in my view, confirms the need to achieve that. I believe we are capable of codifying and of drafting the appropriate codification clause. I refuse to accept the argument, which I regard as pathetic, that we are not capable of codification. That is an admission of defeat before we even start—a pathetic argument to say the very least. I believe we are capable of drafting the appropriate codification requirement.

I know that one of the most contentious issues here relates to the area of codification in terms of limiting the powers of the Senate by amending the Constitution to remove the Senate's right to reject or significantly delay bills appropriating money for the ordinary annual services of the government. I know that will be the issue in debate. It is an issue we need to handle very carefully. Let us get

a few facts on the table in terms of this debate. Let us not forget that, in 1911, the House of Lords lost the power to block money bills. It happened in Britain. For those of you who run around arguing the monarchists' cause, look at what happened in Britain in 1911.

Let us talk about the Senate for a moment. The Senate has become a party political house. It is not the states house, which is where it started. The system of party endorsement has left the Senate as the domain of political parties, and to argue otherwise is a nonsense. Too often, some have argued that the Senate has been a dumping ground for party hacks on both sides of the house. The point is that what happens in terms of the Senate—Senator Boswell may be a bit more reluctant to interject on me now—is that senators are elected by the people of the state and they are accountable to no-one. That is exactly what happens.

That is why, in terms of this argument, I am prepared to go back to 1975 and say that I believe that what happened then has, in my view, led to the conclusion that the reserve powers should be in the Constitution. I have no hesitation in taking that view, and I come from the state where the late Senator Bertie Milliner, you may recall, passed away and the state parliament then refused to appoint a senator from the same political party. They sent Albert Patrick Field down here, who found his way into a footnote of history by that short endeavour on his part.

Let me be very clear: I am totally supportive of an elected president to reflect the will of the Australian people. But the way to give certainty is to codify the powers and out of that we will avoid, as much as is humanly possible, a hysterical campaign by some in the referendum who will wish to defeat the move towards an Australian republic.

Therefore, I am generally supportive of the proposition advanced by Gareth Evans in terms of committee recommendation 7. I was a member of that committee. The other issue there that I find attractive relates to enabling the head of state to refer any bill to the High Court for a decision as to its constitutionality. I think that is an appropriate role for the president to have. If you like, the role of the president would be as the defender and protector of the Constitution and, at the end of the day, the matter would be determined by the High Court. This is based on the Irish model. This is what the Irish President has the power to do and I think it is an appropriate power for the president to have. When Mary Robinson visited this country and there was a great deal of warmth I, like many people in here, thought she played a constructive and positive role on behalf of her country. I believe our elected president could do exactly the same thing.

I conclude my remarks by saying this: I fear that what will come out of the debate resulting from this referendum question will be a campaign by some to attack the issue of the Australian republic by attacking the question that goes to the Australian people. That is why it needs to be clear, it needs to be unambiguous and it needs to be certain. Codification is a key part of that. To some extent, the argument about partial and full codification is a matter of semantics. What I think is required in that debate, and the responsibility that rests on us, is to come up with what codification is necessary to give certainty. That, I believe, is the bottom line. I believe the Australian people watching this Convention want to see not only a positive and constructive outcome from all of us that can be put to them in the form of a referendum, but also the direct election of a president.

Dr DAVID MITCHELL—Mr Deputy Chairman, I was privileged to speak yesterday and to set a pattern for the position which I present to this Convention and to the people of Australia. I was elected on a policy of supporting the present Constitution and of supporting the sovereignty of the law as expressed in our Constitution under the Queen and the Governor-General. You will recall, as will the people who were listening on the radio—but maybe some of those present here this morning have not yet had the opportunity to read their *Hansard* from yesterday; there was only a very small number present in the chamber yesterday—that I explained that as we read Queen in the Constitution we should,

in general terms, understand this to mean the Crown; that is, the person responsible for administering the executive government and for administering and maintaining the law.

I speak to the question: if there is to be a head of state, what should the powers of the new head of state be and how should they be defined? Of course, there should not be a new head of state. I will not repeat what I said yesterday but it is perfectly clear that we do not need a new head of state.

In order to determine what the powers of a new head of state should be, if there is one—and I sincerely hope there will not, and I believe that the people of Australia have sufficient understanding and good sense to ensure that there is not—but if there is a new head of state it is very important that we should understand the responsibilities of the Governor-General now; the responsibilities as spelt out in the Constitution. It is difficult perhaps to understand the full extent of the reserve powers because they are not spelt out. There is a very good reason why they are not spelt out, and this is because it is the responsibility of the Governor-General to protect the people.

I know that there are some who will say, 'But the parliament has been elected by the people.' That is true. You have heard in an excellent address from Mr Paddy O'Brien this morning how the Prime Minister has extremely dictatorial powers. Not only does the Prime Minister have extremely dictatorial powers but the government of the day working together has totally dictatorial powers, irrespective of what the opposition might think and irrespective of what the people might think. One perceived that in 1975 at the time of what is often called the dismissal. There, the Governor-General dismissed the Prime Minister and called an election. It was the Governor-General who called the election. Of course, he had discussions with his new Prime Minister, Malcolm Fraser, but it was the Governor-General who actually called the election. He said to the people of Australia in effect, 'I have done this in an endeavour to protect the people. What do you think about it?' And by the greatest vote ever the people of Australia said, in effect, 'Governor-General Sir John Kerr, you did absolutely the right thing. We have had enough of this government.'

Some people are speaking about the need for citizen initiated referenda and a right to recall members of parliament, a right to recall a government. That is exactly what exists in the Governor-General now. There is a right to recall; the Governor-General protects the people. Conventions are important, but conventions cannot change the law. If the Constitution specifies that the Governor-General has a power, he has that power. If there is a convention that he does not exercise that power, that convention is that he does not normally exercise the power, not that he never exercises the power.

I know you all have your copies of the Constitution in front of you in this house today, for that is exactly what we are talking about. Maybe you do not need your Constitution in your hand; maybe you know your Constitution so well that you do not need to be referring to it from time to time. You will be aware that particular powers of the Governor-General are spelt out in section 58. The Governor-General has the discretion—and you will recall from what I said yesterday how he exercises that discretion and the restriction on the exercise of the discretion—to decline to sign or pass into law a bill passed by the parliament. This is for the protection of the people. He does this by reference to the interests of the people. He does this in his responsibility under God. He does have this power and he should have this power. Of course, a Prime Minister upset would be expected to dismiss the Governor-General, at least tell the Queen to, and the Queen must act on the Prime Minister's advice. He would tell the Queen to dismiss him. The people will have their say at the next election, won't they, as to whether the Governor-General was properly dismissed or not?

You will see, or you know already, that the Governor-General has the command in chief of the naval, military and air forces. The Hon. Gareth Evans seems to have left the chamber. The Hon. Michael Hodgman will recall an occasion when there was a dispute between

the Tasmanian government and the federal government, when a particular federal government minister determined to use the air force in opposition to the Tasmanian government position. Now, supposing it had not just been the one use of the aircraft but supposing the minister concerned had decided to send a fleet of bombers to Tasmania: what would have happened? The Governor-General would have exercised his powers as commander in chief in the interests of the people. It is the responsibility of the head of state, if there be a new one, even as it is the responsibility of the Governor-General now, to exercise his powers, to use the words of the preamble, humbly relying on the blessing of Almighty God.

DEPUTY CHAIRMAN—We have on the list Mr David Muir, but there has been a substitution for Lady Bjelke-Petersen.

Lady FLORENCE BJELKE-PETERSEN—I am really here by default, I must say, because I did suggest that I was not going to speak, but then I thought that here was a wonderful opportunity for me to say a few words on this very important occasion. I really want to speak on whether Australia should become a republic or not. That was my main ambition, but I have been told I must keep now to the subject we have here, which is: if there is to be a head of state, what should the powers of the new head of state be and how should they be defined?

Personally, I do not believe that we need a republic or a new type of head of state. Nevertheless, I do want to have a few words about it. I believe that at the present time we already do have an Australian head of state. The Queen is the symbolic head, as far as I am concerned, and the Governor-General is our constitutional head of state. The Governor-General has the powers of the Crown, the Constitution, the Westminster system and their practices. I believe that the president, however chosen, if it ever gets to that stage where we choose to have a president, could have very unrestricted power. I had the privilege of being on the *Witness* program in Sydney not so long ago and I was interviewed by Paul Barry. He said to me, 'You could probably become the president of Australia.' I said, 'That sounds a very interesting point of view, but I believe that that would give me more powers than the government of the day, more powers than the Prime Minister, because I would be in charge of the army, the navy, the air force and the Commonwealth Police.' Actually, Joh on one occasion was asked what he thought about a republic. He said, 'I think that would be all right provided you made me the first president, and you might have trouble dismissing me.' I think those of you who know him might say that that would be right.

Nevertheless, they are important questions. If the president's powers are to be such that they will be less than those which the Governor-General holds now, who is going to get the powers that he leaves behind? That is an important question that I think our republican friends want to be looking at too. If they go to the Prime Minister and his cabinet, executive government, I do not believe the people of Australia would be very pleased. The people of Australia keep on saying that governments have too much power now. Of course, lots of people are saying—even the man who drove me in the bus this morning—that if a president were to be appointed he should be elected by popular opinion. So you have two arms here: you have the popular opinion people, there is Peter Beattie, who just spoke before, and you have the people who believe that it should be by two-thirds of the parliament. The two-thirds of the parliament system would be fairly political; it would be very political indeed. I was extremely interested to listen to Peter Beattie talking about the Senate, codification and what the Senate ought to do. I was in the Senate when Paul Keating as Prime Minister said that the Senate was unrepresentative swill.

DELEGATES INTERJECTING—That's right!

Lady FLORENCE BJELKE-PETERSEN—It is not. It was a very fine institution and I was very proud to be a senator for 12¼ years. I believe this is a very important point: the republicans have to make sure that the aim of the republic is not finally to get rid of the Senate. I believe the Senate has very strong power, a power that can consult about

what the decisions of the House of Representatives are. It is something that is very important as far as Australia is concerned.

I am pleased just to be able to say these few words here today. I certainly hope that we will not be changing our system. I certainly hope that we will continue to have a Governor-General, although I heard Mr Carr himself say that we should keep the name 'Governor-General'—I think that is important—and the term 'Commonwealth of Australia'. I suppose that would certainly please everybody. But, as far as I am concerned, I do not want to have a change at all. I want to keep what we have now. I do not believe that a republic can make Australia any more democratic than it is. I am very happy to live in Australia.

As I look around the world, I see what has happened to republics. I look at 97 per cent of them. I would not want to go and live there. I do not say that that would turn Australia into a republic like some of the 97 per cent in the world, but you have to be careful. The main rule is that if you get a president in you have got to be able to dismiss them if necessary. I leave those thoughts with you. I certainly do not intend to say what the powers of the new head of state should be and how they should be defined because I do not want a new type of head of state.

Mr MUIR—I cannot let this moment pass, being the former Australian Vice-President of Amnesty International, to reflect on how great it is that we today are able to discuss the issues that we are today in this great country of ours. Whether we are a republic or a monarchy has no impact on whether we commit atrocities to our people. But we believe that a republic is a change for the better for Australia and it is a process of our development.

Powers are seen to be a key issue in whether the head of state is elected by the people. Certainly this has been the view propounded by the ARM. I would urge that the ARM allow a conscience vote by their delegates here in this assembly in relation to the kind of republic that we have. I do not think that this is the place for party direction in relation to such issues. I think that all delegates here should be able to freely exercise their conscience when they vote.

Another point I should make in relation to the republic issue is that the Clem Jones team in Queensland actually did out-poll the ARM in that state. I leave that thought with you because I know the ARM have made it very clear that they have the leading mandate in relation to the issue of the republic. Perhaps we do things a little differently in Queensland. In relation to the Clem Jones model that has been circulated to this gathering, the model has been put up for discussion. We are the only team that has actually put up a model as such to this Convention. The key issue in that model for us is the election of the head of state by the people. Clearly one needs to focus on the powers in relation to that matter.

We recognise that when we talk about powers we take into account the fact that there are different perspectives in relation to power. There is the perspective of the Prime Minister or any prime ministerial aspirant. There is also the perspective of the Australian people. One could concede that any Australian Prime Minister would want the power to hire and fire. A Prime Minister would not want somebody out there in the public forum who may in discussion challenge issues of debate. We say that it is healthy for democracy for that to occur and that the proper perspective in relation to this issue is not the perspective of the Prime Minister but the perspective of the Australian people.

We believe that the head of state in a republic is the guardian of our Constitution. The primary role is to be the guardian of our Constitution and to be a fail-safe when our parliament fails to provide in a proper way for the Australian people. We are talking in this instance of safety and security for the Australian people. We accept that there is a need for a full codification of the powers in order to obtain that certainty. The present position is one of uncertainty, and wide powers as a result of that uncertainty. We do not accept the ARM position that the powers of a president remain identical as they are written in the present Constitution. Those powers are too wide. We can say that they are modified by

convention, but the reality is that it is in black and white in that document—certain powers such as veto over legislation.

It is appropriate that the Prime Minister be the head of government and that the issue in relation to any contest between head of state and head of government can only occur where you have a head of government and an executive president. I am not suggesting that we have an executive president. I think that it is not beyond the intellectual powers of Australians to devise a safe model for a popularly elected president. I do not believe that our intellect is any less adequate than the intellect of the Irish, the Austrians, the Finns and the Icelanders. Those people have been able to devise a safe form of government and a safe and appropriate apportionment of powers between head of government and head of state. The models vary from the Irish republic that we have heard in discussion here this morning, where the head of state in the Republic of Ireland has very little power, to the strong model of Finland, where the popularly elected president in that place has executive power. But in all those four countries we have a popularly elected head of state and a Prime Minister, and it works.

We are looking for a best practice for the governance of Australia. We believe that the people of Australia under present governance are shut out. We believe that the best way of drawing the Australian people into our process of government is to give them a direct voice. I refer you, in relation to the codification aspect, to the Republic Advisory Committee report. It has been referred to in some detail today. It has been called the RAC report for short. There has been a circulation of documents here today in relation to that. I urge all delegates who have not closely perused the wording in those documents to please do so. I think it is certainly a very valiant attempt to codify power. It can be done.

In relation to the power issue, it is important that the head of state has some power. Clem Jones will be speaking to you later on this morning. He will be able to say to you that he has met hundreds and hundreds of people over the last few weeks who have gone to him and expressed a dissatisfaction with the present governance of Australia. The people want more direct say in government and they are concerned about the control of parliament by the executive.

It is important that the head of state have the power of referral of bills to the High Court. Gareth Evans made reference to that earlier today, and this is a matter of discussion that came out of Working Group 7. I am hoping that the Convention will support the resolution in relation to Working Group 7 in the sense that it leaves it open for a popular election.

The powers of a head of state would not relate to any reserve powers that were not properly set out. There would be no power of veto over legislation, as provided in the present Constitution under section 59. There would be no unilateral taking charge of the defence forces and there would be no unilateral action in relation to High Court appointments. The powers would include powers of pardon, and of commuting or remitting punishments in relation to Commonwealth jurisdiction; the power to address the Australian people after consultation with the executive council; the ability to refer bills to the High Court so that the Australian people could be protected in advance of any unconstitutionality; and the codified powers referred to in the RAC report.

I urge delegates not to be afraid to be innovative. Our original Constitution, as drafted by Sir Samuel Griffith and other fathers of Federation, was pure innovation. Please accept the challenge laid down by our predecessors to grasp the nettle for worthwhile change. Do not let any change be mere window-dressing. Symbolism is important to the Australian community, but the Australian people deserve more. Do not be afraid to accept the challenge. Do not be afraid to put your faith in the Australian people. Do not deny them the choice of electing their president. Thank you.

CHAIRMAN—Thank you, Mr Muir. I now call on Mr Malcolm Turnbull to address the gathering, followed by Clem Jones.

Mr TURNBULL—Thank you, Mr Chairman. We are dealing now with the issue of

the powers of the new head of state. For the purpose of these remarks I will assume we are dealing with a non-executive head of state or a non-executive president—I am not closing off the option, from our point of view, of supporting a different name, but I will use that for the time being—who would have the same powers or less than the Governor-General.

Mr Clem Jones has proposed a directly elected model that would give the president additional powers. We believe that is not a good option. We feel that a directly elected president should either have no powers—for example, as in Ireland—or be the chief executive of the nation, as in the case of the United States. We think the French arrangement, where executive power is shared in a very confused fashion between the President and the Prime Minister, is the worst of all options. So I would say that we either go to Dublin for a directly elected president or we go to Washington; the Paris option, for the reasons advanced by Mr Carr, is not on.

What that leads us to is: how do we express the powers? What do we say about them? This is a very important issue because I think almost all of us would agree that it would not be satisfactory to have an uncodified set of powers—that is, to leave the powers to the constitutional conventions—if the head of state were to be appointed by a direct election methodology. That is clearly an important option that is being canvassed here today, and that is why codification is very relevant. The ARM has always been an advocate of codification, not simply because of the lawyers' love of writing things down, as Professor Craven referred to earlier, but because we believe it is important that our Constitution provide a more meaningful description of the way our country is governed.

Is it an outrage to have a clause in the Constitution which says, 'Following a general election, the head of state shall appoint as Prime Minister the person whom he or she believes most likely to be able to form a government which will have the confidence of the House of Representatives'? Does anybody doubt that that is the convention? Does anybody doubt that that is what our constitutional practice is? At the very least, how can we resist putting in the Constitution, as has been done in the RAC partial codification model, those very basic principles which are beyond controversy? At least it would make the Constitution a more meaningful document.

Turning to the partial codification model, I would like to draw your attention to item 4, which deals with the dismissal of the Prime Minister for a constitutional or legal contravention. At the moment there is an undoubted power invested in the Governor-General and, indeed, state governors to dismiss a Prime Minister or Premier for a serious breach of the law. When I say it is an undoubted power, I mean that everyone agrees it exists; but there is absolutely no agreement as to the circumstances in which it should be exercised. There is no agreement whatsoever, and I think it very unlikely that there would be. We have had cases, as we had here in 1975 and other cases, where governors and governors-general have taken legal advice either from judges in private, which is very unsatisfactory, or from members of the private legal profession.

We have proposed in the RAC report, in the partial codification model, a mechanism for the head of state to refer an issue of government legality to the High Court to get a ruling. If the Prime Minister persisted in the breach of the law, then and only then would the head of state be able to take action. We feel that would be an improvement, but I have to say to you very plainly that that is a substantive change from the current practice. If you were looking at the partial codification model from a minimalist point of view—and I know that is an overworked expression—then you would not include article 4.

Turning to the way in which the conventions continue in the partial codification model, as George Winterton said this morning, you define the rules that are beyond any doubt and then you say, 'In so far as we haven't dealt with the exercise of the reserve powers by the stated non-controversial rules, the conventions continue.' So the partial codification model would have the virtue of improving the comprehensibility and meaning of the Constitution by stating the non-

controversial, non-contentious principles of our system of government and also by preserving the flexibility of the conventions for all of the reasons that have been advanced by the advocates of that.

Complete codification, for which there is also a model in the RAC report, endeavours to anticipate every circumstance in which the head of state would have the need to appoint or dismiss a Prime Minister and anticipates every circumstance in which he or she would be called upon to grant or not grant a dissolution of parliament. I think it is common ground that those are the only areas in which the reserve powers apply. Again I should state that, with respect to 1975, the complete codification model in the RAC report does not expressly address the position of the Senate. That, as I said yesterday, is a fact of our constitutional life and it makes Australia a very different parliamentary democracy to Ireland, Austria or many of these other countries that have directly elected presidents.

The way in which the complete codification model in the RAC report would affect 1975 is this: because the head of state can only dismiss the Prime Minister when the Prime Minister has breached the law, has been found by the High Court to be breaching the law and has said, 'I'm going to keep breaching it,' the head of state would only have the ability to sack a Prime Minister who was trying to spend money which had not been lawfully appropriated pursuant to section 83 of the Constitution and who was persisting in it. It is a pretty extreme, far-fetched case, but that would be the state of affairs. It would mean, in applying it to 1975, that Sir John Kerr would not have been able to ambush Mr Whitlam. He would have had to wait until such time as Mr Whitlam had run out of money—and I have no doubt that some time before then Mr Whitlam would have bitten the bullet and called an election rather than persist.

Mr CARR—Fraser would have backed off.

Mr TURNBULL—Indeed, that may have been the case—Fraser may have backed off.

Mr GARETH EVANS—You are still confirming the Senate's powers.

Mr TURNBULL—Yes, I will just go on. The defect of the complete codification model—and I was coming to that, Mr Evans—from the point of view of the Labor Party and people who are concerned about the Senate's power is very simply this: the disincentive to the Senate exercising its power at the moment is that it creates an unholy constitutional mess, a crisis. Nobody knows what the rules are. That is a great consternation in the Commonwealth of Australia; that is a disincentive.

The concern that has been expressed to me by many people, including many eminent members of the Labor Party, such as Mr Evans, is that if the complete codification model were adopted it would be in a sense legitimising, and at least facilitating, the Senate's power. But the problem is that you cannot have a directly elected head of state without either removing the Senate's power, which is an option I will come to in a moment, or facilitating it. The one thing you cannot do is leave the capacity to create a crisis, which requires a constitutional umpire, and have somebody who is most likely going to be a political partisan being called upon to play the umpire's role.

The other solution to this, and it is a very simple solution—simple of conception, difficult of execution—is removing the Senate's powers altogether.

Mr WRAN—Whether to block supply.

Mr TURNBULL—Thank you. Whether you regard that as desirable, it is plain to everybody that it is unachievable.

Mr RAMSAY—Why?

Mr TURNBULL—It is unachievable because a large part of the political community will strenuously oppose it. But it is certainly a matter that is going to be brought up. I hope that has been of assistance to delegates in respect of the powers. I would, as Mr Muir said, commend the delegates to the chapter on the powers of the head of state in the RAC report and to those two models. I hope that, as we discuss codification and its value, focus will be given to the particular provisions of those codes because, as the archbishop said

yesterday, the devil is invariably in the detail but there may also be a few angels as well.

Dr CLEM JONES—Mr Chairman, members of the various houses of parliament here today and delegates, I make reference to the members of the houses of parliament very specifically because, in the context of what we have been proposing in respect of the changes to the Constitution—the road to the republic, the codification that has been discussed at great length here, the powers and so on—the status of parliament is extremely important. Its status, and particularly its status in the eyes of the community, is extremely important.

Unfortunately, I do not know that those who represent us—those for whom we should have the utmost respect because they are doing the most important job there is in our society—realise just how low the esteem of parliament has descended. The attitude of the general public towards our members of parliament is really deplorable. We can argue as to why that is, but I want to suggest that perhaps in the change to a republic and the election of somebody the whole of Australia respects—provided he is given a significant role—you will have a great impact on Australia's respect for the political system and those who operate it, our members of parliament.

Earlier today, Mr Phil Cleary was very kind in making some remarks about me. I would like to say that he exaggerated a lot. But the important thing is that the reason I am here is not for what I or my colleagues believe. We are here because we set out to canvass the views of the community at large. The group that we established was a group that covered the whole of the state of Queensland, a group that predominantly comprised people with experience in local government. We had a past mayor, a present mayor, me, Ann Bunnell, who is one of our delegates here and deputy mayor of Townsville, and we had the mayor of Emerald. In fact, we had people from all over the state with different political views, and we charged them and ourselves with the responsibility of finding out what the people of Australia want in a republic.

Out of that came our model. That model does not necessarily reflect all my views or all the views of David Muir or Ann Bunnell, but it is what we in our experience came to believe was the wish of the people of Australia. It was said earlier, I think by the Premier of South Australia, that we have to seek perfection. Surely, in this context perfection is providing a system of government which is the nearest as possible to what the people of Australia want. That is the goal of perfection.

When we set out to detail this model, we were, as I said, entirely guided by what we understood was the view and attitude of the people of Australia. The most important thing that we found was the criticism I mentioned earlier—and it is a criticism I do not share—that the problem with Australia is the people who represent us. It was said earlier here that we have a two-party system of government which has served this nation well, and there is no doubt about it. It should continue. But unless we come up with something which is going to restore the prestige of parliament in the eyes of the Australian community that two-party system is doomed. We are already seeing that in the voting trends throughout this country.

If you look at the voting trends in the last election in Queensland, and then look at the vote that the Clem Jones group got and where we got it from, I believe those of you who are members of parliament will be concerned. It reflected the fact of an increasing number of votes in the areas where there had been dissatisfaction and where people voted for an independent group, which we were.

I could go on at length about this, and I could also talk about codification and so on, but I do not think that is necessary. We have heard from people talking about codification—partial codification, full codification and so on. As far as I am concerned, I think all of those are red herrings. We are not concerned with the powers that exist in other places—in Ireland, Austria or wherever. If there are any good requirements in those particular constitutions which we can adopt, so be it—we will adopt them. I believe codification is absolutely necessary. As Peter Beattie said, it is absolutely essential—we have to know, we

have to have certainty. But the important thing is that the codification has to suit our needs. And when we say 'our needs' what we really mean are the needs and wishes of the Australian community.

We mentioned that we have a motion to include in the powers of the president a right to refer any legislation to the High Court for advice on its constitutionality. That is something that applies in this situation and that we accept perhaps as a one-off in respect of the president's powers. But that is the important point. When we decide in the long term, the codification should fit the particular needs of the Constitution, which is not being changed, and the Constitution as we propose to change it.

As I said, you could go on talking a lot about these things or you could go on talking about codification, but I do not at this time want to discuss that. I will, I hope, later on. I want to emphasise the thing that I started to say: while the parliament must remain supreme, we must have somebody to make the people's contribution to government. We must have somebody in a responsible position with responsibilities that the people will accept and that the people want.

We do not need to fear someone because we give him a place in our structure. Our Constitution has protected us in that respect for 100 years. A new Constitution providing for the codification that we are talking about, providing for the method of election that we are talking about, providing for the model that we are talking about, can and will undoubtedly maintain that protection and obviate the suggested conflict that there would be between a president and a Prime Minister. We must seek to provide what the people want. That is my message at this moment, and that is my only message. We must seek to provide what the people want—not what we want, not something which we think protects ourselves at whatever particular level of government we may be in, not what protects ourselves as delegates here and having regard for what we may do in our respective lives. We want to make sure that what we do here serves the people of this country in the way they wish to be served and preserves the opportunity for some change that will come undoubtedly in this world of change but will have that one underlying theme: the people of Australia must come first in everything we do.

CHAIRMAN—Thank you, Mr Jones. I call on Mr Michael Lavarch, to be followed by Mr George Mye.

Mr LAVARCH—This Convention occurs against a backdrop of public debate on the republican issue which has almost solely focused on two broad issues: the relative merits of whether Australia should or should not become a republic and, moving on from that point, the best method of appointment. The opinion polls which we see regularly displayed, and one I think yesterday again in the Brisbane *Courier-Mail*, show very strong support for direct election—popular election. Yet in many ways this is a debate which places the cart before the horse. The horse in our instance is the question of the nature of the office of an Australian head of state and the exact powers which attach to that office. In my view it is only when we decide what we want the office to do and what power we give to the office holder can we logically flow on and make a decision about the best way of choosing or electing that office holder.

That reality is reflected in the agenda of this Convention. It is why we are today debating the issue of powers as the first substantive debate for the Convention. It is also an issue which was well recognised by the reports of the various working parties which we heard this morning. For instance, Professor Craven, though he and his group argued against codification, noted that, if direct election were to be a method considered, full codification would be needed.

The reports of the working groups which we will be asked to vote on this afternoon fall within three broad categories. One group argued for reduced powers. The second group argued that the same powers that attached to the office of Governor-General should be retained. That was the majority, I suppose, of the working groups. A third working group, working group 6, argued for broader powers.

The view that you take on these three alternative approaches depends very much on your concept of the best system of govern-

ment which this country should have. If you believe as a starting point that the Westminster system, the system of cabinet and responsible government, the system which operates in Australia now, is a system which should be supported and be maintained, inevitably you are drawn to the conclusion that either the role of the head of state has to reflect the powers which rest with the Governor-General or potentially that those powers be reduced. If, alternatively, you believe that we should move fundamentally away from that system of government, that we should embrace a system which is more akin to that of an executive head of state—the American and similar style models around the world—then you would very much embrace the issue of broader powers than that currently enjoyed by the Governor-General.

All of these are equally valid systems and all of the reports that we have before us can be supported, depending on your point of view, on their respective merits. The issue is the path that this particular Convention should take. I think that we should very much adopt this spirit, which I believe was part of the original series of conventions that drew up the Australian Constitution. Our Constitution was drawn up not by philosophers but very much by pragmatists. It is not a document which flourishes with great expressions or particularly inspires, but it does go about the job very effectively of establishing a system of government, of dividing powers between the states and the Commonwealth, of providing a division of power between the executive, the parliament and the judiciary. If we as pragmatists, as realists, take that this is the system of government that is to continue in this country, then I think you quickly come to the conclusion that those who argue for broader powers really, as much as I respect their views, cannot succeed. This is I think the first of the proposals before us that we can put to one side.

The issue then turns to whether the same powers as currently enjoyed by the Governor-General or greater or lesser powers should be the option that we should further explore. I was a member of Working Group 7. The report of that group proposed to this Convention that there be a full codification of powers based on the model contained in the Republic Advisory Committee report and that, in addition, the power of the Senate to block supply, logically when going down the path of looking at the particular role of the head of state, should also be tackled.

While I, like Premier Carr and Gareth Evans, very much keep a candle burning to the idea that one day the issue of the balance of powers between the House of Representatives and the Senate should be seriously examined and that there should be a power to block supply, as a realist, as a pragmatist, I know that not only will that proposal not gain the support of this Convention; it will not gain broad bipartisan support and there will be very strong voices and broader opinion in the Australian community, which would not support such a course of action. Though that is not my personal desire, I accept that is the reality. I therefore accept that reality and believe, therefore, our prime consideration of this Convention should be on the issue of maintaining the same level of power and possibly debating whether a codification of powers, either partially or fulsomely, should be the model that we advance.

Where does this tie back into the issue of the method of election? It seems to me, and it has been pointed out by other speakers, that you cannot be one-half or one-quarter pregnant in this debate. If we are to have a head of state who holds and exercises executive power, then let us go down that path and give full executive power. The difficulty with the proposals that we have before us is that they do not quite do that but they do not maintain the same powers or reduce those powers. That is why I do not think direct election is a viable option to us. Going down the path of direct election is hand in hand with going down a path of reducing powers, including the power of the Senate, which I do not believe, as a pragmatist, we will achieve.

I do, however, believe that full or partial codification of powers or a reference to the existing conventions are all viable alternatives which will sit either with the McGarvie model or with a two-thirds majority model for the selection of the Australian head of state. My

preferred model is that we do codify those parts of the existing powers, and the conventions which underpin them, which are non-contentious. They have been very well set out in the Republican Advisory Committee report.

We should have an open mind when going to the next step of the concept of full codification, but I think the prospect of gaining support from this convention and the broader community is somewhat less than optimistic. If we are to achieve the charter that has been given to us then we all must give some ground. Just as I might have to accept that my idea of Senate power being eliminated must give way to gain consensus, other delegates will also need to consider giving some ground. We can achieve that around a model of partial codification based on a retention of essentially the same powers which the Governor-General currently enjoys. It is around these styles of resolutions that our deliberations should be focused.

The Right Reverend HEPWORTH—I stand here as a member of the group of delegates—the second largest—to this Convention who were elected on the unambiguously clear title of 'No Republic' but whose members have nonetheless agreed that they will make an equally unambiguous contribution to the Convention by highlighting through working groups and debate the standard against which we are here setting all other proposals, that is, the current constitutional arrangements which have, as with every matter in the balance of powers issue and therefore the debate about powers, set a benchmark in 20th century politics which is a shining light in an otherwise rather desolate political landscape.

The crucial element of this debate, which has perhaps been touched on by Paddy O'Brien but, I suspect, accidentally, has not been touched on by many others and that is that it is quite meaningless in the debate on our constitutional history to discuss the powers of the ruler without first being absolutely clear on the powers of those who are allegedly ruled. In other words, the debate about the rights of the citizen must go hand in hand with the debate about the rights of presidents and prime ministers.

DELEGATES—Hear, Hear!

The Right Reverend HEPWORTH—To debate one without the other is to be establishing a system based on the assumption that there will be those who are ruled virtually without rights, in other words, an elite system of government in which the people are not the principal constituent. The essence of the existing system is that, at least since the glorious revolution, which I remind our republican friends was quite some time ago, the Crown has been the custodian of the rights of the people against elected and executive government, which is likely always to overstep the mark in grabbing power. That must be the starting point because the existing system exquisitely protects the rights of the citizen against an abuse of executive power. Since the executive comes from the democratic source, executives in our system are always likely to overstep their power, forgetting the democratic origins of that power and presuming to act as an executive autocracy.

We therefore must be very clear that the origin of our present system begins with, dare I say it, the British Bill of Rights—that itself has roots in Magna Carta—and sets out the rights of the individual against government and then proceeds on that basis to define those powers which it is tolerable for executive government and the Crown to exercise. In the light of the models before us, that means that we must be looking at the constraints on presidential power rather than on the smooth working of presidential power. I hope we will all constantly fear any sort of president that has a smooth life.

If I can take you back, since it has been mentioned several times this morning, to the history of constitutional reform in Australia, almost all proposals have been rejected. Some of my colleagues in political science have interpreted that as meaning that the people are terminally pig-headed and do not like change. In fact, any change that had nothing to do with making the lives of politicians easier has gone through. Almost all the changes, since they are crafted in the parliament, have been designed to enhance the power or facilitate the activities of politicians. And they have all been defeated. Even the one that went through in the aftermath of 1975 was designed to curb

the ingenuity of state parliaments attempting to craft neat political solutions to otherwise impregnable political problems.

We begin by highlighting the concept that power must be balanced and the first source of balance is between the people and the government. The powers of the president must be crafted in that way so that the constant point of reference is not the efficiency of the executive but the freedom of the people. Any proposition that begins backwards we will resist, and all the propositions currently before us are backwards; they begin with a consideration of presidency. Presidency understood in that way and Australia's extraordinary ability to craft systems for freedom are in direct contradiction. Indeed, in one's lighter moments one may well have looked to the fact that for 100 years we have accepted a monarch living 12,000 miles away because for a group of people at least partially descended from convicts that was a safe distance from the source of authority. We are now bringing authority much more immediately, even if it is only the fact that the political secretary at Buckingham Palace has tended to give rather good advice to the political secretary of the Governor-General, and let us be quite real about the interplay that has occasionally taken place—publicly in 1975 but constantly before and after.

The crucial element in any discussion of powers must be the problem of enhancing the democracy whilst providing a system which stands in judgment over it, at least in the exercise of executive power in a democracy, which is able to judge according to greater principles. All constitutions seek to entrench some principles that cannot easily be changed, particularly by the mob on a bad Saturday morning when they are voting. There is always the problem that if everything is easily changeable, everything will be easily changed and distorted.

There are certain principles we ought to seek to enshrine and none of them are here yet—principles surrounding liberty, freedom, property, relationships and, dare I say it, also a group of principles beyond the personal which seek to entrench the nation and its personality. We have not touched on treaty making and yet it is one of those powers ill defined in the Constitution exercised in quite a different way now to that which was anticipated and which has a profound effect on the daily lives of people by entrenching a range of social as well as political principles which suddenly govern Australia without local political debate. If we are worried about a powerless monarch 12,000 miles away, we ought to be worried about the treaty powers and be looking at them much more closely than we have. That is an issue of personal freedom and of sovereignty, which the monarch is not.

So we would want to further this debate by switching it around and suggesting crucially that we look again at how much of the Bill of Rights has indeed been inextricably translated to Australia, how much of that doctrine of the rights of the individual standing over against the rights of government can be entrenched and how much we can limit the exercise of presidential power by balancing it in its present exquisitely balanced way against the powers of executive power and encapsulate that entire system within the context of unambiguous democracy which we now have but which, with the checks and balances removed, we are likely to lose unthinkingly.

Sir DAVID SMITH—A lot has been said this morning about 1975. It is a year which I remember particularly well. The Hon. Bob Carr, in opening this debate this morning, said that he had maintained the rage. Let me give the Convention the real truth of the matter. If I could just go back to the previous year, 1974, for a moment, we find that in that year the coalition parties in opposition had merely threatened to block supply in the Senate and Prime Minister Whitlam called on the Governor-General and recommended an immediate double dissolution and a general election. But in 1975 Mr Whitlam decided not only to ignore parliamentary convention relating to supply but also to pretend that no such convention existed anyway. He started arguing that the Senate had no right under the Constitution to refuse to pass a money bill which had been passed by the House of Representatives and that the Senate had no right to try to force the government to an early election.

In this Mr Whitlam was, of course, quite wrong, but that did not stop him from trying to convince the electorate that he was right.

Faced with the prospect of having no supply of money with which to govern, the Whitlam government decided to tough it out. As government departments began to run out of money with which to pay the salaries of public servants or to pay their bills from private contractors for the supply of goods and services, the government tried to circumvent parliament and enter into arrangements with the banks to, in effect, lend it the money until it could get it from parliament.

Mr WILCOX—I can give concrete evidence of that.

Sir DAVID SMITH—Such arrangements were unconstitutional so far as the government was concerned and illegal so far as the banks were concerned. Mr Whitlam's stated aim was to put an end for all time to the Senate's power to block supply. In effect, he was trying to bring about a change in our constitutional arrangements, but without seeking the approval of the people at a constitutional referendum, as required by the Constitution.

Not only was Mr Whitlam flying in the face of everything he had said the previous year, when he took the view that even the threat to block supply meant that there had to be an election, he was also trying to overturn practices which he and his party, the Australian Labor Party, had followed for the past 25 years. In 1967 Senator Lionel Murphy, then Leader of the Labor Opposition in the Senate, had this to say about the upper house and money bills:

> There is no tradition that the Senate will not use its constitutional powers whenever it considers it necessary or desirable to do so in the public interest. There are no limitations on the Senate in the use of its constitutional powers except the limits self-imposed by discretion and reason. There is no tradition in the Australian Labor Party that we will not oppose in the Senate any tax or money bill or what might be described as a financial measure.

In 1970, when Mr Whitlam was Leader of the Opposition, he had this to say:

> The Prime Minister's assertion that the rejection of this measure does not affect the Commonwealth has no substance in logic or fact. The Labor Party believes that the crisis that would be caused by such a rejection should lead to a long-term solution. Any government which is defeated by the parliament on a major taxation bill should resign. This bill will be defeated in another place. The government should then resign.

When that same bill reached the Senate, this is what Senator Lionel Murphy, still Leader of the Opposition in the Senate, had this to say:

> For what we conceive to be simple but adequate reasons, the opposition will oppose these measures. In doing this, the opposition is pursuing a tradition which is well established, but, in view of some doubt recently cast on it in this chamber, perhaps I—

that is, Senator Murphy—

> should restate the position. The Senate is entitled and expected to exercise resolutely but with discretion its power to refuse its concurrence to any financial measure, including a tax bill. There are no limitations on the Senate in the use of its constitutional powers except the limitations imposed by discretion and reason. The Australian Labor Party has acted consistently in accordance with the tradition that we will oppose in the Senate any tax or money bill or other financial measure whenever necessary to carry out our principles and policies. The opposition has done this over the years and, in order to illustrate the tradition which has been established, with the concurrence of honourable senators I shall incorporate in *Hansard* at the end of my speech a list of the measures of an economic or financial nature, including taxation and appropriation bills, which have been opposed by this opposition in whole or in part by a vote in the Senate since 1950.

At the end of his speech Senator Murphy tabled a list of 169 occasions when Labor oppositions had attempted to force coalition governments to early elections by defeating money bills in the Senate. Two months later, in August 1970, the Labor opposition launched its 170th attempt since 1950. On that occasion Mr Whitlam had this to say:

> Let me make it clear at the outset that our opposition to this bill is no mere formality. We intend to press our opposition by all available means on all related measures in both houses. If the motion is defeated, we will vote against the bills here and in the Senate. Our purpose is to destroy this budget and to destroy the government which has sponsored it.

In October 1970 Mr Whitlam told the House of Representatives:

We all know that in British parliaments the tradition is that if a money bill is defeated the government goes to the people to seek their endorsement of its policies.

It is true that none of Labor's 170 attempts between 1950 and 1970 to defeat coalition money bills in the Senate and force an early election had succeeded, but this was not for the want of trying. So that when in 1975 Mr Whitlam said that the Senate had never before had refused to pass a government's money bill he may strictly have been telling the truth but he certainly was not telling the whole truth.

Councillor LEESER—Around the time of my 10th birthday I did a primary school project on Australian government. On the front of this project I drew a picture of Sir Robert Menzies, Australia's longest serving Prime Minister. I gave my hair a cut and stuck it down on the page to represent his bushy eyebrows. The point of this project was not for me to give myself a haircut; it was a project of discovery, a project where I discovered the Australian Constitution. I knew that the United States had a constitution—what child of the television generation does not know that?—and I knew what a venerated document that constitution was. So for my 10th birthday present I asked not for a BMX bike or Lego but this copy of the Australian Constitution. I have to say that it looks rather underwhelming. It was a flimsy document and a document which looks like any other piece of government legislation. But the more I studied and the more I read, the more impressed I was. What I was impressed with was not what was written in the Constitution but by what is so much more important, that which is not written in the Constitution—those conventions which are the oil which lubricates our constitutional cogs.

There are four matters I wish to discuss in my speech today as to why the conventions and the Governor-General's powers work well now and why the same could not be said if we transferred the powers to a republican system. The first point relates to the Governor-General's conduct; the second to the codification straightjacket, as I will term it; the third to the difficulties of codification; and the last to the paradoxical need to spell out the powers under a republican system.

If we look at the conduct of the Governor-General, the first thing that we notice about the Governor-General is that he does not have tenure in the same way that the Prime Minister does not have tenure. This provides a check and balance on the Governor-General in the use of his power because he knows he is there subject to the Queen's pleasure, on the advice of her Australian Prime Minister. The second thing that we realise about the Governor-General's conduct is that his office has evolved. He knows that he is there to represent the Crown and he knows that he is there to act in a manner that will bring dignity to the Crown and to act in the like traditions of the Crown. A perfect example of this is the way in which Bill Hayden acted. Bill Hayden, a former critic of the office, rose to the occasion and has now become one of the defenders of that office.

The tradition of the Crown incorporates what Bagehot described as the three rights of the monarchy: the right to be consulted, the right to encourage and the right to warn. Our system is a product of evolution over the centuries, from the time of the Magna Carta in 1215 to the Australia Act in 1986. A president would not necessarily be obliged to act in accordance with these conventions or in the same way as a Governor-General because of election, however so chosen, and, secondly, because of the fact that it is a new office.

I wish to move to the question of what I will term 'the codification straightjacket'. There are two occurrences that result from codification. The first is justiciability and the second is inflexibility. I want to deal with inflexibility first.

If we think back to the founders of our Constitution and to when they wrote our Constitution, their political climate was very different to the political climate we know today. The two-party system had not taken hold. The idea of a Prime Minister in the common law world was a new development. The states were strong and the convention delegates were influenced by writers like Bagehot, Dicey and Bryce. Luckily, because of the traditions that we had inherited from

the United Kingdom, we managed to keep our Constitution flexible.

To see the future requires telescopic vision, the sort of which the founding fathers did not have. It would be unpardonably arrogant for us to believe, in our day, that we have that vision. In their day, the founders could not have imagined the controversy over section 92 that has developed or the fact that, today, the Senate no longer really represents the states' interests but rather the parties' interests. Deakin was on point when he said, 'The Constitution we seek to prepare is for the generations unseen and as yet unknown.' If we codify matters, we put future generations into a straightjacket. Matters become inflexible and we bind future generations to what we think, in our day, are the conventions. We stop those conventions from developing and evolving.

The second and much more dangerous question is that of the justiciability of conventions; that is, when conventions can be adjudicated by the High Court. There the potential for instability is vast. Imagine the chaos the country would have been in 1975 if, before despatching the politicians to the people, the actions of Sir John Kerr were brought before the High Court. Government would have been impossible for weeks. All the arguments that we hear from the republicans about great economic benefits would be totally undermined. Because of instability in Australia's political system, investors would pull their money out. This is precisely what happened in Pakistan when the president's powers were questioned by their equivalent of our High Court.

Some say that the justiciability of conventions can be overcome by putting in ouster clauses, which would prevent the High Court from adjudicating on these matters. But the experience of anyone who has studied administrative law would show that, even when parliament has created ouster clauses, the court has read them down and adjudicated on the matters anyway. If we want to politicise the judiciary and to create instability then that is what will occur by codifying the constitutional conventions.

I wish to move to the issue of the difficulties of codification. As Gareth Evans said, someone was bound to quote that he had said that 'codification is the labour of Hercules,' and I will admit to being that person. But the reality is, as Professor Craven outlined this morning, that it is quite impossible.

Quite independently of Professor Craven, I thought of what happened in 1977, with the Senate's casual vacancy Constitution alteration as a prime example of the problems in terms of codification. Following Tom Lewis and Sir Joh Bjelke-Petersen breaking convention by replacing Labor senators with non-Labor senators, the convention that has resulted and that was codified is that, if a casual vacancy occurs, it must be replaced by a member of the same party. It did not deal with independents and, more importantly, it did not deal with the question of what would happen if a party which the senator represented ceased to exist. This situation arose almost immediately when Raymond Steele Hall left the Senate to contest a seat in the House of Representatives and his party, the Liberal Movement, had ceased to exist. A new convention had to be created—a new convention was born.

Trying to codify the powers of the head of state would present us with exactly the same problems. I do not believe that, when the founding fathers sat around to debate the Constitution, they would have contemplated that the events of 1975 would have occurred. And, yet, it is now an established convention that, if a Prime Minister cannot guarantee supply, he must advise a general election or resign. We cannot pretend, just as the founders could not have pretended, that we can foresee every eventuality.

My final point is a bit of a paradox in a way because, under a republic, you would have to codify conventions. Former Prime Minister Paul Keating recognised this, and he said that it was paramount to codify in the case of a popularly elected president. But it is just as important when you have a head of state chosen by other means. Even the McGarvie model would require codification because a brand new system would be created. The president would not necessarily act in

the same traditions of the Governor-General and the conventions relating to the constitutional council that he has proposed would need to be codified and strongly spelt out.

All of these difficulties have caused recent converts to republicanism, like Malcolm Fraser, to declare that what is really needed—and I urge republicans to think about this—is a total rewrite of the Constitution, from scratch. Do not be fooled—there is no quick fix, bandaid solution.

In conclusion, if in 2001 we are to sing the battle hymn of a republic, then mine eyes must see the glory. For me, the glory is what we mainly stand to lose. That glory is the constitutional conventions, exercised by an impartial Governor-General, acting in the traditions of his office with those flexible conventions—something that all the proposed republican models fail in attempting to replicate.

CHAIRMAN—Those listed who are left to speak on this 'powers' item are Mr Bullmore, Senator Bolkus, Ms Witheford, Mr Ramsay, Steve Vizard and Professor Greg Craven, as well as Peter Costello. None of them are actually in the chamber at the moment. Prior to suspending for lunch, we will take note that, unless they are present immediately after lunch, we may well need to adjourn this matter until 3 o'clock, when we come into the working group sessions.

At the same time, there has been prepared an analysis of each of the similarities and differences amongst the proposals of the seven working groups, which is available in delegates' boxes. It may prove helpful in analysing each of the options and in taking the votes later this afternoon.

Proceedings suspended from 12.59 p.m. to 2.15 p.m.

CHAIRMAN—Delegates, we will resume our proceedings. You will be interested to learn that I have just had a note from the Chief Hansard Reporter that apparently such has been the interest in the *Hansard* transcript of the proceedings of this Convention that there will now be two Internet sites on which the transcript may be accessed and downloaded. *Hansard*'s website was originally hyperlinked to the Convention site. Now the two sites will operate separately. The site addresses are listed on the inside cover of the daily proof *Hansard*, together with the radio frequencies on which the proceedings of the Convention are being broadcast. Equally, the demand for the hard copy daily proof *Hansard* has necessitated the printing of additional copies. These will be available to interested parties shortly.

The proceedings before the Convention are to consider the question: if there is to be a new head of state, what should the powers of the new head of state be and how should they be defined? You will recall that we have had reports from seven working groups and we have been debating the recommendations of those working groups. I call on Mr Peter Costello, the Treasurer of the Commonwealth, as the next speaker.

Mr PETER COSTELLO—The federation of the Australasian colonies and the creation of the Commonwealth of Australia formed a new national government, a new nation. It was a new shoot from an old tree, in time a new shoot that would grow to maturity and stand independently and self-sufficiently. It would, for all purposes, be free and self-standing although unquestionably it had been derived from another.

Some of the delegates to the Convention have argued for a republic as the last step to independence. Some have spoken of it as a decision to leave home. To be frank, I find this line of argument repulsive and, needless to say, unconvincing. It has never occurred to me in my lifetime that Australia was not an independent nation. I have never seen any evidence of its independence being compromised by its constitutional arrangements, and I venture to say that all those who have represented it internationally have done so on the basis that its sovereignty lies solely in Australia and is understood to do so by its neighbours in the world community without question.

It is also argued by some of the proponents for a republic that if in reality the nation is completely independent, even a de facto republic, the wording of the Constitution should be changed to match the reality. But,

to be frank, the words and the reality of our constitution are at variance in so many areas that if the aim was a matching one—words to reality—we would start in more important places than this. The Constitution makes no mention of a cabinet, an obvious feature of our government. It makes no mention of a first or prime minister, which is an obvious feature of the government.

I mention these examples to illustrate the point that the Constitution must be read and understood in accordance with history and convention. This is the case with all great historic literature, especially where we are looking for modern meanings in ancient texts. It is practically impossible to formulate a comprehensive written manual to apply to the myriad of human behaviour. Even more so, I believe it to be practically impossible to write a comprehensive manual to cover circumstances now and circumstances now unthought of but certain to arise in future centuries. This is one of the weaknesses of a written constitution. It is not unique to Australia. It is a problem we share with those other countries that have decided to reduce and enshrine their constitutions in one written document.

It is sometimes also said that the Constitution is not an inspirational document, not a document which states values or ideals. This may be so, but for my own part I do not think this an especial weakness. I am not convinced the purpose of a constitution is to uplift the soul. In my view the purpose of a constitution is to set out the basis for responsible and civil government to allow a society in which language and literature, hopes and aspirations that can uplift a soul will flourish.

Our constitution starts with the historic institution of the monarchy of Great Britain and adapts that office successfully by history and conventions to modern Australia. As adapted and applied, it works remarkably well and yet if there were not a substantial disquiet over the institution, a disquiet likely to grow rather than recede, we would not be here. It was this disquiet, recognised by the current government, which led it in opposition to pledge to hold this convention, if elected. The Convention is taking place in fulfilment of that election pledge.

It is commonly said that all this argument is about is whether we want an Australian as our head of state. If that were all we wanted, one of the options to fix it would be an Australian monarchy but, in truth, the problem is more the concept of monarchy itself. The temper of the times is democratic; we are uncomfortable with an office that appoints people by hereditary. In our society in our time we prefer appointment by merit.

The system works well but a key concept behind it bruises against reality. The only active role now left for the monarch to perform is, upon the advice of the Prime Minister, to appoint the Governor-General and, on the advice of the Prime Minister, to dismiss the Governor-General. If this function were to be performed by a council, there would be no significant change to the current structure of our institutions. The Governor-General, by convention an Australian, would be appointed to hold executive powers subject to the restraints and conventions of the Westminster system of government. The active function of the Crown would be taken over by an Australian or Australians appointed on the basis of service or merit.

More importantly, there is every reason to believe that conventions that have been established and adopted under the current arrangements would continue. This is because the office of Governor-General would continue by whatever name. It is logical to think that the exercise of the power of appointment and dismissal would continue under the same conventions. The proposal along these lines, known as the McGarvie model, is one that I would support without hesitation.

I turn now to the question of whether we should go further. Under our system of constitutional monarchy, the Governor-General holds executive power in name but exercises it upon the advice of the elected government. In reality, the Governor-General has no substantive executive power. Should we appoint a head of state with substantive executive power, power currently exercised by the Prime Minister or ministers of the Crown answerable to parliament? Such a system

would separate the legislature and the executive; that is, it would increase the checks and balances and the exercise of power in our system.

For my own part, I believe the checks and balances in our system are already extensive. They are certainly more than those that apply to the Westminster system of government in Britain. The Senate has unlimited powers to reject legislation including the power to bring down a popularly elected government, our constitution is a federal constitution with states exercising powers and Australia has an entrenched judiciary not at all unwilling to strike down government legislation.

There is another alternative: a president directly elected but with no substantive executive power, along the lines of the Irish model. Whilst I think this works quite well in Ireland, Australia is different. In Ireland it has the capacity to produce a president with a basis for emotional support but without a conflict of powers in relation to the elected government. It does not produce a non-politician. In my view, any person who wins a contested election is a politician.

The difference in Australia is a powerful Upper House with the power to reject money bills. This means the role of the Governor-General can never be ceremonial. If the Senate did not possess the powers to reject money bills and if it were impossible for the Senate and House to deadlock, an Irish model would be feasible. My assessment is that any section 128 referendum which sought to strip the Senate of its power to reject money bills to pave the way for an elected ceremonial president would almost certainly face defeat.

Mr GARETH EVANS—Come aboard, Peter. Well, we've got your support, Peter; come on!

Mr PETER COSTELLO—In the circumstances, those who genuinely wish to resolve the republican problem in their lifetime, Gareth, would not see this as a feasible alternative.

This brings me to the proposal that a president be elected by a two-thirds majority of both houses of parliament. As far as I can gather, the argument in favour of this alternative is that the people, through their elected representatives, get a say in the head of state. This proposal comes with or without add-ons. The latest add-on is that, whilst appointment would take a two-thirds majority of both houses, dismissal would take a simple majority of one. I leave aside the question of why you would want to entrench an appointment without entrenching the dismissal.

The two-thirds parliamentary majority has always left me cold. It is not a directly elected presidency deriving legitimacy from the votes of the electorate; nor is it directly akin to the current Westminster practice. In effect, a president appointed with a two-thirds majority of both houses would enjoy a greater mandate than the Prime Minister, who needs a majority of only the House of Representatives. It is an attempt at compromise which would overcome the problems with the institution of the monarchy but, in my opinion, sow the seed for further constitutional trouble. I doubt it would be the end of the matter. It might be the first republic, but I am not sure it would be the last.

I judge that the disquiet or uncomfortableness with the concept of a monarchy will continue to build. We should address this and not allow people to use it to build other agendas. I am chastened by the Canadian experience. A simple attempt to repatriate the Constitution and institute a charter of rights has led to what is now described as mega constitutional politics, raising questions of succession, distinct cultural rights, sovereignty to indigenous people and a whole lot of other issues which have been advanced in a climate of general flux and change.

But I am for change. I would like to see Australia deal with the issue of a republic—not because of what others think of us but because of what we think of ourselves. Those who are advocating radical constitutional change are, in my assessment, advocating certain section 128 defeat. The history of previous section 128 referenda should give us a realistic focus. The public is very reluctant to change the Constitution, and its reluctance grows as the extent of the change grows. *(Extension of time granted)*

The unease at the centre of our constitutional arrangements is not because they do not work but because the symbols which underlie them are running out of believability—and this will gnaw at legitimacy. I am not for change at any price but I do believe that in changing we could secure and safeguard what is best, that by directing it we would get a better outcome than allowing pressure to build up and explode, and that history and convention makes such a change a feasible and workable constitutional improvement.

CHAIRMAN—I call on Ms Anne Witheford—Mr Eric Bullmore's name is listed; I do not know whether he is about but, if he is not here fairly shortly, he will not be able to speak—followed by Jim Ramsay, Steve Vizard and Greg Craven.

Ms WITHEFORD—It has been said by many that nations are built not by constitutions but by people. Cliche? Yes. Rhetoric? Of course. True? Absolutely.

The question of what powers our new Australian head of state should have is not one in which many young Australians have traditionally been very interested. Thoughts of legal jargon and verbose political waffle come to mind or rather confuse the mind of most young Australians when this question is posed. Yet I choose to speak on this topic today to argue that it does not have to be this way and that it must not be this way.

For the health of our present democracy, for the guidance of our office holders and for the benefit of future generations we must better spell out the fundamental and common principles of Australian government. It is, after all, our Constitution—the Constitution of the people of Australia. It must be a document and guide for all Australians—not just the legal elite. Yet a culture of knowing about our Constitution is conspicuously absent in this nation. Few would be aware of what the Constitution says or, perhaps more accurately, what it does not say about the powers of the Governor-General. In fact, a large majority of Australians do not even know that we have a constitution. But can you wholly blame them?

The basic problem is that our Constitution does not say what it means, nor does it often mean what it says. For too many people it is incomprehensible and inaccessible. It does not accurately reflect the practical workings of our system of government.

Fellow delegates, it is the belief of the Australian Republican Movement that an Australian head of state should perform the role and hold the same powers as the current Governor-General, but we believe that these powers should be partially codified. While the President's role should be largely ceremonial, he or she should also serve as a constitutional umpire. These powers should be at least in part spelled out in an amended constitution in an Australian republic.

It is true that our political system is based on complex legal provisions, unwritten legal conventions and a smattering of political improvisation as the circumstances require. Some of the legal conventions in the exercise of the Governor-General's powers are vague and uncertain. Translating these conventions into the written word in our Constitution would be legally undesirable as well as politically difficult. It would be legally undesirable on the basis that it is necessary for the head of state to be able to deal with unforeseen future contingencies.

For example, do you really think that our founding fathers would have been able to foresee the constitutional crisis of 1975 and the dismissal of a democratically elected government? It would be practically unachievable by virtue of the simple and intransigent fact that the community is divided on how the head of state should react in the event of a Senate denial of supply. I strongly believe that the community would be reluctant to consider diminishing the powers of our head of state. The head of state plays an important, even if last resort, role as a constitutional umpire.

At the same time, the fundamental non-contentious principles agreed by all should be spelt out and simply expressed in our Constitution. These conventions are conspicuously and wrongfully absent, despite their status as fundamental principles of our democracy. We have the responsibility to make our Constitution more meaningful. Spelling these principles out would ensure that the document that guides our system of government reflects the

real operation of our political system. This will only strengthen our democracy. After all, part of the transition to an Australian republic is about making sure the system of governing ourselves more accurately reflects political reality. We now have a great opportunity to correct the quirks and ambiguities of the status quo. Indeed, we have the responsibility to seize the day.

One of the most critical issues in this entire debate is that we make the Constitution and the republic people friendly. By this I mean that the constitution, where possible, should be written in language which can be understood by all Australians, regardless of legal background, education, gender or age. Similarly, I believe that, where possible, the Constitution should clearly define our system of government and make understanding it possible.

The criticism that the task of doing this is too hard, that it just cannot be done, is legally ignorant. It is possible to strike the appropriate balance of enshrining the basic principles of responsible government while providing for the flexibility of unforeseen circumstances. The notion that this task is politically too difficult merely says that we should work harder at it. It is not impossible, but it does require the constructive political will of those assembled here. Spelling out these powers will make our Constitution more meaningful. It will provide the people of this nation—the ultimate beneficiaries of the Constitution and the ultimate source of its authority—with a sense of ownership of the legal document which is the foundation of our nation.

So what precisely are these core non-controversial principles; these fundamental existing practices central to the functioning of Australian democracy? The Australian Republican Movement believes that we should enshrine the following principles. In the first place, it is a fundamental principle of our Westminster system of governance that the head of state should always act on the advice of the Prime Minister, except where the Constitution provides otherwise. At present, the Constitution is silent on this fundamental fact; a fact that is a practical reality of Australian political life. Prima facie section 61, which invests executive power concerning the Constitution and the laws of the Commonwealth, confers near dictatorial powers on the Governor-General. However, as we know, this is not the case—and nor should it be the case for an Australian president.

The Australian Republican Movement proposes that the existing practice that non-reserve powers should only be exercised in accordance within the government's advice should be clearly stated in the Constitution. Secondly, our Constitution should state that the head of state shall appoint as Prime Minister the person whom he or she believes can form a government with the confidence of the House of Representatives. As an example, in the unlikely event of a hung parliament, the head of state should be able to appoint a Prime Minister when parliament itself cannot do so by virtue of there being no working majority.

Thirdly, our Constitution should clearly spell out a mechanism by which the head of state can remove a Prime Minister in exceptional circumstances. For example, if a no confidence motion were passed against the Prime Minister, clear steps should be outlined to allow the president to have a clear path of defined action. Further, the Constitution should provide power for the head of state to dismiss the Prime Minister when he or she breaks a law or acts in contravention of the Constitution.

The events of November 1975 do not loom large in my mind. I was a one-year-old at the time. They will, however, be prescient in this debate. Regardless of the merits or otherwise of the conduct of Sir John Kerr, it is fair to say that the level of resentment, angst and derision this series of events created illustrates that we must better spell out and understand the powers of our constitutional umpire.

To quote George Winterton, 'Australia has had almost a century and a half of experience in operating a Westminster system and adapting it to changing needs.' I believe that partial codification of the powers of an Australian president represents merely a further adaptation of this system. Neither an Australian president nor codification represent the introduction of an alien political culture. Rather,

they are examples of the refinement of that currently in place.

Fellow delegates, this is our chance to seize the day, to seize the opportunity to spell out the rules of our democracy for every citizen to see. It is not too hard a task. It is not undoable nor impossible. But it is a challenge to which we can and must rise. In short, it is a necessary task and one to which the future generations of this nation wait in earnest.

CHAIRMAN—Before I call Mr Ramsay, the Queensland Leader of the Opposition, Mr Peter Beattie, has requested the Hon. Matt Foley MLA and Glen Milliner MLA to be his proxy at certain designated times. I will table that request.

Mr RAMSAY—Mr Chairman, fellow delegates, fellow Australians, today's discussion is of fundamental importance in the current debate. The question as printed goes to the heart of our concerns as a nation. What powers should the head of state hold in Australia and how should they be defined?

The republicans, dressing up their argument in the cloak of only wanting our own head of state, are basically determined to remove the Queen and the Crown from our Constitution and to substitute an alternative head of state with powers yet to be clarified. The debate this morning has demonstrated the wide range of options, the differences, the fears, the uncertainties and the confusion that exists amongst the republican proponents.

My hope is that the debate will encourage us all to have a second look at the merits of our present system. The way the Australian Constitution has evolved throughout the 20th century and the various acts of parliament related to its evolution ensure that Australia's Governor-General will always be an eminent Australian. Furthermore, the Governor-General's authority under the Constitution clearly identifies him as Australia's head of state. If there is any doubt, let it be clarified. That should not be called rubbish. The Constitution demonstrates the way it works with the ensuing acts since 1901 that the Governor-General holds all the powers as Australia's head of state.

The historic convention is that the Governor-General is appointed on the recommendation of the Australian Prime Minister. This ensures that a worthy appointment will always occur. Woe betide any Prime Minister who dared to abuse the responsibility. Such an action would stand condemned—not by the Crown, which would always follow advice, but by history, and, most importantly, by the people themselves at the next election.

Under our present system, it is the people who hold sovereign power, which is exactly where the republicans claim they want it to be. It is there already. Our Governor-General is entrusted with all the reserve powers of a constitutional monarch. The link with the Crown in no way threatens or compromises our national independence, but it does give our Governor-General a unique position above politics.

Although bound by tradition, custom and practice to act only on the advice of the elected government, the Governor-General is able, if that government acts without proper authority, to require it to go to the people by way of a general election before it proceeds any further. This unique mechanism—inherited along with the Westminster system from Britain but now Australia's very own—is an invaluable check on the abuse of power by any government in Australia, state or federal.

Five years ago this was acknowledged by the then Governor-General, Bill Hayden, who I am glad is here as a delegate at this Convention. I told him that I was going to quote him today, and he tells me he still holds the view that he expressed then when he said:

> The present system works well. It allows us to have stable government in this country. The head of state—

meaning the Governor-General—

> is aware of the restraints under which he must function.

He perhaps should have said 'under which he or she should function' to meet some of the concerns of the delegates expressed yesterday, but the meaning is clear. He further said:

> They are acknowledged all round and have worked since Federation quite effectively. If we move away from that and there is no restraint, then my appre-

hension would be that we could go through extensive periods of quite unstable government.

Some republicans respond by claiming they would wish an Australian president to have the powers only of a constitutional monarch. If so, why have they not produced such a concept? A number of suggestions have flowed from their pens and we have heard more suggestions—a wide range of them—as late as this morning. None of them work.

Let me give you just three quick examples. Firstly, Malcolm Turnbull in his book *The Reluctant Republic* argued that becoming a republic is so straightforward and uncomplicated that we do not really need lawyers to understand it. Does his suggested Constitution give the president this reserve power of a constitutional monarch? No way. According to Malcolm, if the president thinks the Prime Minister is acting improperly, he must go and speak to him. If the Prime Minister continues his alleged impropriety, the president may then go and ask the High Court for "relief". Only if relief is granted may the president go back to the Prime Minister and give him a second chance to behave himself. If the Prime Minister remains recalcitrant, the president may then dismiss him and require an election. That is a brief summary of Malcolm's argument, but he did repeat it for those who were in the chamber this morning.

The reserve power of the Crown has effectively, under the Turnbull model, become a majority decision of the High Court after an undefined period of consideration and opinion writing. The result: months of uncertainty, months of instability. Our Constitution may well become a bundle of legal precedents of uncertain durability, subject to the whims and views of members of the High Court from time to time. It sounds to me like a lawyer's delight. But how many Australians will relish that as a change for the better? I suggest, not many.

My second republican example flows from Professor George Winterton. It was his original republic Constitution that first brought my attention to this debate as it was looming several years ago. I read his proposed republic Constitution with interest. I wondered how he was going to deal with this matter. He put in a section 60A, and I may be paraphrasing it slightly, but this was the gist of it: 'The powers of the president will be those of the Governor-General until the parliament otherwise provides.' Those were the words. In one fell swoop ability to amend the Constitution as far as these clauses were concerned was taken from the people and given to the parliament—the protections specifically put in by the founders of our Constitution with section 128 all those years ago were removed.

So I turn to a third republican argument that came from John Hirst on this issue. John has been a good friend in Victoria and a person I have discussed things with on many occasions. He missed out on getting elected on the ARM ticket for this particular Convention because he generously put himself far enough down to enable others to come. He described himself as a generous minimalist. He suggests we give the president absolute power to dismiss a Prime Minister and dissolve the House of Representatives at his own discretion 'if the government of the Commonwealth is breaching the Constitution or persisting in unlawful behaviour.' According to Dr Hirst, the exercise of this power shall not be examined by any court.

That sounds as though it has simplified the whole problem. But just a moment; are we really prepared to give this enormous power to a president without constraint? At least, as Bill Hayden said, our Governor-General is aware of the restraints under which he must function. They are the inherited constraints evolving from our historic link with the Crown. I know there are those who think we can break that historic link and keep those conventions. Some say it is a myth to believe otherwise. I say, it is not a myth; it is a risk not worth taking.

Hirst's argument is based on the spurious claim, which he had in his book, that Australia was born in chains and is not yet fully free. I have never heard so much nonsense in all my life. No-one knows what changes we may be unleashing in the checks and balances of our present Constitution if we attempt to go down that path of separating the reserve powers of the Crown, held by our Governor-General, from the Crown whence they came.

Hirst's argument, I believe, fails at this point. Tampering with the Australian Constitution for the sake of the symbols may put at risk those key elements that give great protection against the abuse of powers by politicians—and I can think of no better place to say that than in the Old Parliament House at Canberra.

Very strongly, our argument and our hope is that this convention, looking at all these models, looking at all these options, will come to the conclusion that not one of them is an improvement on our present system. Let us not fiddle with this move to change to a republic. Those issues that the real republican candidates have attempted to bring up at this convention are certainly issues that Australia and Australians can and should be discussing. But to be discussing them in this forum where we are debating the continuation of the constitutional monarchy in Australia is not appropriate. We need to keep to the subject. I hope, delegates, that we will come to the right and most constructive and positive conclusion for Australia's future—which is to maintain our link with the Crown, whatever other amendments or concepts we may be looking to introduce into our Constitution.

CHAIRMAN—Thank you, Mr Ramsay. We now have two more speakers, Mr Steve Vizard followed by Professor Greg Craven, whom we might be able to accommodate by perhaps running a little over time before moving into the next phase. Mr Steve Vizard; welcome to this other television studio.

Mr VIZARD—Thank you very much. Mr Chairman and delegates, let us be crystal clear: the stated position of the Australian Republican Movement is that in a republic the new head of state should enjoy exactly and precisely the same powers conferred today on Australia's Governor-General—not one scintilla more, not one scintilla less. The Australian Republican Movement's clear position is that whatever powers the Governor-General enjoys today so should be the powers of the new head of state—exactly, identically; no more, no less. We go further: that consequently because no powers change, because nothing is diminished, nothing is added, the balance of power that exists between the Prime Minister and the new head of state should be as identical as that balance which exists today between the Prime Minister and the Governor-General—business as usual; the same.

Yet, despite this proposal for no change, today we have heard the opponents to a republic mount three principal objections: first, that in a republic we would not know what powers the head of state might enjoy—unknown, uncontained, unfettered; and that, as a result of this uncertainty, the delicate balance that resides between the government and the Governor-General, the checks and balances, would somehow be destroyed—pandemonium would ensue.

If indeed it was our intention to support a model that dramatically tampered with the Governor-General's powers, this might be a valid concern. But, again, to knock this point on the head unequivocally, we do not support any such material change. To the contrary; we propose that as a matter of principle and as a matter of fact whatever the Governor-General does today he should do tomorrow acting in his own right as head of state. Indeed, for all intents and purposes in matters of executive powers, the Governor-General is simply the new head of state. The only difference—and it is a critical symbolic difference—is that he or she exercises those same powers in his or her own right, and not as the representative of the Crown.

This brings us to the second objection we have heard today: even admitting that the powers are the same, identical, the new head of state will somehow be minded to exercise these powers in a different way because he is no longer acting as a representative of the Crown. The concern is that it is only the symbolic connection with the Crown that keeps him in check, that enables him to properly and justly exercise his powers. Remove the symbol of the Crown, and the head of state might go berserk.

In our view, this is flawed. First, the Queen herself plays no active role in the government of Australia. Even on the admission of those opposed to a republic, the Governor-General alone has for many decades, in fact, exercised those powers on a daily basis without interference from, or indeed reference to, the Queen.

That is a fact. There are no practical checks and balances. There is no daily overviewing by the Queen herself. There is no circumscription, direction or advice. To the contrary; we have relied on the good sense and good judgement and proper exercise of those powers by the Governor-General as an Australian alone. In fact, if not in law, an Australian alone has properly exercised all those powers for many years. To remove the reference to the Queen in this matter, as opposed to symbolic matters, is to remove no actual safeguards, to remove nothing.

Secondly, if further evidence of this is required on the few occasions where the active intervention of the Crown has been sought, the Queen has been swift and unequivocal in her response that the governance of Australia's affairs and the exercise of these powers in relation to Australia is a matter for Australia alone. Not only does the Queen not participate in the exercise of these powers, she does not want to participate.

Thirdly, and more critically, it is demeaning to suggest that an Australian head of state will only respect his or her democracy, will only exercise the executive powers as they ought to be exercised, if there is the spectre of the Crown breathing over the head of state's shoulders like a schoolyard bully; that it is only the Queen's Chopper Read-like presence that keeps Bill Deane from doing a runner to Majorca with our gold reserves. The ultimate safeguard of the exercise of these powers is not the perpetual daily scrutiny of Her Majesty and never has been, but rather the character and integrity of the eminent Australians privileged to hold that position.

Does anyone seriously suggest that but for the fact that the Queen had appointed him Bill Hayden would have taken it upon himself to declare war on Pakistan, or that the only thing stopping Ninian Stephen dissolving both houses of parliament on a weekly basis or appointing Rod Laver to the High Court was that the Queen had once signed a piece of paper affecting his appointment, or that it was only the Queen's regular visits to this country that stood between Zelman Cowen and him commandeering a battleship and engaging in dragnetting for dolphins? Does anyone seriously think it was because of the Queen's connection to the office of Governor-General that Sir John Kerr dismissed Prime Minister Whitlam—an act that not only changed the face of Australian politics but was a trigger for a generation of appallingly bad impersonations of former prime ministers?

It was and will remain the character and judgment of these men alone that saw them execute their office as they did. It was the character and judgment of John Kerr alone that saw him discharge his duties as he did. For those opposed to a republic to condemn the identical powers of the head of state as we propose is for them to condemn the powers of the current Governor-General. If they belittle a proposal of identical powers, they belittle the very democracy that we currently have and that they so fully embrace.

The third principal objection we have heard today is that, even admitting that the powers can be the same, it would somehow be impossible to affect such a transferral, that constitutionally we cannot give the head of state the same powers as the Governor-General. This is simply not the case. The simplest way to achieve an exact transferral of powers without in any way tampering with them is by incorporating these powers by reference.

Particularly, we think the sentiment and the precise words set out in the Republican Advisory Committee's partial codification model, and as recommended by Working Group 4, represents the specific means of achieving this. That model sets out that the heads of state should observe the principal constitutional convention currently acted upon by the Governor-General—namely, that the head of state will only act in accordance with the advice tendered to him by the Prime Minister or ministers. This can hardly be contentious. It represents the current practice; it represents the facts.

The draft also sets out the current conventions relating to the dismissal of the Prime Minister and the appointment of the Prime Minister. It seeks to embody non-contentious conventions. But to the extent that the conventions are contentious we would not seek to embody them in the codified form. The conventions should be beyond dispute.

To amplify in the draft submitted, clause 2 relates to the appointment of the Prime Minister. Subclause 1 establishes the office of the Prime Minister. Subclause 2 sets out the existing convention. The other circumstances in which a Prime Minister may have to be appointed are not dealt with specifically, leaving the general ministerial appointment power, currently section 64, to operate.

Clause 4 of that draft relates to the dismissal of the Prime Minister. This clause does go further than restating the existing convention. It allows the head of state to obtain a High Court ruling on government conduct so that if he or she were to dismiss the government there could be no question of the head of state forming his or her own private views on what was or was not lawful. It allows the head of state to send the government to an election without dismissing it.

As to the balance of the other powers, or the ones not expressly spelt out, we say they should be incorporated by reference. Whatever they are, however clear or unclear, they are assumed and granted to the head of state—to some small extent a lucky dip, but the same lucky dip we have lived with for the past 90 years and that we live with today; no more, no less.

How does this proposal sit with what the working groups reported on this morning in the general position of the convention? Four of the working groups concurred in their view that the head of state should enjoy the same powers as currently enjoyed by the Governor-General. Logically, this is also the position most acceptable to the constitutional monarchists, and it is the position of the Australian Republican Movement. Three of the working groups resolved that the reserve powers of the head of state not be codified but be incorporated by a reference—whole, intact and untainted. Logically, too, this is the position most acceptable to the constitutional monarchists, and this is the position of the Australian Republican Movement.

Three of the working groups took the view that at least one key non-contentious Constitutional Convention observed by the Governor-General be spelt out in fact—specifically, that we make law the existing practice that non-reserve powers only be exercised in accordance with ministerial advice. This is the position of the Australian Republican Movement. It is remarkable the unanimity that has been achieved even in this short time as we work towards shaping outcomes for the future. *(Extension of time granted)*

Mr RUXTON—Your daddy would be ashamed of you!

Mr VIZARD—Thanks, Bruce. I have a story about an Australian who goes to a pub in Ireland. He sees a whole lot of Irishmen standing around in the corner laughing as numbers are rattled off. He says to one of the Irishmen, 'What are you doing?' The Irishman says, 'We've been here so often we don't bother telling the jokes anymore, we just say the numbers. It saves a lot of time. Why don't you have a go?' The Australian says, 'No, I couldn't, I'm not a joke teller.' The Irishman says, 'No, have a go, have a crack at it.' So the Australian says, 'All right, 17.' All of the Irishmen burst into hysterical laughter. He thinks, 'This isn't too bad.' The Irishman says, 'You're a very good joke teller. Try another one.' So the Australian says, '28.' They all burst into laughter. The Irishman says, 'Tell one more. You're on a roll here. You're a very good joke teller.' He says all right, '67.' There is stony silence. Then one by one they all start to burst into laughter until they are on the floor. After five minutes of uproarious laughter the Australian says, 'What's with 67?' The Irishman says, 'They hadn't heard that one before.'

I am going to round it off now. My dad would have enjoyed that though, Bruce. The ARM does not want to disrupt the numbering system; we do not want to tinker with the numbers. The powers that are well enjoyed and well understood should remain the same. I hope that those who are particularly opposed to a republic but who have agreed to work, and indeed who are working, constructively to develop a model to best compare with the current Constitution embrace the model which we are developing and advocating for what it is—a genuine endeavour to preserve the inherent strengths, the powers of the Governor-General, complete and intact, of our democracy as we consider and assess the

symbolic benefits of moving toward a republic.

CHAIRMAN—While Professor Greg Craven was listed, I am afraid our time has expired. What I intend to do is to call Professor Craven, together with several other people who have given me an indication that they want to speak on the powers, during this next session.

You will recall that in our program this was listed as speakers selected from the floor. What we intend to do now is to call on successively from each of the working groups somebody to formally move and second each successive resolution. As we go through them we are going to move a bit outside the ordinary rules of procedure and have a succession of resolutions before us at the one time. But they will be put on the two screens.

From there, in the course of your general contributions, if you wish to move amendments or speak to any resolution that particular resolution can be put on the screen. If you wish to move amendments to resolutions, would you please put them in writing and hand them in to the secretariat so we are able to have them put on the screen so everybody can observe them.

What I will do now is run through each of the working groups, as we did at the beginning, and I will have the resolutions formally moved and seconded and then flashed on the screen. I will begin with Working Group 1 and have a mover and a seconder for Working Group 1's resolutions.

WORKING GROUP 1

Same range of powers with the existing constraints on their use; no express provision to be made about the conventions that guide the use of the reserve powers.

RESOLUTIONS

The conventions associated with the Australian Constitution not be codified, with the exception that the Constitution be amended to reflect the fact that the Head of State acts with the advice of the Federal Executive Council or a Minister in the exercise of all but his or her reserve powers.

However, in the event that the Head of State were popularly elected, full codification, including codification of the reserve powers, would be necessary.

Further, in the event that the Head of State were elected by a two-thirds majority of a joint sitting of Federal Parliament, and was dismissible by a similar process, full codification would be required.

In the event that the Head of State were dismissible by the Prime Minister or a body acting on the advice of the Prime Minister, codification would not be necessary.

Moved by Professor Craven; seconded by Mr McGarvie.

CHAIRMAN—What I am doing is getting them formally flashed up. Then you can speak across the floor, so we can get more speakers. There is no restriction on the number of times people can speak. I have noticed that three or four people have wanted to speak before, and I will give them priority.

WORKING GROUP 2

Same range of powers with an express provision to incorporate by reference the conventions governing the use of the reserve powers.

RESOLUTIONS

In order to ensure that the existing conventions continue to apply to the exercise of the reserve powers by the new Head of State

a) if elected by a 2/3 majority of a joint sitting of the Federal Parliament or by the McGarvie model:

   (i) that an express provision be inserted in the Constitution to incorporate by reference the existing conventions governing the use of the reserve powers; and

   (ii) that a provision be inserted for the prompt dismissal of a Head of State who departs from the existing conventions; and

b) if elected by popular or direct election that the powers be limited and specified.

Moved by Ms Bishop; seconded by Mrs Rodgers.

WORKING GROUP 3

Same powers with a written statement of the conventions governing the use of the reserve powers as a non-binding guide

RESOLUTIONS

That the Convention resolve that if there is agreement on a written statement of the conventions governing use of the reserve powers, that it

be in the form of binding rules, rather than non-binding guide.

Moved by Ms Delahunty; seconded by Ms Bell.

WORKING GROUP 4

Same powers with codification of the conventions governing the use of the reserve powers as binding rules

RESOLUTIONS

1. The existing practice that non reserve powers should only be exercised in accordance with the government's advice should be stated in the Constitution.

2. The head of State should have reserve powers, ie. powers

3. The reserve powers are (1) to appoint the minister, (2) remove the Prime Minister and (3) refuse to dissolve Parliament.

4. The current balance of power between the Prime Minister and the head of State should be retained and accordingly the Constitution should expressly provide for the continuation of the existing conventions in a Republic.

5. After much consideration the full codification of the reserve powers was neither desirable nor achievable (not desirable because it was necessary for the head of State to be able to deal with unforeseen contingencies and the impossibility of anticipating future contingencies. It was unachievable because the community is divided on how the head of State should react to the Senate denial of supply and we believe the community would not wish to diminish the powers of the head of State).

6. However, we believe a partial codification of the reserve power conventions would be desirable essentially for two reasons: (1) to enable the Constitution to provide a statement of powers which more accurately reflects actual practice and (2) to constrain both the Prime Minister and the head of State to ensure that they comply with the governing conventions. Partial codification was favoured rather than full codification for the reason given in (5).

7. We accepted the Republic Advisory Committee's partial codification model in principle and, with one dissentient, recommended to the Convention the specific draft principles enunciated by the Committee (attached hereto).

8. Consequentially, we did not consider the power to assent legislation a reserve power; the head of State's exercise of the power to assent or refuse to assent should be exercised only in accordance with ministerial advice. We favoured abolishing obsolete Constitutional provisions such as the Queen's power to disallow legislation and archaic provisions such as the executive power to prorogue Parliament.

Moved by Mr Turnbull; seconded by Mr Wran.

WORKING GROUP 5

The present powers of the head of state and the defects of the known republican alternatives

RESOLUTIONS

1. That the Convention notes that the existing powers of the monarch of Australia following passage of the Statute of Westminster and the Australia Act are:

   a) the appointment and dismissal of the Governor-General on the advice of the Australian Prime Minister; and

   b) the disallowance of Acts of the Australian Parliament on the advice of the Australian Prime Minister.

2. That the Convention notes that the powers of the Governor-General consist of powers explicitly conferred by the Constitution which are now exercised by the Governor-General on the advice of the relevant Australian Ministers, powers exercised under statute, and reserve powers. The working group refers the Convention to the discussion of these powers in the paper by Sir David Smith *The Role of the Governor-General: our Australian Head of State*, (tabled).

3. That the Convention note that any conferral of tenure on the Head of State, as is conferred in all republican models, will lead to an imbalance between the powers of the Prime Minister and the powers of the Head of State, because the Prime Minister is without tenure. The Convention further notes the importance of maintaining the dominance of the elected Parliament in the Australian system of government.

4. That the Convention notes that codification of powers will give rise to litigation which could lead to results unforeseen by those responsible for the codification. The working group noted the opinion of The Rt. Hon Sir Harry Gibbs on this matter (tabled). The working group particularly draws the attention of the Convention to differences between republican models in codifying the relationship of a president to the armed forces.

Moved by Mr Hepworth; seconded by Father Fleming.

WORKING GROUP 6

Broader powers for a new head of state

RESOLUTIONS

A. This Convention resolves that:

1. In the event that the Convention supports a direct popular election of the Head of State within a republic, the model containing the following expanded powers of the Head of State to be put to referendum:

(a) appointment of a Prime Minister consistent with majority of parliamentary support;

(b) dismissal of a Prime Minister who loses majority parliamentary support or who acts illegally or unconstitutionally;

(c) the power to dissolve Parliament and call elections where:

(i) no Member of Parliament has majority support to commissioned Prime Minister; or

(ii) the Member of Parliament or Members of Parliament who do have majority support have acted illegally or unconstitutionally;

(d) acts as President of the Executive Council;

(e) gives consent to legislation and executive actions, on the advice of the Executive Council except where otherwise provided in the Constitution.

(f) is Commander-in-Chief of the armed forces, acting on the advice of the Executive Council and with prior parliamentary approval, however in cases of urgency subsequent parliamentary approval is to be sought as soon as possible.

(g) negotiates and enters into treaties subject to ratification by Parliament;

(h) appoints justices of the High Court and other courts created by Parliament on the advice of the Executive Council and subject to ratification by Parliament;

(i) The Head of State can refer Bills, except those Bills for the ordinary annual services of the Government, his or her own proposed constitutional amendments and other matters of national interest to the people through referendum;

(j) can refer any Bill to the High Court to determine its constitutionality;

(k) the Head of State:

(i) shall, on the advice of the Prime Minister, by Proclamation or otherwise summons and prorogue the Parliament and in like manner dissolve the House of Representatives;

(ii) may, in his/her absolute discretion, refuse to dissolve Parliament on the advice of a Prime Minister who has ceased to retain the support of a majority of the House of Representatives;

(iii) may, in his/her absolute discretion, dissolve Parliament when the Parliament has refused to provide revenue or moneys for the ordinary annual services of the Government;

(iv) when a proposed law is passed by both Houses of Parliament and presented to the Head of State for his/her assent, s/he shall declare, according to the Constitution, that s/he assents, or that s/he withholds his/her assent. The Head of State may within three months return to the House in which it originated any proposed law so represented to him/her, and may transmit therewith any amendments, which s/he may recommend, and the House may deal with the recommendations;

(v) where the Head of State withholds his/her assent to a proposed law passed by the Houses of Parliament and continues to do so, the Prime Minister may, after a period of three months, advise the Head of State to convene a joint sitting of the Members of the Senate and of the House of Representatives;

(vi) the members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the Senate and the House of Representatives, and if the proposed law is affirmed by a majority of sixty percent of the total number of members of the Senate and House of Representatives, it shall be taken to be duly passed by both Houses of the Parliament, and on presentation to the Head of State, s/he shall give it his/her assent;

(vii) appoints public servants and military personnel; and

(viii) can take emergency measures to protect national security and integrity, subject to the right of Parliament to review, confirm, amend, or revoke those measures.

2. That the Westminster conventions as modified currently in operation that are inconsistent with the above changes, be expressly repealed.

B. This Convention resolves that:

1. In the event that the Convention supports a direct popular election of the Head of State within a republic, the model containing the following expanded powers of the Head of State be put to referendum:

(a) The Head of State appoints Ministers of State, who are not Members of Parliament but whose appointment is subject to ratification by Parliament;

(b) acts as President of the Executive Council;

(c) gives consent to legislation and executive actions, except where otherwise provided in the Constitution;

(d) is Commander-in-Chief of the armed forces acting with prior parliamentary approval, however in cases of urgency subsequent parliamentary approval is to be sought as soon as possible;

(e) negotiates and enters into treaties subject to ratification by Parliament;

(f) appoints justices of the High Court and other courts created by Parliament subject to ratification by Parliament;

(g) The Head of State can refer Bills, except those Bills for the ordinary annual services of the Government, his or her own proposed constitutional amendments and other matters of national interest to the people through referendum;

(h) can refer any Bill to the High Court to determine its constitutionality;

(i) appoints public servants and military personnel;

(j) can take emergency measures to protect national security and integrity, subject to the right of Parliament to review, confirm, amend, or revoke those measures.

2. The Head of State is not subject to Westminster conventions, as modified, currently applicable, which are expressly repealed in their entirety.

Moved by Mr Gunter; seconded by Professor O'Brien.

WORKING GROUP 7

Lesser powers of the head of state with codification

RESOLUTIONS

Resolution A

RESOLUTION ON CODIFICATION AND LIMITATION OF HEAD OF STATE POWERS

This Convention supports:

- full codification of the powers of the Head of State in order to eliminate, to the maximum practicable extent, uncertainty and ambiguity about their meaning;

- limitation, in that context, of the powers of the Head of State in order to eliminate, to the maximum practicable extent, the possibility of any conflict with the principles of responsible government; and

- limitation of the powers of the Senate to the extent necessary to eliminate the possibility arising of the Head of State exercising discretionary power to resolve a conflict between the two Houses.

This would mean:

(1) in the case of the powers expressly given to the Governor-General by the present Constitution and stated to be exercisable on the advice of the Federal Executive Council

- retain, with provisions to clarify the position of the Federal Executive Council as representing the Government of the day;

(2) in the case of the powers expressly given to the Governor-General by the present Constitution, but with no indication as to how they are to be exercised

- spell out in detail the applicable rules, taking into account the Resolutions adopted by the Australian Constitutional Convention in 1983 and 1985, and the Recommendations of the 1993 Republic Advisory Committee;

(3) in the case of the reserve powers of the Governor-General (not expressly stated in the present Constitution) in relation to the appointment and dismissal of Prime Ministers and the dissolution of Parliament

- spell out in detail appropriate rules to cover each situation, making it clear that the Head of State retains no independent personal discretion, taking into account the Recommendations of the 1993 Republic Advisory Committee and provisions of other Constitutions where these rules are fully codified;

(4) in the case of the Senate's power to block supply, not expressly limited by the present Constitution

- amend the Constitution by a provision removing the Senate's right to reject or significantly delay bills appropriating moneys for the ordinary annual services of the government.

ATTACHMENT TO WORKING GROUP 7

RESOLUTION A

REPUBLIC ADVISORY COMMITTEE 1993: COMPLETE CODIFICATION MODEL

1A. Executive Power of the Commonwealth

1) The executive power of the Commonwealth is vested in the Head of State and is exercisable either directly or through Ministers of State (including the Prime Minister) or persons acting with their authority.

2) The executive power of the Commonwealth extends to the execution and maintenance of the Constitution, and the laws of the Commonwealth.

3) The Head of State shall exercise his or her powers and functions in accordance with the advice tendered to him or her by the Federal Executive Council, the Prime Minister or other such Ministers

of State as are authorised to do so by the Prime Minister.

4) Subsection (3) does not apply in relation to the exercise of the powers or functions of the Head of State under sections 2A, 3A(4), 5A and 6A.

2A. Appointment of the Prime Minister

1) The Head of State shall appoint a person, to be known as the Prime Minister, to be the Head of the Government of the Commonwealth.

2) Subject to subsection 3A(4), whenever it is necessary for the Head of State to appoint a Prime Minister, the Head of State shall appoint that person who commands the support of the House of Representatives expressed through a resolution of the House, and in the absence of such a resolution, the person who, in his or her judgment, is the most likely to command the support of that House.

3) The Prime Minister shall not hold office for a longer period than 90 days unless he or she is or becomes a member of the House of Representatives.

4) The Prime Minister shall be a member of the Federal Executive Council and shall be one of the Ministers of State for the Commonwealth.

5) The Prime Minister shall hold office, subject to this Constitution, until he or she dies ore resigns, or the Head of State terminates his or her appointment.

6) The exercise of power of the Head of State under subsection (2) shall not be examined in any court.

3A. Other Ministers

1) Ministers of State shall be appointed by the Head of State acting in accordance with the advice of the Prime Minister

2) One of the Ministers of State may be denominated Deputy Prime Minister.

3) Subject to this section, the Head of State shall only remove a Minister from office in accordance with the advice of the Prime Minister.

4) Upon the death of the Prime Minister, the Head of State shall appoint the Deputy Prime Minister or, if there is no Deputy Prime Minister, the minister most senior in rank, to be the Prime Minister.

5) In this section, "Minister" does not include the Prime Minister.

4A. Dismissal of the Prime Minister—no confidence resolutions

1) If the House of Representatives, by an absolute majority of its members, passes a resolution of confidence in a named person as Prime Minister (other than the person already holding office as Prime Minister), and the Prime Minister does not forthwith resign from office, the Head of State shall remove him or her from office.

2) If the House of Representatives passes, other than by an absolute majority of its members, a resolution of confidence in a named person as Prime Minister (other than the person already holing office as Prime Minister), and the Prime Minister does not within three days resign from office or secure a reversal of that resolution, the Head of State shall remove him or her from office.

3) If the House of Representatives passes a resolution of no confidence in the Prime Minister or the Government by an absolute majority of its members and does not name another person in whom it does have confidence, and the Prime Minister does not, within three days of the passing of that resolution, either resign from office, secure a reversal of that resolution or advise the Head of State to dissolve the Parliament, the Head of State shall remove him or her from the office of Prime Minister.

4) If the House of Representatives passes a resolution of no-confidence in the Prime Minister or the Government other than by an absolute majority of its members and does not name another person in whom it does have confidence, and the Prime Minister does not, within seven days of the passing of that resolution, either resign from office, secure a reversal of that resolution or advice the Head of State to dissolve the Parliament, the Head of State shall remove him or her from the office of Prime Minister.

5A. Dismissal of the Prime Minister—constitutional contravention

1) If the Head of State believes that the Government of the Commonwealth is contravening a fundamental provision of this Constitution or is not complying with an order of a court, the Head of State may request the Prime Minister to demonstrate that no contravention is occurring or that the Government is complying with the order.

2) If, after giving the Prime Minister that opportunity, the Head of State still believes that such a contravention or non-compliance is occurring, the Head of State may apply to the High Court for relief.

3) If, on application by the Head of State, the High Court is satisfied that the Government of the Commonwealth is contravening a provisions of this Constitution or not complying with the order of a court, the High Court may grant such relief as it sees fit including a declaration to that effect. The High Court shall not decline to hear such application on the ground that it raises non-justiciable issues.

4) If on an application by the Head of State, the High Court declares that the Government of the Commonwealth is contravening this Constitution or

not complying with the order of a court and the Prime Minister fails to take all reasonable steps to end the contravention or to ensure compliance with the order, the Head of State may dissolve the House of Representatives.

5) If the Head of State dissolves the House of Representatives under this section, he or she may also terminate the Prime Minister's commission and appoint as Prime Minister such other person who the Head of State believes will take all reasonable steps to end the contravention and who will maintain the administration of the Commonwealth pending the outcome of the general election following the dissolution referred to in subsection (4) above

6) The exercise of the powers of the Head of State under this section shall not be examined by any court.

6A. Refusal of dissolution

The Head of State shall not dissolve the House of Representatives—

a) on the advice of a Prime Minister in whom, or in whose Government, the House of Representatives has passed a resolution of no-confidence, if the House has, by an absolute majority of its members, also expressed confidence in another named person as Prime Minister;

b) on the advice of a Prime Minister in whom, or in whose Government, the House of Representatives has passed a resolution of no-confidence, if the House has, other than by an absolute majority of its members, also expressed confidence in another named person as Prime Minister, unless the House has reversed the resolution;

c) while a motion of no confidence in the Prime Minister or the Government is pending; or

d) before the House of Representatives has met after a general election and considered wither it has confidence in the Prime Minister or the Government, unless then House of Representatives has met and is unable to elect a Speaker.

For the purpose of paragraph (c), a "motion of no-confidence" is one which expresses confidence in another named person as Prime Minister and is to come before the House of Representatives within eight days.

Moved by Mr Evans; seconded by Ms Kelly.

RESOLUTION B

Any codification of powers should include a provision enabling the Head of State to refer any Bill to the High Court for a decision as to its constitutionality.

Moved by Mr Jones; seconded by Councillor Bunnell.

CHAIRMAN—We will now take speakers from the floor for five-minute intervals. They may give notice of amendments that they intend to move and move amendments that they wish to move. The three speakers of whom I already have notice are Mr McGarvie, Dr Teague and Mr Michael Hodgman.

Mr MCGARVIE—I would like to speak about codification. I am totally opposed to codification. My opposition falls into two categories. I emphasised in my speech yesterday the desirability of resolving this public issue without distracting people from voting because they fear or distrust the means being used. My second objection is that codification is inconsistent with our system. It is a panacea, adopted to cloak the inherent defects of some of the models that are being advanced here.

There are difficulties in codification. What better example could there be than the history of the proposal for dismissal in the model which has a president elected by a two-thirds majority of both houses? Originally, it was recommended that dismissal be by a two-thirds majority of both houses. Presumably the authors of that were quite unaware that that meant that the president would be undismissable.

I raised this issue in Australian newspapers on 1 May. It was not, apparently, appreciated by the sponsors of those models until exactly nine months later—yesterday—when it was changed to dismissal by a majority of the lower House. The other objection which I raised on 1 May has still not been addressed. No-one has yet looked at the fact that the presidential power would include power to adjourn, and power to prorogue parliament and stymie dismissal.

Very intelligent people have engaged in this process of codification. They are still patching. They are still seeking to alter. That should be a very good warning to us all. It will take an enormous amount of time. It is Dr Evatt's idea. He put it forward in his book in 1936. Every attempt to reach consensus since has failed and if the monarchists here were cynics they would have said, 'Yes, we will adopt a republican president model, but

everything must be codified.' That would have adjourned proceedings for another 60 years. They did not.

There is a balance between head of state and head of government now which allows for flexibility and which allows for future development. Anyone who doubts that should read Dr Evatt's book. Dr Evatt was a very bright man. The things that he would have codified, such as having a codified provision on which law courts would decide whether a government had a mandate for a particular bill going through parliament, were obviously sensible and rational then or else Dr Evatt would not have adopted them. They would be laughed out of court today. That shows how important it is that we not stultify ourselves by putting in codes this great developing constitutional system that has given us good democracy.

I will say something briefly about the reserve power. I think everyone would agree with what Malcolm Turnbull said in *The Reluctant Republic*, that the complaint against Sir John Kerr was not dismissing Mr Whitlam; it was doing it too soon and without warning. It has been emphasised that while the Senate has power to reject supply that reserve power needs to be there. It is actually an exception from the convention that the Governor-General act on the advice of ministers. The sanction against misuse of that power—and I say this as one who has been a Governor; one thinks about these things—is that at the time when one occupies a position like that one is of advanced years and one's reputation is very, very important. Having seen what happened to the reputation of Sir John Kerr, there will never be another Governor-General or another Governor who will depart from the ordinary precepts that cover it. I support the motion and I oppose codification root and branch.

Dr TEAGUE—The same powers, no more and no less. There are, I believe, a clear majority of us in this chamber who want to see in any new republican constitution a transfer from the powers of the Governor-General to the powers of the president the same powers, no more and no less. I, a former Liberal senator for 18 years from South Australia and the No. 1 Australian Republican Movement delegate from South Australia—

Mr RUXTON—Thank goodness for the 'former'.

Dr TEAGUE—from everywhere else but from Bruce's corner, am wanting now to appeal to all those in this chamber who have not yet made up their minds on the votes we are to take today. We have seven resolutions before us from the seven working groups. I believe that three of these resolutions can be supported by this Convention today and for the resolutions group to look at the wording of those three resolutions and to bring them back in an integrated, cohesive form as part of the makings of the model that can then be put on the final day. So pro tem, and without great inconsistency, I urge you strongly to support resolution No. 1, the one that former Governor McGarvie has just strongly spoken in favour of. Resolution No. 2 is essentially the Keating government's model for a republic: codification only to the extent of reference as set out in the 1995 model the then Prime Minister put forward and that the group has argued for today.

The third and final resolution that I believe we can all seek to support is resolution No. 4, which is for partial codification. It has been well argued by Michael Lavarch, by Malcolm Turnbull, by Anne Witheford and by Steve Vizard—Steve very effectively summed up the issues just a few minutes ago—that partial codification is realistic, even if a bit ambitious. It is much more ambitious than No. 1 and No. 2. Let us have No. 1 and No. 2—we can fall back on that—but let us see whether we can get No. 4. If we can get partial codification in the form that was set out by the Republic Advisory Committee, then with contributions made by Professor Winterton, Malcolm Turnbull and Lois O'Donoghue it is their words we are directly commending in the circulated material. Let it be shown now.

Let me say very briefly that I believe it does not matter what happens to resolution 3—that overwhelming one, as Mary Delahunty put it. The substantial ones that remain are 5, 6, and 7. I am expecting that those who support the status quo will support No. 5. We understand that. It is my urging of

all of you who do not support the status quo that you vote against No. 5. That is the status quo. My colleague Peter Costello just now has gone way ahead of that in saying that the symbolisms of Australia at the moment are out of date and we need change. We are going to go ahead I believe with the words of 1, 2, or 4. Certainly anyone in the chamber who is wanting change should not support No. 5.

No. 6 and No. 7 are both too huge, too ambitious. One of them is the consistent ambition of my good friend former Senator Gareth Evans. It includes within it—this is No. 7—a denial, a change, an abolition of the Senate's power over supply. The small states will never agree to it. I do not agree with it. No. 6 is a collage that tries to enlarge the head of state's power. I believe that the majority of us here will not support it.

In summary, in all due respect to every delegate here, I urge you to support in today's voting No. 1, No. 2 and No. 4, and to vote against all of the others.

DEPUTY CHAIRMAN—The next speaker is Michael Hodgman, followed by Greg Craven, followed by Gareth Evans.

Mr HODGMAN—Mr Deputy Chairman and fellow Australians, make no mistake about it: this is the finest Constitution in the world—no ifs, no buts. I love it, I will defend it and, if necessary, I would be prepared to die for it because the rights and freedoms which we enjoy today—

Mr CASTLE—The next Premier of Tasmania.

Mr HODGMAN—no, you will be waiting a long time—are in this Constitution. The Hon. Richard McGarvie is so right: they are not codified. That is why they are great. The great strength of this Constitution is that the royal prerogatives, the executive discretions, the Governor-General's powers and the fundamental rights and freedoms of all of us protected by the prerogative writ are not defined. That is exactly as it is in the unwritten Constitution of the mother of parliaments.

Do not think it was a mistake that the founding fathers determined that we should unite in one federal, indissoluble Commonwealth under the Crown. It is the Crown which is our great protector and our great strength. The moment you codify it, the moment you interfere with it. The moment you tamper with this constitutional tapestry, pulling out a thread here and a thread there for minimalist satisfaction, you destroy it.

Read Professor George Winterton's book and find out what happened in Ireland. I am one-eighth Irish and I am Catholic to boot, so I can tell you this one. In 1921 the Irish discovered to their horror that they had abolished all the royal prerogatives. They had no Chancellor of the Exchequer. For a time they could not impose or collect taxes.

Look at what you do to the High Court of Australia. Have any of you republicans had a look at section 75 of the Constitution which expressly sets out the original powers of the High Court of Australia? Look at them: 'In all matters arising under any treaty'—that is part of the royal prerogative. In relation to matters 'Affecting consuls or other representatives of countries', that is part of the royal prerogative. In relation to matters 'Between States, or between residents of different States, or between a State and a resident of another State', that is the royal prerogative. And last but not least, 'in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth'. The great defender of the rights of the citizens, where do you get your prerogative writ, you republicans, when you wipe them all out?

What happens if you codify them and miss them out? To codify is to proscribe. To proscribe gives you a situation where the rights of Australians are in the hands of the very politicians in Canberra, you arrogant, elitist republicans, to whom the people of Australia have said—73, 74 and 78 per cent of people have said this—'If we're going to have a republic, we want to elect the president.' But Malcolm Turnbull, sadly my own Prime Minister and some in the Labor Party have said, 'Oh, no; we wouldn't leave such an important decision to the people of Australia.'

Let me tell you this: I will fight the republic right down the line, but if it comes to the crunch, don't tell me that Australians will not have the right to pick their own president. I

am a First Fleeter descendent. My relatives fought and died in the Boer War. Private Vincent Hodgman died. Don't tell me Australia was not a nation at Gallipoli. Don't tell me that Australia was not a mature, independent nation with the statute of Westminster. Don't tell me that Australia was not a mature, independent nation with the Statute of Westminster Adoption Act of 1942. And don't tell me that Prime Minister Hawke mucked it up with the Australia Act of 1986.

What are you all on about? This is the greatest Constitution in the world. And you want to play with it, tinker with it, to satisfy a few chardonnay-sipping socialist republicans in Sydney or wherever. I will tell you something for nothing: in Tasmania there were six positions up—two republicans distinguished at that; that is all they got. We were only 300 votes off getting four constitutional monarchists. Have a look at the situation in South Australia. The leader of her Majesty's loyal opposition in that state, the Hon. Mike Wran, I have a healthy regard for. He correctly predicted to me at the Adelaide Cup what the result would be in South Australia. Have a look at the situation in Queensland. Have a look at the situation in Western Australia.

I will conclude. If I were Machiavellian, which I am not, I would say to you, 'Yes, put this resolution through; don't let the people vote on it'—that would guarantee the death of the republican campaign—'and, secondly, start codifying the prerogatives, the rights, the freedoms.' I tell you what, the people of Australia will throw that out neck and crop. The Hon. Richard McGarvie was right. I have tried in my own inadequate way to support what you say. So you have got my support 150 per cent. Thank you.

DEPUTY CHAIRMAN—Professor Craven, the original intention had been that these sparkling five-minute contributions would be taken from your own places. But we seem to have established a precedent. You do not feel strong enough to break it?

Professor CRAVEN—No. Mr Chairman, I stand to support the resolutions of the working group on which I served, Working Group 1, which as everybody here would be aware represents the most minimal option before this Convention. Even so, I would point out that that working group has been prepared to move towards those who might want something more. There is a minor modification which provides the Governor-General will always act on advice. Reservation and disallowance will disappear from the Constitution.

I would say for my own part, although I do not know whether I go for all the members of my working party, that I would be prepared to consider the question of incorporation by reference, so long as there was an appropriate clause of non-justiciability in there. That is something that one would have to see come back from the resolutions group. What I would not do, with great respect to my colleague Dr Baden Teague, is countenance option 4. Option 4 is partial codification, but frankly it is partial trouble. The great advantage of option 1 before this Convention is simple: it is winnable at referendum.

Full codification would involve fighting—and I here address my remarks particularly to the republican delegates—on two fronts. It would be the constitutional equivalent of the *Titanic*, and I do not propose to go down with that vessel. I think you have to ask yourself a question: do you want a republic, is that your game, or do you want codification? You are not going to have both. You do not need to have both. You do not need codification. As Mr Vizard so ably pointed out, there does not seem any present danger of Sir William Deane running amuck. As I was at pains to point out, you will not get the transparency you might hope for from codification. You will not be able to codify them effectively and with consensus and you will not be able to instil flexibility.

The real question you have to ask is why you would want to try when it presents such a danger to your cause. May I suggest an answer to that—and, if it comes across as an accusation, it is an accusation against me as well. There is in all these exercises something called founding fathers syndrome, or in this Convention, mercifully, founding parents syndrome: the enormous temptation to put one's signature at the bottom of the Constitution. I do not want my signature at the bottom

of the Constitution; I want a good Constitution, and that is what we all should want. We should forget codification as our tilt—if that is what it is—at constitutional immortality.

We must have, if there is to be a republican proposal, a defensible position; a position defensible at referendum. As someone remarked to me at lunch, this referendum will not be conducted exclusively in Brunswick Street and in Bondi. It will take place in unfashionable places like Perth and Glen Waverley as well and you will have to convince those electors just as firmly as those of the more 'enlightened'.

I think we should be cautious in relation to the Irish model. I have had the virtue of reading the Irish Constitution from beginning to end. I fear that is a virtue that may not be shared by some of its greatest adherents here today. It is an admirable constitution, the Bunreacht Na hEireann, in Ireland. But the thing we must remember about comparative constitutions is that constitutions are like cane toads: introduced out of their element, and their natural predators and balances may not exist. I would caution for that reason against the power of referring a bill to the High Court. This is a potent power for a president to stigmatise the action of an elected government as unconstitutional. It is a power whose consequences are untried and unpredictable, and I warn you against it.

The only exception to codification of course is as my working party said. Were we to adopt what I regard as the ruinous course of an elected head of state or the marginally less ruinous course of a head of state dismissible only by a two-thirds majority of parliament, then full codification would be necessary. But I think, as I said this morning, that would simply be a case of bowing to the grimmest of grim necessities and a necessity that we must hope never arises. I commend the report and the resolutions of Working Group 1 to the Convention.

DEPUTY CHAIRMAN—There are two people who have indicated that they want to move amendments from their working groups. I understand they can do it quickly. We need to get the paperwork done so that we are in a position to have an up-to-date version. Julie Bishop will move for her group and then Malcolm Turnbull will move for his group.

Ms BISHOP—Just quickly, there are a couple of points of clarification in respect of the resolution of Working Group 2. The matrix that was put out indicated that we were suggesting codification of the reserve powers. That in fact was not the case. It was to include in the Constitution a clause specifying that the powers of the head of state must be exercised in accordance with existing conventions, as opposed to codifying the reserve powers.

When one looks at our resolution included in the papers circulated this morning, our working group has suggested an amendment along these lines:

> Paragraph (a): amend the paragraph by inserting after 'McGarvie model', 'and dismissal by the Prime Minister or a small majority of the House of Representatives'; and omitting subparagraph (ii).

Subparagraph 2 is taken out because we suggest it is more elegantly expressed in the amendment, and paragraph (b) remains: 'If elected by popular or direct election that the powers be limited and specified.' I so move.

Ms THOMPSON—I second the motion.

Mr TURNBULL—In respect of resolution 1, I move: First paragraph: at the end of the paragraph, add 'which would be incorporated by reference along the lines of the words at page 94 of the Republic Advisory Committee Report'. I do not think Professor Craven will have any trouble with that, but that is just so there is some language which said, apropos the reserve powers, they will be governed by the conventions that have hitherto applied. I foreshadow an amendment to resolution 2 that paragraph (a)(ii) be deleted.

DEPUTY CHAIRMAN—That has already been moved.

Mr TURNBULL—Fine. In that case, I have a third amendment. I move:

> That resolution 1 and 2 be considered together.

They would now be substantially the same.

Professor CRAVEN—I second the motion.

Mr GARETH EVANS—Without repeating any of the things I said this morning in support of the resolution of Working Group

7, I want to say a couple of things about what is involved in that resolution and to respond to some of the objections and challenges that have been made to it. It is, in fact, the boldest of the resolutions before the conference both in the degree of codification that is contemplated and in the degree of limitation of powers of the head of state and the Senate as well that is also contemplated by it.

I should add in response to what Greg Craven said a moment ago, though, that it does not by any means go all the way down the path of the Irish Constitution, although in the respects that I have mentioned it has much in common with the Irish Constitution. In particular, resolution A from Working Group 7, which I am moving, makes no provision for any increase in the powers of the head of state by way of referring bills to the court. That is the subject of a separate resolution and should not be confused with the matters in issue here.

The argument for Working Group 7's resolution A—the codification and strong limitation model—is twofold. First of all, it is worth doing in its own right because there is too much that is vague, uncertain, ambiguous in the existing Constitution and which deserves to be clarified and also because there are simply too many untrammelled discretions in the existing Constitution which also deserve to be limited.

The second argument for it is a quite different one. It is essentially the political one that it is absolutely necessary to embrace something like the Working Group 7 resolution if you want to go down the direct election path so far as the appointment model for the head of state is concerned. Frankly, there is no chance whatever of winning Australian Labor Party support for the direct election model—and I would suspect the support of many other people—without a very strong codification, a very strong limitation of powers model associated with that and without also addressing the problem of the Senate's power to block supply. For that reason alone, if you have enthusiasm—sneaking or otherwise—for the direct election model, please take seriously the necessity to go with us on the codification issue now before us, even though the codification and limitation model that I am proposing does absolutely stand on its own feet.

The opposition that has been expressed to all this has essentially been on three grounds: first of all, from some people here that the powers should not only not be reduced but also should be enlarged by the head of state, including in the context of a directly elected head of state. I think that view is simply quixotic frankly, in the circumstances. If it is put in terms of giving the people's representative—thus now directly elected—something more to do to reflect that people's representative status, that additional status and additional power would be acquired only at the expense of other people's representatives' powers and status and would be a recipe for unholy constitutional chaos within a very short time of the new system being introduced.

The second kind of objection we have heard to this particular proposal is that you cannot technically do it; that however much you try you can never anticipate every situation that might arise and have a properly laid out rule to deal with it. In response to that I can only say that I have been wrestling with this issue on and off for nearly 20 years now in various capacities, and I am simply not persuaded as a technical matter that that is true.

I think an awful lot of thought and effort have gone into devising ways through these various dilemmas. There is a good model before us in the RAC. There are a lot of good provisions in other constitutions which one could selectively embrace and the job can in fact be done. But, at the very least, even if you did at the end of this exercise leave some matters unattended to which might arise unexpectedly in the future, you would have dramatically circumscribed the area of uncertainty as compared to that which exists at the moment.

If at the end of the day there are some situations which arise which have to be addressed politically because there is no capacity for an umpire to deal with the situation, I do not think we should be too alarmed about that possibility. There is an awful lot of things in politics that can be resolved politi-

cally when there is no other way for an issue to be taken forward. Certainly that is what would have happened I think in 1975.

The final argument that you hear against this over and over again, and probably the strongest of all the arguments that have been put against Working Group 7 model, is that it is simply not practically or politically feasible to be as adventurous as I am proposing; that you could never get up a referendum proposal as far reaching as this. That is a matter to be tested, and the judgment of delegates around this chamber is a judgment that I am very interested to hear.

The biggest concern given the need historically for referendums to be supported by both major parties if they are ever to move forward is whether we could get the support of the coalition for something of this kind. Maybe that was a little implausible before today, but having heard that statesman like contribution from Peter Costello this afternoon a whole new window has opened. *(Extension of time granted)* Peter Costello is a man who, in the light of what he said here this afternoon, clearly has much more than just a sneaking admiration for the Irish Constitution. From what he has said, he is obviously someone who is attracted to a model which goes the whole way in terms of limiting the powers of the president and, in particular, attracted to a model which knocks off the power of the upper house to block supply. In taking that view, as I am sure he does, he is on a unity ticket with every Treasurer that has ever occupied the Treasury benches of this country through the whole course of Federation, whatever side of politics they are on.

Peter Costello is saying, 'You won't get a reduction of Senate powers in my lifetime,' but I frankly cannot believe that Peter means what he says in this respect. Peter, if you are listening, for you to say that is frankly a confession of impotence that I never thought I would hear from you. Do not succumb to a self-fulfilling prophecy in this respect. Get out and lead the charge and make yourself a constitutional hero. Be a giant among the wimps by whom you are surrounded. If you go down that constitutionally visionary path, out there on the next charger to me, between us we can produce a result which is not only desirable and technically achievable but also politically feasible. Do not be deterred by this argument about political feasibility. It is simply a matter of political will. I have great confidence that my colleague and perhaps new friend—I do not want to push it too far—Mr Costello will join me in that respect.

Mr HAYDEN—I would urge support for working group reports Nos 1 and 4. I find reports Nos 6 and 7 totally unacceptable for reasons I will come to in a few minutes. In the resolution from Working Group 1, the key point, in so far as I am concerned, is the last paragraph, where it is said that:

> In the event the head of state were dismissible by the Prime Minister or body acting on the advice of the Prime Minister, codification would not be necessary.

That is the basis on which I would support Working Group 1's recommendation. I would not support any suggestion of full codification. I do not believe full codification is a practical proposition. There are too many things that we cannot anticipate. No-one would have anticipated the circumstances in which what took place in 1975 occurred and the results that took place. Human behaviour is full of unpredictabilities and to try to provide full codification is to be too rigid in the sphere of operation in which the Governor-General or the head of state might have to act.

I accept Malcolm Turnbull's amendments to this particular working group report, incidentally. But many of the concerns I have had about the abuse of the black letter law power available to a Governor-General, should a Governor-General be so minded and there be inadequate control over him, have been answered by the rather measured and sober comments which were made by George Winterton this morning when he introduced the resolution of Working Party 4. Therein, he proposes partial codification—as I understood him—spelling out what is the practice on many matters already in place and, in those respects, spelling out things which should have been included in the Constitution in any case at the time it was drafted. He then goes on to mention that there must be a degree of

flexibility; that is, where the reserve powers cannot be codified—cannot be defined—and I believe that to be essential.

This is why I find some difficulty with Gareth Evans's passionately promoted resolution 7—passionately promoted in a quite a characteristic way. He wants to spell out in detail appropriate rules to cover each situation, making it clear that the head of state retains no independent, personal discretion. That is great in principle. I believe that the head of state should have his powers restricted to the minimal which are necessary for this system to function. But the fact is that, if we had a re-run of something similar to what occurred in 1975 and there was a sort of gridlock between the houses of parliament and the parties, there would have to be an early and decisive resolution of this matter, and I stress 'decisive' and 'early'—much earlier than occurred in 1975. The reason for that, very simply, is that we now have open exchange markets and disruptions to our political economic system—especially of major proportions—feed very quickly into the flow of currency. We would see the Australian dollar plummet overnight if we ran into such a situation.

We have seen what has happened in the region in recent times, how quickly those movements occur and how damaging they can be. We have seen, in less than a fortnight, how a re-rating of Australia's credit standing by an international credit rating agency had rather marked effects on the value of the Australian dollar. There is no room to fool about on these things. As much as I dislike what happened in 1975, I have come to recognise that something would have to be done sooner or later. I think it could have been done later then, but now it would have to be done sooner because of these circumstances, and the Governor-General of the day would have to have that power.

Mr GARETH EVANS—Oh, ha, ha!

Senator FAULKNER—Come on, Bill.

Mr HAYDEN—I am sorry, Mr Evans, but I have to put the interests of the country ahead of the ambitions of a particular political party in government.

Mr GARETH EVANS—Oh, how the mighty have fallen!

Mr HAYDEN—I regret that I have to disagree strongly with Working Party 6's proposition. It is elaborated by Clem Jones's intervention, I understand. It is a perfect formula for continuing clashes between the head of state and the parliamentary system. Once you try to distribute exercise of authority over executive matters, the way this is proposing, between the head of state and parliament then you will have nothing but political instability, and you will have nothing but political conflict and disruption. It is not an appropriate model for Australia to pick up.

DEPUTY CHAIRMAN—Before I call Neville Wran, there is a further amendment which John Hepworth will move.

Professor PATRICK O'BRIEN—I rise on a point of order. I am confused. We are discussing No. 1, are we not?

DEPUTY CHAIRMAN—No, we are discussing all seven or, really, all eight if you think of 7 as being 7(A) and 7(B).

Professor PATRICK O'BRIEN—If I want to speak on a particular one, how do I do that? Do I just put my hand up?

DEPUTY CHAIRMAN—Or you come in here and make me an inducement.

Mr WRAN—In the last couple of days we have had the benefit of a number of really brilliant set pieces which reflected the views of delegates from all political and social spectrums. Up to this point—and I hope the atmosphere that has been generated will be maintained until Friday week—there has been a positive environment in which delegates have been seeking to find real solutions to what is a real question.

I am a little troubled, after the set piece speeches of the last couple of days and after the work, good and all as it was, of the working parties and the excellent reports that we got from the working parties this morning, that this afternoon on a relatively short debate we are going to virtually decide—conditionally decide or, as the document says, provisionally decide—one of the core questions to be determined by this Convention: what shall be the powers of Australia's head of state? No

doubt tomorrow we will be entertained by a series of set speeches on how the head of state should be appointed or elected. We will then rush off into working parties, there will be a plethora of resolutions coming back and we will be asked to vote on those resolutions.

When you analyse them, the resolutions that came back reflect three situations. The first is that the powers of the head of state be incorporated by reference, the second is that they be defined by way of a partial codification and the third is that there should be a full codification. I can understand that resolution 6, which sets out to widen the envelope dramatically, will be totally unacceptable. But it seems to me a great pity that we will be deciding this core question, in somewhat of a hurry this afternoon, whereas what we should be doing, with respect Deputy Chair, is to have a menu of provisional resolutions go forward.

There can be only one final resolution but whatever becomes the draft or provisional resolution today is almost certain to finish up the resolution of the conference in a substantial form. I think there is a great opportunity for a real consideration of those three items contained within the working party's report, a real opportunity to genuinely consider them overnight and toss them around. We have some models here which for those who are constitutional lawyers or Governors-General are very easy to follow, but for most of us who do not fall into either of those categories it is quite difficult. I think the wise course for the Convention is to select a menu of these resolutions. Let us pick a final position when we come to it early next week, and I so move.

Mr RUXTON—Hold on a tick.

DEPUTY CHAIRMAN—I think the methodology we are proposing is precisely what you want, Mr Wran. It is very close to it. What is anticipated this afternoon when we have the voting is not to reach a final decision but it may be that we put up seven or eight resolutions. It may be that three or four of them might get support of over 50 per cent and a couple of them might get a very small vote, in which case you could really put them aside. It then goes on to the resolutions committee to work together to try to produce a kind of menu. I think what you want to move is very much what we have proposed to do.

Mr WRAN—That is good to hear but I think that, within the framework of the draft resolutions that go forward, those draft resolutions should reflect at least the key resolutions in the working party reports, and that would be brought about by Nos 1 and 2 being joined together—that has been suggested and that is almost inevitable; that is, powers by reference—and then No. 4, which is partial codification, and No. 7, which is codification. *(Extension of time granted)* What I am really saying is this: we had an excellent thing happen in this Convention yesterday. Somebody over here moved that we declare our hand immediately and that Australia should be a republic and—not unanimously but almost unanimously—we said, 'No, we will not do it that way; we have another nine days to go; let us take it step by step, brick by brick and try to come up with a fully thought out, fully satisfied result.'

That is the sort of thing that I am suggesting here. I do not think, even though there seems to be a weight against full codification, that is something we should just chop off immediately as if it is not worthy of consideration. I leave that to you to put it to the conference in the way in which I have suggested.

DEPUTY CHAIRMAN—Have you got it in writing?

Mr WRAN—I will put it in writing; it is only one line. The other thing I would like to mention is that we had not really considered before we came to the conference the Australian Republican Movement's position on the issue of abolishing the Senate's power to block supply. We have no official policy but, given our bipartisan nature, we considered whether we could have one. Accordingly, we have agreed that our delegates will vote on this question according to their conscience. Mr Turnbull, the chairman of the ARM, has considered his position and he proposes to abstain, feeling caught between his colleagues in the coalition and his colleagues in the

Labor Party. So I think that should be clear. Finally, for Mr Hodgman's benefit on what happens to the prerogatives: look at page 146 and 147 of the Republic Advisory Committee's report and you get a complete answer.

DEPUTY CHAIRMAN—I propose that after Mr Wran has written out the actual form of the resolution I might just put it without further debate.

Sir DAVID SMITH—On a point of order, I hesitated to interrupt Mr Wran while he was speaking but I would like to point out to the Convention that he spoke of three options, all variations of codification. I remind him that the status quo remains an option.

DEPUTY CHAIRMAN—I do not know that that would necessarily cut across the resolutions. He wants to make sure that what goes through to the resolutions committee ultimately reflects a range, and I think that can be accommodated.

Mr WRAN—I accept that entirely.

DEPUTY CHAIRMAN—The order of speakers is Mary Kelly, Clem Jones, Ann Bunnell, Adam Johnston, Paddy O'Brien and now Andrew Gunter.

Mr GIFFORD—On a point of order, I point out that yesterday I was told by the chairman that I would be able to talk this afternoon about the defects of the various motions, which presently are not yet at the resolution stage, and that I was to deal with the various ones separately. You have not mentioned my name.

DEPUTY CHAIRMAN—It is a great pity that the Rt Hon. Ian Sinclair is not in the chair. He will come back before the resolutions are put to the vote and he may, in his infinite charity, want to give you the call then.

CHAIRMAN—Yes, put his name down.

DEPUTY CHAIRMAN—Mr Gifford, we will put your name down after Andrew Gunter.

Ms MARY KELLY—I am seconding and supporting resolution 7A that came from Working Group 7. We have had a fair bit of exposition, so I want to make only four fairly simple points. The first is this: if you do not want a politician as a head of state, do not give to that office direct political powers. As for trying to depoliticise the office by carefully constructing the method of election or by culling or short-listing out anyone who has ever expressed an opinion on anything, all these efforts are fruitless. They are efforts directed at the wrong part of the equation.

Power is safest in the hands of the many rather than in the hands of one; that is our habit and history in Australia. Australians, based on their barely concealed dislike of their elected representatives in the two houses, have said loudly they do not want a politician as head of state. In fact, they do not even want politicians choosing their head of state. I repeat: if you do not want a politician as head of state, do not give to that office direct political powers.

The second point I would like to make is that resolution 7A is not revolutionary. The powers are mostly retained or clarified; some discretions are removed. People have referred to it as bold, as too huge and as the *Titanic*. I think they need to get out more because it looks to me—and I do not say this out of naivety—to be a fairly logical and plodding effort to retain most powers and clarify others. The Senate change is as conservative as it can be under the circumstances; it refers only to a narrow range of money bills, not taxation bills, et cetera.

The third point is that I reject the idea that, because all unpredictable events cannot be codified, known problems cannot be dealt with; because we cannot write down all unknowable future events, we are paralysed to deal with known present troubles. I do not buy that. We should move to eliminate uncertainty and ambiguity as far as practicable, and that is what it says. Ambiguity will be the death of democracy, not codification.

The fourth and last point—it is similar to the one that Neville was making—is that this is not a time to be cutting off options. I intend to vote for more than one resolution here because I want a chance to revisit them after tomorrow. You may well want to look at what full codification means, and if this was carried a group would write out that text

over the next few days so you could get another chance to deal with it. Remember, your support at this time is only provisional. But, as I understand it, if a resolution is lost its death is not provisional but permanent. I recommend 7A to you. Finally it preserves an important principle of responsible government which makes our future republic safe and workable.

DEPUTY CHAIRMAN—Timing is very tight, but we think we can go until perhaps 4.15 p.m. on the discussion then start the voting procedure at 4.15 p.m. There are a couple of procedural resolutions to be dealt with as well. Since we have seven speakers on the list, it means we will have to ask you to either speak very rapidly or with extraordinary restraint.

Dr CLEM JONES—I recognise that as a requirement, and I will speak for two minutes. I will not say all I intended to say. But one of the things I think is important is that, whatever we decide in relation to the working groups, we do not inhibit decision or debate on the question of election. They are fairly intrinsically bound together. The matter of election, of course, will be dealt with by working parties tomorrow. We do not want to inhibit that debate by refusing to pass particular working group recommendations which would so inhibit. Therefore, I support resolutions 4, 6 and 7.

In relation to 7A, which I will be moving in due course, the motion I will be submitting is a simple one and I expect it will generally be acceptable. It is also important for what it implies. It is important because it implies areas of responsibility which it gives to the president clearly and absolutely by codification.

The motion accepts that the people want a president elected by the people, that the people want a president who plays a significant role and it implies that the people want a person they can respect in the role of president and a person who does not have powers which will impact on the supremacy of the parliament.

In relation to that, I would like to respond to a remark made by Mr Bill Hayden relating to the model which we have put forward and submitted to delegates. There are some things in it which might not be acceptable. We pointed out that they are flexible. There are one or two things which might create conflict between the Prime Minister and the president, and 14 can quite easily be removed by 14(c), for example, by changing 14(d), which I will deal with later on. Otherwise, it is acceptable to the convention.

Councillor BUNNELL—I will be supporting A. I see resolution B as a further extension to 7A. It is unusual that I disagree with Gareth Evans, but today I do, in his simplistic view that the head of state should be ceremonial and symbolic. I work on a daily basis with a diverse group of people within a community. Generally, those people want a popularly elected head of state.

The polls reinforce that this is a widespread wish of the majority of Australians. The reason for this, I believe, is in a corresponding unhappiness with the current political system. The public is seeking the concept of a champion, if you like, of the constitution, someone who is above and outside the mainstream parties. This is one of the reasons the public uses the Senate as a house of review, when in fact its origins were as the states' house.

This motion proposes that the head of state have the power to refer legislation he or she deems unconstitutional to the High Court for quick review and comment. I have noted the comments that have been generally thrown through the auditorium about the issue of the High Court. I am sure members of the High Court have their own opinion about that. This provision supports the concept that the head of state is the champion of the constitution. This is not a new power; it is the current power in the Irish Republic. My fellow delegates, I urge you to support motion 7B.

Mr JOHNSTON—Unfortunately, I cannot be quite as animated as Neville Wran, but I will continue. I would like to foreshadow amendments to a number of working group proposals—Working Group 4, clauses 1, 3, 6 and 8, and Working Group 6 regarding treaties to be ratified by both houses of parliament explicitly. I will also seek to delete subsection 1 and section 8 of B. Also, on part

B, we need to amend paragraph (f) to identify both houses of parliament and I will seek to delete paragraph (h). Also on part 2 of the long motion, I would seek to take out the word 'not'.

My general comments are that I oppose, in all forms, attempts to codify powers of the Governor-General, head of state or whatever you want to call him. I believe that it should be assumed that those people who assume those offices would have the intelligence to deal with unforeseen circumstances as they arise. I also do not think it is that feasible to say that you can write down every possible contingency. You would end up with a constitution like the tax act.

The other amendments I have foreshadowed basically revolve around the fact that I do not think the acts of the Governor-General should generally be judiciable by the High Court. That brings the court into the act of politics. If we support the separation of powers, why would we want to make the High Court a political umpire? I thought that was the job of the Governor-General in extreme circumstances. That is why I would not support that.

Finally, whatever system we agree to, it would be very difficult to remove or change all our conventions. I think we should assume that Westminster conventions, as we understand them, continue to be binding. Anything else would not take 10 days but 10 years. That is why I move the amendments as circulated.

Mr WILCOX—Mr Deputy Chairman, I raise a point of order. I want to know what is before the chair and what the procedure will be. I came here this afternoon expecting to vote on certain matters, maybe in some preliminary way. I was not sure whether they were preliminary or final. Mr Wran said he had a one-line amendment or new motion which was going to make everything clear. Please tell me which rule of debate we are operating on and how we go on from here? I am not blaming you, Mr Deputy Chairman, or anyone else, but we are trying to do, not in even in two weeks, but in two days what the founding fathers took two decades to do. We might want a little more time to catch our breath. Please direct us.

Mr WRAN—Point of order, Mr Deputy Chairman: I have considered the appropriate way to deal with the proposal that I put. In the light of what you have said and the way in which you have put the motions, the motions can be put in the ordinary way and we can vote on the motions Nos 1 to 7.

DEPUTY CHAIRMAN—In answer to the point of order, and I did explain this a few minutes ago, we are really dealing with the seven reports—or strictly eight reports because No. 7 is 7A and 7B—together. It is not a final disposition; it is possible for you to vote for two, three, four or however many you like. Those that receive a majority of votes will go on to the next stage. The resolutions committee will meet tomorrow. It has already prepared a matrix which puts the seven reports together so that we are able to come up with a single set of propositions that can come up towards the end of the entire procedure. What we are really deciding today is whether, of the seven points on powers, all seven go on to the next stage or some of them die.

Mr WILCOX—By leave or any way, Mr Deputy Chairman. Thank you for that explanation because it has helped me and I hope it has helped a number of other delegates. It has helped me because at least we now know that, if some of these proposals from the working groups do not pass, then it will save the resolutions committee quite a lot of work. That is part of my objection.

DEPUTY CHAIRMAN—Yes, exactly.

Brigadier GARLAND—Point of order, Mr Deputy Chairman: what you have explained so far is as good as far as it goes. But I understand that there have been a series of amendments made to some of those motions which have been talked about and, with the noise that is in the rest of the chamber, it is very difficult for those of us who are a little bit hard of hearing to pick up what is being said. Are we going to receive some piece of paper at some stage of the game before we are asked to vote on those motions with all the amendments on them?

DEPUTY CHAIRMAN—With the exception of Adam Johnston's amendments, most of the amendments are fairly minor technical

things. With the miracle of technology, I understand that, when the Chairman comes back, you will see the text up on the screens so that you can work on that basis.

Mr RUXTON—Following on that point of order: this is for the non-intellectuals in this place—

DEPUTY CHAIRMAN—I did not know there were any.

Mr RUXTON—I suppose I have had some experience in the chair over the years. I would have thought that it would have been the normal thing to do to go through each motion one at a time, amend it and either carry it or throw it out.

Mr SUTHERLAND—They will eventually.

Mr RUXTON—I know they will eventually but, for goodness sake, it is one big confusion. It is like an Irish stew, and that is not a pun either. However, I was supporting Mr Wran in that we are trying to do two weeks work in a day and a half. If Clem Jones had his way yesterday, we would all have gone home and I was not going to give my expense cheque back. We just seem to be bolting on the most important issues in a very confusing way of debate. If you do not remedy it, Barry, I will blame you.

DEPUTY CHAIRMAN—I am prepared for that too. Essentially what we are deciding now is—and of course you will have the text before you in one form or another—whether more than 50 per cent of you are agreed that the report should go through to the next stage. It is not a final adoption but it may well be a final rejection. If some of the reports do not receive 50 per cent, then they will not go forward to the next stage.

Mr GIFFORD—Mr Deputy Chairman, you said there are only some minor corrections. I would like to disillusion you on that. The ones that I am proposing to put before you are major ones.

DEPUTY CHAIRMAN—I am sorry, do you have them in writing?

Mr GIFFORD—Not yet. Let us be fair about it, please; I have made my own notes which I sat up last night and did until about 2 a.m. and I have done it again this morning, because the drafting of these sorts of alterations is a very detailed and very difficult thing to do. Here you are trying to rush through. You went until 6.3O p.m. yesterday but now we have to get through by a quarter past four, which it is now. You have not even looked at the numbers that we are dealing with. I protest that it is most unfair to the people. There are critical alterations to be made and I am not using the terminology lightly. This is a field in which I have had a lot to do.

DEPUTY CHAIRMAN—I would have thought it would have been practical to have provided us with the draft so that they could have been typed up, incorporated and circulated, because this process has been going on for a while. What we are doing now is really determining in the broad which of those seven or eight propositions—eight including 7A and 7B—go on to the next stage. Even at the resolutions committee some preliminary work has been done. The resolutions committee will be working again tomorrow because what we will expect them to be doing is come back with some kind of package of proposals that relate to this area which will then be put and, of course, debated. It may be that your proposed amendments are more appropriate at that stage.

Mr GIFFORD—I would have thought they were fundamental.

DEPUTY CHAIRMAN—Yes, but it may be that we are not ad idem in this. What we are looking at is to say, 'Here are the broad areas about heads of power, whether you set them out or do not set them out' and so on. We need to get some indication from the meeting at this stage on which of those reports you want to go ahead at the next stage.

Mr GIFFORD—Yes, but the trouble is how do you do that when you have not dealt with basic problems in each of these motions?

DEPUTY CHAIRMAN—I can only repeat that, this morning when the reports were brought in, quite a long discussion followed where you might have had the opportunity to get up and state your point of view and foreshadow that you were going to circulate

amendments. We have had the secretariat there all day. It would have been possible to have had your amendments circulated and so on.

Mr GIFFORD—This morning I was not here because I was working on this very difficult problem.

DEPUTY CHAIRMAN—I have great sympathy for your point of view but I do not quite understand what we can do at this point. I think that if we go ahead with the proposition that we give broad approval to some of these reports going on to the next stage and some not, then there will be an opportunity tomorrow, I am sure, for you to do some further work and submit to it to the resolutions committee.

Dame LEONIE KRAMER—On a point of order: my understanding was that Mr Wran suggested that all these resolutions should go through unvoted on today to the next stage; is that correct?

Mr WRAN—You are misunderstanding—

Dame LEONIE KRAMER—Would you mind correcting me, Mr Wran?

DEPUTY CHAIRMAN—I think the intention is that, when the Chairman comes into the chair, there are one or two procedural motions about the order in which we put some of the propositions, and the Wran procedural motion—which, as I understand it, is in effect an endorsement of the process that we are doing—will be put then.

Dame LEONIE KRAMER—May I say, Mr Deputy Chairman, that I do not think many people are clear about what we are doing and I would like clarification of that also.

DEPUTY CHAIRMAN—May I say it again: we had seven reports from the working groups. What we are really determining at this stage is which of the seven reports secure majority support to go on to the next stage. It is conceivable—perhaps unlikely—that all seven will be agreed to by more than half the people here. That will be an indication that the resolutions committee has to deal with all of them. But if only four of them receive the support of more than 50 per cent, then only four of them will go on to the next stage.

Dame LEONIE KRAMER—I think that is a pretty undemocratic way to proceed. I am trying to reflect the problem of the previous speaker.

CHAIRMAN—I point out that the proceedings and the order of proceedings we are following were adopted yesterday, that the working groups and the pattern in which we are proceeding have been identified on successive occasions today and the purpose has been to try to ensure that we consider the matters that were identified as a result of the working group submissions. Unfortunately for those whose names were listed to speak between 4 and 4.15, that time has now expired. I believe that we have three minutes in the ringing of the bells, so we are able to have one of those speakers only. We did agree on our rules of debate that the bells would ring for three minutes before the division takes place.

Professor PATRICK O'BRIEN—I will be very brief. I just think that it is not acceptable that if we move to a republic we have a head of state whose powers are undefined for all practical purposes, so we need some form of codification. The question is what should or should not be codified and also what powers should be used at discretion. I have eight points I want to go through very quickly. But just to repeat: if the head of state loses all capacity to act with discretion, then the position would be even less powerful than that of the Governor-General bound by the conventions that apply to the Crown. What I propose in the following describes the very limited ways in which the discretion of the president or head of state should be preserved or eliminated in order to allow the head of state to fulfil the very limited but important role of ensuring that political power is exercised only according to the Constitution as agreed by the people.

Firstly, commissioning ministers and Prime Ministers: the president should preserve the capacity to commission ministers and the Prime Minister after a vote of the House of Representatives. This enshrines in fundamental law the prevailing Westminster convention and in fact diminishes the discretionary powers that the Governor-General presently

enjoys. A further Westminster principle could be preserved by ordering the president to remove the commission of any minister who loses a vote of no confidence in the House of Representatives or who the House finds has wilfully misled it or otherwise commits a serious criminal offence or breach of the Constitution.

Secondly, deadlock between houses: in the event of a deadlock between houses over supply, it may be desirable that the president or head of state retain the right to cause an election to come on, so long as the people also confirm or remove the president's commission at the same election, if it so wishes. In doing this, the flexibility of the Constitution is to be retained to deal with circumstances which may not be possible to foresee beforehand.

Thirdly, removal of the discretion to prorogue parliament: I know the ARM agrees that the power of prorogation is pretty redundant and should be removed. The discretion of the Governor-General or head of state to prorogue parliament should be removed and each house of parliament should be allowed to set its own sitting times, subject, of course, only to the provisions of dissolution for general election purposes. This strengthens the power of the parliament over the political executive.

Fourthly, removal of the power to veto bills: the Governor-General's powers to veto bills should be removed, but a discretion to submit bills to the High Court if he or she believes them to be unconstitutional should be granted to him or her. This right could be extended to other directions of the Prime Minister to the president. Finally, I favour Nos 6, 4, and 7, in that order.

CHAIRMAN—I understand Mr Gifford and Mr Johnston have amendments which they wish to submit. I point out to all delegates that on day 9 the conduct of affairs on that day will allow final debate on the question of which model for an Australian republic might be put to the Australian people in a vote. If you look at your orders of proceedings, you will see that it comments that the report from the resolutions group will bring forward for reconsideration a draft package of final resolutions. Instead of considering each of the resolutions and debating on them, during the last hour we have been looking at the seven, plus the change to Working Group 7 resolution, which means that is there are eight resolutions before us.

We are looking at all those eight resolutions, and amendments have been submitted as they have been received. If Mr Gifford and Mr Johnston have amendments and they are here, they will be submitted in accordance with the same procedures pertaining to everybody else. If there are further amendments to the resolutions which go forward, they can be submitted, provided they are moved and seconded, and we will find an appropriate time for that to occur. They can then be forwarded to the resolutions committee, and they will be submitted together with the resolutions report on day 9.

We are today considering eight resolutions. Of those eight resolutions, the intention is that all resolutions with amendments that receive more than 50 per cent of the vote of this Convention will go forward to the resolutions committee. The resolutions committee will look at those. Where there are similarities, they will be resubmitted in whatever form for day 9 reconsideration. Are there any questions about that procedure?

Mr GUNTER—On a point of order, when I moved resolutions from Working Group 6, I moved A and B separately, sequentially. Will they be presented for a vote in that way or in globo?

CHAIRMAN—They will be submitted as 6A and 6B. Mr Gifford, you had amendments. Are they available? Have they been handed in to the secretariat?

Mr GIFFORD—They will be, Sir. But I will have to write them out and then get them to the secretariat.

CHAIRMAN—We have been dealing with that matter since this morning, and our trouble is that we have run out of time. We are going to the voting of them. It means that your amendments will have to be considered subsequently. Can you write them out and they will be forwarded to the resolutions committee for consideration. The same applies

to Mr Johnston's amendments. If the resolutions go forward to the resolutions committee, they will be considered by them. If the resolutions to which your amendments are proposed to be made are not supported by 50 per cent of the delegates then they will no longer be considered by the Convention.

Mr GIFFORD—So that the matter is clear, I was working till quarter past one at lunchtime to try to get everything finished.

CHAIRMAN—I am sorry if there has been a misunderstanding. Your name was not on the list for this afternoon; perhaps it should have been. For that I apologise. In any event, we are now at the stage of the resolutions that we have received. If you would like to give us the amendments that you wish to move, they will be forwarded to the resolutions committee, if the resolutions to which they apply receive more than 50 per cent support from this Convention. We now have another amendment that I wanted to put to you.

Mr MOLLER—As I understand it, you are proposing that the amendments will go to the resolutions committee, that they will be referred to them by the Convention without consideration by the Convention.

CHAIRMAN—No, what I am proposing is that, if there are amendments for resolutions that go to the resolutions committee, they will be considered by the resolutions committee and they will report back here. No resolutions are being put as final resolutions until the resolutions committee has submitted them. When the resolutions committee come forward, they will have a number of proposed amendments of their own. If they wish to raise those that are canvassed by any member, they can do so. It will be for the resolutions committee to consider in the final form of resolutions what amendments they wish. When we pass provisional resolutions, they will come back to us. The resolutions committee will propose whatever amendments they will suggest and we will consider those amendments to the resolutions we pass. If they are adopted, they will then become the final form.

The amendment that was suggested by Nick Bolkus was that, in the order of considering these working group submissions, instead of dealing with them from 1 to 7B, we should deal with them in order of the extent to which the powers of the Governor-General are augmented. There would be some confusion in that, but I put it to the Convention that Mr Bolkus has suggested that the order should be 6A, 6B, 7A, 7B, 4, 1, 2, 3, 5. That is listed in order of the powers given to the Governor-General. It is virtually from the greatest power given to the new head of state down to the least power. The alternative way of considering it is in the order that the working groups submitted their reports to us. We are taking a vote on Senator Bolkus's amendment, seconded by Senator West, that the order of consideration of the Convention will be in that order.

Mr McGARVIE—On a point of order, is it practical to oppose that, or does time preclude it? I content myself by saying that that would induce procedural chaos. I totally oppose it.

CHAIRMAN—The motion is:

That the order of consideration of the Convention should be 6A, 6B, 7A, 7B, 4, 1, 2, 3, 5.

The alternative is that we will deal with them, as we have throughout the day, from 1 to 7B. Senator Bolkus's amendment is before us.

Motion lost.

CHAIRMAN—We will now deal with Working Group 1's resolution. Working Group 1's resolution was moved by Professor Greg Craven and seconded by Mr Richard McGarvie. The first proposition will be the amendment—in the square brackets at the end of the paragraph—which was moved by Mr Turnbull and seconded by Professor Craven.

The original resolution of the Working Group 1 is that part of the resolution that appears without the bit that is now highlighted in black. The amendment moved by Mr Turnbull, and seconded by Professor Craven, is that which is now highlighted in black. Our first vote will be on the words which would be incorporated by reference, along the lines of the words at page 94 of the Republic Advisory Committee report.

Before I put that amendment to that motion, I remind you that we are not voting finally. You will have a vote on each one of the

resolutions before us. In other words, you will be able to vote on nine resolutions, plus amendments. All those that receive more than 50 per cent of the vote of the Convention will be forwarded to the resolutions committee. If you have further amendments that you wish the resolutions committee to consider, you can send them, with the name of the seconder, to the resolutions committee. It will consider them and they will come back to the Convention for consideration as amendments on day 9.

Senator HILL—As it seems to me that there are four separate issues within this resolution covered by four separate paragraphs, shouldn't we vote on each paragraph separately?

CHAIRMAN—The proposal is that we should vote on each paragraph separately. I point out that we are not trying to deal with it with that precision today. What we are trying to do is to refer to the resolutions committee a series of packages. Senator Hill wishes to move the motion seriatim. Mr Johnston has seconded it.

Mr RAMSAY—I am not clear what it means. I see resolutions on the board which have two paragraphs, and the paper I have in my hand has four paragraphs. Are there words missing from the resolution? Are there further amendments to paragraphs 3 and 4?

CHAIRMAN—As I understand it, the first question I put will be that the amendment, which is that the four paragraphs be reduced to two paragraphs, with the words in black incorporated. That will be the first proposition you will consider. If that is lost, we go back to the four paragraphs, and it will then be relevant to consider Senator Hill's motion.

Mr RAMSAY—Is part of this first amendment the deletion of paragraph's 3 and 4?

CHAIRMAN—I am sorry, the other paragraphs are all as they are. The amendment is to the first paragraph of the resolution. In other words, there are still four paragraphs. The amendment was to the first paragraph, and those are the words that are in black. In other words, the only amendment is to the first paragraph, and the other three paragraphs stay as they stand.

Senator Hill has suggested that we consider each of those paragraphs seriatim. Before we move to that, I will take the vote on the amendment, because the amendment is to the first paragraph. The motion is:

That the words that are proposed to be inserted be so inserted.

Motion carried.

CHAIRMAN—We are therefore in a position where we now take Senator Hill's motion which is:

That we deal with the resolutions from Working Group 1 as four separate resolutions.

Motion lost.

CHAIRMAN—The resolution from Working Group 1 is in four paragraphs, as on your working group report, as amended by the words that are now added on the screen. I put Working Group 1's report, as amended.

Motion, as amended, carried.

CHAIRMAN—As my colleague suggests, that means that it now goes to the resolutions committee as a provisional resolution. It is passed by this Convention at this stage as a preliminary resolution. It is referred rather than carried.

We move to Working Group 2's report and amendment. The motion for amendment is:

That the words reported in Working Group 2's resolution be changed by the addition of the words 'and dismissal is by the Prime Minister or a simple majority of the House of Representatives' after 'McGarvie model' in paragraph (i) and the deletion of the whole of paragraph (ii).

Amendment carried.

Motion, as amended, carried.

CHAIRMAN—That resolution will also be referred to the resolutions committee.

Working Group 3's resolution has not been amended. The motion is:

That Working Group 3's resolution be referred to the resolutions group for consideration for re-examination by the Convention at a later date.

Are there any questions?

Motion lost.

Father JOHN FLEMING—I am unclear as to the majority on resolution 2. Did you say there were 152 people in the House?

CHAIRMAN—No, a number of delegates are absent.

Father JOHN FLEMING—I am not sure what constitutes a majority of the House.

CHAIRMAN—A simple majority of those present.

Father JOHN FLEMING—How many were in the House? Did we count abstentions?

CHAIRMAN—No, I counted a simple majority. In the final resolution, as we determined in the rules of debate, everybody's name will be recorded and whether they voted for, against or abstained. On this occasion, as you will note from the rules of debate, the requirement is that we determine it by a show of hands and a simple majority. At this stage it is a simple majority of those present. At the final stage there will be a different method of taking the vote.

I understand there were amendments to Working Group 4 and Working Group 6 received from Adam Johnston. These were not put. They were moved and seconded. I will put those to you. They are deletions. Working Group 4's amendment will be to their report. It is quite a long report, so we will deal with them as they come on the board. Mr Johnston moved with respect to Working Group 4's report that it be amended by the deletion of paragraph 1, so we will deal with Adam Johnston's first amendment because we cannot get them all up on the board. I think it is better that we deal with them one by one because there are a number of them and we will not be able to understand them otherwise. It is proposed that Working Group 4's report, which has eight propositions, be amended by, first, eliminating proposition 1. It was moved and seconded. We will deal with this one first. The motion is:

That proposition 1 be deleted.

Motion lost.

CHAIRMAN—The amendment is lost, so the words remain. Mr Johnston's motion, in the report of Working Group 4, is:

That paragraph 3 be deleted.

Motion lost.

CHAIRMAN—The motion is lost, so the words remain. Mr Johnston's further motion is:

That paragraph 6 be deleted.

Motion lost.

CHAIRMAN—Similarly with respect to paragraph 8, Mr Johnston's motion is:

That paragraph 8 be deleted.

Motion lost.

CHAIRMAN—We now put Working Group 4's resolutions, which at this stage consist of eight resolutions unamended. The resolutions were those that were distributed to you this morning. In summary, they are the same powers with codification of the conventions covering the use of reserve powers as binding rules. The motion is:

That Working Group 4's report with its resolutions be referred to the Resolutions Committee for consideration at a later stage of this Convention.

In fairness, we will take a count of the vote.

Motion carried.

CHAIRMAN—The motion is carried by a vote of 83 to 58, so that Working Group 4's report will be referred for consideration by the Resolutions Committee and for reconsideration on day 9. There is an amendment by Mr Hepworth to Working Group 5's report. Mr Hepworth proposed that there be a new clause 1—this is the sort of thing that the resolutions group can put in formal words. The motion is:

Delete clause 1; insert the following clause 1: Note that the states would be maintained and the present powers and their balance continue.

Are there any questions about the amendment?

Mr TURNBULL—What does it mean?

CHAIRMAN—The amendment is as highlighted in black—that that be added to Working Group's 5 report.

Motion carried.

CHAIRMAN—Working Group 5's report is the report of Working Group 5 with the addition of that paragraph that has just been included by the Convention, so it will be Working Group 5's report plus those words as inserted. The motion is:

That the report from Working Group 5 be referred to the Resolutions Committee for consideration by this Convention at a later stage.

The motion is lost 78 to 41. That cannot be right.

Ms PANOPOULOS—Mr Chairman, on a point of order: why can that not be right?

CHAIRMAN—Because there were more people than 41.

Ms PANOPOULOS—Maybe they abstained.

CHAIRMAN—There were more people than that voted the first time.

Ms PANOPOULOS—Maybe you should sack your tellers then.

CHAIRMAN—We are now up to eight tellers and we are trying hard to get it.

Ms PANOPOULOS—This is supposed to be a professional organisation.

CHAIRMAN—I hear your point of order. We will take another count. Those in favour of the reference of Working Group 5—

Brigadier GARLAND—Mr Chairman, I have a point of order.

CHAIRMAN—We are in the middle of a count. I do not take a point of order in the middle of a count. There is no point of order in the middle of a count. May I have a count, please. Those in favour of the reference of Working Group 5, as amended. There are 56 ayes and 78 noes, I declare the motion lost.

Motion, as amended, lost.

Brigadier GARLAND—When the motion was put the first time on the hands you said, 'Carried.' Then there was a bit of a murmur. Then you went back and had a vote and it was carried the second time around, according to the numbers.

CHAIRMAN—No, I was trying to make sure we had the votes right.

Brigadier GARLAND—Then you went back a third time. I find that very difficult to accept.

CHAIRMAN—I make no apology for trying to get the accurate count. I am trying to make sure we read the votes right, which I can tell you is not that easy.

WORKING GROUP 6

Broader powers for a new head of state

CHAIRMAN—We now have Working Group 6A to which there is an amendment to be moved by Mr Johnston.

Amendment (by Mr Johnston):

That subsection (g) now read:

negotiates and enters into treaties subject to ratification by both House of Parliament.

Mr GUNTER—Mr Chairman, on a point of order: after consultation with my seconder, we are prepared to accept the amendment as part of the motion, to save a vote.

CHAIRMAN—That amendment has been accepted as part of the motion. Mr Johnston, you also seek to delete subsection (j); is that correct?

Mr JOHNSTON—That is correct.

CHAIRMAN—The first amendment moved by Mr Johnston is:

Delete the words 'can refer any Bill to the High Court to determine its constitutionality;'

Motion carried.

CHAIRMAN—We now move to subsection (viii) and who can take emergency measures.

Mr JOHNSTON—I am seeking to delete that provision. I am most concerned that we would expressly give the head of state emergency powers. I am happy to accept it may be given as a convention, but I do not think it should be given expressly.

CHAIRMAN—Mr Johnston has moved:

That subsection (viii) be deleted.

Motion carried.

CHAIRMAN—I, therefore, now put the recommendations, as amended, of Working Group 6. The motion is:

That Working Group 6's resolutions be referred to the Resolutions Committee for consideration by this Convention at a later date.

Motion lost.

CHAIRMAN—We are now considering Working Group 6B. The motion is:

That Working Group 6B's resolutions be referred to the Resolutions Committee for consideration by this Convention at a later date.

Motion lost.

WORKING GROUP 7

Lesser powers of the head of state with codification

CHAIRMAN—I have an amendment from Professor Craven with respect to Working Group 7 that paragraph (4). The amendment is:

That paragraph (4) be deleted

Brigadier GARLAND—Is this Gareth Evans's motion?

CHAIRMAN—Yes.

Brigadier GARLAND—Then I'm going to vote against it.

CHAIRMAN—This is an amendment by Professor Craven that paragraph (4) be deleted.

Professor CRAVEN—Mr Chairman, may I say something?

CHAIRMAN—Yes.

Professor CRAVEN—I do not propose to speak to the motion, but it has just been pointed out to me that the third dash point in the preamble to these motions reflects paragraph (4) and therefore also should be omitted.

CHAIRMAN—We will take that as being an extension. As it is not a final motion, I think we will allow Professor Craven to amend his amendment. Does Mr Kilgariff, the seconder of the motion, accept that amendment?

Mr KILGARIFF—I do.

CHAIRMAN—We will deal with those separately. The proposal is that we delete paragraph (4), in accordance with the recommendation of resolution (a) of Working Group 7. Those in favour of deletion, please raise your hands. Those against deletion, please raise your hands. I declare that motion carried.

DELEGATES—No!

CHAIRMAN—Do you want a count? We will have a count.

Motion carried.

Mr GARETH EVANS—Mr Chairman, I raise a point of order. Can I just say for the record that, with the resolution thus denuded and emasculated, I no longer seek support for the remaining part of the resolution. I do not seek to withdraw it because it is not my resolution; it is the property of the committee. But I am not asking anyone to vote for it.

CHAIRMAN—That was an unusual point of order, but I think we have all noted what was said with interest. In the second part of the amendment, the motion is:

That the words from 'limitation' down to 'two Houses' be deleted.

Motion carried.

CHAIRMAN—I, therefore, move:

That resolution A of Working Group 7, as amended, be referred to the resolutions committee.

Motion, as amended, lost.

CHAIRMAN—There being no amendments, the motion is:

That resolution B of Working Group 7 be referred to the resolutions committee.

Motion lost.

CHAIRMAN—Just so that everybody is aware, I will read out which resolutions have been referred to the working group. We will then return to general debate on the question of whether Australia should become a republic. No. 1, as amended, was carried and will go to the resolutions committee; No. 2, as amended, was carried and will be referred to the resolutions committee; No. 3 was lost and will not be referred to the resolutions committee. Resolutions from Working Group 1 and Working Group 2 are going; the resolution from Working Group 3 is not. No. 4 has been referred; No. 5 was lost; Nos 6A and 6B were lost, as were Nos 7A and 7B.

We now have a list of speakers on the general question of whether Australia should be a republic. On the speakers list that I have in front of me, the first three speakers are Mrs Kate Carnell, the Rt Hon. Reg Withers and Mr Graham Edwards. At this time a number of working groups will also start to sit. Would those who are involved in the working groups please leave as quietly and as quickly as they can. I call Mrs Carnell to speak on the general question.

Mrs CARNELL—As a long-time and passionate advocate for a republic, the events

of Thredbo last year brought home to me yet again that our current system has passed its use-by date. I remember watching on television as Sir William Deane visited Thredbo soon after the disastrous landslide, and joined with the families as they grieved for the loss of their loved ones. There was our Governor-General expressing our sadness and our shock, representing our feelings and compassion to the families, just as he had done with such dignity to the families whose loved ones had been senselessly gunned down at Port Arthur just a year earlier. In a very practical and compassionate way he was filling the role as our head of state, as he and his predecessors have done so well; yet he is not our head of state.

I believe that the question of whether an Australian should be our head of state—the question of whether Australia should become a republic—has already been decided in the affirmative in the minds of most Australians. The most important questions now are: what sort of republic should we have; and when? I personally have nothing against the Queen and nothing against the system of constitutional monarchy that has served Australia so well.

This is not a debate about expressing our regret about our heritage. But Australia has moved on since the states knocked together a compromise constitution in 1897. It is time now that we grappled seriously with acknowledging that fact. To that end, in moving to an Australian republic, the objective must be not just the minimalist change replacing our Queen with a president, but to give the people of Australia more say in their government. If you like, this is about refreshing our vision of what it means to live in a democratic state—a state where the leaders draw their power from the people; a state where the citizens are sovereign. This is the sort of republic that we must endeavour to establish.

This is an opportunity to allow all Australians to feel more connected with the decisions that affect them. Put simply, I believe that a free and independent country like ours should have as its head of state a citizen from that country with the legitimacy and authority which can only flow from being directly elected by the people. We need a head of state that we know, we trust, we have faith in—that we own. We need a president we have chosen because they transcend party politics and a president that we are committed to because we, the people, have chosen and elected them.

As the millennium approaches, quite simply, we need a president for our times. My belief in our need for a president is long and on the public record, but it seems to me that the crux of the question is how they should be elected—and certainly the debate over the last few days has centred around that. I do not accept that the Australian people will take to the idea of party politicians choosing the president even if it were by a unanimous vote, let alone by a two-thirds majority. Frankly, they do not trust political parties—whether they be my own, the Labor Party, the Greens, the Democrats or whatever. The community quite seriously no longer has absolute faith in political parties.

We are looking for a different style of national leadership from that which political parties could provide. Inevitably, from my perspective, the choice of a president through this kind of negotiation between political parties to achieve a two-thirds majority would be a tainted choice or, worse still, a safe choice.

The politicians' argument for the so-called minimalist republic seems based largely on concerns that direct election of a head of state might upset our parliamentary system, which is code for 'let's leave the current system undisturbed'. That response merely serves to emphasise the point that today too much power is held by the executive at the expense of the legislature and the people.

The move to a republic provides the opportunity to see the parliament and the people exercising greater check on the authority of the executive. I appreciate, of course, that the direct election of the head of state would require changes to the Constitution to spell out clearly the powers of, and limitations on, the head of state. But our Constitution should be more relevant. It should not only spell out the powers of the head of state but also the

powers of the Prime Minister, the executive and the legislature.

When Australia's Constitution was discussed in the 1890s, I have no doubt that the decision of six separate states to form into a nation was an exciting prospect. When Federation happened, it was a huge leap into the 20th century. But I have to say you have only to go to a COAG meeting as the Chief Minister of the ACT or as this nation's longest serving health minister—and that is only three years—and to go to a Medicare agreement negotiation for you to know how those constitutional arrangements that were devised in 1901 simply do not suit our current needs.

A nation born of a compromise of states last century is a nation unable to meet the challenges of the next millennium. Time and time again, I have seen issues that deeply affect the lives of Australians—of heroin addiction, of the plight of people with a mental illness, or those with disabilities or indigenous Australians—get derailed in the bickering between states and territories, and the Commonwealth. But I am a realist and I believe that the party political system is the best way to achieve workable government and change. I suppose I would not be here today if I did not believe that.

But I have never stopped, as I know many of you here have not stopped, fighting for a better system of national leadership. This Convention gives us a very real chance to do exactly that. I believe that the Irish system does give us a useful guide as to what might be possible here: a president with strictly defined powers, supported by a council of eminent Australians, possibly comprising former governors-general, former Prime Ministers and chief justices. But I think it is absolutely essential that there are representatives from the indigenous people of this nation on that eminent group. The council of eminent Australians could also act as a form of preselection committee to determine the name of the people that actually end up on the ballot paper for our directly elected president.

Like the Irish system, I think we should have direct election by secret ballot based on the same sort of transferable voting system—as is the case in our federal elections. I think we should have an election every six years and a president that may be limited to two terms. With specified exceptions, the functions of a president would be performed on the advice of the government of the day. Like the Irish system, or even the practice that developed around this Convention, let the political parties realise that the president, while being entitled to be drawn from a political party, transcends party politics.

In fact, it is no small irony that party politicians who argue that we cannot possibly have a direct elected president because a party political figure would be divisive still at the same time believe that they are the only ones who can possibly choose that president in the future. This argument is obviously illogical. It defies the experience of other countries—most notably Ireland.

I think the last two presidents of Ireland are eloquent proof of the basic principle that people are the best guardians of democracy, that we can actually trust the people of Australia to elect the right person. Listening to the debate over the last few days, it seems to me that many people, even people who are elected themselves, do not believe that we can trust the community—a very strange argument. Ireland—a country where some of the basic rights of women are not recognised, where such things as divorce and contraception are forbidden—voted for Mary Robinson. She did not wear any sign of sectarian allegiance, but she chose to wear an AIDS ribbon as a sign of her concern for Ireland's disadvantaged people. Her successor from Ireland's troubled north continues to build those bridges in a strife torn area.

Australia needs a president desperately who can walk on the streets of Ipswich or Redfern or Wilcannia or Cabramatta. In a country where thousands of young people are homeless, in a country where our official unemployment rate is still over eight per cent, we need a president to keep our nation's attention on the plight of our disadvantaged people. We need a president whom we can be proud of; a president who will take this proud vibrant nation to the world; a president who can lead

trade missions to Beijing, to Bonn, to Johannesburg to open up trade opportunities in the world, to create jobs for Australians. We need an Australian president whom the US President can toast as an equal; a president who can open our own Olympic Games as the head of state of Australia. We need an Australian head of state who can argue our case in the UN.

In a country where one in four children who came here as refugees have been tortured, where the 1998 Young Australian of the Year fled her own homeland of Vietnam as a refugee, why not have somebody like Gus Nossal—one of the world's greatest medical researchers who fled his own native Austria at the age of seven in 1937—as a presidential nominee for the Australian presidential election in 2001? Or imagine Lois O'Donohue, Sir William Deane, Archbishop Peter Hollingworth—imagine if we had an election with the calibre of those people. Boy would that be an election worth voting in!

But, most importantly of all, it would be the people's choice of president that would seal the bond of trust between them and the national leader and so build up our faith in leadership in this country generally. When you think about it, none of the leaders in this country—or at least at the national or state level—are directly elected.

No doubt a president elected by the people might cause the Prime Minister and the government of the day some trouble. Maybe that would not be a bad thing. Australians would support a national leader who would challenge the complacent attitude of some people who think that our system cannot be improved and prove to those who cannot see the argument for change that we can have a stronger, better leadership than what we are getting currently.

This Convention gives us a once in a lifetime opportunity, a once in a millennium chance to begin drafting those changes in our Constitution; a Constitution that was put together last century in a time that was totally different to what we see in Australia today. There is a clear need for reform, but that reform runs right across the board into social areas. If anybody at this Convention believes that Australians are willing to accept a head of state, a president, a Governor-General, whatever the name might be, that politicians are going to elect, that they do not have any input into, I think they are wrong. I believe Australia has moved significantly past that.

As a head of surely one of the littler governments in Australia, I know that Australians are no longer willing to sit back and allow politicians to make decisions on their behalf. They want to make decisions for themselves. On that basis, I believe very strongly that we do need a directly elected president in this country. That certainly runs to such things as codification of powers, but all of that can be achieved if we accept one basic parameter: that is, a republic is an entity built on the people. The people have to have faith in the new president. The people will only have faith and will only own a president if they have direct input.

CHAIRMAN—We now have the pleasure of hearing one of the great parliamentarians of the last 30 years. He and I have known each other for a little while, the Rt Hon. Reginald Withers.

Mr WITHERS—Thank you, Mr Chairman. I suppose it is somewhat nostalgic to be back in this building. I have not spoken here since the only joint sitting of the parliament of federation which we had in 1974. If I was advising the Prime Minister about anything, I would be suggesting to him that he dust off the dust from those standing orders that you, Fred Daly and I and a number of others put together to run the joint session some 24 years ago—a joint session, mind you, which was caused by a double dissolution.

We have heard a lot today about the 1975 double dissolution. People are forgetting that that was the second time around; 1974 was the first. I do not want to dwell on that because it is one of the fascinating things that has happened over the last two days. Whilst we have been suffering almost as many cliches upon cliches as one gets used to in parliament and everybody talks about how we have to look forward to the next millennium, you all seem stuck in 1975 and you are not really yet into 1998.

I have been interested that all delegates seem to be fascinated that we are having a re-run of the 1890s. Could I correct you? We really are not. What we are having here is a re-run of the English parliament of the 1640s, the French estates of the 1780s and the Russian Duma of 1917. I suppose my colleagues over there and I are the first and second estate, the fourth estate is still up there, Mr Chairman, and I do not know where the third estate fits.

All of those three groups met to carry out some minimalist changes to their constitution. We seem to forget that that was the first attempt to have a minimalist change. What happened was that the forces of change took over. Those who wanted the minimalist change were swept aside by forces over which they had no control, and those three countries, a century apart, all eventually fell under a dictator—England under Cromwell, France under Napoleon, and Russia under Lenin.

To take the comparison further for today, I would suggest that the modern Mensheviks of our time are the ARM. They, like the Mensheviks of 1917, set out to have a few minimal changes in Russia. But eventually they were overrun by the Bolsheviks, who I think sit in the corner here. I think the modern day Bolsheviks are the elect the president people.

History tells me that the Bolsheviks beat the Mensheviks. I am quite certain, after listening to the debate for two days, that the Bolsheviks will again beat the Mensheviks—mainly because the Bolsheviks at this delegation have more brains, more energy, more passion and more commitment than the Mensheviks. So bye, bye ARM. You are going to get run over by the Bolsheviks. The reason the Bolsheviks will eventually win is that their argument for an elected president is the argument that the people want.

The ARM set out to convince us that there was only going to be minimal change. They started to present to the Australian electorate a model which looked like a small, furry, cuddly kitten that you could pick up and stroke and that would not scratch you back. It was something that you could hug to your bosom and it would do you no harm. But with the arrival of the Bolsheviks on the scene, with their 'elect the president', we now have a raging tiger out there. That is the tiger that the Australian electorate wants. It is no use everybody—the Prime Minister, the Leader of the Opposition and everybody else—saying, 'Take that model and we are off the road to disaster.' That is the road where you are going to end up. If we do end up on that road, the ARM will be cursed in history for letting this tiger out of the cage, because you can no more put the tiger back in the cage than you can put the genie back in the bottle. You have a heavy burden to carry, Mr Turnbull and your ilk, because you are going to do Australia enormous damage, no matter which model gets up.

But the interesting thing is that the ARM model will never get up. Why won't it ever get up? Very simply, the electorate will not have any republican model that does not have an elected head of state with the powers owned by the present Governor-General. Agreement by the major political parties that that would be the wrong way to go and that the best model would be by the election of parliament is certainly no guarantee of success with the electorate. In fact, when the major parties get together is when you have to be highly suspicious of the model.

We have just had an interesting example in the parliament of New South Wales, where all the parties in both houses got together and passed legislation in the early hours of the morning to enrich themselves by another $50,000 a year.

Mr RUXTON—Shame!

Mr WITHERS—Oh, yes, but that is what always happens when mainstream parties are all agreed. It is a sign that there is something funny going on. It is great for the mainstream parties but there is not much in it for Joe Blow outside.

The electorate will not vote for any change which will enhance the power of the politician. The few successful referendums we have had in this country have never empowered the politician. Of the few successful referendums post-war, the most sensible on in many ways that was put up was the one to break the nexus in 1967. Those lunatic senators—eight

of them, most of them from my side of politics—who went out and campaigned against that and against all the mainstream parties were successful. They were quite mad because it has led to the funny-looking Senate we have got; you cannot increase the Representatives without increasing the Senate. The defeat of the nexus was one of the worst things that happened to the Australian parliamentary system, but it was an illustration that the electorate will not vote for more politicians or to help politicians.

We have had a couple of referendums on simultaneous elections. The first was by the Whitlam government, which we in the Liberal Party opposed, and the second was by the Liberal Party, which the Labor Party supported. But, again, it was turned down because it was going to be to the benefit of politicians.

The amendment on the replacement of senators was carried overwhelmingly in this country because it was taking power away from politicians. We have had an interesting example here this afternoon, where there have been three amendments put up to the working party papers by members of the current parliament: three current senators and one ex-senator. They all got thrashed. Was it because their amendments were stupid? Or was it because none of us trust politicians? If the politicians are putting up those amendments, vote them down. I think that is what the electorate is going to do.

There is the argument that has been put that the electorate could not be so stupid as to elect a president at large. There is some belief amongst politicians that the electorate out there does not like instability in politics. If they do not like instability in politics, why do they keep voting for the Democrats in the Senate? Why do they continually vote one way in one house of state parliaments and another way in another? Why do they do that?

Why did the American public only last year vote for a Democrat president and a Republican congress? Because they were not prepared to give to either party total power. They did not trust politicians. If you imagine that somehow or other you are going to have a republic in which the politicians become more powerful at the expense of the head of state, think again, because nobody in Australia will vote for it. This whole exercise is not only going to be a waste of time; it is also going to be an enormous waste of money. If I had a lot more respect for people here, I would also say it was an absolute waste of talent, but that would be going too far, as my friend Jim Killen would say.

If parliament cannot give us a workable and understandable income tax act, why should anybody believe that they can codify the reserve powers of the Crown? The parliament has been struggling since income tax was introduced in 1914, yearly, sometimes twice and three times yearly, to give the Australian electorate a simple, clear, understandable income tax law. The last I heard about it, it weighed about three or four kilos and was about a foot high, and nobody any longer, not even the combined seven High Court judges, knows what is contained in the income tax act of Australia. Yet we are going to set about and codify the powers of the new republic. Really, we do kid ourselves. One thing that politics should teach you is to lose that sort of intellectual arrogance that somehow or other the gods sent you. If you read enough about the Greek gods, you know that hubris leads to nemesis, and the Greek gods had some lovely and very interesting punishments for those who committed the crime of hubris.

Where do we go? I may as well make a prediction, like everyone else. Let me look in my crystal ball. The most likely event coming out of here is that the ARM model will get up. It will most likely be the ARM model which will be put to a referendum, and I predict here and now it will most likely lose in every state. No matter how the ARM dress up their little furry kitten, the public out there will recognise it for the sabre-toothed tiger that it is. People do not run revolutions except to transfer power. That is the only reason you want change. There is no suggestion of any change to this new republic by any model that has been put up that it is all about the devolution of power. It is all about the concentration of power. It is the concentration of power from the Crown and the head of state to the

head of government. The electorate will not tolerate that.

The electorate will not tolerate the central government attempt to dictate to the states. The states will not tolerate the castration of the Senate. No matter what you may think of the Senate, no matter what you may think of 1975, what the Senate did in 1974 and in 1975 was overwhelmingly endorsed by the electors; yet 1975 is criticised by people as being undemocratic. It totally escapes my understanding how anybody can believe that the action of John Kerr in saying to the electorate, 'You must resolve this dispute between the two houses by a secret vote in the ballot box,' somehow or other was undemocratic. Those who claim that that was undemocratic one must be very careful about.

What all these ARM models amount to in the end is that the power is so concentrated on the Prime Minister that as long as he can hold his majority in the House of Representatives he is impregnable and undismissible. He is almost a dictator. Then they say, 'If the Prime Minister commits a crime, he can be dismissed.' If the head of state must do whatever he is directed to do by the head of government, and if I was the head of government and I was about to be prosecuted for a crime, I would direct the head of state to issue me with a pardon. There is nothing wrong with that; it is quite constitutional, quite legal. And a Prime Minister can entrench himself behind that power. That is why the head of state must not have his powers interfered with, because at the end he is the guardian of the people's rights. Any republican model you like to think of waters that down.

You may think it is all very interesting that everybody has all these numbers here, but I think the 60 per cent of people who did not vote for delegates to this election really knew what it was all about. They do not want to change; they have no intention of having a change. I say to my right honourable friend, who looks so distinguished in that chair, with or without a wig, that I predict that the ARM model will be put to the people and it will be overwhelmingly defeated in the six states of the Commonwealth because we don't trust politicians and we will not countenance a transfer of power from the head of state to any head of government.

Mr EDWARDS—I was, I must admit, moved yesterday at the start of our Convention when our national anthem was played and delegates spontaneously sang *Advance Australia Fair*. I felt that there was at least some common ground. I was rather saddened, however, to later listen to a number of speakers from the monarchist ranks who were, in my view, unnecessarily mean-spirited in their attacks on members of the Australian Republican Movement. We have been, for instance, accused of being dishonest, divisive, unpatriotic, ignorant of the Constitution, anti-British and anti the Queen, among other things. I am not going to respond to that mean-spiritedness because I think in the end the Australian people will make their own judgment. But I want to say to the monarchists that if yesterday's and today's example is the best you can do then I would despair for the future of Australia if you were running our country. I say this because you appear to reflect our past without in any way reflecting our great Australian heritage or character.

I am extremely pleased to be part of the Australian Republican Movement. We are a diverse group of people, from the cities, the bush, young, old, from all walks of life and with representation from most political parties. We are a unified group, from the robustness and energy of Malcolm Turnbull to the effervescent passion of Janet Holmes a Court to the quiet dignity of Hazel Hawke or the wisdom of Peter Tannock—all united in the view that we should have an Australian as our head of state. Indeed, I take this opportunity to thank the people of Western Australia and the Australian Republican Movement for giving me the opportunity to be a part of this Convention.

People have recently been asking me why, with my background as an ex-serviceman, I support a republic. I guess the reasons go back a long way, and they are in part related to our history. I well recall my days at school where I grew up with a sense of frustration because we were taught so little Australian history and so little about the real individuals

and occurrences that give and gave Australia its unique character.

I remember too as a young boy listening to the stories of veterans from Gallipoli, the Middle East and France and being told then by some of those veterans that one day Australia would break from the monarchy. I had the opportunity some years ago to visit Gallipoli. I must admit, it was an emotional experience. As I stood in awe at Anzac Cove, I came to understand the depth of feeling with which those men of my childhood spoke. Indeed, the first republicans I met, although I did not recognise it at that time, were some of those diggers who survived the horrors of the First World War.

I just ask you to reflect on these facts. In 1914-18 Australia had a population of some four million people. Of that sparse population, approximately 417,000 enlisted in Australian forces. Over 300,000 were sent overseas to serve on some three different continents. Sadly, 60,000 were killed and over 220,000 were wounded. That war on foreign soil ripped the heart out of our young nation. Indeed, I often wonder where Australia would be today if those young men had not been sacrificed for King and Empire.

Then there was the Second World War. At that time, with our own nation under immediate threat, our wartime Prime Minister, Curtin, had to fight bitterly with Churchill and Roosevelt over the deployment of Australian troops. In the face of their opposition, Curtin wanted our troops home. After months of argument, he had to override Churchill and order the return of our forces to prepare to defend Australia—and didn't they defend it magnificently. Then there was the war of my own era, Vietnam. Who could forget the slogan 'All the way with LBJ'?

It is my strong view that Australia has great cause to become a more independent nation with our own strong sense of self-determination and confidence in our own ability to decide our own future in our own regime in pursuit of our own destiny and security. Australia has played a great role in international war and conflict; yet, we have paid a terrible price for our own freedom—a freedom which should be fully and totally reflected in our own Constitution with an Australian as our head of state.

In the past, as a soldier and as a state member of parliament, I have sworn allegiance to the Queen, her heirs and successors. At all of those times I thought I should have been swearing allegiance to Australia and her people.

I am not anti the Queen. Indeed, I am proud of my British heritage just as you should be proud of whatever particular heritage you and your family personally bring to Australia. Know that I am not anti-British; I am just proud to be Australian and I want this reflected in our Constitution.

The move to have an Australian as our head of state is largely a symbolic change, but nonetheless an important change. It will not change our system of parliamentary democracy, which has served us well, nor should it, nor will it take us out of the Commonwealth. It is a change, however, that in my view will alter the way we feel as ordinary Australians, in our own hearts and minds, about our own country.

This Convention cannot make a decision on whether or not there will be a republic, nor can it change the Constitution. That decision ultimately and rightly can be made only by the Australian people.

The monarchists say to us—indeed, we heard it reiterated by Lord Waddy—that 49 per cent of Australians do not want to change our Constitution. I say rubbish, Sir. I say to you: if you and your fellow monarchists have the courage of your convictions and if your words are not just empty rhetoric then support the model we want and let that model be put to the Australian people and let them decide.

In conclusion, I took the opportunity the other day when I arrived in Canberra to quietly sit under the halo at the Vietnam veterans memorial and reflected on many issues that are personal to me but which strongly related to my attitude to a republic. It was a humbling yet balancing experience, particularly when you know that but for the grace of God and a bit of luck your name could well be up there with the others who lost their lives in that unfortunate conflict.

I hope I reflect that balance here when I say to the monarchists: you obviously think it is acceptable for Australian men and women to fight for this country and you think it is acceptable for Australian men and women to die for this country, yet you do not think it is acceptable or good enough for an Australian man or woman to be head of this country. As an ex-serviceman and as an Australian I find that objectionable. That is why I strongly and passionately believe that Australia should become a republic.

Dr O'SHANE—Firstly, I want to acknowledge that I stand on Ngunnawal land. I want to take this opportunity to acknowledge the privilege extended to me by my fellow Australians who elected me, an Aboriginal woman, to this historic Convention. There is an obvious sweetness to my being here, given that neither women nor Aborigines were allowed to participate in the Constitutional Convention of a century ago.

Furthermore, my election as a delegate to this Convention is an expression by the people of not only reconciliation but also a recognition that we indigenous and female Australians have an important role to play in shaping the future of our country. I am so proud to be here, and I humbly accept the enormous responsibility I carry in this nation-building process in which we at this Convention are engaged.

Whether Australia becomes a republic is no longer the question. It has been decided. Whether our fellow Australians express their opinions through media polls that they favour an Australian republic, they have already decided the question. When our fellow Australians voted in a voluntary postal ballot to send a majority of republican delegates to this Convention they had already decided the question. The Prime Minister's speech yesterday implicitly acknowledged that the question has been decided—notwithstanding that he reiterated his oft-stated position in favouring the perpetuation of a constitutional monarchy.

That modern Australia, the Australia that has developed since 26 January 1788 as distinct from the Australia of my ancestors, has a constitutional monarchy is a direct unambiguous consequence of our origins as a colony of Britain—a penal colony at that. As such, it was underwritten with the values of power, privilege, elitism, oppression and dispossession. It was blatantly exclusionary. It is no wonder then that the Australian Constitution, designed to institute a constitutional monarchy as the system of government in this country, is such an inadequate and uncertain instrument as it is.

But, having said that, it was an instrument of its time, written by men of their time. It served the people only to the extent that one closed his eyes to the women in the world, categorised Aborigines as akin to animals and thought of non-Anglo Celtics and especially Asians as sub-human. The so-called founding fathers were absolutely no wiser than we who are gathered here. So let us not deify them, as the Leader of the Opposition and others were so earnestly urging us to do yesterday.

In this century we have seen many social, political and cultural changes impacted by very fast, sophisticated travel and communications technologies. The world—Australia—has changed. Our peoples trace their social, cultural, racial and other ethnic origins back to every part of the globe. We know about human rights. We know about participatory democracy. We condemn and reject tyranny. We reject oppression and exclusion. We insist, rightfully, on being included in the decision making which affects our lives, how we relate with each other and our environment, and we demand a system of government which is answerable to the people. The question then is not whether Australia becomes a republic but when and how. Nor is the question, strictly speaking, that of what sort—as the Prime Minister, the Leader of the Opposition and Malcolm Turnbull would have it.

Yesterday, and again just in the last few moments, it was put to this Convention that there are two models for an Australian republic: the McGarvie model, about which the less said the better; and the minimalist model, by which is meant the replacement of the Queen as the head of state with an Australian head of state selected by a two-thirds majority of both houses of federal parliament. They appear to be distinctly separate models but, in

fact, both positions are simply variations on the one theme: that we return to the past, that we keep the Constitution as it is—one designed for a constitutional monarchy, with only the minor change of nomenclature. In other words, we are being invited simply to chop off the frills and replace them with buttons and bows. That has been reinforced in this chamber this very afternoon, when a resolution to codify and limit the powers of the head of state was rejected by the body of this Convention.

For all the lip service that we heard yesterday and today from Labor and coalition politicians and from ARM members about democracy, about the people and about acknowledging the Aboriginal history of this country, we witnessed the curious spectacle of all of these people voting against our discussing these issues in the context of building a vibrant, inclusive and democratic future for Australians. Not one of them was conscious of the contradictions in what they said and how they voted. We did not hear one word from them about a Constitution which would serve a democratic republic of Australia rather than a constitutional monarchy. If they were conscious of it then we have seen a massive exercise of the deepest, most profound hypocrisy.

I ask my fellow Australians: how can we use an out-of-date, ambiguous and uncertain Constitution, designed for a constitutional monarchy system of government, to serve the needs and aspirations of an Australian republic? The very notion is preposterous. As Ms Schubert said yesterday, 'These are the proposals of dull minds.'

What does the ARM model give us? It gives us a head of state who owes her job to the Prime Minister, thereby enhancing the power of the Prime Minister—a power already overwhelming the parliament. It leaves us with a Prime Minister and cabinet whose powers will not be described in the Constitution at all. In adopting the model put forward by the ARM, we are adopting merely cosmetic changes to the Constitution.

Is it the position of the Prime Minister, the Leader of the Opposition and the ARM that we retain section 25 of the Constitution—a discriminatory, exclusionary provision? Is it their position that we retain section 117 which clearly, by its reference to 'a subject of the Queen', is oppressive in nature? None of these speakers yesterday addressed the values, the principles and the attitudes implicit in these provisions. Mr Howard and Mr Beazley might well rush out of here on 15 February and move to put before the Australian people that these sections be deleted from the Constitution but, in any event, the Constitution is infused with those values and they cannot be so simply removed.

Without doubt, as so many other speakers here have observed, we have enjoyed political stability and no small measure of democracy. I suggest that that has been due more to good luck than to good management; it has not been because we have a useful Constitution which serves as a handbook for good government, as a Constitution should.

I want to spend a moment here reflecting on the practical meaning of democracy in Australia. It is a word whose currency has been seriously debased by politicians who are won't to bandy it about in the context of parliamentary democracy. In fact, we have seen the spread of government by the executive or, even worse, by the Prime Minister, with no accountability to parliament. Such practices have all the hallmarks of arrogant, contemptuous authoritarianism. Unfortunately, we have seen and heard it being expressed right here in the course of this 'people's Convention', as the Prime Minister himself described it.

I believe that our fellow Australians want a just republic, not just a republic. I believe that our fellow Australians want a constitutional framework for a democratic, participatory society giving high priority to social justice and to an ecologically sustainable economy—one in which the sovereignty of the people is paramount. How do we achieve such a society and such a system of government to serve us? I propose that we simply declare ourselves a republic and then set out to build a Constitution which is based on democratic principles designed to ensure a better, fairer society for all Australians: one which spells out entitlements to vote—one

vote, one value—proportional representation; and one which sets out in clear terms the respective roles, functions and powers of the Prime Minister and cabinet, parliament and head of state, including such matters as qualification for office—for example, that candidates for the office be Australian citizens and not hold dual citizenship—the manner of election and manner of removal, which is a different process to the former, and which emphasises the responsibility of government to parliament.

What is missing from the ARM model is that there is no attempt to state the powers and functions of the Prime Minister and cabinet. That omission allows them to argue misleadingly, as the Prime Minister and other politicians do, that the head of state would have greater power than the Prime Minister would have.

The Constitution for a democratic republic of Australia must spell out our social, economic and cultural rights: apart from freedom of speech and assembling, freedom from discrimination and oppression on the grounds of race, national origin, age, sex, sexual preference, disability, marital status, religion and political beliefs; and the freedom to organise trade unions and business associations and to collectively bargain.

Presently, indigenous Australians are desperately defending our small right to negotiate over traditional lands, established under the High Court's Mabo decision and the Native Title Act. The ARM model is essentially asking indigenous Australians to endorse a Constitution that gives us no more than a gesture—and a limp-wristed one at that.

Presently, 8.2 per cent of Australians are officially without work and are, right now, facing the prospect of being forced to move away from their families to work for the dole. You have to be cynical—more, contemptuous—to ask these Australians to empower a republic that makes no commitment to them.

Presently, half a million Australians are trying to obtain tertiary education against the user-pays commercial principle and are now having to choose not to enrich their skills and lives with further education. Then there are the thousands of working mothers now being forced to abandon paid work because they cannot afford child care any more. Again, you have to be cynical, arrogant and dismissive to endorse a Constitution that will not protect their basic rights but will protect the Prime Minister.

These same attitudes are obvious in the scaremongering that we were subjected to yesterday and, indeed, today by the proponents of the ARM model, including the Prime Minister, when we were told that the direct election of the head of state is a dangerous path to go down in that it would lead to instability. It is clear that these people fear democracy. Indeed, what is becoming more and more evident is that these people are absolutely terrified of democracy. But what is of greatest concern to me is that they are playing the politics of misinformation, uncertainty, deceit and division.

Mr Turnbull and his followers can well afford to engage in such politics. He does not have to face again those 1.5 million Australians who voted for him. But to those Australians who did vote for him, I ask you: were you aware that Mr Turnbull would do a deal with the Prime Minister to deliver unto the government the republican model it is prepared to run with? In voting for him and his team, is that what you were asking them to do? Is there anyone here with so little respect for our fellow Australians that they truly believe that democratic elections of both the head of state and the politicians, from whom the Prime Minister is chosen by members of his or her own political party, would lead to instability of government? Just how far out of reach can you get?

We Australians have a culture of tolerance and civility. In particular, we have a strong sense of democratic action. *(Extension of time granted)* We have heard a great deal on the floor of this Convention that limiting and codifying the role and powers of the head of state is too difficult. Well, my fellow Australians, since when did Aussies shrink from doing the hard yards? What is it we celebrate when we celebrate the Anzac spirit and the spirit of the overlanders, not to mention those women who kept their home fires burning and worked the land and the factories in their

absence, not to mention the indigenous peoples who have survived the vicissitudes of this ancient land for tens of thousands of years and the brutal dispossession of our lands, our children, our cultures, which were visited upon us?

The people together can do it. The people together will do it. Of course, we will not do it here in these 10 days, but we can point the way to a vibrant, inclusive future for all Australians—one in which we all can participate in the responsible exercise of our sovereign power. As a first step towards that future, we call on the ARM to turn around the vote that it took here this afternoon in this chamber, Constitutional Monarchists as well and those still uncommitted to work with us in developing a people's republic that we will be proud to take to our fellow Australians.

DEPUTY CHAIRMAN—I call on the Leader of the Opposition from Queensland, Peter 'Admiral' Beattie.

Mr BEATTIE—Federation in 1901 was not the end of the story of our nationhood; it was only the beginning. Then the young Australian nation was still wrapped in the Union Jack. Until the 1930s, we did not even have our own foreign affairs department. Mother England handled our foreign affairs from the British Home Office in Whitehall.

When was it that, according to the Queensland Constitution, we requested and consented to the enactment by the parliament of the United Kingdom of an act designed to terminate the power of the parliament of the United Kingdom to legislate for Australia? When was that? 1935? No, it was 1985—just 13 years ago. It was only then that it was declared that each state had the full power to make its own laws for the peace, good order and good government, including all the powers the United Kingdom might have had before the start of the act. Only in 1986 was it decided that decisions of our state courts were final, that there should be no appeal to the Privy Council halfway round the world.

It seems obvious to us now that these provisions should have been dispensed with many years before. In years to come, historians will wonder why it took us another 100 years after Federation to commit ourselves to the final act of independence: an Australian republic. It has taken too long for this young nation to decide it is time to leave home and become a fully-fledged independent nation with our own address instead of 'care of Buckingham Palace'. Even now, like Linus in the *Peanuts* comic strip, we still carry the remnants of those apron strings like a safety blanket. There are still some amongst us, those opposed to the Australian republic, who still cling to this comfort blanket. They do not want to cut those apron strings. They believe we can set up home as an independent nation under our own roof but still have Mum with us to represent us. That is not good enough.

They conveniently forget that in the latter half of this century Britain has had no compunction about shedding some major ties with the Commonwealth and Australia and turning her back on us. Britain decided that Australia and the Commonwealth came a very poor second when it came to trade and that Britain's future lay with the European trading bloc. They forget that when they arrive at Heathrow Airport there is easy access for anyone with a European passport but that we Australians are treated as aliens. Those who oppose and fear a republic today share a kinship with those who feared Australian Federation in the 1890s.

As this nation approaches its 100th birthday we should aim for more than a telegram from the Queen. It is time we took that final step in becoming a truly independent nation where we no longer have a foreigner as our head of state as a hangover from our colonial days, where we actually have an Australian standing on the world stage to represent Australia, where we do not have members of a royal family having to wear two hats—tiaras or crowns. The vast majority of each year they wear the British head gear representing British interests and urging people to buy British. Only on very rare occasions do they reach into the royal wardrobe for the equivalent of the royal akubra. Only on very rare occasions does the monarch don the mantel of Queen of Australia. We need a full-time head of state who spends the whole year working for us.

The symbolism of an independent Australia in the world is important for our national

identity. It is fundamentally important for our future. In the eyes of many Australians, my state, Queensland, has a reputation of being a conservative state. But on Saturday an A.C. Neilsen poll showed that a majority of Queenslanders want a republic. In fact, 11 per cent more Queenslanders want a republic than want a Monarchy. The desire for change is unstoppable.

I believe it is clear that this Convention will opt for Australia to become a republic in accordance with the wishes of the majority of Australians. What becomes important, therefore, is for us to provide a way of becoming a republic which is acceptable to the highest possible number of Australians. I think it is time for some straight talking on the type of republic to be proposed by this Convention.

I say again to my fellow republicans: remember that any constitutional change has to be approved by a majority of people in a majority of states. There will be a campaign run by the monarchists in states such as Queensland, South Australia and Western Australia to defeat the move to a republic by defeating any proposition in those states, thus preventing there being a majority of states—in other words, the referendum loses. I never thought I would agree with Reg Withers, but earlier in his presentation he said exactly the same thing. I am afraid to say it, delegates, but he is right.

We cannot win the republican argument by winning just in Sydney and Melbourne. I stress: we must win a majority of people in a majority of states. It is therefore important that we produce recommendations that result in a convincing referendum question. In my view, that must include the popular election of a president, and if we do not we put at risk the whole proposition of a republic. The rigid opposition from some leading republicans to the position of an elected president has been, in my view, unhelpful. The refusal to have an elected president may cost us the referendum. I say it again: the voting outcome today in particular, the voting down of the amended resolution 7, in my view, threatens the success of the referendum when put to the Australian people.

The A.C. Neilsen poll shows 82 per cent of Queenslanders want to be able to choose their own president rather than have a president elected or selected by politicians. Supporting the popular election of a president will give the republican argument the greatest chance of success in a referendum. The bottom line is that politicians and political parties are at their lowest ebb in terms of public support in the history of this nation. Any proposition allowing for politicians to appoint the president through the parliament will be treated with suspicion by the Australian people and will put at risk the very moves towards a republic.

Australians will not be impressed by some behind-the-scenes-deal between politicians on who should be nominated in parliament for the position of president. To suggest that the appointment of a president by a two-thirds majority of the parliament in some way makes them non-political is a nonsense. They would only get that endorsement by virtue of a political deal. A president elected in this way is a president selected by politicians after a deal between the major political parties. It is this sort of arrogance which is making so many people in Australia determined to have their own say on who the president should be.

I am not afraid of the Australian people having the power to elect their president. Perhaps there are too many politicians, ex-politicians and aspiring politicians who believe that they have more wisdom than the people they represent. I do not. A number of speakers have suggested that the Australian people really do not fully understand all the ramifications of the direct election of a president. What arrogance. What an insult to the Australian people. It is similar to the way politicians argued that women should not have the vote in the early years of our history, and why there were some at the 1898 Convention who, out of fear, opposed federation. It is just as nonsensical. We should be aiming for a true democracy where the people can choose who they want for their president. Do not be under any illusions: if we do not get it right, the monarchists and royalists will ambush this referendum in the outlying states—and I do not believe any of them have

made any pretence to the contrary here or in any other place.

It has been argued by one Queensland monarchist that no Queenslander would ever become president if people were allowed to elect a president. I want to put this to rest. Not only is that an insult to Queenslanders and all Australians, it is also disloyal to Queenslanders. Australians will always support someone who has ability no matter which state he or she comes from. Just look at the way South Australians stood to applaud Queensland wicket keeper Ian Healy on Sunday. That is part of the Australian character that makes this a great country.

Apart from that, this argument that Sydney or Melbourne will always hold sway in a direct election is just as applicable to any method of selecting a president or to the appointment of a governor-general for that matter. The only way to defeat it is by the calibre of the nominee—which is my argument. I say that because, of the 147 federal House of Representatives members, 87 come from either New South Wales or Victoria. If this nonsensical argument about Sydney and Melbourne was true it would not be possible to have a Queensland Governor-General because New South Wales and Victoria have the parliamentary numbers to have their own way, in terms of the Prime Minister. If the argument was true then Bill Hayden would never have become the excellent Governor-General that he was.

As part of the direct election of a president I fully support the codification of the powers of a president to eliminate any uncertainty or ambiguity about their meaning, and certain limitations on the powers of a president in order to eliminate any conflict with the principles of responsible government. The full details should have been a matter for this conference, and I hope they still will be.

I support an elected five-year term for the president, clear codification of the president's powers, nominations for president from Australian citizens and a possible role for the president as defender and protector of the Constitution similar to the Irish model where the president can refer repugnant or unconstitutional laws to the High Court. In my view the president must not be a member of any political party.

On issues such as the procedures for the nomination and dismissal of the president I have an open mind. Delegates need to be aware that in some of the states, and I will have more to say about this next week, it may be necessary to have state referenda in conjunction with the federal referendum to overcome constitutional difficulties in the states. In Queensland, the legacy of past governments continues to provide us with constitutional problems to overcome.

The Queen of Queensland legislation enacted in 1977 was intended to keep Queensland as an outpost of the British monarchy even if Australia became a republic. As it is, the Queensland Constitution dwells on the Constitution of the colony of Queensland. But the 1977 legislation was designed to entrench parts of the Constitution so that it could not be changed without a referendum. Premier Bjelke-Petersen did this following the dismissal of Prime Minister Whitlam in 1975. The 1977 Queen of Queensland legislation is just one of a number of examples of the need to review Queensland's constitution. Premier Bjelke-Petersen told parliament on 7 December 1976:

> To entrench the present system the bill provides that none of its clauses can be altered by parliament unless the bill is first presented to the people by way of referendum as prescribed in the bill. The requirement of entrenchment is also itself entrenched so that the guarantee cannot be undone such as has been done in other parts of the Commonwealth of Nations where a republican form of government has been brought about contrary to the Constitution.

In other words, it was a belt and braces job. It was a double knot which was not meant to be untied.

At this historic Convention we should acknowledge and respect our wonderful history. We must learn from our history, but our eyes should not be eternally focused on it. If we do that then we shall trip and stumble as we move forward. We need to look forward to the 21st century and to a Constitution which talks about an independent and democratic nation of Australia and what rights and benefits this country offers its citizens—a

Constitution that takes us into the next century. There are a number of delegates here who support the direct election of the president. Perhaps the majority of delegates do not. That causes me great concern. Those of you who have argued the monarchist's position would certainly oppose the direct election of the president and I therefore understand your position. I do not agree with it but I can understand your position.

Those who are from the Australian Republican Movement who have opposed the direct election of the president have, in my view, been very short-sighted. I hope that during the remainder of this Convention you will give serious consideration to the position you have taken. I appeal to you to do so. I appeal to you to consider the argument that I have already advanced—that is, we need the approval of the Australian people to pass this referendum. There is a huge degree of cynicism out there about politicians, political parties and the process itself. I can understand why that cynicism exists. We need to be careful that what we put to the people is a referendum proposal that has an opportunity to be supported.

I believe that a lot of people elected to this Convention from the ARM were elected on the basis that people believed they were voting for delegates who would support an opportunity for them to vote for the direct election of the president. I therefore sound a very clear warning: unless we come up with a proposition that effectively gives the people of Australia the power to choose their president then I fear we may not end up with an Australian republic at all.

DEPUTY CHAIRMAN—I call Kerry Jones, the Executive Director of the ACM.

Mrs KERRY JONES—'Women in time will do great things.' This is the motto of the nuns at my old school, Loretto Convent. The nuns gave me a great education. Quite frankly, I never gave a thought to the Constitution. But when I was a young student at Sydney university I became aware of the need for sound constitutional government. The Senate had delayed supply to Mr Whitlam's government. Eventually the Governor-General acted. The university and the country were in uproar. There were demonstrations and some of them were ugly.

It seemed that Australia could experience the sort of civil disturbance we have seen so often in other countries. We were on the brink of chaos. But soon the country was caught up in that most democratic, almost soothing, activity—a federal election campaign. It seemed that the election was just a few short weeks after the dismissal but, rather than seizing emergency powers as happens in so many countries, the head of state had referred the question to the ultimate tribunal—the tribunal of the people. And the people made their decision.

What had brought on these events was beyond my concern. I was far more interested in music as a young music student. But my life in those years was in achieving what the nuns had been encouraging me to do. My career in teaching, my love of music and, as with so many women, being a mother working full time—they soon took up most of my time. But of course most of my concerns were with my family and my work.

After 1975 any interest I had in the Constitution receded for the same reason that so many Australians know so little about it: it works so well. Then one evening I was invited to a function about something called the republic. It was addressed by Michael Kirby. Michael Kirby was a hero to me and my friends and to my generation as I believe he is to today's young thinkers. A great judge, liberal and compassionate, he was a model to all of us. In a crowded hall he explained to us that the republic was not about *Woman's Day* stories on the royal family; it was about our system of government. It was about all the best in our system of government, one which would ensure that Australians did not have the instability, the long periods of strife, all too common in other countries, but lived in a federal democracy that works well.

Michael Kirby is an unashamed monarchist. I thought back to 1975, to the way in which a political struggle could have so easily turned but which was so quickly decided by us, the people. I had become a constitutional monarchist—not out of my love of English

blood, for my blood is actually Irish; not out of birth in the Protestant establishment, for I am actually a Catholic; not out of enthusiasm for all things royal, for I have little interest in such trivia. I had become a constitutional monarchist because I was persuaded, as was Michael Kirby, that the system of government bequeathed to us by our founders is superior to any republican models proposed.

The present system had the near unanimous support of Australians until recent years. Those great Australian leaders Menzies, Evatt, Chifley and that great wartime leader John Curtin were committed equally to an Australian independence and to the monarchy. If any attempted to rewrite history, may I remind them it was not Menzies but John Curtin who chose a member of the royal family to be our own Australian Governor-General. There is no doubt in my mind, Placido Domingo notwithstanding, that John Curtin was the greatest Labor leader the country has ever known and is among our greatest prime ministers.

There is no doubt that we anti-republicans come to this Convention as the underdogs. We did not have the wealth to fight a TV campaign for the Convention election. We did not have the resources of the largest political party to help us. We did not have and do not have the support of that army of advocate journalists who do not see their role as reporting the objective truth but see their true vocation as campaigners for whatever fad may be in fashion in the salon of the eastern suburbs of Sydney.

The organisation which I represent, Australians for Constitutional Monarchy, was formed in July 1992. Our charter, which now has close to 20,000 signatures, was written by Justice Michael Kirby. In brief, it is to defend the Australian system of government, the Australian Constitution, the role of the Crown in it, a role which guarantees us leadership above politics—something none of that plethora of republican models that are being debated can ever do.

You may have noted through the more stormy periods of this long debate, a debate that has been particularly encouraged, as I said, by the Australian media, republicans continually try to move us anti-republicans into a preferred republican model debate. On behalf of our membership, as well in reference to our charter and mandate—the mandate we were elected on, achieving over 2 million votes from across Australia—I take this opportunity to assure all Australians of my absolute, unequivocal belief that our current system of government in Australia is already one of the best in the world and my commitment to retaining absolutely in its full integrity that system of government.

I believe no republic model will ever offer the protection and safeguards that work so well in our current Constitution. The fact is that there are only two tried and tested models for democratic government, especially government in a federation like ours. One is the American. It has its great weaknesses, weaknesses which we are seeing today. A supply crisis or an impeachment, or threatened impeachment, can lead to months of instability. The other safe, secure tested system, tested over more than a century, is Westminster. An integral part of Westminster is those two politician-free zones—the judiciary and the head of state. The Crown is integral to Westminster.

Any attempt to graft a republic on to Westminster produces an inferior model. It produces a competition for power between the President and the Prime Minister, as in France; or it produces a competition for power between the President, the Prime Minister and the Supreme Court, as in Pakistan; or it strips the President of any powers, as in Ireland. All of these models have the potential to produce constitutional crisis. If we have a unique president, a president with no powers, we would also have to neuter our Senate and our states and make the Prime Minister all powerful. What would that do in solving the real problems that concern those who did not frequent the republican salons of elite Sydney—the real issues of unemployment, health, schools, taxation, mortgages?

My task is simple: it is to assess each republican model against the Constitution that has served us so well. None come up to this benchmark. When I was a child, the nuns said to us women that in time we will do great things. I do not claim I am doing great things.

I am only the director of an organisation which exists on the small donations of thousands of ordinary Australians. I can only do small things but, if this Convention maintains the Constitution, if this Convention causes our political leaders to abandon this distraction and do their job of finding solutions to the problems of ordinary Australians, then they will have done great things.

Mr BRUMBY—It is a great honour and a privilege for me to speak in this debate and play my part as one of 152 delegates in helping to shape the nation's future. I speak in this debate as a representative of the Victorian parliament, but I speak also as a person who spent seven years in the federal parliament, including five years in this place. I have to say that, when I came back here today and saw Michael Hodgman, I thought I would never have been back in this chamber seeing Michael Hodgman again representing the interests of—I am not sure whose interests he was representing but he was here today.

DEPUTY CHAIRMAN—Neither of you has changed.

Mr BRUMBY—Neither of us has changed. It is a great honour to come back here at a time when our nation seems ready to celebrate its maturity, to turn a fact of life into a law of the land and to acknowledge that our head of state should be one of us.

During my years in the state parliament and the federal parliament I saw first-hand the appointment and the discharge of responsibilities of Governors-General Sir Ninian Stephen and Sir Zelman Cowen, and I served in this parliament alongside the Hon. Bill Hayden. At the state level I have worked alongside Governors Richard McGarvie and, more recently, Sir James Gobbo.

As the former federal member for Bendigo, I understand the crucial role that Victorians, particularly those from the goldfields of Bendigo and Ballarat, played in the establishment of our federation almost 100 years ago. Sir John Quick's original home in Bendigo still stands today and the monuments, the architecture and the symbols throughout Bendigo and Ballarat stand still as testament to the efforts of ordinary workers across the goldfields to achieve our federation.

If I might be a little parochial, it was Victorians who in many ways drove the process of change; it was Victorians who led the renaissance of the federation movement under the Southern Cross; it was Victorians who in every sense accommodated and drove the federation and even gave away the capital; and it is the good people of Victoria who continue today in the vanguard of progressive social change in their support for an Australian head of state and in their endorsement of multiculturalism—and I am proud to be here today to represent them.

The challenge of this Convention is to gain consensus for a model for an Australian republic. I think that challenge and others have been clearly set out by the Prime Minister, the Leader of the Opposition and others. If that consensus is to be achieved and subsequently passed into law via referendum, then the model that we choose must, in my view, effectively meet four key criteria. Firstly, the model must be acceptable to both the government and the opposition parties and, hence, to the federal parliament. A model which does not enjoy bipartisan political support has no real chance of obtaining the necessary public support required to pass that referendum into law. Secondly, the model must be acceptable to the Australian people, and they must have some ownership of that process of change. Thirdly, the model must strengthen and build on what is one of the best, most robust and well tested of all of the democracies. And, while we remain a relatively young parliamentary democracy, in many ways we are the oldest democracy in the world—the first to provide universal suffrage and a range of other initiatives where we have led the world in our short parliamentary history. Fourthly, I believe that the model must provide a symbol of renewal built around an Australian head of state.

I have always been, for as long as I can remember, a republican. I have been a passionate republican. In response to the speech that has just been made by Kerry Jones, I have to say that, irrespective of any merits of the present system, it is totally anathema to me that our official head of state is not an Australian and that we rely on a foreign entity

to approve, and potentially dismiss, our Governor-General. It is not just the symbolism of that, as the Prime Minister would say; it is a great anachronism that, as a modern, democratic, forward-looking and independent nation, we rely on another person in another country some 12,000 miles away as our head of state. As much as she may be a great monarch of another nation, the Queen is not one of us; our celebrations and our achievements are not hers. The fact is that time has moved on. As Mary Delahunty said earlier this morning, it is time that our Constitution express the way we are, not the way we were.

I want to make some brief comments on the issue of direct election. As I have said, I have come to this Convention as a republican, but I have come with an open mind as to the best republican model. Nearly two years ago I appeared on the front page of the Melbourne *Age* alongside a photo of Prime Minister Keating, with a headline reading 'Brumby versus Keating'. The article explained that, on the question of the republic, I supported direct election with codification of powers. This was of course, as you would recall, a different position to that which was taken by the Prime Minister, as he explained to me in his own special way over the phone later that morning.

Over the past 18 months and in the run-up to this Convention, I have had to look long and hard at all of the options in terms of what is achievable, what is workable, what is likely to achieve consensus from this Convention and what is likely to receive bipartisan political support. Having looked at all of the arguments in detail and having listened to many of the excellent speeches which have been made here today and yesterday, it is my firm belief that you cannot have an elected president and at the same time maintain our system of Westminster parliamentary democracy; the two simply do not fit together.

As Malcolm Turnbull said yesterday, there are essentially two models for an elected president. You can have a president with full executive powers like the American system, or you can have a president with no executive powers, only ceremonial powers like the Irish system. I think we need to be clear about this because there is a lot of passionate debate about this. There is no in between system. An elected president cannot be an impartial umpire. Even with good faith and the best of intentions conflict will inevitably arise between an elected president and the elected Prime Minister of the day. That is the fact of the matter.

You could go through dozens of potential scenarios but they are not difficult to envisage. You could have a Liberal government with a Labor president. You could have a Liberal government with a Labor president and minor parties holding the balance of power in the Senate. That would be quite a likely outcome in our system of federation. You could have a president who is elected on a single issue campaign and then confronted with directly contradictory legislation passed by the House of Representatives. What position would that put the president in? I repeat that the range of possible scenarios—and some of them were outlined in the media this morning and in speeches yesterday—are numerous and they are real.

In attempting to justify their arguments, many point to the presidency of Mary Robinson of the Irish republic between 1990 and 1997, claiming that it provides an attractive model involving direct popular election without apparent conflict with the elected government of the day. But the reality is that the Irish model needs careful attention. The fact is that the election of Mary Robinson was more Irish good luck than good management. The 1990 election itself was an anomaly. From 1945 until 1990 every president of Ireland was supported by Fianna Fail. The deeply controversial Eammon de Valera was president for two terms between 1959 and 1973, and he moved directly from the office of the Prime Minister. He was elected narrowly at the age of 76, and he was re-elected in an even closer fight at the age of 83.

I think that point is worth making. Many who support direct election say that the politicians will not get a look in. But when you look at Ireland the people who have had the first run at getting into the presidential position have been the politicians. To the younger people who spoke yesterday: Misha Schubert, who I thought spoke exceptionally

well but I cannot agree with her views; she wants the full range of change—the power, the energy, the passion that an elected president can bring. But, again, I would refer her to Ireland. That is not what we got in Ireland for most of those years. We got a person who was 76 years old and who was then re-elected when he was 83 years old.

But that is not the end of the story, because there was no election at all for the presidency between 1973 and 1990. We had Erskine Childers from 1973 to 1974, who died in office. We had Cearbhall O'Dalaigh from 1974 to 1976, and we had Patrick Hillery from 1976 to 1990. In the three cases between 1973 and 1990 a consensus candidate was chosen by negotiation between the parties. So, again, I would say to those who support the direct election of a president: have a look at the record in Ireland, have a look at what has actually happened, not just the Mary Robinson example because she was an exception. I will come to her in a moment. Have a look at the other examples. They did not give us the type of candidates that many who support direct election would want to see as elected as president of Australia.

The reason that between 1973 and 1990 there was no popular vote was that there was an agreement between the major political parties. In 1990 Mary Robinson was nominated by the Labor Party and the Workers Party. The Fianna Fail nominee was the Deputy Prime Minister, Brian Lenihan, and the third candidate was Austin Currie of Fine Gael. One week before the presidential election Prime Minister Charles Haughey was forced to sack Lenihan for having been caught out lying. Nevertheless, Lenihan led on the first ballot in the popular vote. Mary Robinson defeated Lenihan on the second ballot with 52.8 per cent of the vote after Fine Gael then urged its supporters to vote for her.

I would put this to the advocates who keep quoting the Irish model: have a look at the facts, as I have done over the last few months. If Lenihan had won in 1990, the Irish presidential model might not have seemed so attractive to so many of the delegates who are here today, and so I repeat that there are essentially two choices at this Constitutional Convention. You can support an elected executive president, and I respect people who put that view; it is a legitimate debate although I must say it is a debate we would be better off having in Australia 20, 30, 40 or 50 years down the track.

If you are going to support an elected president, let us be clear about what we are talking about. We are talking about an elected president with full executive powers. We are talking about the American-style system. That is one choice.

The other choice is to have an appointed head of state accountable to the Prime Minister and to the parliament of the day. I have to repeat that a hybrid system simply will not work. You cannot have a halfway house; you cannot elect a president and at the same time expect the president to be an impartial umpire.

So I support a system of appointment. Whether it is by the Prime Minister or by the parliament on the recommendation of the Prime Minister, that detail is to be worked through at this convention. Unless we are going to say, yes, let us look at the American system with a direct election of an executive president and going to go down that route, we need to stick to having a serious debate about the other two alternatives. One is appointment directly by the Prime Minister—the McGarvie model—which has some attractions but I think the people of Australia lack ownership of that model and it does not have enough inspiration to take us forward into a new millennium. The other is the one which, of course, has been the model of the Keating Labor government and the model supported by the ARM and is for a president appointed or elected by the parliament of the day.

You cannot have both systems. If we are not going down the American route, let us look seriously at those two options—appointment by the Prime Minister or election by the parliament—and have a serious discussion about them. They are the two systems, and they build around our Westminster parliamentary system of democracy. If I might conclude by commenting on that system, there has been a lot of criticism here that parliaments are not accountable. There was Ted

Mack's speech yesterday that the parliamentarians are not accountable; they are not answerable to the people. With due respect to Ted Mack, who is a person I respect, that is simply not the case; that is simply not the fact in Australia.

We have more elections in this country than just about any other country in the world. The average we have had in federal elections since World War II would be about every 22 or 23 months. The people who make up the numbers on the floor of parliament, who effectively elect the Prime Minister, are out there facing the people in a full, open, robust and democratic system. It is a democratic system. It is a nonsense to say that if the Prime Minister or the parliament appoints the Governor-General or the president of the day it is not a democratic system. It is a democratic system.

There is another issue which I will be raising next week. It is the role of the states, because the Australian republic does not begin and end in Canberra. Each Australian state will have to examine its own Constitution, the role of its Governor and how it wants to prepare itself for the new century in the light of national change. I appeal to delegates today. I ask those who are supporters of the monarchy to understand the popular sentiment across Australia as we move towards a new millennium, the popular sentiment which is expressed here in the numbers on the floor in the Convention that people do want to see change. They do want to see an Australian head of state. They do not want to see an Australian who is not one of us as our head of state. I ask them to look seriously at the options, to play a constructive role, to recognise the momentum of change and to get behind the models which will give us a truly Australian head of state.

Mr HAYDEN—The Prime Minister has made it clear that his preferred outcome from this Constitutional Convention would be a consensually supported recommendation which could go to the Australian community as a referendum proposal. It would test the community attitude about whether we should become a republic and when and what sort of republic we should be.

On the basis of the Prime Minister's declared openness on this, or receptivity on this proposition, I have adopted the attitude that, where I can at this Convention, I will contribute constructively towards the formulation and refinement of resolutions which might come out of working parties in respect of what sort of republic this country might want. But, I have to say, that that is not my preferred position. I do it out of a sense of constructiveness and a wish to contribute as much as I can so that we can avoid serious flaws in any proposition that may go to the public and which later could haunt us with all sorts of problems of political instability.

My preferred position is the status quo. I am not here as an ideologue from the republicans or from the constitutional monarchists. I am a pragmatist. I have a simple test. What works? Does it work well? If it does, that is a bonus. Is it acceptable to the public? It is because of all of those calls, reading positively, that I support the status quo.

There may be a counter to this. The opinion polls at the moment are showing slightly more than 50 per cent of the public want a republic. But I am convinced that the status quo is going to win in the referendum, should there be one, in which this issue is contested. I recall 1984: four referenda were put by the government of the time to the Australian public. They commenced with 80 per cent opinion poll support from the Australian public. They finished with 60 per cent opposition. One man, Peter Reith, who emerged from hibernation like a sore headed bear, fought the campaign almost single handedly and managed to sow enough concern in the community to turn that situation around to the disadvantage of the government.

More recently, Malcolm Mackerras published an analysis which showed that even in spite of a majority vote overall in support of a republic the small states could conceivably defeat that majority—that is, repudiate the referendum proposal. Of course, the issue has been further complicated in the course of the last two days because the issue of states' rights has been injected into the consideration of the matters before us.

Queensland and Western Australia have made it quite clear that they will resist vigorously any attempt to interfere with their internal arrangements. So I could go back to Queensland some time after the referendum, having had the joy of being a republican Australian elsewhere, to become a constitutional monarchical member of Queensland's monarchical system. I have no doubt that Tasmania and South Australia will end up somewhere there too.

I suggest to the Australian Republican Movement that they should be fairly sensitive to this point because their natural allies in the Labor Party in Queensland and in other small states are going to be very seriously disadvantaged by this issue if it is one for contention in the lead-up to any referendum.

Lastly—and I want to come back to this in more detail if time permits—the Australian Republican Movement has decided on a policy which is in conflict with community attitudes. I think it is very brave but rather foolish. If I were them I would go for greater prudence than that. You do not win elections by telling the public that it is not what they want that you are going to offer them but what you say they are going to have to accept.

What worries me is that all of this disruption to our community, to our social and political processes is occurring over an extended period when we have a republic now. The fact is that we have a republic now. Our nation is a republic in all but name. Let me repeat it: our nation is a republic in all but name. Kim Beazley said it yesterday. So here we are engaging in a $50 million windsurfing exercise in this chamber of Old Parliament House and what is the objective? To change our de facto small 'r' republic by putting a stamp of a big 'R' on the Constitution. There is an element of stunt in all of this.

Let me tell you what the implications of Mr Beazley's statement are. All the benefits of a republic for Australia are here now and they have been here for some considerable time. The Governor-General is head of state. That is clear from Mr Beazley's statement. Furthermore, the head of state is an Australian and is a resident in Australia. Moreover, in respect of the last matter there is an unbroken line of Australians as head of state—de facto in Mr Beazley's terms—since Casey was appointed Governor-General in 1965. Sir David Smith has made the point on more than one occasion that the Governor-General is in fact the head of state of this country; de facto the head of state. His view has been derided by many sources opposed to his expressed attitudes. But we have Mr Beazley supporting him, saying that he has been right all the time.

One might ask what are the virtues of the present fictions which surround the role of the sovereign. The first and most important is that the sovereign is more than arm's length from our political processes and is respected and trusted; is not even suspected of being the sort of person who might connive in any political actions or conspiracies. In 1975, if the Prime Minister of the time had been inclined to attempt to sack the Governor-General, I am certain, with good reason, that the advice to the palace to withdraw the commission would not have been proceeded with. There would have been prudent delays and we would have been forced, as we were eventually on the broader issue, to sort these sorts of matters out ourselves.

If we lose the benefits of the status quo which we draw down on at the present time, what have we got? The best that I can see so far is the so-called McGarvie model—a council of elders the members of which will act on the advice of the government; that is, the government will tell them what to do. It is a veil, and I think a not very convincing veil, at a time of great political stress in this country. People are not going to pretend that this process is a sort of arm's length thing to which they have been accustomed in the past under the status quo. Furthermore, this council of elders could be reduced to a government cipher staffed by the wrong sorts of people, and perhaps government won't want to staff it with the right sorts of people. It would be subject of an onslaught by a political party, losing out in a dispute which went before it in respect of the head of state. In Australia we play hard bodyline ball in our political differences. Of course, the PM could

sack the body; after all, it could be described as unrepresentative slush or whatever the term might be. All in all, I do not think it would be a very successful proposition if it were to be adopted.

So, if we are going to move away from the status quo, we are going to have to think a lot more about how we handle a number of things. What has worried me as a pragmatist has been that some of the black letter law authority available to the Governor-General under the Constitution, if it went to a president in its present form, could be misused at some time by some sort of populist. I think that George Winterton's contribution on Working Party 4 today allayed much of that sort of worry, but what happens if there is a referendum and the proposition for a republic gets up but Winterton's proposal for defining how power is to be used is defeated? The thing remains wide open. There is this uncertainty, which leaves me greatly disturbed.

The dangers I see in the proposals which are coming forward from the republicans are related to the fact that in all models there is to be an election. There is the two-thirds election by parliament, mentioned with great reverence by Malcolm Turnbull yesterday as though it shone refulgently in its own virtuous glory. Rubbish! Anyone who says that has not been involved in political processes, in or out of parliament. There will be horse trading, there will be filibustering when it suits people, there will be aggressive personal attacks in reviews. We are not very good in Australia at bipartisanship on the big issues, especially when an opportunity is seen to polarise the political debate. I do not see this as a very healthy process at all.

When a president is elected he has a constituency of his own and, if it takes two-thirds of the parliament to sack him, it is unlikely he will ever be sacked for political misbehaviour if he plays up to a sufficient number from, say, the opposition party—whichever party it might happen to be—and the independents in the respective houses. All he would have to do would be to mobilise something like a little over 40 per cent of the vote and he would have frustrated the government of the day. My major problem is, as I mentioned, that not enough attention has been paid to how we sack politically errant, highly politicised presidents.

Then there is the case of the direct election. I saw in one of the newspapers that we might end up with a handsome TV sports personality if this sort of process were adopted. Well, stranger things have happened in the parliamentary process. I remember about 37 years ago that a member of Queensland's finest walked straight off the plod to come down to the House of Representatives with the presumption he could become a senior minister or hold senior ministries, or that he could be considered as an alternative Prime Minister. He might even end up as a head of state of this country. I confess that even stranger things have happened since that member left the parliament, but I do not want to go into that. I think that is an arrogant, conceited presumption. As long as sufficient controls can be applied to the person who becomes president, it does not matter what their background is. It is up to the public to determine who they want to represent them in a democracy.

Malcolm Turnbull rules out the direct election because we will end up with politicians. The rule is, as I took it, that any Australian can become head of state except one who is a politician. It seems to me that that is a bit like saying that any Australian can become a surgeon except one who is a doctor. I leave to the Prime Minister commentary on former Australian heads of state who have been politicians, in his statement of yesterday, and to Sir Harry Gibbs, the former Chief Justice of the High Court, in his lecture 'A republic: The issues'. More worrisome, of course, is that direct election can foster demigods. But if we can control a president who is elected from parliament with two-thirds of the vote there, we can surely extend the general principles to control someone who is elected by popular vote.

The dilemma for the Australian Republican Movement in all of this is that it wants the minimalist position; that is, the two-thirds vote for a president from parliament. What it is effectively saying is that they trust people to make wise choices electing politicians.

Actually, they have no alternative in this but they are trying to make a virtue out of it. The Australian Republican Movement and the politicians do not trust the people to elect their first citizen, their head of state. As I said, I see no problem with politicians or anyone being elected, provided there are sufficient controls. What the ARM is doing is rudely repudiating the public. It is telling them they cannot have what they want. They will get what the ARM and the politicians, in their superior wisdom, determine. That is a rather dangerous election policy, I should have thought.

More than seven out of 10 Australians want the right to elect their head of state. The Australian Republican Movement, which at most represents about 10 per cent of eligible voters, judging from this recent election for delegates to this establishment, is telling 70 per cent of the Australian public, 'Pipe down, we'll do your thinking for you. Just follow.' Really, that is a little presumptuous. If the republicans believe they can control the president then it is insupportable to be spending $50 million on this roadside running repair job on the Constitution which is before us.

I am not a republican. If I were, however, I would support the 'whole Monty' as they say these days.

Well, I would not support it but I think that is the way we should present this. If I were a republican with a strong commitment to environmental issues, dedicated to the rights of Aboriginal people, with a deep-seated conviction on civil liberties, concerned about a bill of rights, wanting to restructure the political system to make it more democratic and so on, I would not wimp on the real challenges—to comprehensively redraft the Constitution and to embrace contemporary values, as was eloquently presented by Pat O'Shane this afternoon. But I am not a republican.

If we are going to spend all of this money for such a minor change, then that is unacceptable. The republicans should be prepared to face the fact that as a matter of integrity they have to go all the way and have a popular election for the president and the major redraft that elements of the republican representatives here are proposing.

Reverend TIM COSTELLO—It is a great pleasure to speak after Bill Hayden, particularly because as a real republican I guess I am trying to do some of the very things he said he would do if he were a republican. Let me say that I am a reluctant republican—reluctant because I do treasure the achievement of constitutional monarchy. Like many of you, I have stood near the spot where Charles I was tried in the Great Hall of Westminster and reflected on the extraordinary achievement of the emergence of the system of constitutional monarchy that we enjoy. The ultimate triumph of parliament over the crown is a great historical drama and the political genius of that achievement is certainly enjoyed in the system that emerged. So I am proud that we are heirs and beneficiaries of this struggle in Australia.

I am a reluctant republican also because the symbol of the Crown has been a dominant symbol and therefore story in my history in Australia. I think the ACM can rightly claim that this symbol has been moulded to fit the Australian experience and that it carries the story of both Australian identity and Australian history. I agree with them in so far as this story is not a foreign story to me; it intersects with my personal history.

But, having been Mayor of St Kilda, in inner city Melbourne, I know that this story was foreign to many others. At monthly citizenship ceremonies—and this is where I started to become dislodged from being a monarchist—I could not escape the incongruence and confusion that swept over the faces of names like Svetlana, Mohammed and Abu Dabu, as they swore allegiance to Queen Elizabeth II, her heirs and successors in order to become Australian citizens. As I watched their faces and tried to explain this incongruence, which I admit does not occur now at citizenship ceremonies, I guess I sensed that the emerging story was the story of a republic—a story that was indigenous and home grown; that certainly emphasised mateship, equality and interdependence that ultimately was not enhanced by monarchy and allegiance

to Yarralumla and ultimately to Buckingham Palace.

I do want to say that both stories, both symbols—Crown and republic—do speak of Australian identity and experience. This week I believe we are experiencing the rights of passage. I think it is an emotional clearing house for very, very deep emotions. I guess I am saying that I am articulating the transition that those of us who are republicans have recognised is occurring within our nation. The dominant story that resonates louder, stronger and more vibrantly with us is no longer the monarchy but a republic.

Having said that, I am fearful that we may vote for something less than a real republic. Whilst I support a resident for president, that is not the heart of a republic. A republic is a compact of engaged citizens who believe that they are equals and believe that participation in self-government and ownership of their future are the highest virtues of free peoples. Yes, that can happen under a constitutional monarchy; but the symbol of the Crown does not obviously nourish active republicanism, certainly not as sufficiently as I believe one of our own as head of state will nourish.

In talking about a real republic, I believe we must retrieve something of our de facto republican history under a constitutional monarchy. At the turn of the century we were one of the world leaders in developing active citizenship that was passionate about minorities. We were one of the first nations, for that reason, to introduce proportional representation to express minority view points, because citizens who were not in the majority should be heard. Along with universal suffrage, the secret ballot and a host of other citizens rights, we in Australia saw ourselves as really a social laboratory for active citizenship, for democracy and for justice.

Indeed, when Mr Justice Higgins, in the famous basic wage case, fixed that basic wage it included not just your food and rent for the working man—and then it was the man—but the cost of a daily newspaper. He said, 'How else could the working man fulfil his civic duties if he could not afford the paper to know what his government was doing?' The rest of the world was left rather breathless at this republican, if you like, equality, this breath of civic vision. A real republic must recover these instincts.

Much of the drive for an elected president comes from the sense of dilution of republican instincts of self-government as our highest ideal. The party system has not helped. The political party system, though Bob Carr referred to some of its achievements over Independents just seeking their own benefits, calls for loyalty before courage, creativity and initiative—at least in the minds of most Australians.

Most Australians know that the votes are counted before the speeches are made. So massive cynicism against politicians and against parliament results. This cynicism has been quite palpable, if often unfair, over the last two days in this chamber. Young people feel profoundly disconnected from this whole enterprise we call the political system—and not just young people. They and others see no way to make their contribution. So for them the possibility that they might elect their head of state—and the polls clearly show that is what they are saying—a head of state who has authority to pull the government they are starting to despise into line, is very appealing. Who can blame them?

Direct election gives them an avenue of political expression. A better answer, for mine, in a real republic is to actually reconnect citizens' deepest hopes to contribute to their nation with active citizenship. I supported a directly elected head of state—up to a couple of hours ago—if we had voted to look seriously at codifying the reserve powers and removing the power of the Senate to block supply. We have cut off that option.

I was supporting it for this reason: I believe the Senate received the power to block supply basically as a trade off to get the states into federation. But the Senate has never functioned as a states house. Despite the party system allowing the Senate to still function as a house of review, apart from a couple of instances, in my view, it has never really functioned as a states house. The parties make the decisions in the Senate.

Furthermore, because of the nexus between the Senate and the House of Representatives, the possibility of hung parliaments in the future, with population growth and with the balance of power increasingly likely to be in the hands of independents or minority parties, means that the prospect of blocking supply is going to be far greater. The prospect of the need for the exercise of reserve powers is going to be far greater. I wished that we had actually faced up to this issue. I should say, for mine, that issue was worth facing up to, quite apart from direct election.

I had believed—this now is not possible given some decisions provisionally taken—that the presidency should become an entirely ceremonial role because then the unwritten historic conventions that have constrained the Governor-General from a precipitate use of the reserve powers—conventions that may only function because they adhere to the Crown, as Sir Harry Gibbs argues, and will not adhere to the McGarvie panel and a president—could certainly have been written down. If this could have been done then an elected president a la Ireland would have been open to us. Also, limiting the power of the Senate at least to block the ordinary money bills—not any other limits—would have reminded us that responsible and representative government is the foundation of our political system. It should be made to work—rather than creating a new model with potentially a powerful president.

The politicians here and some of us who have made comments on the political system must face the charge that unwittingly we have undermined the confidence in representative democracy in this nation through a number of factors—perhaps through the lack of civility in debate that people see, particularly in question time, on the news each night, certainly through the perception that there is sheer brutality in the number crunching of factions that decides who gets in and how decisions are made, causing deep contempt for the notion of representative government. Election by two-thirds of parliament or the recommendation by the three elders in the McGarvie model does not have much emotional resonance with the people. It is going to be virtually impossible to sell. Direct election with codifying and with limiting Senate power, which is also going to be hard to sell, I know, was at least clearing some of the biggest hurdles and was the way through. I am not quite sure where I am going to go now with those decisions.

Sir DAVID SMITH—Come back to us.

Reverend TIM COSTELLO—That is a very generous offer from that side of the House. A real republic must work on two issues immediately. The first is a clear recognition in the preamble of our indigenous people, whose prior ownership and existence, except in a negative way, was completely omitted from the present Constitution. History will not afford us the honour of being a true republic if we do not face this profound moral issue. As many of you know, in the Convention debates of 1890 our indigenous people were mentioned only once and then it was by a New Zealander—Jack Russell, I think his name was. A founding father said, 'You do not need to worry about them; by and large they are a primitive race that is dying out. They are not going to be a problem.' We must face this issue and the preamble is the place to face it.

Secondly, though this will now be the subject of future conventions, I believe we must work on a charter of freedoms and responsibilities that actually entices the imagination of citizens and draws their concerns into the new republic. Globalisation has already largely declared that the nation state is finished. Constant change has left many Australians feeling passive and totally locked out of shaping their nation's future. If we become a republic we will be reasserting our belief in the nation state. It becomes a regrouping, a regathering time for active citizenship, I hope. But it will only be meaningful if it includes a recontracting of our commitment to protect our freedoms and, perhaps more importantly in the nuances of today, to actually commit ourselves to our responsibilities to this nation. Responsibilities are actually more important today than freedoms—responsibilities like the great phrase of JFK: ask not what your nation can do for you but what you can do for it. In

other words it means young people engaging in active citizenship that does not lapse into cynicism and helplessness.

I believe history is made by the dialectic of principle and pragmatism. I do fear that pragmatism may be winning. And I do fear that if it does win, if the dialectic of principle is not powerfully there luring Australians to actually see that we are on about some noble ideas, then we may fail history. Thank you.

Convention adjourned at 7.30 p.m.