

# CONSTITUTIONAL CONVENTION

[2nd to 13th FEBRUARY 1998]

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TRANSCRIPT OF PROCEEDINGS

Wednesday, 11 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 AO (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 the Hon John Faulkner (Leader of the Opposition in the Senate)

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 QC MLA (Chief Minister, Northern Territory)

## **PROXIES TABLED BY THE CHAIRMAN**

### **PRINCIPAL**

Mr Howard  
Mr Carr  
Mr Borbidge  
Mr Olsen  
Mr Rundle  
Mrs Carnell  
Mr Stone  
Mr Bacon  
Mr Collins  
Senator Alan Ferguson  
Mr Kennett  
Mr Beattie  
  
Mr Court  
Sir David Smith  
Mr Fox  
Mr Beazley  
  
Ms George  
Mr Kilgariff  
Sir James Killen  
  
Ms Imlach  
Senator Faulkner  
Reverend Costello  
Mr O'Farrell  
Mrs Rodgers  
Mr Withers

### **PROXY**

Senator Minchin  
Mr Iemma  
Mr FitzGerald  
Mr Griffin (6 and 11 February)  
Mr Hodgman  
Ms Webb  
Mr Burke  
Mrs Jackson (4, 5 and 6 February)  
Mr Hannaford (3-6 and 9-10 February)  
Mr Abbott (2-6 February)  
Dr Dean (All, except 11 February)  
Mr Foley (4-6 February)  
Mr Milliner (9-10 February)  
Mr Barnett  
Professor Flint (5 February)  
Mr McGuire (5-6 February)  
Mr McLeay (from 3pm, 5 February,  
6, 9 and 11 February)  
Mr McMullan (10 February, 9.00 am to 2.00 pm)  
Mr Martin (10 February, 4.30 pm to 7.30 pm)  
Ms Doran  
Mr McCallum (6 February from 4 pm)  
Mr Paul (6 February from 3.30 pm)  
Professor Flint (11 February from 7.30 pm)  
Mr Nockles (6 February, afternoon)  
Mr Melham (9 February)  
Mr Castan (6 February)  
Professor Flint  
Mr Mackerras  
Mr Paul (9 February)

**Proxies continued—**

**PRINCIPAL**

**PROXY**

Mr Green	Ms Jackson (9 February)
Senator Bolkus	Mr McClelland (9-10 February)
Mr McGauchie	Dr Craik (9 February)
Mr Anderson	Mr Abbott (as necessary)
Mr Costello	Senator Campbell (9 February, from 3 pm)
	Mr Pyne (10 February, 9.00 am to 3 pm)
Senator Hill	Senator Payne (10 February)
Dame Leone Kramer	Professor Flint (11 February)
Mr Bonner	Mr Longstaff (11 February, as necessary)
	Professor Flint (12-13 February)
Reverend Hepworth	Mr Pearson (11 February)
Mr Beanland	Mr Carroll (13 February)
Ms Ferguson	Dr Howard (12 February, morning)
Major General James	Mr Freeman (11 February, from 6 pm)
Mr Chipp	Mr Fitzgerald (11 February, from 6 pm)
Mr Castle	Professor Flint (11 February)
Mr Andrew	Mr Slipper (10 February, 2.00 pm to 4.00 pm)
Mrs Hawke	Mr Keneally (11-12 February)
Mr Webster	Dr McLennan (11 February, 6-7 pm)
Ms Zwar	Dr Howard (11 February, evening)

COMMONWEALTH OF AUSTRALIA

# CONSTITUTIONAL CONVENTION

Hansard

1998

OLD PARLIAMENT HOUSE, CANBERRA

2nd to 13th FEBRUARY 1998

*Wednesday, 11 February 1998*

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

**CHAIRMAN**—I have received a proxy from the Hon. Denver Beanland, Attorney-General of Queensland, of Mr Frank Carroll for Friday. I wish to advise that Dame Leonie Kramer has withdrawn her proxy which was tabled yesterday. As a result of last night's late finish, not all working groups have been able to finalise their deliberations. Three working groups have, however, prepared draft resolutions and these have been circulated. As soon as the working group report from the fourth group is prepared they will be distributed.

**Ms O'SHANE**—Please, Mr Chairman, would you call for quiet; I cannot hear you.

**CHAIRMAN**—One working group remains to complete its deliberations and submit its resolutions. As soon as that working group's recommendations and resolutions are available they will be distributed. Delegates will recall that, as a result of our late finish last night, it was decided that working group reports would be taken at 10 a.m. instead of first thing this morning. We will begin our debate shortly on the general addresses.

There are other items of variation in today's program. I know that delegates may not find this convenient but, in order to accommodate all those who wish to speak on the general debate, we have allowed for there to be a

continuation of the general debate during the time previously scheduled for lunch. That will mean that we will be sitting right through. Similarly, we have extended the sittings at the end of the day so that we might be able to again conclude the general addresses and also allow for debate and voting on the preamble to the Constitution, the oath, qualifications of the office of head of state and other transitional and consequential issues. Those matters are all identified on today's *Notice Paper*, which is in front of you.

There is also reason to mention again that if you wish to move amendments to the working group resolutions they should be lodged by 2 o'clock so that there is time for them to be prepared and distributed among delegates. This certainly made it a lot easier yesterday. I would recommend we follow a similar process today. I also should remind delegates that, in accordance with the resolutions that came to the Resolutions Group yesterday and were passed, models have been circulated under cover of a blue sheet. So the paper which has a blue sheet on the front is the models of a republic which delegates can peruse. The deadline for obtaining the required 10 signatures is 2 o'clock today. All models receiving 10 signatures will then be placed on the *Notice Paper* for debate tomorrow.

I hope that we can find a satisfactory method by which we can vote and record the names of all those who vote for each model, those who abstain and those who vote against. There is a mechanism that is being developed which we think will meet that requirement.

But, please, those who wish to have their models accepted should remember that they have to obtain the 10 signatures and lodge those signatures by 2 o'clock today. I think we might be able to move straight on to the general addresses now. I will call Mia Handshin.

**Ms HANDSHIN**—There is a saying which cautions: do not limit your children to your learning for they were born in another time. I was born in this other time and this, in part, explains my desire for Australia to become a republic. I share this desire with the vast majority of young Australians. We have a vision which exceeds the limitations of yesterday and embraces the possibilities of tomorrow. For six generations Australia has been home for my family. My ancestors left Prussia to escape religious persecution and, from that beginning, forged a future in this new land.

Over these six generations much has obviously changed, but significantly so in the last 50 years, particularly in respect of the issue before us. The symbols which once fostered and perpetuated an affinity with, and connection to, the monarchy have markedly diminished. No more do school children sing 'God Save the King', as they did when my grandmother was young. No more do they salute the flag, honour the Queen and promise to obey her laws, as they did when my mother went to school. No more would a royal visit entice two-thirds of the people from their homes, as in 1954. No more would thousands of school children gather to wave their paper Union Jacks as the royal couple passed by.

My learning in my time has been vastly different. I have only known the national anthem as Advance Australia Fair. I do not consider myself a subject of the crown as my grandmother and mother did, for I have considered myself only as an Australian citizen. The last royal visit I remember was newsworthy more for a breach of protocol than the reason for the actual visit.

Learning, too, has changed. My mother's learning limited her to accept unquestioningly that which was handed down. But learning today has encouraged young people to move beyond their limitations, to question what is

and to explore what might be. Australia today is an independent, culturally diverse nation. What Australia might be we are only just beginning to comprehend.

On behalf of the majority of young South Australians, I support an Australian republic and the attendant constitutional changes. In South Australia, there has been overwhelming youth support for a republic, evident in voting conducted at the 1995, 1996 and 1997 regional and state schools constitutional conventions, the national convention, in debates of the state and national YMCA youth parliaments, and the results of surveys conducted during the SA Youth Arts Festival and the Australian Democrats youth poll. I do not reject nor denigrate our heritage for, as we have heard often during this debate, a new way forward does not negate nor extinguish where we have been.

We are not able to rewrite history but the future is still a blank page waiting for our mark. That we find ourselves debating this issue today is indicative of the fact that the monarchy no longer serves to unify our nation as it once did. People have asked those of us of the republican proclivity: what can be done to make us feel more Australian? The answer I give is that I feel totally, wholly Australian but I feel no connection with Britain. Constitutionally, the Queen is our highest governmental authority. However, she assumes this position by virtue of hereditary succession.

Australians value democracy, yet in this regard we have accepted a system which is the antithesis of the democratic process. There is incongruence between the reality and that which we value. In this increasingly impersonal age there is a growing need for a constitutional head of state who is not only a symbol of leadership but also the personification of our national identity. A foreign head of state is no longer able to fulfil this role.

As expressed with succinct eloquence by former Governor-General Sir Zelman Cowan, a head of state which is our own might make more sense. As to the method of appointment of a head of state, my preference derives from my desire for this Convention to reach a consensus. As an idealist, the notion of empowering the people through a direct role

in the election of an Australian head of state has great appeal, the benefits being that parliamentary democracy might redress some of the public disengagement and disenchantment. But, having listened to the various arguments centred upon direct election, I could not support this model without considerable safeguards.

Considered contemplation draws me towards appointment by a two-thirds majority of a parliamentary joint sitting. But, pragmatically, for this Convention to arrive at an outcome, I join with a number of delegates in seeking a compromise. I believe an effective compromise will harness the benefits of both the two-thirds and direct election model—a combination of both participatory and representative democracy.

As a young person, I feel an even greater sense of urgency that this Convention arrives at a solution. I plead with all republican delegates to put aside individual positions just for a moment and ask themselves what is more important. Is it coming to a solution that completely satisfies their own position or becoming a republic? Surely the answer must be that becoming a republic is paramount. In answering thus, we must all give a little. We must arrive at a position that most can find at least some peace with.

Please consider this: as republicans we must pull together our resources and focus our passions in a collaborative manner. I believe that we are in a far better position today to create a workable, acceptable model for Australia now than were the founding fathers. We have the advantage of 97 years experience that has taught us that there is much to correct and there is much we should not correct.

We have the wisdom of hindsight and the 20/20 vision that comes with it. We have learned much over the last century. We know that women are competent, capable citizens equally interested in the affairs of the country. We recognise that young people, once virtually disregarded until age 21, have unique perspectives and are an invaluable resource and that there is much to be gained from cultural exchange.

The Constitution and the system it prescribes must be inclusive. The people must

have a sense of ownership for it. The change to a republic I grant will have little effect on the daily lives of Australian citizens. It will not resolve the pressing issues of unemployment, youth suicide or environmental degradation. Change will be largely symbolic. However, we should never underestimate the importance and influence of symbols in our lives. This change can pave the way for future reassessment and contemplation of our constitutional system providing that most difficult first step.

‘Democracy’, said James Conart, ‘is a small hard core of common agreement surrounded by a rich variety of individual differences.’ We definitely have the latter, so let us collaborate to achieve the former. If we arrive at that core of common agreement, we can set in motion a process which has the potential to unify this diverse nation, encompassing all with a sense of belonging, knowing that we have made a decision for ourselves and not simply accepted that which has been handed down.

In 1956, prior to the closing ceremony of the Olympic Games, a young boy, the son of Chinese immigrants, asked the question, ‘Why don’t you all march together?’ And with that the teams broke rank, putting aside national and cultural boundaries and marched together as one team—a symbol of global unity. I believe the time has come again for those of us separated by perspectives or opposing viewpoints to lay our differences aside and, for the sake of our nation, all march together as one team.

**CHAIRMAN**—I have a proxy from the Reverend John Hepworth, nominating Christopher Pearson to take his place for today. I advise delegates that it is also Heidi Zwar’s birthday. I wish her a very happy birthday.

**Ms ZWAR**—I came to this Convention unconvinced of the merits of change but I assured the youth of the ACT that I would listen with an open mind. I have done so and I have come to the conclusion that the McGarvie model is the only reasonable alternative to our present system. Any change must be the result of careful consideration.

On the first day of this Convention Mr McGarvie stated with accuracy that Austral-

ians are a wise constitutional people. It is important to remind all delegates that the youth of Australia will likewise prove a wise constitutional people. There are many misconceptions about young Australians, in particular about our views on politics and the Constitution.

It is wrong to assume that there is a single youth position on the republic. It is patronising and insulting to young Australians to suggest that we cannot think for ourselves and form our own opinions on an issue as self-evidently important as this one. Furthermore, popular assumptions are not necessarily true. One need only look at the shifting support for a republic among Australia's 18- to 24-year-olds between January 1993 and December 1996. Support for a republic fell by 22 per cent to below 50 per cent in this four-year period. I say this not to indicate what support for a republic may or may not be at the moment but rather to illustrate the diversity of views among all Australians on this issue.

One thing that many people, both young and old, agree on is that change purely for its own sake will ultimately put at risk the stability and durability that our present Constitution provides. In fact, no delegate has been able to produce a single instance in which the present Constitution has fundamentally failed the people of Australia.

There are two words that have been uttered more than any other at this Convention. They are 'compromise' and 'consensus'. But what do they really mean? The word 'compromise' may be defined as finding a middle course, give and take, even truce or reconciliation. It is this word more than any other which sums up what many delegates to this Convention seek to achieve. We should certainly seek to achieve compromise although we should not—this is a trap that many delegates have fallen into—compromise on the best system of government for Australia.

Mr Turnbull said in his opening address that we should ensure the best of the old is preserved in the new. I find it disappointing—I know that many other Australians find it disappointing—that in the course of the negotiations that have taken place in and around this chamber, many delegates have

been quite prepared to sacrifice the best and not the worst aspects of our present system when devising their republican alternatives.

The other catchcry of this Convention so far has been consensus. We are here to reach a consensus model to put to the people at referendum. In turn, we should require national consensus before we become a republic. Delegate Delahunty has told this Convention that she wants Australians to embrace change. If these words are to mean anything at all, the ARM must give Australians in all six states the opportunity to embrace change at the pace they themselves desire.

Intelligent analysis of the four distinct republican options that have been put before us reveals numerous flaws with each. I turn firstly to popular election. The only and essential virtue of the popular election option is its democratic overtones. These overtones are less impressive when we consider the extraordinary lengths to which the republicans at this Convention have modified the option beyond recognition. There are to be screening panels or ratification by parliament, maybe an age limit on nominees and countless other conditions, all of which would significantly erode that one quality. Yet beyond that quality there are a myriad of weaknesses attached to popular election.

These have been canvassed at some length by previous speakers but I will remind fellow delegates briefly what they are. Firstly, the president's popular mandate will radically alter the balance of power within our political system; secondly, as such, codification of the powers will be an absolute necessity; and, finally, there is the issue of the often-forgotten states: do we also elect state Governors or do we leave it to each state to decide on their own method of election or appointment?

The second model is appointment by two-thirds of parliament. This method of appointment has no obvious merits but numerous pitfalls. Firstly, the need for consensus across the political spectrum will invite mediocrity. The most likely outcome of a two-thirds appointment by parliament will be a compromise candidate acceptable to both major parties but singularly uninspiring as our head of state. Secondly, the process will inevitably

become highly politicised. Backroom deals will become an integral part of the appointment process—hardly cloaking the ultimately successful candidate with the dignity that our head of state deserves. Finally, the suggestion that potential appointees be publicly announced and pitted against each other will discourage eminent Australians from allowing their names to be put forward, and we will also run the risk of encouraging muck-raking and dirt campaigns.

The third model, my preferred one, is that proposed by Dick McGarvie. It, too, has several flaws, the most significant of which lies in the make-up of the Constitutional Council; that is, the body which would act as a referee in the event of a constitutional crisis. The distinguished members of this committee do not have the often underrated benefit of being removed from the Australian political system; rather they are a product of that system. I also remind delegates that not one appointed delegate to this Convention was elected on a McGarvie platform, nor is there at this stage any apparent popular support for the model.

I turn finally to the most frightening option: the so-called hybrid. There are many views as to how we should synthesise the ostensibly diametrically opposed models of popular election and parliamentary appointment. The hybrid is a master stroke of diplomacy and political expediency. Its precise form is somewhat unclear but it takes as its basic structure the model put forward by the ARM.

Hybrid model A boasts a tokenistic concession to the democratic virtues of popular election. Tacked on to the process of appointment is the provision that nominations can be made by members of the public although the public's choice must, of course, still be ratified by two-thirds of parliament. Hybrid model B allows a popular vote on the president but it is again conditional on a two-thirds majority of parliament being able to first of all vet the candidates. So, whilst appointment in this hybrid model is effectively by a two-thirds majority of a joint sitting, dismissal is at the will of the Prime Minister, either with a 51 per cent majority of the House of Repre-

sentatives or with the approval of Mr McGarvie's Constitutional Council.

It seems that, whilst many republicans here believe that the council is too elitist to rubber-stamp the Prime Minister's choice of head of state, it is nonetheless remarkably in touch with the common people when it comes to the crucial issue of dismissal. Finally, under this model provision must be made for the likely scenario where, in the event of constitutional deadlock, the head of state is dismissed but the parliament is unable to agree on a new head of state. The republicans must devise a way to resolve this inevitable deadlock.

Despite the faults associated with the McGarvie model, I view it as the most acceptable alternative to the present system. It does at least—as Mr Turnbull asked us to—ensure the best of the old is preserved in the new. However, let me conclude by reminding the proponents of change that they have a great deal to do to convince me and to convince a majority of Australians that they have engineered a system superior to that which we currently enjoy.

**CHAIRMAN**—I table a proxy on behalf of Mr Michael Castle, who nominates Professor David Flint as his proxy for today.

**Mr CASSIDY**—I am one of those people who are in favour of Australia cutting its political ties with Britain. I have nothing against the British people, the British government or indeed the Queen, whom I love. I just do not think those ties reflect anymore how Australia feels these days or how it sees itself. Because I hold these views, I am regarded as a republican, but that label is not important to me. I love this country, as so many of us do, and I just want to see our nation get the best. I know that other people have seen the change in our national identity too. They have seen us grow away from Britain; they have seen Britain grow away from us. Yet their response is to become adamantly more monarchist. I wonder why this is so. How is it that other people, looking at exactly the same facts and situations, choose to take the exact opposite course of action to mine? That is what I want to talk to you about today.

I want to tell you why I have been given the label republican, and I am proud of it. In

the late 1970s Prime Minister Malcolm Fraser announced the establishment of three government organisations designed to help build up Australia's national pride. That was 20 years ago. You may recall that in the Olympics in 1976 Australia did not do very well—in fact, New Zealand won more gold medals than we did—and we really needed to boost our national pride. The three bodies Mr Fraser set up were the Australian Bicentennial Authority, the Project Australia campaign and a National Australia Day Committee. The Bicentennial Authority was given the job of planning and running the 1988 Bicentennial celebrations, Project Australia was a revamped Buy Australia campaign and the National Australia Day Committee had the task of beefing up the celebration of Australia Day and the more general task of building on national pride.

I was privileged as a public servant at that time to be appointed secretary of the National Australia Day Committee. The committee was chaired by the world famous athlete Herb Elliott and included among its membership Neville Bonner, who is here today; former politician Fred Daly; the Rugby League chief from Queensland, John McDonald; publisher and PR genius Sir Asher Joel; the world speedboat record holder at the time, Ken Warby; our Ambassador to the United Nations, Ralph Harry; Chairman of the Northern Land Council, Galarrwuy Yunupingu; and others. Once the committee became well established, other great Australians were appointed: people like John Newcombe, John Laws, Michael Edgley and Dawn Fraser, and the list goes on. One special lady called Tania Young was also a member. She was better known in the 1960s as Tania Verstak, Australia's own Miss World. I do not know if you can imagine what it felt like sitting around a table with these world famous Australian achievers talking about what a great country this is and planning the ways for Australian people to celebrate it. You very quickly become very proud of our nation and its prominence internationally.

But just meeting and working with these great Australians is not enough to turn a monarchist into a republican, so there must be

more. One of the first plans of the National Australia Day Committee was to invite local government areas all over Australia to set up their own Australia Day organising committees so that they could put on parties and celebrations at their own level. We did not have much to offer them as an incentive: just a few printed serviettes, badges, stickers and balloons and some Australian flags. Of the 650 local government areas in the country at that time, 600 responded to the committee's call and set up their own Australia Day councils in the first two years. But the impressive thing was not that they did it but what they were doing when they got going. It seemed every township, village and hamlet in Australia had its own way of marking Australia Day, and they told the National Australia Day Committee all about it. There were local communities having poetry readings, re-enactments, concerts, fairs, fetes, plays, balloon rides, pony rides, train rides, dances, demonstrations, competitions, prize giving, award giving and just so much more.

It is an extraordinarily moving experience to be at the centre of the thousands and thousands of events and activities which were put on all over Australia to celebrate being Australian. Tens of thousands of volunteer hours went into Australia Day celebrations all over this country. But just being part of that will not turn a monarchist into a republican either, at least not this one. There was more to come.

Not long after the committee started work it decided to make a concerted effort to position the Australian of the Year award as the highest honour our community could bestow. At the time there were quite a few Australian of the Year awards selected by newspapers, state Australia Day councils, community groups and so on. The National Australia Day Committee convinced all of them, except the newspapers, I remember, to roll all their Australian of the Year awards into one big national one which would be presented by the Governor-General on national television during a special Australia Day concert. The committee called for nominations, investigated the claims made, con-

sidered each candidate and then selected the winner.

It is terrific to see that more than a couple of Australians of the Year have been here this week. Once again, I was in awe of the achievements of the many people nominated. How can so many people achieve so much and have such an impact on their fellow Australians? It is amazing to me. I began to see the rich qualities that this country has and the contributions not only to Australia but to the world that large numbers of Australians are making. It is just incredible. There can only be one Australian of the Year each year but you should see what the selection committee knocks back: dozens and dozens of Australians performing just the most impressive feats. There is this huge undercurrent of achievement and success in Australia that we hardly ever hear about and it is enormous. It is enough to make you become very passionate for this country, its people and its future.

Not long after building up the Australian of the Year award the committee introduced the Young Australian of the Year award. Once again, the quality of the nominations was breathtaking. This year, 1998, the organisers received over 700 entries for the Young Australian of the Year award. What a wealth of talent we have. Anyone who heard Tan Le's acceptance speech at the new Parliament House three weeks ago will know exactly what I mean.

Since 1979, I have been immersed in the very finest this country has to offer. I have seen how extensive, how exciting and how genuinely Australian it is. But wait, there is more. My commitment to an Australian republic grew out of the work I did with the National Australia Day Committee. But there are two other tasks the committee did; these will probably puzzle the few friends I have who are monarchists. The National Australia Day Committee was the organisation that reworked the words to the new national anthem in the early 1980s. The committee dropped McCormack's original words 'Australia's sons let us rejoice' and replaced them with 'Australians all let us rejoice'. It scrubbed two verses, made a couple of other small amendments and the government adopt-

ed it as the new anthem and that is what we sing these days. Being right there when the words of this nation's anthem were finalised has given me a feeling of commitment and ownership to this country that I will never get over.

The second thing that helped me to decide to become a republican was work I had to do with the Australian flag. During my years with the National Australia Day Committee I parceled up and posted out hundreds and hundreds of thousands of flags to Australia Day councils and community groups that wanted to wave them on Australia Day. The number of flag stickers the committee printed must add up to millions. The flag badges we gave away were counted by the truckload and the printed paper flags we handed out were measured in tonnes. Few people have had the privilege of distributing millions of their country's flags to their country's people, but I have. That is why I regard as nonsense the monarchist claim that we republicans have a hidden agenda. We are not about changing the flag. We are about recognising Australia's greatness and installing an Australian as our head of state. If I wanted to change the flag I would join Ausflag, and I am not a member.

In summary, I am a republican because I have been privileged to see, as few others have, just how great this nation really is. I have seen time and again the world-class standard of our best. Yes, we do owe a great deal to the colonisers who tamed this land. We must never forget our roots. But our achievements are our own and they are massive. We should not shrink back from the greatness of our people. We should stand proudly independent, beating our chests at the world, showing them that we are just as good as any of them because we are just as good as any of them. I have seen plenty of evidence to show that we are better. Australia is a great country now and it is going to be greater. That is going to happen whether you take part in it or not. Australia becoming a republic is inevitable; the only question is when.

I am not a great Australian. My few achievements are very modest. But I am going to give this country everything I have.

If the most I can give is just a helping nudge towards achieving independence or a slight push towards a new confidence as a republic, then that is what I will give. This Australia, my Australia, deserves nothing less.

In the short time left to me I will appeal to Australians everywhere who are involved or interested in direct election to think again. There are two things I would like them to think about. A lot of people have changed their mind in the last few weeks, and I think that should continue. The first point is that the new Australian president is going to replace the Queen and the Governor-General. When we have a president, we will not have a Queen or a Governor-General. We do not elect the Queen or the Governor-General and it is a nonsense to suggest that we should elect their replacement.

The second thing is: think about our kids. We only have this country on loan, while we are here, while we are meeting as a convention. We were handed down this country in perfect working order by our parents, who got it from their parents, who got it from theirs and from the forefathers and so on. We do not have the right to completely change the Australian political landscape by having a directly elected president. We should, if we have not changed our mind anyway, join that avalanche of Australians who have moved, bringing the figure from 78 per cent in favour down to 56 per cent. Let us get it down to 10 or 12 per cent so that it can be manageable. Mr Chairman and delegates, thank you very much.

**Professor WINTERTON**—I would like to begin by going back to basics. We were commissioned with the task of finding the most appropriate and suitable model of republican government for Australia. I suggest that there are two criteria that we should apply to evaluate the models that have been placed before us. The first is that the model we choose must embody republican principles of government. There is more to a republic than merely removing a monarch. Secondly, it should retain the current system's checks and balances or, perhaps, improve on them.

I will begin by asking what a republic is. A republic is a system of government based

upon the sovereignty of the people in which all governmental officers derive their authority from the people, either directly, by popular election, or indirectly, through appointment by the people's representatives. We have heard a lot that there are three republican models before us but, if you apply that definition of a republic, which most people would agree with, this is wrong, with all due respect. In reality, there are only two. I will deal briefly with the republican models and then look at the non-republican model.

I favour the proposal that the head of state should be elected by a two-thirds majority of both houses of the Commonwealth parliament. This is thoroughly republican. The head of state would derive authority indirectly from the people, through election by their representatives in the Commonwealth parliament, who have been elected by the people. This proposal would also provide the perfect balance of checks and balances. Most of us would agree that what we want is a bipartisan, politically neutral, or politically neutered, if you like, head of state, who acts as a focus of national unity and has the authority to act as an ultimate constitutional guardian—and I want to emphasise that latter role. Admittedly, public opinion polls support popular election. They also support other propositions. These include not wanting a head of state with no powers and wanting a head of state able to act as ultimate guardian. The head of state must have some authority to be able to do that. At the moment, the Governor-General basically fulfils that function.

The advantage of this model is that both the head of state and the Prime Minister derive their authority from the same source: parliament. It has often been emphasised that the head of state's authority is to derive from a super-majority: two-thirds. That is true, and the Prime Minister may not be able to command two-thirds of even one house, let alone both. But one has to bear in mind the time factor. The authority of the president or head of state was derived on one occasion. On one occasion he or she got two-thirds. That parliament may have ceased to exist. It may have been dissolved, through a double dissolution, for example. The Prime Minister, on

the other hand, derives authority and has the confidence of the popularly elected lower house and must retain that current authority. In other words, the Prime Minister's authority is current. The head of state's authority becomes increasingly dated throughout the term.

I will deal very briefly with popular election. This is a thoroughly republican model. The head of state is directly elected. As many other people have pointed out, if one's heart alone ruled one's choice in these matters, one would favour it. It is the most republican model. That is why the people naturally vote in support of it. But its great weakness is in respect of checks and balances. Basically, the head of state would be too strong, would have too much of an independent mandate and could provide a destabilising influence on our government.

We have heard a lot about the codification of powers. It is often emphasised that you need full codification of reserve powers in order to have this model. The reality is, though, that full codification is certainly undesirable, as we heard discussed in an earlier session.

Let me look at the McGarvie model. Mr McGarvie has rendered a valuable service in focusing on the weakness of the original ARM proposal to have the head of state dismissed by a two-thirds majority of parliament in a joint sitting. This was conceded by the ARM, and they abandoned this and changed it before the beginning of this Convention.

I think we have gone too far the other way—and I do not want to spend time on this—and made dismissal of the head of state too easy. Dismissal of the head of state with regard to misbehaviour in the ordinary functions of government can certainly be achieved by prime ministerial dismissal. But I ask: how is prime ministerial dismissal going to help resolve the problem of a head of state exercising reserve powers improperly? By the time the Prime Minister realised that reserve power was about to be exercised improperly, he or she would no longer be Prime Minister.

If we have this immediate dismissal—the head of state can dismiss the Prime Minister,

under our system; the Prime Minister can dismiss the head of state, under the McGarvie model—what we end up with is what we had in 1975: the head of state unable to give warning of proposed action and what you might call a game of constitutional chicken. I certainly think that is undesirable.

But the great weakness of the McGarvie model, in my opinion, is that it is simply not republican enough. Where are the people or their representatives in the McGarvie model? Absolutely nowhere. Paul Kelly last Friday on television accurately, I think, perhaps over-generously, called this model 'the anaemic republic'. In reality, it is no republic. The head of state is essentially appointed by the Prime Minister. This receives minuscule support, less than five per cent—less than four per cent in public opinion polls.

I ask you to compare a McGarvie head of state with the present Governor-General. I do not support the monarchy, but the Governor-General derives authority from the Crown, the monarchy. That gives an authority based upon tradition, sentiment and, for some, religion. What authority would a McGarvie president have to dismiss a Prime Minister commanding a solid majority in the House of Representatives, as Whitlam did, or as Lang did in New South Wales? Here is this person appointed basically by the Prime Minister, through a council of three retired governors or governors-general; where is his authority derived from? Not from sentiment or religion; merely from prime ministerial appointment.

It is also not as comparable, with all respect, to the current system, as Mr McGarvie has suggested. I realise that the majesty of the Crown does exercise some restraint on prime ministers and premiers recommending appointments of governors and governors-general. But what possible restraint, moral restraint, is this council of three retired people going to exercise on the Prime Minister? None.

Mr McGarvie himself essentially concedes this. I do not think I am misrepresenting him in saying that what he sees as the ultimate restraint on the Prime Minister is simply his or her sense of duty or—as he, I think, has put it—his or her sense of the judgment of

history. Are we prepared to rely on that? After all, those who think that the Prime Minister should have a major role in the appointment of the head of state are given that by the two-thirds majority model. The only person parliament could choose is somebody nominated by the Prime Minister.

My fear from this Convention is that ultimately we will be faced with a terrible choice: the McGarvie model or the status quo. This, for me, is a choice between two non-republican models because, as I said before, a republic is more than the mere absence of a monarch. I personally would find it very difficult to choose between these two.

We started out this century with the most democratic Constitution in the world. It was adopted by the electors, and it was changed only by the electors. If we adopt the McGarvie model, with all respect to my friend Dick McGarvie, it seems that we will have shrunk to this: that we appoint a head of state—appointed by the Prime Minister, through the machinery of three retired former governors and governors-general.

No other democratic republic in the world has stooped to this. Every other democratic republic in the world elects its president either through the people directly or through parliament usually by some sort of super-majority. At least the present system is explained by history. But this model we would have actually chosen. How would we look in the world?

We emphasise symbolism. Symbolism is vital in the republican debate. It is one of the principal arguments for changing the present system. What is the symbolism in the McGarvie model? It is of a shrunken, scared, inward-looking country. Is this what we want to portray?

Finally, let me address one argument that I have sometimes heard in favour of the McGarvie model and that is, 'We want to get rid of the Crown. We want to make Australia completely constitutionally autonomous. Let's do this first and then we can move to other things.' I ask you to pause to consider the reality of that.

One of the principal arguments for changing the current system is its incongruity. We are

an independent, largely freestanding nation and yet we share a head of state—'share' is generous since she is primarily Queen of the United Kingdom and nobody denies that—with another country. If we remove that one principal reason for changing the current system, do you ever imagine that we would get any change? Remember how change to the Constitution comes; it comes through a bill in the House of Representatives or the Senate and it must be basically approved by the government. What Prime Minister is ever going to give up power given through the McGarvie model?

I urge you to follow the Prime Minister's request: choose a republican model. He asked us to come up with what we saw as the best republican model. Let us choose a republican model.

**Mr GIFFORD**—It is important to make sure that our facts are indeed facts. Unfortunately, this whole conference has been affected by people who have put forward what they say are the basics and which in fact are the opposite. I am therefore going to make a list, justifying it as we go through, of the basic points of this affair.

The first of these basics is the status of the Governor-General. We have been told time and time again that we cannot have a head of state unless we have a republic. Let us look and see what the real situation is. The Governor-General, for the whole length of time of the Commonwealth of Australia, has been the head of state. That is no fancy statement.

In 1871, the then Governor-General of Canada, in a public address, said that of course the Governor-General must be the head of state. When our Constitution was being drafted, one of those involved was Sir Robert Garran. He, agreeing with the Canadian Governor-General, along with a colleague was involved in writing a book which has stood the test of time—a book annotating all the sections of the Commonwealth Constitution. He stressed that the Governor-General was the head of state. That is a very important difference.

You can say that was only an academic. He was not an academic. He was the first parlia-

mentary draftsman for the Commonwealth of Australia. You may say that he was the only one. In the same year, 1901, there was another leading and highly regarded specialist in constitutional law and he took exactly the same view. In 1902, Professor Harrison Moore, another man with tremendous regard that has stood the test of time, took exactly the same view. And so it went on.

But you say that they are only academics. Let us look and see what happened in the Whitlam era. You will recall that in the Whitlam era the then Governor-General dismissed Whitlam as the Prime Minister. The Speaker of the lower house decided to get that rectified, as he regarded it. He contacted Buckingham Palace, asking that the Queen reinstate the position of Whitlam. What happened? The reply he received from the Queen by the Speaker I quote in full:

The only person competent to commission an Australian Prime Minister is the Governor-General. The Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution.

In taking the view that has been expressed by the ARM, is there any way of overcoming that decision by the Queen? Of course there is not. The Queen has set out the position succinctly and correctly. It means that we have two heads of state, one being the Queen who is the symbolic head of state if she is needed, for example, in some major matter where she is invited to open a new building or something of that sort.

She is a real lady. There was a funny little incident that occurred when she came out here shortly after she had become Queen. The whole of the Melbourne Cricket Ground was covered by school children. I am a member of the MCC and, in those days, safety precautions were nil. As the Queen left, I went up onto the then canopy, stood there and focused my camera on the Queen's open car. It was only after I had the film processed that I knew what had happened. She started waving with one hand, laying the flowers on the seat with the other hand and kicked off both shoes. As I say, a real lady.

The second issue we have to look at is that the Governor-General has gone overseas since

1971 in his capacity as our head of state. Since 1971 he has been received as the head of state. Twenty years later, in 1991, the governors-general had made 27 visits to 20 different countries. Four years later, in 1996, the total had grown to 51 visits to 33 countries.

The next fact is that of the head of state being an Australian. It has been said time and again in this Convention that you have to be a republican if you are going to have heads of state who are Australians and who are proud of it. From 1965 to the present day, every one of the seven heads of state has been an Australian, and an Australian who is proud of being an Australian.

I now turn to the test of misleading. There has been gross misleading by the ARM in the material made available through the Electoral Commission. The fundamental basis for considering whether a statement is misleading means what it means to the general run of voters.

**The Most Reverend PETER HOLLINGWORTH**—Mr Chairman and delegates: in the interests of brevity and for those who have yet to speak, I will not give my prepared speech but I will make some points. Some of us have come to this historic convention with an open mind, fully understanding the complexity of the issues before us. We hold personal views as to whether Australia should become a republic at law in the fullest sense of the word or whether we should remain as we are: a constitutional monarchy under the sovereign Queen of Australia.

Personally speaking, my head inclines me one way and my heart another. That is the problem for many of us of my generation. But the time for personal feelings is over. In this matter, we as delegates have to address the national interests and the future. We have heard some marvellous speeches in this chamber, especially from our young people. I do not want to sound patronising, but I think the quality has been quite outstanding and it augurs very well for our future.

I listened very closely to what Moira O'Brien from the Northern Territory said yesterday: head first and then heart. I think that is the right sequence. We have listened

closely to the speeches day after day, knowing that at some stage we would have to make some conscious decisions. It is clear that we cannot leave this Convention with a raft of confusing options to be put before a plebiscite. That is simply not possible. I think that would be to fail the Australian people. We have to do as the Prime Minister said: namely, to put before a referendum two choices—the present set of arrangements and a model of a republic that the voters could understand.

We may not shrink from that task, any of us. I would hope that, from here onwards, the time of arguing from fixed positions and its spoiling tactics, however humorous they may be, is over and for the vast bulk of delegates in the centre the time of creative compromise has begun. I am reminded of something very wise the Queen once said. Someone asked a question 25 years ago, ‘What is the point of having a Crown, a monarchy?’ And she replied, ‘Simply because it is there. If you take it away, you have to invent something else. Remove it and you create a vacuum in the existing power arrangements.’ That is precisely the point. In such circumstances where there is a vacuum, something else or someone else will move to fill the gap. That surely has been the task that has burdened us over these last seven days—trying to find a way of filling what would be a vacuum.

I do not want to talk about the various models; I will get an opportunity to do that later. I do want to address one small matter which is particularly to try to get hold of the question of what people are asking for when they say they want a popularly elected president. This was a matter which exercised most of our time as we met as a group of non-aligned delegates last night. It is my view, from what I have heard from the speeches, that the majority of delegates will not accept the proposal for a directly elected president for very good practical reasons—not reasons of principle, but reasons of the practical outcomes, unintended as many of them would be.

I believe that we must have some serious debate. We have a responsibility to the Australian people, if that is the way the vote goes, to demonstrate why you cannot graft a

foreign model of a popularly elected president on top of our existing structures. I will get a chance to say something more about that later and I will pass on. The other thing that I think I am bound to mention is that there remains in many of the models something of a problem whereby the names and the good reputations of many eminent citizens of Australia may have to be submitted for public scrutiny before a joint sitting of both houses of parliament. I am quite sure that in no way would some of the best candidates allow that to happen, nor could they. Those are some of the issues that I think we have to come to terms with when we really start to get down to the debate.

But I think one of the great issues that I want to come back to in relation to the popularly elected head of state model is to try to clarify what it is that is so important to people. I know that there are negative things about politicians as the representatives of the people. Most of those criticisms are undeserved. I know too that there is a kind of popular culture out there, but we cannot be driven by popular culture. We are dealing with affairs of state; with a complex machinery of government. I know that there is a great sense of idealism out there, and I share a great deal of it. I have a deep sympathy for many of the views that people like Dr O’Shane, Mr Cleary, Ms Rayner, Professor O’Brien and many others have expressed.

We would not disagree with any of them, in the main. But the big question is, ‘Can you entrench these things in tablets of stone?’ Should you try to build them into preambles and constitutions and into the methods by which government operates? With greatest respect, Sir, I think one of the problems that we are confronted with is what is sometimes called HPU, humanist positivist utopianism. I said before that we have got to put our heads before our hearts. That is what we have to do—not to dismiss matters of the heart, but to make sure we make clear distinctions and what we recommend to put before the Australian people is actually something that would work over the long term.

I would make a plea to my friends amongst the populists, with whom I have a

great deal of sympathy. I too believe in some of the noble ideals of *respublica*, and all of us believe in some of the great ideals of a civil society. I would say in passing that one of the great things about this House of Parliament and the fact that the Centenary of Federation Council now has its headquarters here is that we have a marvellous venue in which to pursue much of those great debates which should be part of national life. But many of those great philosophical ideas that have come to us over 2,000 years are not ideas that you can simply graft on to our existing Constitution and political arrangements. In many ways they should not be; in many ways they are part of our discourse that we share day by day.

I take very seriously what the last two Boyer lecturers have said in their outstanding speeches. I am thankful for the great contribution they have made to the debate. But this is an issue of debate and discourse. It is not something that you should try to ram into and graft on to constitutional arrangements. Such things will probably come unstuck.

In drawing all this to a close, I simply want to say this: my reading of things is that the Australian people, generally speaking, will buy some change—perhaps not a lot of change. They want to be confident that our well-known and familiar symbols are in place. They want to be sure that our way of life is preserved. Above all, they want to be convinced that our democratic institutions will not be undermined. But they can accept change if it is done in a sensible and orderly fashion.

In conclusion, I think we ought to take on board the fact that the business of constitutional change and change in our political structures is, indeed, a hard thing to achieve. Those who are watching should take that matter on board. We would all like an ideal state of affairs. We would all like an ideal nation. We would all like to have an ideal head of state. I suspect one of the things that the populists have in their mind is a kind of mix between Mary Robinson, the late Princess Diana, the late Mother Teresa, Nelson Mandela and a few other people.

**CHAIRMAN**—Unfortunately, like some of them, your time has now expired.

**The Most Reverend PETER HOLLINGWORTH**—My concluding remark, Sir, is that the Archangel Gabriel is not normally available for election except in times of dire need and crisis.

**Mr KENNETT**—I have been listening to the debate with great interest and obviously respect the views expressed but, in the end, this Convention should meet two critical objectives: firstly, any republic should be of a nature that will mould a more cohesive Australian society; and, secondly, any republican format should enhance Australia's status internationally. The fundamental question, which will be addressed by the public of this country, is whether Australians think we are at that point in our history and maturity as a nation at which we should break our last formal ties with Britain.

I think, as Reverend Hollingworth has just said, most Australians recognise the inevitability of severing Australia's constitutional links with the UK, but only if a better system can be identified. The Convention, therefore, is charged with agreeing on a republican model which is able to meet one basic test: that it is better than the system which has served this country so well for more than 200 years. This is a judgment which will be made by all Australians through a referendum. If we are going to make the change, it should be done not in anger or enmity; rather, it must be with honour and deep gratitude for what the connection to the monarchy has meant throughout the period of Australian settlement in terms of the basic institutions of Australian democracy.

We should be conscious that the time has come when Australia not only should be independent, which it has long been, but should be seen nationally to be independent without qualification or limitation or need for explanation. There is no justifiable proposal that we abandon our system of responsible government within a parliamentary democracy. In respect of our constitutional position, I would remind you of what one of our fathers of Federation, Alfred Deakin, said at the outset of the 20th century:

The Commonwealth Constitution will begin to take effect on 1 January 1901 but everything which could make the union it establishes more than a mere piece of political carpentry will remain to be accomplished afterwards.

That is the essence of the work of this Convention. However, the Constitution is not a loose-leaf folder to which we can add or subtract like the pages of a recipe book. As the noted United States Supreme Court Judge Oliver Wendell Holmes once said, a Constitution is meant to last. The Australian version of the Westminster system has served our nation and each of the states and territories extremely well and should not and need not be abandoned for Australia to become a republic. What the community wants if there is to be change is one which preserves the elements of the current system with one change which appears minor but is not in reality: a change in the position of the head of state. It is a big task to bring change into effect without dramatically altering the balance of our special brand of democracy or, more importantly, undermining it.

The elements of the existing system which must be preserved include the existing balance of powers between the arms of government and in particular between the head of government and the head of state; the role and powers of the head of state to be a neutral power acting in the same way as the present Governor-General and Governors and with the same powers and restrictions as currently apply; and, finally, filling the office with high calibre Australians.

The answer, not perfect but the best available, must be one based on the system we know to operate effectively. It is to confer on the president, without defining them, the powers at present inherent in the Governor-General. The extent of these powers and the fact they cannot be effectively codified makes it desirable that the president retains the present degree of flexibility which is based upon convention. For these reasons, the popular election of the president is, to me, not an acceptable solution. The direct election model would impose a presidential system over the top of a Westminster system. Without significant change you can have one or

the other but I do not believe you can have both.

Further, a partisan process, which an election must be, will not produce a neutral power—the necessary impartial umpire who is able to serve with unquestionable dignity—and it would require and produce in fact the reverse. This is neither required nor desirable in any change and, as Reverend Hollingworth said, it would ensure that those who disliked politics, who might best be suited to the task of constitutional umpire, would refuse nomination. These are precisely the things we do not want.

In essence, therefore, I am here to show my support for a model that advocates the election of an Australian president by a two-thirds majority of joint houses of the Commonwealth parliament. An election structured in this way delivers both a republic and, importantly, an improvement on the present system. It requires the Prime Minister and the opposition leader to agree on the appointment and in this way would blow a refreshing wind of consent through the corridors of our Westminster system. This gives the people, through their representatives on both sides of parliament, input into the choice and all but guarantees a bipartisan president. It leaves the Westminster system of government in better shape rather than eroded.

However, the most difficult element is the means of dismissal. In this, along with others, I disagree with the proposal that a two-thirds majority of the combined houses should be required, because it will make it virtually impossible for the head of state to be dismissed without potentially an unseemly political brawl. I also, with respect, reject the proposition of the McGarvie model that the selection of the head of state and the question of dismissal, should it arise, be on the advice of a council of retired governors and judges. Such a model attempts to replicate a monarchist system in a republican model and will give us something worse than the present system.

Firstly, non-elected establishment figures with past histories in Australia and no powers cannot replicate an absent neutral monarch. Secondly, a council can refuse to consent by

resigning, a monarch invariably consents and in real terms cannot resign. Also, I firmly believe that this is not a time for hybrid solutions but a time for a bold, simple Australian solution. We should not set out to be minimalist. This is not an Australian trait. I therefore support the notion that dismissal should be effected by a majority vote of the House of Representatives on the motion of the Prime Minister.

The potential problems that this presents in relation to what happens if parliament is not sitting at the time and the possibility that a president may attempt to frustrate the process by adjourning or proroguing parliament can be answered easily with technical amendments. The mechanism for the dismissal of a president in this way becomes subject to the rigours of the democratic process of the parliament and of this country. It is a public process and is able to come under public scrutiny. Any Prime Minister in government that did act to remove a president would eventually be accountable at the next election—in short, the supreme body, the people of Australia.

To clarify a number of other matters from my perspective, I agree firstly that the support of all states is necessary for Australia to become a republic. This adopts the process which applies under the Australia Act and would require the states to agree to support the change. Secondly, if change occurs federally, the states should follow suit and, for my part, I would encourage Victoria to alter its constitutional arrangements should the Commonwealth become a republic. Thirdly, in relation to titles, I support the retention of the Commonwealth of Australia as our national title and I believe that in a republic the title of president is most appropriate for the head of the state of the Commonwealth.

May I voice one word of warning: there are some, including the editors of the *Australian* this morning, who insist that this Convention should make its decision in accordance with current opinion polls. Today's polls are rarely the same as tomorrow's. Each member of this Convention has a duty to make an honest, reasoned and independent decision based on what is in the best long-term inter-

ests of the Australian people. The polls do not relieve us of that responsibility. That is the price of leadership and that is the task of this Convention.

I also support the concluding comments by Delegate Handshin today when she clearly addressed our minds to the fact that should the direct election model not be the favoured choice of this Convention, we should all urge those who advocate it, nevertheless, to provide clear support for a final resolution which can be put to the Australian people.

Finally, this Convention must arrive at a compromise based on common sense in determining the republican model that is put to a vote of Australians. Not to do so would fail the Australian public and any test of leadership applied to this Convention and leave the matter unresolved when we arrive at 1 January 2001.

**CHAIRMAN**—As the official photograph the other day was totally unsatisfactory, arrangements are being made with the ABC to take still photographs that will show delegates seated in their places. One of the official ABC photographers is about to put that in place. I ask delegates if they do not mind staying in their places while we get it set up. It will enable people to be photographed for the purpose of the official photograph of this Convention. I am sorry, but the other day the photograph of people standing in the centre was quite unsatisfactory. It seemed to me it was a pity not to do it in a way that could be recorded for posterity. After this process is concluded, we will move to the presentation of the reports of the working groups on the issues for today. They will be Working Groups M, N, O and P.

*The official photograph was then taken.*

**CHAIRMAN**—Before we proceed to the working group reports, I have received a proxy nominating Mr Clive Longstaff in the event that Mr Neville Bonner may not be able to be with us all day. We will proceed first to the report from Working Group M and Professor George Winterton. We are going to proceed to each of the reports before we proceed to the discussion on the reports.

**WORKING GROUP M****Each State should be able to make individual decisions about retaining their links****REPORT**

Each State should be able to make individual decisions about retaining their links

1. The autonomy of the States in the federal system be reaffirmed; and the present balance of constitutional power between the States and the Commonwealth be retained.
2. Accordingly, each State will retain control of its own constitution, and any move to a republic at the Commonwealth level shall not impinge upon state autonomy.
3. The title, role, powers, appointment and dismissal of State Governors or Heads of State will be determined by each State. State Governors or Heads of State will not be appointed or removed by the Commonwealth Head of State or the Commonwealth Government.
4. While it is desirable that the advent of republican government occur simultaneously in the Commonwealth and the States, it is noted that each State has different legal arrangements and may not wish, or be able, to move to a republic within the timeframe established by the Commonwealth. In these circumstances provision could be made in the Commonwealth Constitution to allow States to retain their current constitutional arrangements.

**Professor WINTERTON**—Perhaps I can say one or two words as background. The legal position concerning the establishment of a republican constitution in Australia and the states can be rather complicated and there are disagreements among constitutional lawyers and others. Maybe I could just summarise in essence. I hope this Convention does not try to resolve these legal problems. I am sure they could, but there would be disagreement here. I think it might be helpful if I just state fairly and briefly what some of those are. It might assist if I basically distinguish the legal issues involved in the establishment of a republic at the Commonwealth level and the state level.

In order to establish a republic at the Commonwealth level, one would certainly have to amend the Commonwealth Constitution, and that would require a section 128 amendment. There is no problem in that respect. Most people, I think, would say that it is not essential to amend the covering

clauses in the preamble, but certainly it would be cosmetically, at least, desirable. We have certainly had motions advocating amendment of the preamble in order to update it, at least. It would look strange to have a Constitution which abolished the Crown and yet still referred to the Queen's successors.

In order to amend the covering clauses in the preamble, because section 128 refers to amendment of this Constitution and they are not part of this Constitution, the prevailing view—which I personally do not accept, but it is certainly the prevailing view—is that it would require the procedure laid down in section 15 of the Australia Acts. There are two Australia Acts: a Commonwealth act and a British act. I think the British act is really the relevant one. It provides for two methods by which this could be achieved.

Although I hesitate to say so, it is fair to say that the second one is not universally conceded. The one that is universally conceded is laid down in section 15(1) of the Australia Act. That would require all states and the Commonwealth parliament to pass legislation. That would, of course, require the consent of all the states. Section 15(3) provides an alternative source, but I have to concede that this is not universally conceded, although certainly many people, including myself, take this view. That would require a section 128 referendum—which could be the referendum bringing in the republic—and Commonwealth legislation pursuant to it.

In short, without getting too technical, there is a view that the consent of the states would practically be required even to bring a republic purely at the Commonwealth level—although, as I say, that is not my personal view, in being fair in these things. Those who maintain that you need to amend or you should amend the preamble and the covering clauses—and, certainly, I agree one should—would say section 15(1) is the clear way to do it, and that would require the consent of all the states, legislation from all the states, plus legislation from the Commonwealth.

If one moves to changing from a monarchy to a republic at the state level, there are two sets of provisions that need to be dealt with. First of all, there are the state constitutions or

constitution acts. Many of these—there is some debate among lawyers as to how many—entrench the Crown at the state level. There is no doubt that Queensland and Western Australia do and would require referendums. Victoria certainly does by requiring an absolute majority of both houses of the parliament. It is arguable that New South Wales and South Australia also do. About the only one that seems not to, as a matter of law, is Tasmania, although I realise that, politically, it is probable that all the state governments would want a referendum on the subject.

The provisions in the state constitutions can be changed by the state parliaments, but they have to follow the procedure laid down by entrenchment—either absolute majority or referendum and, in some cases, both. Then there is section 7(1) of the Australia Act. For those of you not familiar with it in detail, section 7(1) says that Her Majesty's representative in each state shall be the Governor. Some would say that entrenches Her Majesty the Queen in the Constitution of the state; others—I include myself—would say, 'It doesn't do that. It simply says as long as there is the Queen, her representative is the Governor, but it does not entrench the Queen.'

Clearly there is uncertainty, and I think one could say that most people would agree that you do not want uncertainty in the establishment of something as significant as a republic. It would look ridiculous if things were declared unconstitutional by the High Court later on. Therefore, one needs to amend section 7 of the Australia Act. That, as I remind you, has those two alternative methods—section 15(1), which requires all seven parliaments, or section 15(3), the referendum plus the Commonwealth act but not universally conceded.

With that background, perhaps I can focus on the report of Working Group M. Working Group M consisted of several state political leaders, some opposition leaders, a Deputy Premier and Dame Roma Mitchell. It achieved unanimity, I think I can say, in all these propositions.

The basic decision made by the committee was that the essential principle must be that

the advent of a republic at the Commonwealth level should have no effect on state autonomy. The structure, the arrangements concerning the state executive, the appointment or the removal of any state governor, whether states retain governors or not and what their powers are, should all be matters for the state.

I will emphasise a matter that is sometimes raised in error rather than in any other way. It is somewhat inaccurate to see the federal president replacing the Queen. In the view of this group—and in view of most republicans—there is no intention that the president would replace the Queen for the purpose of appointing and removing state governors. The view is that the states would remain completely autonomous, the removal or the appointment of the state governor would be determined purely by the states, by whatever method they chose—whether they chose the McGarvie model, the two-thirds model, the direct election model or some other model. It should be entirely up to them. We believe this Convention should not express any opinion on that. That is purely up to the states.

We also took the view that the advent of a Commonwealth republic should occur independently of the states and that it should not be necessary for all the states and the Commonwealth to become a republic at the same time. This, I realise, is not uncontroversial, but I do emphasise that that group was unanimous in that view. It took the view that it was unrealistic to think this would happen.

Theoretically, if the Commonwealth moves to a republic and the states move to a republic or not, in their own time—presumably retaining links with the Queen if she were willing to allow that—it is possible that you could end up with a hybrid. It would not be unique. Malaysia has a hybrid, Imperial Germany had a hybrid. It would also appear incongruous.

But let me remind you that there have been incongruities in the past. I do not think anyone here who has studied these matters would disagree with the proposition that the monarch became monarch of Australia if not in 1939 when the Statute of Westminster was effectively adopted, or adopted in 1942 retrospectively, then certainly in 1953 when the Royal Style and Titles Act was passed.

So we had a Queen of Australia at least from 1953, if not 1939. Yet it was only in 1986 that the head of state of the states ceased to be the Queen of the United Kingdom. So we did have that incongruity of a different theoretical head of state—same person of course. Between 1939 and 1986 or 1953 and 1986, the Queen of the United Kingdom was head of state of the states and the Queen of Australia was head of state of the Commonwealth. Yet we all went about our business. We grew up and went to school and all the rest. It did not seem to have a deleterious effect on our lives.

So, in short, this group advocated that the movement of the Commonwealth to a republic should have no direct effect on the states, that they should make their own decisions. State autonomy was the dominant principle. We did not think the hybrid was likely to eventuate as a matter of practical reality. I hope I am not misrepresenting the group by saying that as a theoretical possibility we conceded it could occur and it did not cause us excessive trouble.

The last point is that people sometimes ask, in respect of this hybrid, who would the governor of the state represent if the state, for example, chose to retain links with the Crown. The answer is: in theory, the Queen of that state but, in reality, the people of the state. The reality is now that the Governor-General really represents the Australian people, and the Governor of the states the people of the Australian states. So, in reality, although there might be this legal quirk, we took the view that this would have no practical significance at all.

**DEPUTY CHAIRMAN**—Delegates who want to speak will be able to do so for only a few seconds because there was a resolution yesterday which said that there would be a total of 10 minutes for each report. Professor Winterton took up 9 minutes and 30 seconds and I have taken up a few seconds. You will have the opportunity to speak, I would think, if you are on the list.

**Dr SHEIL**—I have a general question of Professor Winterton. Early in his exposition he laid down a set of conditions for the situation where we got rid of the Crown and

created a republic. I am wondering what Crown he is talking about. We cannot obviously abolish the Crown of Great Britain; therefore we must be going to abolish the Crown of Australia. We have our own Crown but as far as I am aware we have not built a Crown. We do not have one sitting in a glass case anywhere. There is none sitting on any head in Australia. It must be floating around like a wraith over the country. I agree that we have an Australian Crown, but how will you abolish it?

**Professor WINTERTON**—I remind you of the last sentence in point 4. It was included to deal with this problem. The idea was that if this eventuated there would be a provision in the Commonwealth Constitution to enable a state to set up its link with the Crown and thereby, in effect, have a state Crown. That was the purpose of the last sentence in No. 4.

**Mr WADDY**—Is Professor Winterton actually saying that the republicans propose to abolish the Crown of Australia and allow the establishment of six separate Crowns in each of the states of Queensland, New South Wales, Victoria, et cetera, if that is what the states want? Is that what he is actually saying?

**Professor WINTERTON**—Yes, as a theoretical possibility. It is not just me; this committee took that view—it is a theoretical possibility but we did not think it was really a practical possibility.

**Mr WADDY**—So the republicans want to abolish one crown and substitute six. I just want to get it clear.

**DEPUTY CHAIRMAN**—There is clearly intense interest in this. Yet you had a resolution yesterday which said that the total amount of time for each of these reports was 10 minutes. Mr McGarvie is very anxious to have five minutes. I know that there are a number of others who want to speak. I understand that the full time will not be taken up with the next group. We might then use that as a 10-minute period that we can spread around a bit. I would be disposed to give you the call if that were the case. I will ask Michael Lavarch to report. That will give us a bit of flexibility.

**WORKING GROUP N****There should be simultaneous change across all States if a national majority agrees to change**

**Mr LAVARCH**—Working Group N met briefly last night and this morning. They were not well attended meetings. Unfortunately, the late vote of last night threw the commitments of delegates somewhat out. Inasmuch as there was discussion at the group it was on the desirability of, were we to abolish the monarchy at a national level, abolishing it at the state level also. The group recognised that for a good number of years now it has been recognised that the Crown is divisible and that we do have effectively separate state monarchies as well as a national monarchy. It was also recognised that while it was constitutionally possible to have a national republic with one or more monarchist states, this would be at best anomalous. It would be inconsistent with the fundamental principle that the Australian people's allegiance should not be divided between a foreign monarchy and an Australian republic.

The real question is how the states' ties to the monarchy should be severed. There are two broad options. The first is a bill, which will be ultimately put by the Governor-General to the Australian people, to amend the Constitution. This could seek to remove the monarchy at both the national and the state levels. Alternatively, as Professor Winterton has outlined, the question of the states' ties to the monarchy could be left to individual states to determine.

It was recognised that both approaches obviously have advantages. The first would entirely remove the possibility of Australia becoming a republic at the federal level with one or more monarchical states. This would ensure that Australia becomes a republic at both the national and state levels at the same time. The second approach is consistent with the view that each state is, subject to the Australian Constitution, an independent body politic within the federation. Accordingly, a state's constitutional system is ordinarily a matter for the state to determine.

According to this view, constitutional change should not be forced on the people of

a particular state by the people of other states approving a referendum under section 128. I note in this respect the finding of the Western Australian Constitutional Committee that most Western Australians feel that the form of government in Western Australia is for that state's people and that state's people alone to decide.

Ultimately, the group believed that nothing would particularly turn on the approach that is adopted. It is considered that it would be highly unlikely that an outcome would be achieved which would see separate state monarchies—for a number of reasons. First, the referendum itself would most likely, if passed at all, be passed in all of the states. As Premier Kennett indicated this morning, given a result of that magnitude, it seems unlikely that an individual state government or state parliament would then reject the will of the people of that state so expressed. There was also a further view expressed that it seemed unlikely that Her Majesty would accept the invitation to be the Queen or the monarch of an individual state against a backdrop where the nation as a whole had voted towards an Australian republic.

Finally, on the question of whether this course of action is legally open to us—that is, the use of section 128 to achieve a national outcome—or whether there is some legal bar through the operations of the provision of the Australia Act and any limitation within section 128 which may preclude there being a national simultaneous outcome, my view is that there is no such bar. It is based on a misinterpretation of the penultimate paragraph of section 128 of the Constitution, which provides:

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

The reasoning appears to be saying that this mechanism then cannot be used to change state constitutions and that the phrase 'the provisions of the Constitution in relation

thereto' relates to any provisions of the Constitution in relation to a state. This view is not correct. 'The provisions of the Constitution in relation thereto' are the provisions of the Commonwealth Constitution in relation to matters specifically mentioned in section 128. The special requirement does not extend to every proposal which would alter the Constitution of the state. I refer delegates to the final report of the Constitutional Commission of 1998 which canvassed that.

In the end, the group resolved not to present a formal report to the Convention, believing that the options would be canvassed in the other reports and, if delegates were of a view that this option should be taken up, it would be handled by way of amendment to other reports.

**DEPUTY CHAIRMAN**—Has your document been circulated?

**Mr LAVARCH**—No.

**DEPUTY CHAIRMAN**—We will now proceed to the report of Subgroup O, and the rapporteur is Mrs Annette Knight.

#### **WORKING GROUP O**

**Any change should be simultaneous but should only occur if majorities in all States support change**

#### **REPORT**

1. A decision on change to a republic should be made in such a way that either the Commonwealth and every State simultaneously become republics or all remain monarchies.
2. The change to republics should only occur if majorities of Australian voters and of voters in every State support the change.
3. The most practical and symbolically satisfying way of resolving the republic issue is by a referendum in which the change will occur only if majorities of Australian voters and of voters in every State support the change and if every State Parliament requests it.
4. Only successful cooperative federalism can bring about the resolution of the republic issue and Commonwealth and State Governments must work together from the outset to facilitate an effective resolution.

**Mrs ANNETTE KNIGHT**—My working party unanimously supported the proposition that any change should be simultaneous but should only occur if the majorities in all

states support change. The recommendations are before you.

I propose to briefly present a broad overview of the working party's deliberations, before calling on my friend Dick McGarvie to address the legal ramifications of this proposal. We are cognisant of the fact that an argument can be advanced that, by accepting to federate, the states accepted the section 128 procedure for altering the Constitution and they should continue to abide by that commitment. We feel that there are other more important issues to consider and that there are additional complications here.

This may be a powerful argument, but we maintain that the question is not simply a legal one and the significance and nature of the change involved is such that by far the best outcome for Australia, if it is to become a republic, would be for all states to agree. If there were less than unanimous agreement, the move to a republic could be divisive. Such an important event should bring Australians together and not divide them. As Sir Francis Burt once observed, the legal changes that must be made must first be made in the hearts and minds of Australians.

The issue identified by our group to be of paramount importance is one based on an approach that is not only practical but symbolic of the cooperation and commitment of the states to support and reinforce the strength of the federal union. The wisdom of such an approach is evident at this very Convention, with delegates drawn from every state and territory. It clearly reflects the benefits of the partners in this great national enterprise working together to achieve the best end result. Such an approach has been a major reason for the success we have enjoyed since federation.

There is a strong feeling amongst some delegates, particularly those representing the youth of this country, that some of the strong views held by individuals and groups here have the potential to create an alienating influence. These same young people see the proposition that we are supporting as the catalyst to securing an outcome that reflects a truly cooperative approach. We share this view. At least four state premiers—Court,

Kennett, Olson and Borbidge—have already signalled their support, cognisant of the fact that the success and stability of the Australian polity since federation has been grounded on the political legitimacy given to the federation by the popular vote in all the colonies and that, if there is to be a Commonwealth republic, it should be built on a foundation just as secure.

We urge your support for the proposition, because we believe that it is unlikely that a referendum on an Australian republic would succeed with less than the unanimous support from the states. It is worth remembering that, of the eight referendums that have been approved by the Australian people, only one was passed with less than a majority in every state. I will now hand over to my friend Dick McGarvie who will speak about the legal ramifications of the proposal.

**Mr McGARVIE**—I am about to make a speech which some will regard as the most unpopular speech of the Convention because it brings home the magnitude of the task of resolving this issue, whichever model is adopted.

The constitutional health of our democracy and federation requires the prompt, fair and effective resolution of the republic issue for the whole federation. The notion of resolving it only for the Commonwealth system, as though the states do not matter, would be a repudiation of our federation. Australian commonsense would never tolerate the issue being resolved in a way that could result in the Commonwealth and some states becoming republics and one or more states remaining monarchies. Nor would it tolerate a state being forced, against the will of a majority of its voters, to become a republic, even if that is legally feasible.

Effective resolution requires a process structured so as not to carry inherent bias against either side. Bias will be absent only if electors can make a simple choice between the present system and a republic model that will equally maintain our democracy—the proposed constitutional amendments will have to be valid beyond credible argument and the method of making them will have to preserve the cohesion of our federation. Unless all

those features are present, many who favour becoming a republic would vote against the proposed change rather than put our democracy or federation at risk. Effective resolution is achievable, but only if we face up to the difficulties involved.

The requirement for a republic model equally safe for our democracy will be satisfied by adoption of the model I advance. In a state, the governor will become actual head of state, appointed or dismissed on the Premier's advice by a constitutional council of three automatically selected under the state's constitution from categories of former governors-general living in the state and former governors, lieutenant governors or supreme court judges of the state.

Whichever model is adopted, the most practical way of resolving the issue starts with a bill to make the constitutional changes for becoming a republic being passed by the Commonwealth parliament. It would then be submitted to referendum on the basis that, if a majority of Australian voters and a majority in every state approved the change and if it were also requested by every state parliament, the Commonwealth and each state would all become republics together. Unless there were all those approvals and requests, the Commonwealth and all states would remain monarchies.

The constitutional machinery for doing that would rely on the powers in section 128—the referendum provision in the Commonwealth Constitution—section 51(xxxviii) and section 15(1) and perhaps 15(3) of the Australia Acts 1986. The bill to make constitutional changes would provide that it would only come into operation as an act and make those changes if all those approvals and requests were given.

In saying what I do, I draw much more on a lifetime's observation of referendum campaigns and outcomes than on knowledge of constitutional law. There is a practical need for that complex process, because there are highly credible constitutional lawyers who hold the opinion that the ordinary amendment provisions of the Commonwealth or the states could not validly make the changes from monarchy to republic.

It is argued that Australia could not become a republic without amending the preamble and the first eight sections of the Commonwealth of Australia Constitution Act because they make the monarchy an essential part of the Commonwealth. They argue that the referendum provision can only amend the Constitution set out under section 9 of the act and not the preamble or first eight sections. Others disagree. For present purposes, it is not necessary to determine what the High Court would decide. If it were sought to change to a republic merely by the referendum provision, the lawyers' opinion that invalidity would follow would carry immense weight in a referendum campaign where all flaws and possible flaws are exposed and stressed. Fearing what would happen to the whole system if the new head of state lacked the legitimacy and authority of constitutional validity, many voters, although favouring a republic, would vote no.

Professor Greg Craven drew attention to that in 1992. Credible lawyers have also expressed the opinion that section 7 of the Australia Acts, which provides that the Queen's representative in each state shall be the governor, prevents the ordinary amendment provisions in state constitutions from changing the state to a republic. The practical way of changing the whole country to a republic, if a majority of voters in Australia and every state desire that, is by use of the amendment powers of section 15(1) of the Australia Acts.

If the Commonwealth bill is approved by those majorities and requested or concurred in by each state parliament, it could, when it came into operation as an act, bring about amendments to the Commonwealth and state constitutions which would change them all simultaneously to republics. It could do that in a way that would override the need, under some state constitutions, to hold a state referendum. This method would overcome the risks of invalidity that have been mentioned and be constitutionally valid beyond all credible argument.

That process fully maintains the position and independence of each state because nothing could change to a republic unless the

majority of that state's voters voted to have the Commonwealth and all states become republics. While requests from all state parliaments would give the Commonwealth act power to bring about the amendment of the state constitutions on that occasion, it would confer no future power on the Commonwealth parliament to amend state constitutions which it did not already have under the Commonwealth Constitution. Clearly, only cooperative federalism can bring about the effective resolution of the republic issue. It cannot be done without Commonwealth and state governments working together from the outset.

Even if a majority of a state's voters voted 'yes' in a referendum, there would be no guarantee that its parliament would make the request for the Commonwealth act which would change Australia to a republic. The best that could be done would be to build up a community consensus and expectation that state parliaments would act in accordance with the verdict of its state's voters. All this illustrates how important it is to start building consensus and for this Convention to adopt the republic model that is utterly and obviously safe for democracy.

#### **WORKING GROUP P**

##### **The present arrangements for State links with the Crown and the defects of suggested alternatives**

**Sir James KILLEN**—I move:

Resolution: that this convention recommends to the Federal Parliament that it extends an invitation to the State Parliaments to consider:

1. The constitutional implications upon their respective constitutions of any proposal that Australia should become a republic.
2. The consequences to the Federation of Australia if a State or States should decline to accept a republican status.

I say to my honourable and learned friend Richard McGarvie that I would not look upon that speech of his as being the most unpopular that has been delivered to this Convention. I would regard it with great respect as being one of the most cautionary and one of the most informed that has been delivered. I must confess that, with the manifest imperfections that have over the years been identified in my

being by many in this chamber, I would seek to add to them today. I have been astounded—I remain astounded—at what I would describe as the arrogant assumption by many in this Convention that this is some simplistic affair. It is not.

I listened with interest to my friends learned in the law pushing the view that this Commonwealth parliament can decide the issue. I take leave to observe that in the Commonwealth's Constitution the words 'state' and/or 'states' are referred to on no fewer than 326 occasions. In relation to those who simply say, 'We'll use the mechanism of 128 and suffocate the states,' I pause; I step back not in admiration but aghast at the arrogant assumption that that is possible.

This working group has put forward a resolution which is, in essence, an invitation. It is a recommendation to the parliament of the Commonwealth—not to the government, but to the parliament of the Commonwealth—to invite the state parliaments to give their opinion on what is proposed. For my part, I think there are significant alterations that have to be made. For example, I perceive some 43 sections of the Constitution that would have to be altered; some 90 references involving the Crown in one way or another. As a consequence of that, I again step back somewhat surprised at the rashness—to use a gentler word—that some people employ.

This is an invitation to ask the state parliaments for their view. There are two limbs to the invitation. One is simply to say, 'If you have any fears about going to a republic, the impact on your constitutions, let us have them.' For example, I acknowledge the presence of an old family friend, the Western Australian Premier. The Western Australian Constitution by dint of section 73 provides that there must be an absolute majority of both houses of the Western Australian parliament voting to disturb the position of the Crown and a referendum. With my own state, an enlightened state—

**Father JOHN FLEMING**—Which is that?

**Sir James KILLEN**—I did not detect, Sir, that you were so poorly informed. With regard to a referendum I, with respect, would disagree with my honourable and learned

friend Professor Winterton. I would have thought it pluperfect clear that in New South Wales and South Australia you would need a referendum to disturb this—and in Victoria, that emancipated state.

**Mr RUXTON**—We don't get a go there.

**Sir James KILLEN**—Oh, no. My honourable and well-informed friend, who brings that robustness of attitude that cheers us all up—Mr Ruxton. We are under obligation to you for your timely warnings from time to time.

In Victoria an absolute majority would be needed in both houses of the parliament. All this postulates that there is going to be immense difficulty. I want to say to the Attorney-General—that is, the Commonwealth Attorney-General—that I listened to his speech the other day with a great deal of interest and that, for a number of counts, I take leave to say this: I think it is a new-found luxury for ministers to be parading in public their private views. The only private views I think they can parade in public are what friends they will make and what horses they will back. If they seem to think that there is some stern message in that, then let them relive. You will not find that advice in any textbook but you will find it in the lessons of history.

The second thing I want to say to the Attorney-General is that he mentioned the word 'federation' once in his speech and that was in an historical context—that the referendums since Federation would not encourage much. He did not mention once the Australia Act. I am surprised that the federal Attorney-General—the first law officer of the Crown in the Commonwealth—would not have adverted to the difficulties posed by the Australia Act and that he did not mention the difficulties posed by the existence of the federation. Therefore, I would invite him to present to this Convention his opinion on the impact on the federation of turning into a republic and also on the implications of the Australia Act.

I assure my honourable and learned friend that there would have been no Attorney-General who ever wandered around the corridors of this building who gave an opinion that would be subjected to such meticu-

lous examination. So his labours would not be in vain. I hope he will respond to that and let us have his opinion, because I think this Convention is entitled to it. He was diffident, he said, as shadow Attorney-General and as Attorney-General, to offer his private views. Well, this is a simple request for him to give us his public views on the implications for and the impact on the federation and the Australia Act.

I turn to the Australia Act because this is vital as far as the states are concerned. One could offer the view that, when it was passed in 1986, it was passed peradventure. I have some difficulty to this day believing that those who framed it could have been sharply conscious of the stern political truths that have existed in this country in this century. There must be six state parliaments—this is one limb of approach—to disturb the Australia Act. Six parliaments must make a request to the Commonwealth parliament. Six parliaments, I observed, in the plenary session a few days ago. That encourages me in my racing activities that I will get a winner occasionally. To get state parliaments to agree to that? Well, so be it; it may be possible.

I confess that I have no admiration for the assumption that the Commonwealth parliament can say to the state parliaments, 'You will pass this legislation, consider this legislation, when we tell you to do it.' That is to be found in the Attorney-General's speech to this House.

When the Australia Act went through the parliament in the Senate—we used to refer to it in this place so reverently as 'that other place'—I would say the speech of the then minister, a former Attorney-General, my friend the honourable and learned gentleman, Gareth Evans, occupied in the committee stages, looking at the facility with which he speaks, some two or three minutes at the outside. He used the expression 'I guess' on two occasions. I have never known such tentativeness to be resident in any presentation on his part. But my friend did not advert to the implication as far as the states are concerned. The view is available, and I suggest it is a respectable one, that the provisions of the Australia Act, in a very real

sense, doubly entrench the requirements that already exist in the manner and form of the constitution of four states that, in my respectful opinion, can be identified. They are some of the problems. I come back to where I began. I am indebted to my honourable and learned friend Richard McGarvie for identifying some of them. This is a request to the states: please give us your opinion. I am sure that all state supporters will support this motion with a great deal of enthusiasm.

**DEPUTY CHAIRMAN**—Firstly, before I call the Premier of Western Australia, there are three proxies that I should notify. One is from Digger James nominating Damien Freeman for tonight from 6 p.m.; Christine Ferguson nominating Professor Colin Howard for this morning; and Don Chipp nominating Alan Fitzgerald from 6 p.m.

Secondly, the arrangement for lunch has been changed slightly to take account of the continuous sitting. Lunch will be available to delegates between 1 p.m. and 2.30 p.m. Delegates are free to move to the dining room at any time during that period. But, of course, we will continue sitting throughout. I hope that we will be able to maintain reasonable numbers in the chamber through the lunchtime session. We do not have a formal quorum, but I would like to think that the attendance is much higher than it generally is during the lunchtime sessions that we have in the Commonwealth parliament and as a courtesy to those speaking. Also, the Chairman and I want to thank the caterers for their flexibility.

The debate on the subject 'How should the links to the Crown at state level be handled?' which, of course, involves consideration of the four reports we have had, begins now and will continue until 1 o'clock. Speakers have five minutes. I now call the Hon. Richard Court.

**Mr COURT**—I hope the five-minute speaking time is not at all symbolic of the downgrading of the states' perspective in relation to this matter. The states' position on this issue of change to the Constitution is fundamental. We should never forget that it was the states that came together in the first place to form our Federation. If all of the

states are not supporting fundamental change, it simply will not happen.

I heard Mr Turnbull this morning saying on radio that it was inconceivable that the states would not fall into line if there was to be a republic on the need to change each of the states, that they would be able to leave the timing of that to their own choice. I say thank you for those words, but the states will make those decisions on their own constitutions. They certainly should not be taken for granted.

I remind the delegates to this Convention that Western Australia is the only state in Australia that has never been a part of New South Wales. I just make the point that we will not have any intention of sheepishly following any particular dictates that come out of that state.

Western Australians have demonstrated they have a great interest in the Constitution. Just prior to Christmas we opened a constitutional centre—the first one in this country. Since then we have had 12,000 people go through that centre. At the completion of this Convention, we will be having six public forums in the coming months around the state, and already very strong interest is being expressed by people wanting to attend those particular forums. That is an indication that we take this issue very seriously.

If there is going to be change, it is important that the change does occur in the states at around that time. I accept that with two states, including ourselves, needing a referendum, it might not be possible for it all to happen simultaneously. It gets back to this basic question that there must be broad agreement with the states if we are to have the change.

The Constitution Act of Western Australia must be amended to provide for a suitable republican model for the continuation of the office of Governor. That is a matter which must go to the parliament of Western Australia and also the people of Western Australia must vote in a referendum as alteration to the office of Governor requires such endorsement.

Each state, as has been outlined this morning, has its own process for change. State parliaments need to work together to effect

any necessary changes to the Australia acts if we are to achieve this change. It would be totally wrong for a Commonwealth referendum under section 128 to attempt to simultaneously alter the constitutions of the states, overriding the parliamentary and democratic processes of the states. This would set a precedent so that the possibility arises of voters in other states imposing fundamental change upon the Western Australian Constitution even though a majority of Western Australians may vote against it.

A particular model that may be appropriate for the appointment of a Commonwealth head of state also may not necessarily be the best means of appointing a state governor. Further to our insistence that any republican model put in a section 128 referendum apply only to the Commonwealth Constitution, we would strongly urge that the best way for the states to move forward with the Commonwealth is for that referendum to receive a majority of votes in all of the states. I think that issue has been broadly supported at this Convention.

In a practical sense, I believe that this does not set up an unrealistic hurdle. As I stated earlier, it is more likely that any referendum, if successful, will gain a majority in every jurisdiction, as occurred in 1966 and 1977. What we are saying is that this historic change needs to be supported by majorities in each state to give it absolute legitimacy and to create a sense of national unity. On a practical level, yes, majorities in each state give their respective parliaments clear signals to move to consequential change to a practical model that suits their needs. It is the surest and best way to close off the possibility that any state could choose to retain links with the Crown if there was support by majorities in all of those states. I reject any suggestion that this inclusive majority requirement that I am seeking is in any way putting a spoke in the wheels.

Western Australians, as I mentioned, take a deep interest in their federal Constitution. Time and time again they have used their votes to protect it from centralist meddling. I would like to conclude my comments by quoting from the report of the Western Aus-

tralian Constitutional Committee which met a couple of years ago. It says:

As far as national identity is concerned, the committee was greatly impressed on listening to the views of the people of all ages and backgrounds throughout Western Australia by the extent to which people in this state are conscious of being both Australians and Western Australians. They have a dual allegiance that reveals an intuitive grasp of the principles of federalism and commitment to them.

The strong support shown for retaining the federal system is an indication of what national identity means to many Western Australians. For most people who responded to the committee, being Western Australian is an essential aspect of being Australian. To force them to make a choice between the two would be counterproductive, especially if it were for the sake of national identity.

As discussed, broad-based support across the states has historically been required for national referendums to be passed. Heavy-handedness on the part of the Commonwealth with respect to state Constitutions would probably prove fatal to any republican proposal.

I think that fairly sums up my views—that is, the challenge for this Convention is to come up with a proposal that does have that strong support in all of the states and then I believe that the issue of how each state handles its own Constitution will be one on which we will be able to relatively easily agree on change taking place.

**Mr RANN**—The Commonwealth of Australia, whether it be under a constitutional monarchy or under a republic, will have one central unifying continuum as we move into a new century: that we are a democratic and representative federal system that includes state and territory parliaments and governments as well as the Commonwealth parliament and government. It is a system that was devised 100 years ago in a constitution that recognised the geographic reality of Australia: that we are a continent, not just a country, with different regions that have evolved differently as states and territories—and, Richard, South Australia was never part of New South Wales.

It is vitally important that any move to a republic does not alter the federal balance of the Constitution in respect of the powers and responsibilities of federal, state and territory

governments. To do so would be political as well as constitutional folly. Above all, each state must be the master of its own constitution.

I am a republican but I want to stress that my support is for a republican system and constitution that enshrines the sovereignty of the states in a federation. There is bipartisan agreement in South Australia that, in a republic, it would still be a necessity for each state to have its own head of state. On Monday, I argued against Australia's head of state being called Governor-General under a republican system. I did so because the very term 'Governor-General' by definition means representative of the Crown, and only constitutional monarchies in the Commonwealth of Nations have Governors-General.

But the same is not true of the term 'governor', which is used in both republican nations and constitutional monarchies to describe the heads of state in regions, provinces or states. That is why I strongly support the retention of the title 'governor' to be used at state level if Australians vote to become a republic. India, the world's largest democracy and a republic within the Commonwealth, has a President as national head of state, a powerful Prime Minister as head of government and Governors as head of state in each of its states. Similar systems with national presidents and state governors occur in non-Commonwealth republics such as the United States, Argentina, Brazil and many other nations. So I will support the retention of the title 'state governor'.

If a majority of Australians and a majority of states do support a republic, it is vitally important that all states take as soon as possible the appropriate, consequential, constitutional and legislative steps to ensure they republicanise their institutions. It would be ludicrous, in my view, for any state to try to go it alone—to try to remain as some kind of monarchical island within a broader Australian republic. There must be constitutional consistency within our Federation, and there will be a clear need for the national council of Attorneys-General to get cracking soon after this Convention to both explore options

for change and make the necessary preparations to ensure constitutional consistency.

But we want a national model, not a Canberra model. Constitutional consistency does not mean prohibiting regional variations within the Federation. After all, there are considerable constitutional differences between the states already. South Australia has one vote, one value. Western Australia does not. Queensland has a unicameral parliamentary system. Tasmania has the Hare-Clark voting system, which is yet to catch on internationally. Some states, such as Queensland and Western Australia, require a referendum to change their constitutions. Others require a majority in both houses of state parliament.

What I am trying to emphasise is that, under the umbrella of national constitutional consistency, there can also be variations at the state level. Some states might opt under a republic to choose their governor or state president in different ways. Some might opt for election or appointment by the Premier, appointment by a two-thirds majority and so on. But that is for each state to decide following their own deliberations in state parliaments or in state-based constitutional conventions and following public debate.

Certainly, we should not contemplate state governors being appointed by the national president or by the Commonwealth because that would alter the balance of federation. In South Australia, the move to a republic would necessitate a swag of amendments, more than 30, to the South Australian Constitution Act, amendments to the Australia Act and around 350 other South Australian statutes—difficult, complex but quite achievable in an omnibus enabling bill. In South Australia, such an approach would be embraced, I believe, in a bipartisan way and there would be no impediment to achieving consequential changes at the state level before the target date of 1 January 2001.

Fortunately, the South Australian Constitution is much broader in scope and significantly more flexible than the Commonwealth Constitution. Apart from the limitations imposed on state laws by the Commonwealth constitutions, it is much easier to amend the

South Australian Constitution by subsequent acts of the state parliament.

In closing, there has, of course, been some debate—and rightly so—about the importance of the preambles to the Constitution as a statement of Australian values. Certainly, this is an area where the states could take the lead and set an example by adopting or changing their own preambles. The states have much in common but different cultures. The preambles, as well as the constitutions, can reflect those different state cultures and different state values.

In South Australia, the state which first gave women the vote and the right to stand for parliament, I would like the South Australian preamble to our Constitution to include a recognition of equality under the law for men and women and a commitment to equal opportunity. South Australia was also the first state in a bipartisan way to legislate for Aboriginal land rights with 20 per cent of South Australia now under Aboriginal ownership. I would like the South Australian preamble to include a clear recognition of the original inhabitants, the indigenous people of South Australia, and also a definition and recognition of multiculturalism and the contribution made by waves of migrants to building and advancing our state. But these matters are for South Australia and each state to decide.

**Mr STONE**—The Northern Territory is not a state, although we have aspirations in that direction and we hope that we might one day rightfully take our place in the Commonwealth of this great nation of ours. In that context, we do not count when it comes to the referendum, only in the sense of a majority of the people not as a majority of the states. I am sure that our colleagues in the constitutional monarchist ranks would be very pleased to hear that since not a single constitutional monarchist delegate was elected from the Northern Territory.

**DELEGATES**—Shame, shame!

**Mr STONE**—But, indeed, not a single representative from the ARM was represented in those who were ultimately elected either. They were elected as independent republicans. I say as an aside that it is a shame that there has been some discounting of the view of

those who support the direct election. They are simply representing the views of the people who sent them to this Convention in the first place. For them to have done anything less would have been unacceptable to the people who voted for them.

I say to delegates that you could be excused for believing that there was a degree of paranoia or parochialism about the position that might be put by the states from time to time. Let me read you something:

We know that the tendency is always to the centre and the central authority constitutes a vortex which draws power to itself. Therefore, all the buttresses and all the ties should be the other way to enable the states to withstand the destruction of their powers by such absorption. Government, at a central and distant point, can never be governed by the people and may be just as crushing as a tyranny under republic or Commonwealth forms as under the absolute monarchy.

That was said and indeed later written by Sir John Cockburn in the South Australian parliament in 1901. It is as true today as it was then. The states do have an interest in this Convention. The states, after all, were those that gave birth to the Commonwealth of the federation. So there is a sense of ownership. Often that is forgotten. People form the view that it was the reverse, that the federation of the Commonwealth created the states. But that is quite the contrary.

The states are important stakeholders in these deliberations. But, equally, the states must not become, unwittingly or otherwise, an obstacle to the republic, because I believe that the Australian people will be very unforgiving. I take the view that there should be broad agreement and that will give the republic the legitimacy that it needs. If it does not achieve that, it all will have been for little. The thought that a state would go it alone would, in my view, be absolutely untenable. We are either in this together as a nation or not at all. That is an important consideration in the final wash-up of our deliberations.

Finally, to comment on the remarks of the Hon. Richard McGarvie and of my old friend Sir James, they are interesting points of view but they tend to obscure some of the real arguments in all of this. I hope those sorts of arguments will not be used in the public arena

to effectively scare Australians into believing that it is all too hard and too difficult, because it is not. It is not as difficult as it is being presented by some. As I have said, the states do have a real, legitimate interest in all of this. It was the states that created the federation and the Commonwealth, and it will be the states that play an important part in deciding whether we become a republic or not.

**Ms BISHOP**—I speak as a proud Australian, born a fifth generation South Australian and educated there, my life shaped and my views influenced by living and working in Western Australia. Our Australian states are independent entities under our federal system, so specified in section 106 of the Constitution. Altering the constitutional status of Australia will require a number of complex steps to be taken. We cannot, for example, overlook the fact that the legal and constitutional vehicle that gave expression to the desire of a majority of people in the various Australian colonies is the Commonwealth of Australia Constitution Act 1900, United Kingdom—an act of the then Imperial Parliament.

I turn to the implications for the states. While section 109 of the Constitution allows Commonwealth law to override state legislation in the event of inconsistency, there has never been a successful attempt by the Commonwealth to alter state constitutions en bloc through the referendum power of section 128. There is some doubt as to whether section 128 does have the ability to rewrite state constitutions, all of them predating 1901.

This is far more than a legal question. Australia is a federalist democracy. Our democracy depends upon the dispersal of power that state parliaments inherently provide as a counterweight to the federal parliament. The balance of our federal system would be gravely altered if a precedent were set whereby state constitutions were amended through section 128—or, put another way, whereby voters in New South Wales could override the electors of Western Australia to impose some kind of major change to the Constitution of Western Australia.

Changing state constitutions to reflect a preferred republican model in the event of a successful move to a republic at Commonwealth level must be an exercise in federalist cooperation, not in centralist coercion. It seems generally agreed by all shades of opinion that it would be divisive and undesirable for any state to try to continue as a monarchy when Australians have voted for a republic. The best way to avoid this would be to ensure that so fundamental a change be carried with the concurrence of a majority of voters in all states. Thus, there would be a clear mandate for the parliaments of the states to cooperate in necessary amendments to the Australia acts and to change their own constitutions by legislation or by referenda as the case may be.

The Western Australian Constitutional Committee in its 1995 report made a firm recommendation that a republic should not proceed unless the majority of voters in all states favoured it. This was not a means of raising the hurdle to bring about the defeat of a referendum by giving one state the power of veto. Rather, it is a means whereby the move to a republic be an inclusive one, where there would be strong popular support for the republican model, giving it an inherent legitimacy. We take comfort that in a practical sense the eight referenda that have been carried received the support of a majority of voters in all states. The only exception was the 1910 referendum on state debts, when New South Wales was the recalcitrant state. So history suggests that the electors of any one state are unlikely to stand out against a consensual national tide.

To make sure that there is such a spirit as we go into a referendum, it is absolutely essential that this Convention recognises: that the state parliaments and their electors are the writers of their own constitutions; that, in the event of a successful referendum for a republic, the states can be trusted to take action by legislation or referenda to amend their constitutions to institute a republican form of government; that the actual form of republican governments at state level are the business of the individual states and territories.

For example, the Western Australian Constitutional Committee suggested that, if the monarchy were removed from the state Constitution, we should retain a local head of state with the same standing and possibly the same title as the Governor. The position of Governor under the Western Australian constitution act can only be altered by a referendum of the electors of Western Australia. These electors have the inalienable right to decide for themselves what kind of republican constitution we will have at state level.

The precondition for a truly just republic is respect for the constitutions of the states and the confidence that the states will replace the Crown in a manner that they see fit if Australians vote for a republic via referendum under section 128. It will be so much safer and smoother if that referendum, should it be successful, succeeds in all jurisdictions.

**DEPUTY CHAIRMAN**—I call Mr Tom Bradley. I should explain: as Chaucer would have called him, the verray parfait knight Sir James Killen has taken an uncharacteristic vow of silence and ceded his place to Mr Bradley.

**Sir JAMES KILLEN**—I'm practising, Mr Deputy Chairman.

**Mr BRADLEY**—Fellow delegates, ladies and gentlemen: the argument put so cogently here this morning by Richard McGarvie is a compelling argument, and there seems to be no alternative to it. If one turns to the Australia Act, section 7(1) establishes the positions of the state governors. Why would such a matter be put into the Australia Act? For the very simple reason that the independence of the states within this Federation depends crucially upon the independence of the state governors. The moment that the state governors suffer the fate of being appointed by an Australian president, the independence of the states is gone.

Section 15(1), as Mr McGarvie pointed out, prevents any alteration to the Australia acts, unless the parliaments of all of the states of Australia agree to request it. The only exception to that is if the people of Australia, in a referendum under section 128 of the Constitution, agree to make such a change.

If one turns to the referendum provision in our Constitution, it makes it abundantly clear that an alteration to the Constitution which affects the rights of the states or particular states under that Constitution must be approved by a majority of voters in each of those states. Section 101 of the Constitution establishes the status of the state constitutions. They cannot be amended by any simple referendum under section 128; they can only be amended by a referendum which is carried in a majority of each of the states whose constitutions are to be altered. The arrogant centralist assumption of the Australian Republican Movement and its patron saint Paul Keating that, somehow or other, the Australian Constitution and the federal balance could be tampered with through a decision of the Commonwealth government alone has been shown to be meaningless.

The view that the rest of Australia is simply an outer suburb of Sydney is a view that must be repudiated. The expression that has been used here by republican delegates in referring to the states of Queensland, Western Australia, South Australia and Tasmania as merely 'the outlying states' underscores the arrogant attitude which seems to assume that a fundamental shift in the balance of power under our Constitution can be achieved without reference to the people of those states.

The assumption seems to be that somehow the states are the wayward children of the Commonwealth. Rather, it is the reverse: they are either the older, wiser sisters of the Commonwealth or, indeed, they are the parents. It was the states that agreed in the compact which is the Constitution to create the Commonwealth, and not the reverse. If that compact, which was to unite in one indissoluble Commonwealth under the Crown, is to be dissolved, it seems an injustice that, unless all the states agree, any state which does not wish to subject itself to the rule of a Canberra president—whether appointed by a majority of voters in the populous states or by their representatives in the federal parliament or by Mr McGarvie's gang of three—should not in justice be permitted to withdraw from the Commonwealth. I ask the republicans to consider seriously whether they would

propose to continue to impose their will on any state of Australia that resisted the moves they propose.

The people of my state think that Queensland itself is too big often to be ruled from Brisbane. But I am certain that the people of all the states of Australia would agree that Australia as a whole is too large to be ruled from a centralised power in Canberra alone. The decisions about these grave matters which affect the whole of the nation must be decisions of the whole of the nation. In the absence of agreement from a majority of electors in each of the states and each of the state parliaments, the changes proposed here by the republican movement cannot be carried further than the dinner parties of the eastern suburbs of Sydney.

**Mr BEATTIE**—We should get one thing clear: I do not regard Queensland as one of the outlying states; I regard it as the centre of the universe. I grew up in a small country town in North Queensland called Atherton, which has 3,500 people and is about an hour's drive from Cairns. When I was a kid, we talked about southerners. This was just after the war and we were getting over the Brisbane Line. We talked about southerners and all those people in Townsville. I mention that, along with the fact that when I am at the Brisbane airport I am closer to Jeff Kennett in Melbourne than I am to Cairns, because I want to ram home the fact that the tyranny of distance and the attitude of Queenslanders, and indeed a number of other states, is such that we will want to appropriately determine what republican model exists in Queensland. It is that simple. We will make the decision at a state referendum about the model to apply in Queensland.

There are arguments from time to time that Australia is overgoverned and, further, that we should abolish one tier of government. The tier most frequently suggested, unfortunately, is the states. During my long political involvement, I have seen a number of power plays by the power brokers from Sydney and Melbourne, all designed to basically exclude the other states. I do not like it. That is why I am a strong supporter of the states and I am a strong supporter of the current powers of

the states. In other words, in my view, the states are not only here to stay; they are an essential ingredient for equity and fairness in the development of Australia as a complete nation. That is why they are so important. To anyone who wants to use this debate over constitutional reform as a means of trying to remove the states from the Federation, my advice is that the states should never and will never be removed from the structure of government in this country. I even say that when Brisbane in 2015 is going to be bigger than Melbourne. I notice that Jeff Kennett has left.

The federal referendum for the Australian republic is only part of the republican story. The other part lies with the states. I see the outcome as very simply this: there has to be a national referendum on the issue determined by this Convention. Australians will vote in a majority of states and by a majority, hopefully, for some form of republic. Once that process is completed, in my view the states should consider the issue. Because of the Queensland legislation and a range of other matters, in Queensland there will be a state referendum.

In my view, I do not see any difficulty in having different models in the different states. I do not want that. I would prefer to see a republican model nationally and some uniformity. But, if there is diversity, so what? Let the Queenslanders make their decisions, let the Western Australians do the same. There is nothing wrong with a bit of diversity. As Mike Rann said before, in Queensland we have the good commonsense to have only one house of parliament. Judging from what I see elsewhere, that is a darned big improvement. And it is not only the parliamentary structure that is different there, it is the method of voting and a range of other issues. So there is nothing wrong with diversity.

I am simply saying this: under the Constitution, there are a couple of choices. I heard what Sir Richard McGarvie said before, and understand that the Commonwealth Attorney-General's Department has provided legal advice that says there are two alternatives. We can have a section 128 referendum which would be binding on all. I do not accept that

we should do that. You have already heard my view that there should be a state referendum in my state to determine this issue. I do not believe that there should be a federal position imposed on the states. While that can apply under section 128 for the Commonwealth position, it should not apply to bind the states. I understand that the legal advice from the Commonwealth Attorney-General's Department in relation to the states says that they can change by their own referendum. They can have some diversity, should they so wish.

I understand the argument that is being put forward here by some. But my view is: let Queenslanders decide what model they will have. Hopefully, it will be a republican model. I will be the first person out there arguing for it. But, if they choose to have a different model, my view is: so be it. We are a big enough nation and a big enough country to be able to cope with that. In terms of some of the details, I do not have a lot of time to go through them.

**DEPUTY CHAIRMAN**—You have no time.

**Mr BEATTIE**—I have no time. I conclude by saying that I am happy to see the retention of the position of governor. There will obviously need to be consultation with the people of the state about how that person is appointed, but I see no reason why we cannot retain a governor who will be the representative of the people.

**Mr COWAN**—The question before the chair is how should links to the Crown at state level be handled. There is a very short answer: by the states. If Australia is to become a republic, there will be a myriad number of state and Commonwealth acts which will need to be changed. However, the main vehicles for change will be the Commonwealth constitutions act, the Australia acts and state constitution acts. I will deal with those three main vehicles, putting a Western Australian perspective.

The first is the Commonwealth constitution act. Any change to that act should not undermine the powers, the roles or the responsibilities of the states nor threaten the very existence of the states or, indeed, of the federation.

I was very dismayed to hear some of my state parliamentary colleagues advocate support for the use of a referendum under section 128 of the Commonwealth Constitution to amend state constitutions. If that were attempted in Western Australia, I assure you that it would be vigorously opposed and it would guarantee failure.

I came here as one who was very anxious to preserve the status quo but charged with the responsibility of delivering a model which could be put to the Australian people at a referendum. In that sense, we need to give some consideration to whether or not that model will succeed or not. To seek to amend state constitutions by the use of a section 128 referendum would certainly be regarded by Western Australians as something that should be strongly opposed.

I will turn to the Australia acts. As claimed by the Hon. Richard Court, the Premier of Western Australia and by the Hon. Richard McGarvie and Sir James Killen, through their provisions to allow the states to influence any proposed moves towards a republic these acts offer the greatest protection to the states, because the states are required to support any particular proposal to amend the Australia acts. Again, these acts will be very important, because the approval of all the states will be required. Once more, if in any referendum there is a matter which includes the states—and some people have advocated this—and the capacity to overturn something which might exist within the Australia acts, you will find that the issue of states rights will arise. Please be assured that any referendum on a republic is doomed to failure if it is submerged by the issue of state rights.

The third part of change will be the change to the Western Australian Constitution. In Western Australia, any amendment to our constitution which impacts upon the role of Governor or the upper house requires not only an absolute majority of both houses of parliament but a referendum. In that sense, if the state is in any way antagonised and it believes that its place in the Federation or the Federation itself is threatened, or there is to be a greater move to centralism because of a move towards a republic, naturally Western Austral-

ia will be one of those states which oppose the move to a republic.

In conclusion, one of the greatest attributes of the Westminster system—perhaps I can add that it is sometimes its most frustrating quality, especially for government—is that it ensures the preservation of the status quo. Advocates of change must convince a majority of the need for change. That is, as my parliamentary colleagues can tell you, quite often a long and tortuous process, because the support for change must be demonstrated time and again.

It would appear that the Commonwealth Constitution, the Australia acts and the state constitutions in each of the respective states have provided significant checks and balances if this country does choose to become a republic. None of these are insurmountable. However, any change will succeed only if there is overwhelming support of the people and their parliamentary representatives in all states. That, in my view, is entirely appropriate.

**Mr MYERS**—I came to this Convention with an open mind. I still very much have an open mind. One of the main considerations that will play a part in whether or not I support a move to a republic will be the role that the states are to play in the process. This question really goes beyond whether or not Australia should become a republic. It moves into how Australia should become a republic. The real issue here, the real point of the matter, is that Australia will not become a republic unless this matter is resolved fully.

To resolve it fully I believe that a majority of people in all the states need to be able to express their support for a republic. As I look around this room I see many fellow Queenslanders. I am sure that, like me, they are proud of the fact that they come from the 'sunshine state'. I was brought up on sun, rugby league and Golden Circle pineapples. As a Queenslander, I am far too proud to admit that AFL is anything but a girls' game. I am sure that there are many other people around the country who feel the same.

Whenever we travel overseas, we are Australians. When we travel in this country, we are from our respective states. Any refer-

endum that seeks to impose its will upon people in a particular state will fail. From a Queensland point of view, I can assure you all that any pressure to force Queenslanders to conform to the rest of this country will not get off the ground. When considering any republic model and when in particular considering the role of the states in this issue, I urge you all to vote in favour of cooperative federalism. Federalism is what has made this country the great place that it is. Federalism is what has made our parliament so effective. At the end of the day, do not ignore the states.

**Professor SLOAN**—Our working group and the other working groups were asked to address how the links to the Crown at the state level should be handled. I must say that I am in complete agreement with Peter Beattie and Hendy Cowan in saying that the answer to this question is simple: allow the states themselves to decide.

The states, of course, are separate constitutional monarchies from the Commonwealth, with their own vice-regal heads of state. They have their own distinct constitutions, some of which can only be changed by referendum of their people. The vast majority of state governors have served their states with enthusiasm, energy and dignity; and we, as a group, have been privileged this week and last to share the company of some former state governors in this chamber.

I am now a devoted federalist. It was not always so. Dame Leonie, some gratuitous autobiography: I was born and raised in Melbourne. The notion that Australia is governed by and for the benefit of Melburnians and Sydneysiders caused little discomfort to me in my youth. But, having lived in South Australia for nearly 20 years, I now clearly see the benefits of federalism.

We are told that we are overgoverned. Frankly, I would prefer to be overgoverned by democratically elected politicians than to be undergoverned. Democracy may be messy—a bit like markets, Chairman—but so be it.

Federalism has the virtues of creating some proximity between the voters and the politicians, as well as establishing benchmarks for good government across the states. The

benefits of competitive, as well as cooperative, federalism have restricted—although not totally restrained—irresponsible actions by state governments.

So what about the question at hand? Leaving aside some legal technicalities—and, speaking as an economist, I think economics looks quite simple compared to constitutional law—which appear to be numerous and ambiguous, I can see no harm in a combination of a Commonwealth of Australia which is a republic, some states which are also republics and some states which remain constitutional monarchies. To be sure, this would be messy; but if the republican model is seen to offer the advantages argued by so many, then over time a streamlined system of a Commonwealth republic and republican states is likely to emerge.

Are there any practical problems with such a mixed model? Would the Queen seek to throw in the towel, so to speak? The reality is that, at most, two states would remain constitutional monarchies even in the short term, given that a majority of states would have passed the federal referendum bringing the Commonwealth republic about. It seems unlikely, in the short term, that the Queen would throw in the towel for the states remaining constitutional monarchies.

Let me finish by saying that, as someone from the central state of Australia as opposed to someone from an outlying state, my advice to this Convention is to leave the balance of power between the states and the Commonwealth as it is. Let each state retain control of its own constitution and allow each state to decide if, when and how to convert to being a republic.

**Mr COLLINS**—I am an unashamed federalist. I am deeply committed to our federal system and I am implacably opposed to any unitary system for this country. I do not support any continuation of the centralist trend that we have seen during the century that the Commonwealth has existed.

I believe that we will always have states and state governors. To put it simply, as I said the other day, the state governors will be to the states what the president will be to the Commonwealth. It is absurd to suggest that

there is any threat to this system or that governors will somehow be appointed by the president. I completely reject such a notion. It would be rejected by the people of Australia and it would be rejected unanimously by all Australian states. I go further: not only will the president not appoint the state governors but the vice-presidents will be the governors of the states in the same way that the state governors now fill in for the Governor-General when the Governor-General is absent from the Commonwealth. The states will provide the vice-presidents.

There has been talk this morning of some states being monarchies and some being republics. We are one nation and there is only one solution. We must move as one people. Of course it will be necessary for the states to legislate and for there to be separate and consequential state referenda to mirror some of the changes which are proposed and which will hopefully be carried by the Australian people at a referendum in the very near future. But, that said, it is up to the states to determine the model they adopt to appoint governors.

To repeat what I said the other day, there will be, in a republic, if that is what the Australian people adopt at a referendum, a role for state governors in every state of Australia. Those state governors should work from the government houses of those states and continue the heritage and traditions of those states. That has been an issue of some contention in New South Wales. I place this on the record: if I am fortunate enough to win our next state election due in March next year our governor will go back to work in our government house within 14 days of that state election. That is as it should be.

There is a lot of frustration at this Convention because not all the issues can be dealt with. As a state politician I share that sense of frustration. I share the frustration felt by delegates such as Pat O'Shane and Moira Rayner. We will not be able to get through the sort of agenda that we would like to today. We are not going to be able to redefine the federation as we might like to be able to redefine it and entrench it for the 21st century in this Convention. There are all sorts issues

that we will not have time to discuss, least of all issues such as Commonwealth-state relations and who holds the purse strings and what flows from that.

I believe it is critical that we all understand that we share one thing. This Convention and this century will not be the twilight of the Australian states. Quite the contrary; this should be an opportunity for us to reaffirm our commitment to statehood and the federation and to carry it into the 21st century. I will go further: it will be necessary for us within five years to have a further Constitutional Convention to discuss the sorts of issues we will not get a chance to discuss today so that we can better equip our federation for the 21st century.

There is an alternative to centralisation, there is an alternative to the growth of the federal bureaucracy, and it is important for us to make that commitment. There may be, for example, an opportunity for a future convention to consider a council of the Australian states as an alternative to the relentless bureaucratic growth we have seen at a federal level, but that is for another day. There is an easy and definite role for the states in the new republic. It is a role which will build on tradition, not deny it.

**Mr TONY FITZGERALD**—Today at last we have got to the stage of looking at how the states fit into a federal republic. A criticism that I have of this Convention so far is that we have spent days talking about the name of a proposed head of state and we have not got down to the core issue, which is the federation, because we are talking about the federation of Australia. Other speakers have covered it, but I want to emphasise that point. I only have five minutes and do not want to waste any more time but the weight of my argument still stands.

I come from Queensland and I have learned one thing—that regional Australians are not centralists. We hear the criticism often that when people come to represent their states and local communities in the federal parliament there must be something in the water or there must be something in the air, because they all start to become centralists. But when

you go home and fly over the Tweed, you know that you are back in a regional state.

We are all Australians. We are proud Australians, but never forget that we are also members of a state and we are also members of a local community. This point needs to be made time and time again—never forget it. Unless you look after the states, you do not have federation; you do not have this nation as we have known it. Just as people in North Queensland do not like being ruled from Brisbane—they complain all the time—in my own local authority areas, which are much smaller, people complain about the central power being in the place where the councils meet. This is the same thing—Canberra is not going to run Australia. It is going to be a meeting place where representatives come to air their views.

The complication is that we have a state constitution, the Constitution of Queensland. It embodies a number of acts. They are historical, but these are all the relevant acts at present. The Australia Act is included in it and sections 15(1) and 15(3) have been referred to time and time again. The question that is going to be asked in the country areas is: how does this fit in with the Australian Constitution? We know the word used in the preamble to the Australian Constitution is that it shall be 'indivisible'. How does it fit in? How does it fit in with a section 128 referendum? Can we be overruled or not? They are the issues that people want to know the answers to. That is the fine print we want to know about.

I am not opposed to a republic. I am proud to say that I am not opposed to a republic, but I want to know what the fine print is before I sign up on any model. It is ridiculous to be asked when you come in through the door, 'Are you republican or not? Which model do you favour? What will you do if you do not support that?' I want to see the fine print. The electors want to know the fine print. I suspect that the 60 per cent of people in Australia who did not vote to elect delegates here will have the final say. They are not staunch one way or the other. They are out there to be influenced. Are they going to support the model that comes out of this Convention? I

totally support the fact that we should put a model out, but we must be united and point out what happens.

My other point concerns the statement, 'Don't worry about that because, if there is a constitutional problem, the High Court can look after it for you.' When that is said in Queensland you can hear people suck in air. They do. They do not want a High Court—with all due respect to the High Court and the justices—to now start qualifying what their constitutional rights are. They want to know before they cast a vote. I believe that is only reasonable. Otherwise, the people in Queensland and the outlying states—and I suspect all states—will have the motto, 'If in doubt, throw it out.' That is simple and that is what is going to happen with the 60 per cent of people who did not vote. I am not opposed to a republic, but we must know what the fine detail is and we must acknowledge it.

I totally agree with previous speakers who said that, if the majority of the people in each of the states all want to go to a particular republican model, we have to pass all the state legislation first and empower the federal government to pass similar legislation. Any reverse of that is wrong; it is not acceptable. We must stand by and let the people decide.

**Mr GRIFFIN**—I represent the Premier of South Australia and I also represent a state, the majority of whose citizens presently support the current system of a constitutional monarchy. I also represent a state whose people embrace with great affection their state heads of state, a succession of state governors, including former Governor Dame Roma Mitchell and the present incumbent, Sir Eric Neal. We find in South Australia that the succession of governors has been a unifying influence largely because the governors have played a role which is above partisan politics.

Some members of the convention, I would detect—not expressly here but certainly in the corridors—seem to want to rely upon a move to a republic to effectively abolish the states. I indicate here and now that from South Australia's perspective, that will be resisted fiercely. Although at times it is difficult to feel that federal governments, through financial and other constraints, believe that the

states are valuable and equal parts of the Federation, that nevertheless is the position both as proposed by the founders of the Federation and as most citizens of Australia would now want it to be and would want it to remain.

From the perspective of a less populous state like South Australia, the state does have to fight its way in the Federation all the way and all the time. There is constantly a need for the citizens within the state for the state government to fight to ensure it gets its fair share of finances, projects, visits and business activities frequently against fierce competition from the eastern and larger or more populous states.

We should never forget therefore that, while Australia is a nation, it is also a federation and we should be doing all in our power to ensure that it remains so. It is in that context that I want to raise some issues with the Convention, remembering that in South Australia, as in Western Australia and in some other jurisdictions, there was a Constitutional Advisory Council appointed to look at the very issues which this Convention is exploring but also to give to the research and consideration very heavy emphasis to the role of the states.

There has been some debate in relation to the method by which any republic, if one should be determined to be acceptable to the Australian people, should be achieved. I do not want to deal with the intricacies of section 128 of the Constitution or the Australia Act or other legislation. But I do want to say that because of the differences of views which are likely to be reflected as to which is the best way or the most appropriate constitutional way to achieve change, whatever the correct position may be, there ought to be a majority vote in each jurisdiction to give any change moral authority throughout the Commonwealth.

In fact, in South Australia the Constitutional Advisory Council went so far as to recommend that before there was any negotiation with the Commonwealth, there should be a plebiscite of the citizens of that state to give some authority to the state government to negotiate with the Commonwealth for appro-

priate changes both federally and to the state Constitution. I think that comes very largely out of a view that such radical change must involve the people of the state having a say, whether it be at a referendum through the parliament and not just through the executive arm of government. The important thing to recognise is that, subject to proper process, the states should control their legal and constitutional structures, including appointment of their head of state.

Enough reference has already been made to the role of state governors. No way should there be an outcome that results in state governors being appointed by the president or by the Commonwealth executive government. The sheer symbolism of such an outcome is that the Federation is dead. It undermines the states. Such an outcome, particularly if there is no consultation with governments and approval of state parliaments and the people, would be radical and unacceptable.

I want to briefly touch upon two other issues. One is the corporate crown, which does not seem to have received a lot of attention so far. But, quite importantly, the corporate crown is embodied in the Commonwealth and the states. It is an important issue that has to be addressed conceptually as well as constitutionally. I raise two issues. The first is that all prosecutions are in the name of the Crown. If merely changing that to the people is contemplated, then it may not adequately deal with the issue conceptually. Many statutory corporations are instrumentalities of the Crown and all that that implies. That too may not be adequately changed merely by a reflection of a change in the nature of the transition from Crown to the people.

Mr Chairman, I recognise I have run out of time. I appreciate the opportunity to speak to the Convention. I reiterate my very strong view that the states are an integral part of the Federation and must be involved right from the start in the consultation process for there to be any successful and acceptable constitutional change across Australia.

**Mr SHAW**—Mr Chairman, Australia was created from the agreement of the colonies. They came together to form one nation. It would have significant historical resonance

for the states to come together again and agree that, if the country as a whole decides to become a republic, they too should each cut their ties with the monarchy. New South Wales would be pleased to play a positive role in reaching this agreement and invites each of the states to consider what needs to be done to effect a transfer should the people of Australia agree to a republic.

I believe that our country would look bizarre in the eyes of the world community if we became a republic at the national level while some states remain tied to the monarchy. It is extremely desirable that the nation move towards a republic collectively. As Sir Henry Parkes said, 'We are one nation with one destiny.' Even if one or two states do not vote to become a republic, they should abide by what would be the decision of the Australian people through the referendum procedure that the states agreed to at the time of the Federation.

Imagine the reverse situation where a referendum were unsuccessful but those states where it was carried sought to become individual republics within a Commonwealth that was a constitutional monarchy. Such a situation would be not just anomalous but also absurd. The issue of whether or not to become a republic is a national question. We should embrace it collectively.

Would such a move require both state and Commonwealth referenda or would a single question suffice, and could a republic be imposed on an unwilling state? As with any matter involving the law or the opinion of lawyers, views differ on the subject. My own view is that it would be possible for amendments to the Australian Constitution introducing a republic also to sever the links of the states to the monarchy. The relevant section in this respect of the Constitution is section 106, which preserves or validates the continued operation of the constitution acts of the states. However, it does so subject to this Constitution. Thus, a constitutional amendment clearly requiring a republican form of government at both state and Commonwealth levels could override any contrary provisions in the constitution acts of the states.

There has been some confusion amongst delegates as to whether section 128 of the Constitution requires the support of all the states if their constitutions or forms of government are to be affected. This is based on a misreading of the penultimate paragraph of section 128. The history of the provision shows that the support of all the states would not be needed.

However, other complications exist with respect to the operation of the Australia acts and what is required to amend them and also with respect to those provisions which exist in the constitution acts of some states which entrench the Crown. These are complex constitutional matters which are best considered by the state and Commonwealth solicitors-general rather than in a forum such as this.

For the Commonwealth referendum to have been passed, the majority of voters in at least four of the states must have voted in favour of becoming a republic. It would be fair to assume that the governments of those states, even if initially unenthusiastic for change, would be willing to put in place the necessary arrangements for the state to also sever its links with the monarchy.

I would hope that any remaining state governments would also follow suit. If the unsatisfactory situation arose that a state dissented from removing its monarchical structure, consideration may have to be given to the federal imposition of a state level republic. This is not an issue we have to conclude here. Our efforts should be and are directed to achieving a compact for change.

I turn now to the issue of state governors in an Australian republic. There are a number of possibilities, ranging from dispensing with state governors altogether to transferring the functions to another office holder or retaining and modernising the office. The latter—that is, retaining and modernising the office—is the course that has been pursued in New South Wales. The issue of the reserve powers of the Governor has largely been addressed in New South Wales by the fixed term parliament legislation supported by referendum and the fact that the New South Wales upper house has no power over supply.

Although the different ways in which a Governor could be appointed have been widely canvassed—most thoroughly I think by Professor Winterton—I propose as little change as practicable. Like my colleague from Victoria Mr Brumby, I favour appointment by the president of the Commonwealth on the advice of the state premier. However, in such an arrangement it would have to be crystal clear that neither the president nor the Commonwealth government would have any discretion to decline to make an appointment or make it in any way other than in accordance with the wishes of the state premier. The same would apply in relation to removal, although I have an open mind on whether or not the state lower house of parliament should have the power to dismiss the Governor.

In the transition to a republic, the optimal result would be for all the states and the Commonwealth to negotiate a compact allowing for a package of change to be effected concurrently at the state and federal level. If Australia becomes a republic, each of the states should also cut their ties with the monarchy. If the people want a republic, they should have one. Australia's future should be dictated by democracy, not by politics, and not be hampered by one or more state governments seeking to exercise a veto right or pursuing their own narrow views. The states, I believe, must follow the voice of the people, the result of the referendum.

**Mr BRUMBY**—Could I begin with some comments about the states, obviously, and particularly the issue of sovereignty. When the Australian Constitution came into effect on 1 January 1901, the six former British colonies were, of course, transformed into the states. Section 106 of the Australian Constitution continued the previously existing separate constitutions, thus continuing the separate relationship between each state and the monarchy.

In addition, the same section provides that the state constitutions could only be changed by the procedure already contained within their own Constitution. Thus the states have always enjoyed throughout our federal history parliamentary sovereignty and in Australia, unlike some countries such as India, the

national government does not have the power to dismiss state governors or state parliaments. Here in Australia our states stand independent and they stand separately accountable to the people. So maintaining the balance between the states and the Commonwealth has been a constant theme throughout Australia's political history.

I guess the essential starting point in this debate is: should a shift to a republic change that balance of arrangements between the Commonwealth and the states or between the federal government and the states? The answer is: it should not. There is no reason whatsoever why the shift to a republic should change the present balance of constitutional arrangements. That is the first thing. That is why, in the report of the working party of which I was a member, we strongly recommended, on my recommendation, that the autonomy of the states in a federal system be reaffirmed and that the present balance of constitutional power between the states and the Commonwealth be retained.

The second issue which I would want to touch on is the power to appoint a Governor. It follows from that notion of state parliamentary sovereignty that the states must retain their autonomy and their powers in relation to state Governors. Irrespective of which model is chosen federally in the move to a republic, each state must retain their autonomy and their authority. In other words, the right to determine the role, the title, the powers, the appointment and the dismissal of state governors must be a matter for each state to determine in the future.

In addition, to the extent that the new Australian head of state is given any power under a state Constitution, it should be exercisable only on the advice of the Premier of that state on the same basis as the Queen currently acts as provided for in section 7(5) of the Australia Act. In other words, we do not want a situation as occurs in India where the national president is able to dismiss state Governors and state governments.

The third issue concerns the timetable for reform and the role of the states in that. I have to say that I think all of us in this Convention here today who support a republic

would want to see parallel reform occurring. In the ideal world, we would like to see the Commonwealth and the states moving towards a republic within the same time frame, and ideally it would be a time frame which was established and all would move to achieve it within that time frame.

But for that to occur really relies on two possibilities: firstly, the arguable use of the Commonwealth's coercive powers—there are a variety of ways in which that could be exercised and I would reject those—or, secondly, the view which has been put by the Hon. Richard McGarvie and others that to move to a republic would require a majority of voters in Australia and a majority in each state voting yes to a referendum.

I have to say that I could not support the use of coercive powers by the federal government against the states, so I think we can delete that option. But I also have to say that, while I am not a lawyer, I am very reluctant to share the conclusion which is reached by Richard McGarvie that the only way to an Australian republic is by a majority of voters in every single one of the states voting in a majority to do that. I call that the 'absolutely all' or the 'absolutely nothing' option, and it is not an option which I think would reflect the goodwill and the intent of the Australian people.

You do not have to be a genius to work out some of the implications of that. If you set that benchmark and that requirement, you could have 50 voters. In fact, you could have one voter in the state of Tasmania—a wonderful state with a wonderful opposition leader—who could shift the balance of arrangements and make it a 'no' vote in that state. Despite the fact that there might be majorities in every other single state in Australia and despite the fact that there could be a 70 per cent vote, Mr Withers, amongst voters in the rest of Australia in favour of a republic, you could have one single voter somewhere in Tasmania or Queensland who could reject this. So I cannot say that, and I cannot agree with that proposition.

Obviously, I support the republic. I support the use of referenda, a majority of voters in a majority of states and allowing each state to

move in their own time frame and to their own timetable. To those who say the one state might wish to keep their own monarchical links, I say in those circumstances it would be extraordinarily unlikely for the Queen to want to maintain her links with a separate state while the rest of Australia, the other states and voters, by an overwhelming majority have said, 'We want to become a republic,' and have shifted to a republic. I could not see her maintaining that relationship with a single state.

**Mr O'FARRELL**—It seems a thousand years since I was in the armed forces. Then, there was a happy philosophy amongst us troops that if anything moved you saluted it and if it was static you painted it. It was a cheerful, commonsense contempt of the military establishment. Today the contempt of the national establishment is gloomy and intellectual; whatever its activities, whatever its institutions, they must be reformed.

Personally, although I have a loyalty to and an admiration for that remarkable lady, Her Majesty the Queen, my concerns in this debate are about the Constitution of Australia and the profound effect the abolition of the monarchy could have upon it. I think it is important to try to concentrate the argument between constitutionalism and republicanism, rather than the romantic concept of royalty and what Malcolm Turnbull describes as the concept of simple patriotism to have a native-born head of state.

So what I have to say is not directed to those who have already made up their minds one way or the other but to those who have no strong feelings, particularly those who think a republic is inevitable. Until this morning, practically no consideration had been given to the totality of the Australian constitutional fabric. There can be no such thing as a minimal change. In the Commonwealth alone, George Winterton's model requires over 70 amendments.

A referendum might abolish the Queen and replace the Governor-General with a president, but it would be in the Commonwealth—not in the states and not in Australia as a whole. So today there is the Queen, and the Governor-General is one of her representa-

tives—*primus inter pares* to be sure, but one of seven in the gubernatorial line-up. The Crown is the cement that binds them together. Australia is a federation, and no-one in this chamber has a mandate to abolish or jeopardise it.

The constitutions of the states are secured by section 106 of the Constitution and have been subsequently reinforced by the Australia Act 1986. It is important to understand that as late as the 1980s the states refused to legislate to initiate that act until the Commonwealth was excluded from having any role in their constitutional affairs and they were granted direct access to the monarch to advise about the appointment of governors.

If this is not enough, there is a legal argument of high principle that the preamble to the act in which our Constitution is embedded declares that the peoples of the Australian colonies agree to unite in an indissoluble federal Commonwealth under the Crown. If there is to be a new sort of union—that is to say, a republic to replace a monarchy—then a referendum to bring about such a change might have to be supported by a majority in all the states. The dissent of one would cause the proposal to fail, as is the case with the Australia Act.

I know many people find these arguments petty and irritating and contend they should not stand in the way of the will of the people, but governments as well as humble citizens must live within the law. Not to do so, however frustrating, creates precedents for those in power, today or tomorrow, to interpret in their own way the will of the people to advance their own political purposes.

Sadly, the *Hansard* report of the debate in the Tasmanian House of Assembly on 3 December last in support of a republic reveals that none of the speakers, including the Premier and the Leader of the Opposition, while reiterating the time-worn rhetoric in favour of a republic, made any mention of the problems the state of Tasmania or any other state will face at a conversion of Australia from a monarchy to a republic. It is important to understand some of the ramifications of change.

A referendum instigated by the Commonwealth to establish a republic would apply to the Commonwealth but not the states. Unless we propose to be a schizophrenic nation, it would then be necessary to amend the Australia Act 1986 by an act of the Parliament of the Commonwealth passed at the request and with the concurrence of the parliaments of all states.

I have a right and a duty to point out these deficiencies but, as a proponent of the status quo, I have no obligation to offer solutions to the advocates of a republic the people I represent do not want and see no need for. Indeed, it seems quite extraordinary that in the five years of the republic debate the opponents of the status quo have made no serious attempt to agree on a model of an amended Constitution, nor have they considered the implications of a republic on the Statute of Westminster, the Australia Act nor the constitutions of the states. They have come to this Convention with no clear idea of what they want nor how to deal with the federation. They are undecided about the election or appointment of a putative president, his or her powers or the means of his or her dismissal. That they do so is myopic and shallow, and I hope the Australian people will note it.

If they succeed in creating a mirage of consensus at this Convention to remove the monarchy, they will at the same time advocate the removal of the linchpin of the federation, replacing it with sticky tape and band-aids. They say the republic is inevitable—and somebody already has pointed out that so is death. It is, however, unnecessary to commit suicide merely to prove the point.

**DEPUTY CHAIRMAN**—I table a proxy for Mr Steve Vizard appointing Mr Thomas Keneally for the rest of 11 February. I now call Mr Jim Bacon.

**Mr BACON**—It is a pleasure to follow such a distinguished Tasmanian as Edward O'Farrell. Whilst I agree with some of what he said, of course, I do not agree with all. But I am sure Edward will agree with me that, as Tasmanians, whilst we might be more tightly girt by sea than the rest of you, we are still very much Australian.

With unemployment at 12 per cent state-wide and a population in our island state that is shrinking for the first time since 1941, it is perhaps not surprising that there has not been the same level of discussion in Tasmania about the general question, the national question, of whether Australia becomes a republic, and there has been virtually no discussion on the implications at state level, as Edward O'Farrell pointed out. Nor has there much discussion about other possible changes that we might wish to make in modernising our Tasmanian constitution.

Whilst the Convention has certainly sparked interest—and I believe that the debate and certainly the number of people watching the event in Tasmania has increased each day—one thing is absolutely certain. I say this based not on the legal argument but on a hard-headed political analysis of it. The certainty is that, if the rights of the states are threatened, then certainly Tasmania—and I suspect some other states as well—will vote no in a referendum. As a republican, I think that would be very disappointing, but I would certainly understand why Tasmanians and people in other states would do so.

I support the recommendation from Working Group M involving a reaffirmation of the autonomy of the states in the federal system. As a republican, I agree with what John Brumby said that of course it would be ideal if all the states could then make the necessary changes following a successful national referendum, but that is not practical. In fact, it is highly unlikely that it could be achieved, even if this Convention or the federal parliament were to decide so.

The recommendation from Working Group M recognises that fact. It has the correct summation of the situation by reaffirming the role of the states but, particularly, allowing the states to make their own decisions about how they go following a possible successful national referendum to change to a republic.

As I said, there has not been a great deal of discussion in Tasmania about the general question and very little, if any, discussion about possible changes to our own constitution. There certainly is no demand that I am aware of for any substantial change at all to

the role of the Governor in Tasmania or to the method of the Governor's appointment. In fact there is very strong support in Tasmania—as other state politicians have indicated about their own states—for the role played by the Governor. I see that in general, apart from the constitutional role in relation to parliament, as a civic and community role as an apolitical figurehead of the state. There is no better example of that role, and one that I think is very strongly supported, than the current activities of the Tasmanian Governor, Sir Guy Green, in supporting and promoting the involvement of Tasmania in Antarctic affairs.

Of course, there has been one area of debate about the role of the Governor in recent times in Tasmania. In both 1989 and 1996, the state elections resulted in no party having a majority of members in the House of Assembly and there was debate at that time about the role of the Governor. Interestingly, the two different governors on those occasions took different steps for resolving the situation. Whilst I do not have time now to go into the detail of all that, that is the one area where there is some need for discussion and debate in Tasmania to see whether we cannot clarify it. As I understand it, some past Governors in fact have wanted that aspect of their role at least clarified.

I am proposing—and will do so as soon as parliament resumes in Tasmania—for the establishment of a joint house committee to promote debate on these issues and consider and seek views on what changes to the Constitution Act and other relevant legislation at a state level may be necessary if a successful referendum is held and Australia moves to a republic, and the need for clarification of the Governor's powers and responsibilities where no single party has a majority in the House of Assembly.

Certainly, we would be proposing that the only change to the Governor's role and appointment be one that absolutely entrenches bipartisanship in the appointment, where the Premier would have to consult with the leader of the opposition and seek his or her agreement and that their nomination would be subject to the ratification of a two-thirds

majority of both houses of the parliament. In other respects, I do not believe there is support for a change to the role of the Governor in Tasmania, nor would I propose it.

**Professor DAVID FLINT**—We have gold-plated legal advice that no state nor the Commonwealth should go it alone. There are very practical reasons for that. The reasons are that the original compact between the people in each of the states was to establish an indissoluble federal Commonwealth under the Crown, and you cannot change that compact without going back to the people in each of the states. The second reason is that the people cannot share their allegiance. You cannot be in Queensland having allegiance to a republic and also to the Crown. Even the Marquis de Talleyrand, who shared so many allegiances in France, did them sequentially, not at the same time. Finally, above all, this will only add to the constitutional instability which must flow from the Keating model.

We live today in an open financial system. I remind you that a decade ago Mr Keating himself said two words to the media: banana republic. What was the result? The international financial system flushed out money from the Australian financial system and the dollar dropped. Constitutional instability will have this effect on us: it will lead to financial instability. Who will suffer? It will be every Australian who has money in the bank, every Australian who has property, every Australian who has income. Who will gain if we have this constitutional instability? The people who will gain are seen in Kuala Lumpur. The hotels in Kuala Lumpur and the Asian capitals are filled with the agents and representatives of the multinational corporations—perhaps some of the multinational corporations that are funding the change to the flag in this country.

I call upon the supporters of the Keating model, who argue that the states can go it alone and that we can progress stage by stage to a republic, to show a bit of humility and modesty and perhaps admit that sometimes they are wrong. They were wrong about this Convention. They said that it would fail. They said that it would be stacked. Compare it to the Republican Advisory Committee, where

the terms of reference were fixed and the membership was fixed so that it would have one outcome.

The ARM was wrong in attempting to hide the costs of a change to a republic, as they did the other day. They were wrong to hide their involvement in changing our flag. They were wrong to suggest that the Labor Party was not interested in cutting off supply to a government in the Senate because Sir David Smith has read us chapter and verse of the Labor Party proposing exactly that. They were wrong to say that our membership of the Commonwealth will continue after we become a republic. When Mr Sutherland tried to explain this, he was told that he was wrong. The British authorities, the Commonwealth authorities, very clearly state that, if you become a republic, you must ask to be re-admitted again and any member of the Commonwealth, however small, can veto you.

The proponents of the Keating model are also wrong in their essential model. For five years they have told us that the two-thirds rule would ensure that we have exactly the same system. Now, on the floor of this Convention, they are in the process of changing that, changing the dismissal, which is an admission that we were right and they were wrong all those years. I suggest that those who support the Keating model accept that they have been wrong. They are basically wrong. In the words of that once reluctant republican, Oliver Cromwell, I beseech you, Mr Turnbull, in the bowels of Christ, think it possible that you may be mistaken.

**CHAIRMAN**—I urge all convenors of the working parties to examine their reports. Having examined them, I believe that there is only that resolution to be proposed by the Hon. Sir James Killen for us to consider this afternoon. Each of the other working groups could look at their reports and, if they wish to move a resolution, I suggest that those resolutions be submitted to the secretariat. I call on the Hon. Denver Beanland.

**Mr BEANLAND**—It is day 8 and, at long last, we have arrived at what is a very crucial issue in this whole debate—that involving the sovereign states and the federation which makes up this country. Of course, not only do

we have the sovereign states, the compact, that make up the federation; we have the independent legislatures within each of those states and we have the Governor who is responsible to that state, not to the Commonwealth. In some of the debates we hear around this chamber, we could be excused for thinking that there is some relationship between the Governor and Governors-General and that there is no independence.

At the end of the day, it is terribly important that the states retain the position of Governor—there is a range of issues and arrangements that must be looked at in relation to that—and that those Governors should retain the independence of the Commonwealth which they currently have. The last thing we would want to see is some arrangement—I am sure the state of Queensland would and I would be totally opposed to it—where the state Governor was in some way appointed by a federal president. What a disaster that would be. That would lead to the destruction of the sovereign states as we know it.

There are three or four issues that must be taken into account in this whole matter: firstly, the arrangements of the Governor and the Crown; secondly, we have the Australia Act and the importance of that; and, thirdly, we have those sections that are entrenched. The role of the state Governors is well known. Whether we should go to a republican form of government or mirror the Commonwealth arrangements for the president is a matter for each state and the people of each state. The role of the state Governors must remain. The appointment, dismissal and powers are matters for the people of the states and not something that would involve the Commonwealth.

As I have already indicated, I believe it is essential to retain the name of Governor. Many republics have Governors, including places such as India, not to mention the United States of America, which are two different systems. In addition, I believe it is one of the reasons why we must have the approval of all the states in any changes that take place. I say all the states, because it is not good enough to have four of the six states voting in favour of a republic. If we are going

to go forward with cooperation and goodwill to a republican form, it is essential that the governments—not only federally but of all the states—have the moral authority of the people of their state. Therefore, it is essential to have all six states voting in favour.

That also relates to the entrenchment provisions. Queensland—and Western Australia—has a number of important entrenchment provisions in relation to the Crown and the role of Governor. Those arrangements are entrenched within the state constitution. It would be a dreadful situation if we got to the stage where Queensland did not vote in favour of a republic, yet the people of Queensland were expected to make arrangements to the state constitution and then turned around and refused to do so.

There is no point in people coming forward and saying, ‘Section 128 of the Commonwealth constitution will override the states.’ I tell you it will not override the states and will certainly not override the moral authority and the people of those states, no matter what state it is—whether it is Queensland, Western Australia, Tasmania, New South Wales or whatever. It is terribly important, therefore, that we get the moral authority of all the states if this proposal is going forward. Whilst Queensland and Western Australia have more sections entrenched and others do not, nevertheless, the moral authority is still essential.

The third matter is that of the Australia Act. I will not go through all the details, because others have, except to say this: it is quite clear that it requires certain authorities and approvals of state parliaments. If it does not get that, it will end up in the courts—no doubt, in the High Court. One could well see, halfway through changing to a republic, a huge legal battle going on in the High Court of Australia.

What happens if the view of the state which is bringing on this challenge is upheld? The whole republican issue will start to unravel. What a laughing stock this country will become. Therefore, again, I return to the issue. It is terribly important that we have the moral authority of all the states in support of any change that goes forward to ensure that

the people of those states are supportive of that change.

**Ms THOMPSON**—Mr Chairman, delegates, ladies and gentlemen, the states are the rocks upon which our Federation was built. We must remember this. We Western Australians feel strongly about this, and we know that we are here to speak and act in the interests of Western Australians and Australians. Mr Bradley, let me tell you that republicanism is alive and well in Western Australia, despite the fact that I have never been to a dinner party in the eastern suburbs of Sydney.

Some of my Western Australian colleagues forget who elected them. Let me remind them, although I note that I do so in their absence. Western Australians voted 42 per cent for the Australian Republican Movement and 30 per cent for my colleagues from the monarchists. In fact, four per cent of Western Australians voted for a candidate who did not know what he wanted before they voted for a direct election.

We have one Western Australian delegate who walks around this chamber and cries, 'Compromise!' That means that he gets his way and only his way. This is a delegate who achieved a mere three per cent of the vote. Yesterday we had the spectacle of this delegate busking on the floor of this house for sympathy, as well he might. He is a delegate who cries, 'Compromise!' Compromise? The Australian Republican Movement's model has been on the table for over three years. We have modified it. We have talked to people. We have built in changes as people have raised concerns with us. Over that three years—

**Professor PATRICK O'BRIEN interjecting—**

**Ms THOMPSON**—Be quiet, Professor O'Brien, your turn will come.

**Councillor TULLY**—Mr Chairman, I raise a point of order. I am a bit concerned about these comments because this group went into the election claiming that they would compromise, not have a fixed position. They have not compromised at all.

**CHAIRMAN**—Councillor Tully, will you please resume your seat. That is not a point of order. I would suggest, Ms Thompson, that you might address your remarks to the subject and not to the person who might advocate other causes.

**Ms THOMPSON**—Their model finally saw the light of day on Monday. We hear of democracy, of equality, yet some people believe that democracy means that Sydney and Melbourne get their say in who the president is or we stay put. This is not democratic; this is not compromising. It merely means that some people are a little bit more equal in the Federation than the rest of us.

I implore you all to remember where you came from. Remember what is good for your state and for Australia. Remember that we in Western Australia demand a say in who our president is, and a directly elected president will not get us that. Politics is the art of the possible. We Western Australians will not have a presidency which gives us no say, which is what some people want. We in the smaller states will not allow anyone to confine us to the dustbin of democracy by stripping us of the only method we have of anything like a fair say. The states must stand up and be counted and be given a say.

**Ms PANOPOULOS**—Clare may be from Western Australia, but she was born in Sydney. I suspect that she is still part of the Sydney push. How quickly some of us forget our history. Ninety-seven years ago it was the states that made the Commonwealth, not the other way around. This Convention should have started with an examination of the Crown as it relates to the states, yet the Canberra centralists have relegated this discussion to the tail end of the Convention, in between grubby deals, to cobble together the mixed lolly bag of a republic.

When ACM moved an amendment that would have incorporated alteration of state constitutions as part of the time frame of moving to a republic, most federal parliamentarians in this chamber voted against it. I wait to hear their excuses when they go back to their respective states. It is sad and disillusioning for a young woman like me to observe our elected representatives determine

their political views according to geographic location. In his opening speech, Mr Beazley said:

Any of the models we consider will to some extent rebalance the political process in this country.

He expressly included the McGarvie model. Yet no republican at this Convention has explained how their model would rebalance the separation of powers doctrine. They have either not thought about it or hoped they could easily gloss over it. How can republicans expect to be taken seriously when they do not address the fundamental issues of our Federation? For the last week and a half, the republicans have bleated ignorant slogans and refused to answer the questions of substance. I can only assume that their advertising people have advised them to keep repeating their meaningless and ignorant jingos. Repeating something that is not true will not make it so.

I for one am not seduced by the calls for compromise. Our Constitution with its own Australian head of state, which has delivered one of the most stable democracies in this world, should not be compromised. The Australian people deserve more. The centralists are calling for compromise. What they really mean is that Canberra will decide and, if the states do not follow, too bad.

What they do not appreciate is that we will only have a republic when the majority of people in all the states vote to support a republic. The states, as colonies, came together to form a Federation under the Crown. If republicans want to rip the Crown out of Federation, they need the consent of all the states if the Commonwealth of Australia is to remain intact. This is not some red herring but the opinion of two distinguished lawyers, Sir Harry Gibbs and Dr Colin Howard, both of whom demand greater respect as constitutional experts than does any one else in this chamber.

Republicans have been warned: do not insult the Australian people by throwing a grubby deal of a republic in their face. When you put two completely different republican dogs in one room, you get a mongrel. The states, the people of Australia, will not throw

away their Constitution for a hastily conceived mongrel.

**Dr GALLOP**—It is clear that questions related to the position of the states have been ever present in this Convention, but indeed they have been unresolved at this Convention. There are both legal issues and political issues that have to be addressed in any move to a republic.

As a republican at this Convention, I will put the following proposition forward: the starting point of any move to a republican future should be to ensure that the ability of a recalcitrant and obstructionist state government, and their monarchist allies, to use taxpayers money and obscure legal argument to hold up a positive decision at a national referendum under section 128 of the Constitution should be avoided at all costs. For that reason, the option put forward by Working Group M is clearly the way forward. Leave the states to their own devices. The option clearly establishes that the states are autonomous, both in respect of the process of change and in respect of the republican forms they may wish to have and, by implication, whether they wish to maintain their current arrangements. This will mean that the political process in each state will determine the outcome.

Within that political process, as a Labor leader and supporter of a republic, I will do all I can to ensure that Western Australia will respond positively to a successful federal referendum. Indeed, I will do all I can to ensure that it is part and parcel of that successful referendum. I have an obligation to do that not just because I am a supporter of the republic but also because I am a supporter of our federal Constitution, which does provide a means for its alteration, including a move to a republic.

Let me now make a point about the republic and our states. The republic will strengthen the federation by removing the Crown from the Constitution. Let me give one very clear example of this to delegates at this Convention. I refer to section 2 of our federal Constitution. Section 2 provides for the Governor-General to be the Queen's representative in

our nation, exercising powers as she 'may be pleased to assign to him'.

Let us imagine a situation. Let us do the sort of thing that all the monarchists have been doing at this Convention by looking at words and probing the implications of them. Just imagine a nasty Prime Minister very keen to get rid of a state Governor. Delegates, it is not beyond the realms of constitutional possibility that a referral of the power to appoint and dismiss state Governors could be shifted to the Governor-General. That would then mean that the Governor-General, acting on the advice of a Prime Minister, could dismiss a state Governor.

I would like everyone in this room today to tell me why that constitutional possibility could not occur, given the nature of our current system of government. By going to a republic we will guarantee that the states will fully in law as well as in fact govern the arrangements by which their Governors are appointed, the powers and functions they have and the way that they are dismissed.

Let me also say that it will be a good thing for our federation if our states have different systems, if only in emphasis and nuance. It will mean that the ways and means of making a republic work better will be subject to continual review and change, just as they have been in respect of electoral systems, upper houses and parliamentary practices. In other words, we should leave the republican future within each state to the political and constitutional devices of those states. That will create a genuine process within our federation of testing new ideas and allowing new ideas to develop.

I am sure that the different states will establish different models for appointing and dismissing state Governors. In my own state, I will be keen to see that the governorship is preserved and that the people of the state have some ownership of the process by which such Governors are appointed. We need a system that will engender pride and that will be linked to the aspirations and desires of our people.

The monarchists make one very important point at this Convention and that is that there is, amongst some of our people, a strong link

with aspirations and desires of the monarchy. We have to replace that with something in which people can have great pride. I believe that in many of the models we have seen so far that cannot be done.

**Mr HODGMAN**—In the last four days I have been back in the real world. My constituents have given me four messages to bring to this Convention. The first is that, objectively, they have reached the conclusion that the constitutional monarchists and those who support our current Constitution are currently winning the debate which is being carried to them by the media. The second thing they have told me to tell you is that they have reached the conclusion that a move to even the most minimalist republic will be constitutionally difficult, indeed prickly. The third thing they have noted is that the republicans at this Convention are hopelessly divided. They are saying to me that, if they are divided, we will not vote for a republic.

The last was not really a message of felicitation, if I can quote Sir James Killen. They said that, with the greatest of respect to this Convention, which refused to have the matter investigated, they, the ordinary people of Australia, the ordinary men and women of Australia, want to know what this republic is going to damn well cost. Whether you believe it or not, out there in the real world they are staggered to hear that the republic could cost the taxpayers of Australia in excess of \$4,000 million in year one and \$1,000 million for every year sequentially for the next seven years.

Like Sir James Killen, I want to put on record my amazement that the republicans have been in this debate now for eight days and most of them have ignored the fact that the Commonwealth of Australia is a federation. I remind you: it is one indissoluble, federal Commonwealth under the Crown.

Our federal Attorney-General, for whom I have great regard, addressed us the other day and never once mentioned the fact that we are a federation and never once mentioned the states. My dear friend Professor George Winterton went further today. But, with great respect to that academic of great distinction, I have to say, 'Get your facts right.' He said,

'In Tasmania you probably wouldn't even need a referendum to get rid of the governor.'

I will quote a distinguished Tasmanian—a great constitutional lawyer who was head of the Attorney-General's Department in Tasmania, who was head of the Department of the Premier and Cabinet, who served our state under both Liberal and Labor governments and whose integrity has never been questioned—who topped the ticket for the republicans in the state which I come from where, out of six seats, the election to this Convention returned two republicans only, three constitutional monarchists including my friend Dr Mitchell from the Australian Monarchists League, and one independent. And what did Mr Julian Ormond Green tell you yesterday? Ignore it at your peril. I quote from the *Hansard* transcript specifically. He said:

For example, the Tasmanian Constitution states that the parliament consists of the governor, the Legislative Council and the House of Assembly. The office of governor is an essential element in the legislative as well as the executive side of the Constitution of that state.

He went on:

Under any legislative mechanism to achieve a republic at the federal and state levels, a vigilant approach needs to be adopted to ensure that the federal government and the federal parliament not use the opportunity of the change to a republic to give the federal president power to appoint state governors or state presidents. I say this as a warning because, during negotiations and discussions on the Australia Bill in 1984 and 1985—

which later became the Australia Act—

in which I was involved, the Department of the Prime Minister and Cabinet—

under the Hawke government—

pushed for the appointment of state governors by the Governor-General. When that push failed, it was then proposed that nominations for the appointment of state governors be made through the office of Governor-General and then passed to the palace. That, too, was not agreed.

So you can see what was on the agenda in 1984—state governors would have been appointed by the Governor-General. Can you imagine what would happen in a republic forced on us by people like Mr Malcolm Turnbull? The state governors would be removed by the president. You are not just tinkering with the Constitution—the republicans

are actually trying to rape it. Let me put it bluntly: back off.

We on our side know that the people of Australia cherish this Constitution and cherish our Federation. We will fight to preserve it and we will succeed. You might have the numbers here, but I cannot wait for this to go to a referendum out there in the electorate because the republicans are going to get the father and mother of a hiding, if I can conclude on a totally non-sexist note.

**Mr WRAN**—This has been a very interesting debate. As one would expect, there have been very positive stances taken by state Liberal leaders, both in government and in opposition.

However, I think—indeed I am sure—that the legal and constitutional complexities upon the states in the event of Australia becoming a republic have been vastly exaggerated in the debate. It has had the effect of creating almost every delegate as an instant constitutional lawyer who can find either the frustrations of the change or the solutions. I think the important thing to remember is that, when Australia becomes a republic, when we have our own head of state, states retain their autonomy. The states are part of a federation. Under the constitutional arrangements between the Commonwealth of Australia and the states which make up that Commonwealth, they have the right to appoint their own head of state of the state. Nothing will change that by virtue of Australia becoming a republic.

This notion that federation will be fractured and that suddenly Sodom and Gomorrah will arrive is absolutely nonsensical to my mind. The fact is that the Queen is the head of state of each of the Australian states. The Queen at present is represented at the state level by the state governors. It is open, irrespective of whether there is constitutional change in respect of the republic, for each of the states or for all of the states to retain the Queen as their head of state. It is open to the states—all of the states—to remove the Queen as their head of state. There are various ways of doing it, depending upon the terms of the state constitutions, but, nevertheless, the machinery is there to do it.

It is open to one or more of the states to appoint their own head of state. The argument that section 7 of the Australia Act entrenches the monarchy at the state level is an interesting argument but one which I repudiate. Nevertheless, what is the answer? You either amend the Australia Act or acts to make it clear that the Australia Act does not entrench the monarchy, or, alternatively, as is set out at page 127 of the report of the Republic Advisory Committee, you can have an alteration under section 15(1) of the Australia Act upon the request and consent, as my learned friend Delegate Killen pointed out, of all the states. All of that is complex but feasible. There are no enduring hurdles to the change. The change to a federal republic will in no way create a problem for the relationship between the federal government and the states and nor should it.

The one thing I would like to emphasise is this: there is absolutely no need for the Commonwealth to force the states or any one state to abandon the monarchy against its will. If, despite the fact that the Commonwealth of Australia is a republic, some state wishes to retain a monarchical system within its own borders, then that is its choice. To that extent, the constitutional arrangements will be quite adequate to cater for any change. The probability is that, if a state hangs out and maintains a governor appointed by the Queen, ultimately, I would think, the Queen herself would say, 'Enough is enough. You've got a republic out there in Australia. I really don't feel comfortable being the Queen of XYZ state.' Thank you.

**Lady FLORENCE BJELKE-PETERSEN**—I am pleased to be able to speak on these motions before us today. I want to remind you all that, in 1901, the states agreed to unite for federation. They did not do it in two weeks; they took some years to settle the whole argument. It is amazing to me that it has taken us eight days to get around even to thinking about the situation that would apply to states in our Federation. This is something that we really have been very slow to look at.

The issue of whether we should be a republic or not was thoroughly debated when the founding fathers wrote the Constitution. In the

end, it was decided by the people that they would be better off with a constitutional monarchy than with a republic. The question was put to the people at a referendum and it was the people who chose the Crown, not the Crown that chose the people. The Crown was not forced on us at all and the sovereign certainly has never interfered with our constitutional development.

I want to remind our gathering here that, in 1977, the Queensland government made the Queen the Queen of Queensland. Apparently, they decided that not only should she be Queen of Australia but also that she should be the Queen of Queensland, and they wrote it in with consultation and with legal opinion from Oxford in England. They seemed to feel that that was where they would get very good advice. I do not know whether the lawyers in Australia thought they were being overlooked. Because of this, I believe it is certainly necessary for Queensland to have its own referendum about being part of the republic. I wonder whether, in the end, it might be a stumbling block to a federal republic; I am not sure about that. But Queensland has certainly often been called different. Western Australia could be in the same situation.

Then we have the matter of governors of our states and what will happen to them. There have been great discussions about whether they are to be called governors or whether they are to be called vice-presidents if we have a president of the republic. As I mentioned earlier in one of my speeches, the thing that worries me is that there could be a move, if we become a republic, to do away with the states. When I mentioned this last week, Mr Wran shook his head and said, 'No.' But on Monday a republican delegate from the Northern Territory, Mr Michael Kilgariff, said that we should examine whether the current system of states should be maintained, a recognition of a stronger role for local and regional government, as well as other constraints imposed by current constitutional arrangements. I am sure that our Brisbane Lord Mayor fancies the Brisbane City Council having a lot more power and perhaps even taking over the state in Queensland.

Please forgive us; I certainly would not like that to happen.

In the main, we know too that the federal government holds the purse strings—that is another matter—and everybody wants to pay less tax. When I was in the Senate, in my maiden speech I talked about having a single rate of tax. I thought it was a good idea at the time but not everybody agreed with me. I think if it had been adopted we might be in a better position now because people are always wanting to pay less tax.

We know that when Mr Keating started to talk about a republic he defined the Senate as 'unrepresentative swill'. I class the Senate as being very important to the states. If you do away with the states you will have to do away with the Senate, and I think that that would be very bad indeed. I am sure the senators here would be upset about it too. I have often wondered whether Mr Keating thought about doing away with the Senate as part of his republican plan. He mentioned it was unrepresentative swill, with which of course I did not agree.

The Senate, together with the states, is certainly an important part of the democratic system of government in Australia which I believe should be protected. Our present Constitution under the Crown certainly does this and that is why I stand before you today as a constitutional monarchist hoping that we will retain our present system of constitutional government here in Australia.

**Professor PATRICK O'BRIEN**—I generally support Working Group M's proposition, for several reasons. Firstly, I believe that diversity is the stuff of life and this model does make it possible for different states, in the event of Australia becoming a republic, to have different forms of republican government. It is my personal belief, based upon much reading and the judgment of others, that in a sense the Westminster system is unreformable. It is what Sir Ivor Jennings, Lord Hailsham and Lord Hewart call the 'elective dictatorship'. This model makes it possible for some states to move away from elective dictatorship to a more direct form of democracy better suited to our times.

The *Economist* pointed out recently that in this day and age the doctrine of absolute parliamentary sovereignty is an anachronism. My colleague Professor Martin Webb has written a model constitution for Western Australia and that model will come up when Western Australia finally gets its Constitutional Convention. It greatly disappointed me that the Western Australian Republican Advisory Committee decided to delay any decision on the future of Western Australia's Constitution until the decision had been made at a federal level. I was very saddened that our Premier, usually an ardent states rightist, supported that because it seems to me that if you did believe in the states you would get in first and try to provide a model for other states and the rest of Australia. In Western Australia we had that opportunity and we lost it.

There is another very important reason which I touched on in my opening remark—diversity. Just as with Judith Sloan, who went from Melbourne to South Australia, I was a Victorian and a Melburnian and, like most Victorians and Melburnians, I believed that that was the centre of the universe. The question of federalism did not particularly pre-occupy me except in a theoretical way as a student because Melbourne-Sydney-Canberra was the centre of power. But having moved to Western Australia and having lived there for nearly 30 years, I did see the great value of federalism because it does give particularly the remote and isolated states—and there could be no more remote and isolated state than Western Australia, apart from the Northern Territory and the northern sections of Queensland—the opportunity to have a greater say in affairs.

While secession is dead and is not going to occur, the secessionists do have a point. Their main point is that a very large percentage—something like 27 to 30 per cent—of Australia's national income is derived from WA exports. So although Western Australia is numerically small in terms of the total percentage of the national population, it does provide 30 per cent of the national wealth. That does raise the problem of how you weight voting systems. But as far as main-

taining a very healthy, strong diversity, model M does that.

Quite clearly, if Australia becomes a republic, regardless of what form we adopt, there will be hitches. Things will not work immediately. There will have to be changes and amendments.

If you have a variety of governments in a variety of states under the general mantle of the Commonwealth, it provides competition, which is very important. For instance, take the bay area of San Francisco, where you have a huge population with many different republics, in reality, existing. I think it was in 1993 that San Francisco increased its sales tax in order to help pay for the large number of street people who had moved into San Francisco from other states. Then Alameda County lowered its sales tax and it boomed. So for the reasons that I have given, in particular cultural diversity would be best maintained in advance through general support of model M.

**DEPUTY CHAIRMAN**—We will now hear from Mr Tom Keneally as proxy for Steve Vizard.

**Mr KENEALLY**—Steve is from Victoria and I am from New South Wales, so I believe that we have a powerful sense in this chamber of the federal compact in operation, and I honour that compact which created the Commonwealth of Australia. Whether or not the Australia Act entrenches the monarchy in each state, as Neville Wran said:

This does not pose insuperable constitutional problems in converting states that so choose from monarchies to republics.

The ARM is happy to support self-determination by states, because we are all statesmen and women, as to their arrangements concerning their governors and as to them taking their own route to republican stature if that is what they choose. This is simply an extension of what we seek and what we are permitted for the Commonwealth under section 128—that the Australians themselves, as a Commonwealth community, exercise the power to achieve the appropriate republican model.

The term ‘governor’, as many speakers have said, is not offensive. I was relieved, as a citizen, when the Convention decided not to recommend the retention of the term ‘governor-general’ because, as my old friend Lloyd Waddy said, diplomats would be kept busy interpreting the meaning of governor-general. The same problem does not apply to ‘governor’.

However, we have to acknowledge that, although it would be great if every state voted for the republic—and we republicans believe that, now that this Convention has moved the debate into a new gear, every state will—and it would be wonderful for our moral authority in passing as a federal community to a Commonwealth republic if that could be achieved, I do not think that we should set a stricter test for this move to a republic than we do for other constitutional issues. Section 128, with its demand of a majority of electors from a majority of states, is an adequate test for all constitutional issues.

I would ask all delegates this: in a republican Commonwealth of Australia, would our dear and respected friend, the monarch of Great Britain, want to be put in the position of retaining a partial monarchy of New South Wales or Western Australia? Implicit in some of the demands is the belief that a federal republic of Australia and a monarchical state level system would not collapse of its own absurdity and would not be as abhorrent to the monarch as it would be to all sane people, except some of the Gilbert and Sullivan personalities on that side of the chamber, one of whom I see has departed.

I have the honour of being the founding chair of the ARM. I do not get Christmas cards from Bruce Ruxton but I am proud that, for the first time at this Convention, republican models are being sanely discussed. Our monarchists raise the problem of radical instability resulting from some of the republican models that have been presented, but so many cabinet ministers dissent from the view that there is radical instability in what the ARM is presenting that the tanks in the street proposal no longer has credibility.

Mr Hodgman, I, like you, look forward as a citizen to the referendum. You indicated

that the republicans have the numbers here. The reason the republicans have the numbers here is that they have the numbers in the community. I think the time has come when Australians want to create, as the copestone and the apogee of their own desire for fraternity and community, a constitutional republic which reflects their present and their future but which certainly does not deny the past and certainly does not deny the federal compact.

As I tread back towards citizenship—if it is not out of order—I praise and thank the chairs and the delegates at this Convention. I think that all of us citizens have been impressed by the level of the discourse and by the way the constitutional options have been severely subjected to criticism and exposition here. I think that perhaps this Convention might prove a model for future Australian discourse as well.

**Councillor TULLY**—This Convention cannot ignore the reality that if Australia is to become a republic we may still have six states with the Queen of England as their head of state. In Queensland, the situation is more complicated because in 1977, as was said earlier, the Premier Sir Joh Bjelke-Petersen entrenched the Queen of Queensland into the state Constitution. The effect of that legislative amendment means that the Queen of England will remain as the Queen of Queensland until there is a referendum in Queensland to change the state Constitution. Whilst the title Queen of Queensland may have some sort of ring to it, heaven forbid if that recalcitrant son of hers should ever become the king of Queensland. I would have to go and live in Victoria, I would think, with comrade Ruxton to get away from something so bizarre.

Some delegates are engaging in a mischievous and misleading exercise in suggesting there cannot be or should not be any change at national level to become a republic until all the six states have agreed on six state republics. If this were to be agreed to, it would mean that one state could hold the entire nation to ransom. Clearly, this is unacceptable. There is no legal or constitutional requirement for simultaneous change at

all seven levels of government in this nation, however desirable that may be. The misinformation being peddled by some delegates at this Convention which seeks to delay the inevitability of an Australian republic is deplorable.

The preamble to the Australian Constitution which states that the people of Australia or to be more precise of the six colonies, with the exception of Western Australia, have agreed to unite in one indissoluble federal Commonwealth provides no impediment to the creation of a federal republic. In fact the sovereignty of the states would not be affected in any way. Any suggestion to the contrary is simply mischievous.

Let us not cloud the issue of an Australian republic with the need for reform at state level. It is quite possible to have a federal republic with six monarchical states. It would also be possible to have simultaneous referendums to cure this absurdity. But let us not fall into the trap of saying that Australia cannot become a republic without the unanimous agreement of all six states. This is simply a legal and constitutional myth perpetrated by some of the snake oil salesmen at this Convention. We cannot ignore the sovereign rights of each of our six states. We must leave it up to them to resolve their own arrangements in their own time.

If one or more of the states wishes to stick with the Queen as their head of state with a governor to represent her, so be it. But do not allow this to be a subterfuge to prevent serious constitutional reform at a national level. Those monarchical states which stick with the current system will simply perpetuate the last vestiges of colonial rule in Australia. It is not the role of this Convention to tell the states what to do. We can identify the legal and the constitutional difficulties, but let us not get entangled in a states rights issue which has the possibility of going beyond our charter here at this Convention.

As a final thought on this theme: what have the governors of the states ever really achieved? Some would say that they are simply the aristocratic toffs to rule over the working class. I have searched through the annals of Australian history to find one single,

solitary, positive achievement of any governor since the First Fleet arrived in 1788.

After weeks and months of searching, I found one. On 29 July 1860 in London, Charles Wallace Alexander Napier Cochrane Baillie was born. As with my comrades on my side of politics I am always suspicious of anyone with a double-barrelled surname. You can have a fair idea before you meet them that they are probably a Tory voter.

What about Charles Wallace Alexander Napier Cochrane Baillie. He went on to become a governor of Queensland and later went to Bombay to serve as governor there. One day at Government House in Brisbane one of the servants accidentally dropped the morning tea while she was making it for Charles Wallace Alexander Napier Cochrane Baillie. It comprised a cake, dipped in chocolate and dropped into coconut. The governor of the day was Lord Lamington. It is he who gave his name to our national food or national cake. That was the single most important issue that I have ever found any governor in Australia has contributed to.

I was telling Professor Patrick O'Brien about this story at morning tea last Friday. You will remember what that morning tea was. It was lamingtons. When I told my comrade from the west that he was eating a cake named in honour of a colonial governor answerable to Queen Victoria he nearly choked but he promised never to eat lamingtons again.

**Senator BOSWELL**—As a senator representing Queensland I think it is incumbent upon me to raise some issues affecting the states. The Senate is the states house although people would argue that that is incorrect.

The Australian republic raises many issues for the states and there are major complexities and legal steps required in the transitional process. In raising and talking about these issues it means we are taking the difficulties head on and recognising the realities associated with the creation of a republic. We have had a lot of froth and bubble in this debate, but I think it is time that we now get down to the realities of life associated with becoming a republic.

It is not a simple matter. There are basic questions such as whether there is one indivisible crown or six state crowns. Most legal commentators agree that there is only one, although Professor Craven disagrees with that. Professor Winterton today struck out one crown and replaced it with six. I would not have thought that that was an act of a true republican.

Then there is the question of what happens to the 1986 Australia Act. It has been enacted by the six states and the Commonwealth. In Queensland under section 7 all powers and functions of Her Majesty in respect of the states are vested in the state governor. Section 15 installs the state governor as the Queen's representative. In Queensland any change must be by referendum.

Any changes to the act can only be at the request of all state parliaments. Replacing the crown in the states requires amending every state's Australia Act. This could come down to the use by the Commonwealth of a section 128 referendum which we know needs to be passed by the majority of voters in the majority of states in Australia. We have been told by eminent jurists that the use of section 128 would no doubt end up being decided by the High Court. While it can be reasonably assumed that any state government would not stand out alone to remain a monarchy in an Australian republic, certainly the legal means to use 128 are unclear. It could come down to a decision of the High Court and the imposition of the decision on the states.

A lengthy High Court decision on the states power in relation to the Crown would not be desirable politically, or at all. I ask: have the republicans faced up to these realities? It has been suggested today that there could be different models in different states for appointments of the successors to state governments. This would be no way to have a united country, operating a federated system of states.

Then there is the other reality on the referendum legislation. Before the 1999 referendum can take place, a referendum bill will need to be passed through the federal parliament, detailing all required changes to the Constitution. Everything has got to change:

the preamble and all other constitutional amendments—a massive project. The states will definitely need involvement and consultation in this intricate process of the referendum bill.

If the Crown is to be removed at the federal level and then disappears at the state level, how is this vacuum going to be filled? If the Crown disappears there could be many unintended consequences. Once you remove the Crown, you remove all the conventions that attach to the Crown. There are many areas of Crown involvement: mineral rights, which are vested in the Crown, and Crown ownership of land.

A seamless transfer will have to be 100 per cent guaranteed. But is this legally possible? We have seen court decisions not proceed along expected pathways many times. I say to the republicans: the effect of change will be diverse and open up many unintended consequences. The difficulties of amending the states and Australia acts and implementing the referendum will need to be addressed as soon as this Convention finishes. Republicans want to embark on this process without a guarantee it will work. Realities must be faced, including the major question involved with the states becoming a republic.

The young people today, with enthusiasm which I admire, have addressed the main issues and driven forward a republican idea. But what we have not heard from these enthusiastic young Australians—and I welcome their contribution—is how to get down to the nitty gritty of how we process or become a republic. This is not being addressed by this conference by any means.

**Ms RODGERS**—It would be extremely dangerous to attempt to force the states to become republics. It would be equally dangerous for any state or the Commonwealth to go it alone. As the former Chief Justice Sir Harry Gibbs said:

There is a strong argument that a referendum supported in a majority of states, but not in all states, would not be enough to effect the position of state governors as representatives of Her Majesty. The position of state governors is entrenched by the Australia Act and that act can be amended only by an act passed at the request, or with the concurrence of, the parliaments of all states or by an act

passed pursuant to powers conferred on the Commonwealth parliament by an alteration of the Constitution made in future through a referendum. However, it is doubtful whether an alteration to the constitution which affected the governors of all states could be made unless a majority of electors in all states voted in favour of the alteration. There is a further argument that the monarchical character of the Constitution is established by the Constitution Act, not merely by the Constitution itself and that no amendments to the Constitution could validly give the Commonwealth parliament power to amend the act.

I come from Western Australia. Western Australia is different in constitutional terms from the other states in two respects. Firstly, we are not mentioned along with the other states in the preamble. Why? Because we came in later. The Commonwealth of Australia Constitution Act 1900, a British act, authorised Queen Victoria to proclaim:

The people of New South Wales, Victoria, South Australia, Queensland and Tasmania and also—if Her Majesty is satisfied that the people of Western Australia have agreed thereto—of Western Australia shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia.

Secondly, we are the only state to have sought to secede from the Commonwealth. When we approved a referendum to secede, we sent it to London. A select committee looked into the question and then recalled that it was not a British matter; it was not for Britain to dissolve the Federation. Our constitution had already been repatriated. Australia itself could change its own constitution. Australia was independent. Needless to say, the Commonwealth did not implement the referendum.

It is probably difficult for the people of Sydney, Canberra and Victoria to understand how we feel. We are responsible for a substantial proportion of Australia's exports, yet we do feel that we are short changed. In addition, much more power has accrued to a distant Canberra government than was ever intended. The High Court—and we have only had one judge there—has forgotten that we are a federation.

Let me say one thing: the people of my state expect that any substantial change in the original compact will require a new deal. We agreed to unite in an indissoluble federal

Commonwealth under the Crown. Change any aspect of that and the whole deal is open to re-negotiation—not only about the Crown. We want to talk about tax. We want to talk about the external affairs power which the High Court has interpreted to increase Canberra's power. After all, if you enter into a partnership and your partners want to change the business into a company, the whole structure and all the terms and conditions are open to re-negotiation.

Turn Australia into a republic, and an essential feature of what we agreed to in 1901 has one and only one result: the whole deal is open to negotiation. Today I give formal notice to the members of the Western Australian parliament and to the Western Australian members of the Commonwealth parliament here present: in the event of the 1901 Constitution being reopened, you have an obligation to derive the best deal for Western Australia. That is your clear duty to the people of Western Australia.

Let me say one further thing, and I am warning of this: I will be informing the people of Western Australia about the extent to which you looked after our interests. But I must say, I even fear for the foundation of the Federation if you in any way attempt to force a republic on to the Western Australian people without our separate agreement. Let me draw on the wisdom of a Canadian observer who says:

Republicans have from time to time argued that the Canadian scenario could not take place in Australia, for there is no single group like the French in Canada to act on or force a division. But I am not sure. For one thing, were, say, Queensland and Western Australia, or both, to vote no in a referendum, it seems to me that the damage to the Australian Federation could be nearly as great as that which resulted from the exclusion of Quebec from the constitution.

So, my fellow Western Australian delegates, your job is to insist that, if we become a republic, all the deals are off. Western Australians would expect nothing less, and I shall be monitoring these matters closely and reporting on them.

**Ms KIRK**—Mr Chairman, delegates: I would like to address a matter that has been raised by a number of delegates this morning.

That matter is whether the states can and/or should be forced by the Commonwealth to adopt republican constitutions, should Australia become a republic.

The Commonwealth parliament may have the ability to abrogate state entrenched manner and form provisions and/or to otherwise alter the state constitutions, without the states' consent. The two potential sources of power for this have been identified as sections 51(xxxiii) and section 128.

Legal commentators agree that section 51(xxxiii) could be used by the Commonwealth to empower the states to just disregard the manner and form provisions. However, there are two possible restrictions on the power of the Commonwealth to adopt this course—namely, section 106, and the limitation on Commonwealth power outlined in the Melbourne Corporation case.

On these points, I would like to make the following comments. First, it is unclear whether section 106 restricts the Commonwealth's power to affect the constitutions of the states or whether the state constitutions are subject to the legislative powers of the Commonwealth. Second, as section 51(xxxiii) requires the consent of the states before the Commonwealth can legislate pursuant to this power, the Commonwealth would be unlikely to infringe the implied prohibition in the Melbourne Corporation doctrine.

The other method that the Commonwealth may pursue to directly or indirectly alter the constitutional system of the states is the section 128 referendum procedure. The Commonwealth could attempt to impose a republican system of government on the states without the consent of the people of the state. Whether this is possible depends on the effect of section 106 which, as I said, may limit the Commonwealth's power to affect state constitutions.

I agree with the view expressed by many other delegates in the chamber this morning that an attempt or even the threat of the Commonwealth using the section 128 procedure to impose a new constitutional structure on the states would be fatal to an attempt to introduce a republic. It is essential that the

states consent to the constitutional reforms that will give effect to a republic and that the people of the states are given the opportunity to participate in determining the constitutional structures of their state. To a lesser extent, the section 51(xxxviii) procedure would also take the decision making process away from the people of the states and thus the ability to determine for themselves the states' constitutional structures. The preferred option is therefore for a state referendum to be held simultaneously with the section 128 referendum, at which the constitutional matters concerning the states and the Commonwealth can be determined by the people.

**Mr EDWARDS**—When I spoke the other day, I made the comment that this Constitutional Convention has no mandate or authority to impose anything on the states. But I would also say this: while no federal government or a convention such as this should endeavour to bully the states, likewise the issue of states rights should not and indeed cannot be allowed to become an impediment to Australia having an Australian as its head of state.

I listened with interest today to the Premier of Western Australia, Richard Court, to the Deputy Premier, HENDY COWAN, and to my colleague Geoff Gallop. I was impressed not just by the leadership of this group of political and civil leaders from Western Australia but also by the leadership that has been set generally today by other state leaders. I was very impressed by the speech by Jeff Kennett. Indeed, he spoke very strongly. I noticed that, when he came into the chamber and came over here to speak, Bruce Ruxton thumped his chest and pointed at Jeff Kennett and said, 'My leader.' I simply say to Bruce Ruxton, 'Follow your leader.'

The other thing I want to comment on today is the leadership that has come from another section of the Convention. I refer specifically to the young people generally who have spoken here over the last couple of days. The highlight of all the speeches and indeed the best and most moving speech I have heard in this forum was that delivered by Andrea Ang yesterday. As she spoke, I could not help feeling a strong sense of emotion and pride in our young people. I

want to say to those people who sit here slinging insults, such as that which we heard this morning where republicans were called mongrels, that Australians do not want to listen to that sort of insult. Indeed, Australians will not be moved by that sort of insult.

What Australians will be moved by is the sort of leadership that we have seen displayed by our states leaders, who have the issue of looking after states rights as their paramount priority. Australians will be moved by the kind of leadership we have seen displayed by so many of the young people here today.

I conclude by reiterating this: the states should not be bullied. I know that the states will not allow themselves to be bullied into accepting what they feel is not in their best interests. Equally, the issue of states rights should not be allowed to become an impediment to Australia having an Australian as a head of state either.

**The Right Reverend John HEPWORTH**—The states cannot and will not be bullied, but nor can the states be ignored. For too long the Australian Republican Movement has had as a fundamental part of its platform that it does not matter what the states do in the republic. That is not a statement of pragmatism, it is a statement of contempt. Australia is not composed of a unitary central government in which the states are somehow increasingly irrelevant. Australia is a federal system and demands to continue as such. Any republican model that is serious must take this into account.

I acknowledge that we do not have a serious model before us yet, because we do not have one that includes the states. To say that we will go to a republic that is simply a Canberra republic, which in Sydney presumably means a part of the western suburbs, is to state a nonsense. If we cannot design a republic in which Australia's political system becomes republican, we will have failed. The states must be part of the design.

It is a complete nonsense, and not only a legal nonsense, that we can somehow unravel the Federation by having a republican Constitution in Canberra, with all the rhetoric of unifying the nation—and all I have heard of that in the past 10 days has been anti-state

and anti-federal rhetoric. The union of the nation under a strong federal symbol of a presidency I translate in only one way, which is that the states have become irrelevant. It is a legal nightmare to suggest that state constitutions will go on in some way, undisturbed, with their own links to the Crown. That could only, I presume, have been designed by somebody totally ignorant of the implications of the Australia Act.

I was absorbed and fascinated to listen to Dr Gallop. One might have hoped that he would have known better. He constructed a great card castle on a hypothetical case of the Prime Minister advising the Queen about a matter within the province of a state Constitution. Section 7, paragraph 5 of the Australia Act states:

The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

Our republican friends find it impossible to get this into their minds, but the continuation of the states is of the essence of our Constitution. Indeed, they have been strengthened by the sovereign powers conferred most recently in the Australia Act. Those powers confirm the daring of the original Constitution, which created a limited central government within the symbols of Australian nationalism but gave final and sovereign power over so many day-to-day matters to the states. That is the essence of the Constitution. A republic that is only in Canberra but leaves the states undisturbed, as the ARM would have it, is a Clayton's republic. It is the grand continuation of the banana republic. It is Paul Keating's final wish.

It is not beyond our wit to design a system that includes the states. I admit that it raises the hurdle, but it raises it in the most realistic way. All the states must change at the same time—not just as a legal imperative but as a political imperative, primarily—in order that Australia will not be divided in this way. At the moment we are going into a referendum with polls showing that the basic threshold question of the republic has between 50 or 60 per cent support. We are a divided nation. We will now divide off the states and make their

discussions irrelevant, yet again dividing the nation.

Our Constitution is designed to include the separation and division of powers, but to include them in a constructive and creative way. That is what we are abandoning if we regard the states as irrelevant to the republican debate until such time as they might decide to come in.

**Mr WILLIAMS**—There has apparently been a desire expressed on the part of some delegates to have a Commonwealth view as to the position of the states in a change to the republic. I can offer some comments from a legal perspective. I will make some comments of my own in relation to the political perspective as well.

The legal view can be simply stated. Section 128 of the Constitution provides for changing the Constitution. A change in the head of state involves that. A referendum proposal is only passed if it is adopted by a majority of electors in a majority of states with an overall aggregate majority. So the system for change involves the participation of states as identified entities.

There is a whole host of further technical issues that could be addressed or dealt with in this Convention but, for my part, I do not think this is the appropriate forum to be arguing about legal technicalities. The technicalities about transition to a republic at the state level have in fact been canvassed at considerable length in legal discourse over the last decade or so. Professor Winterton has written extensively on the subject. I understand that he spoke this morning and gave a general and very fair perspective on the issues.

From the government perspective, I remind delegates that in an advice to the Republic Advisory Committee, the then Acting Solicitor-General, Mr Dennis Rose QC, canvassed many of the questions that I think might be on the lips of some of the delegates. His advice is public. It is dated 29 June 1993, and appears as appendix 8 in the appendices volume of the report of the Australian Republic Advisory Committee at pages 296 to 311. He gave quite detailed advice, and that advice

continues to be the major advice to government on those issues.

As I said, I do not believe that this is the occasion for visiting the details of technical legal advice. It is clear enough that there is doubt surrounding the effect on the states of change at the Commonwealth level. But, in putting any proposal for a referendum to the people, the technical arrangements ultimately adopted should include the states.

For my part, I would not advocate any change that would exclude the states or in any way promote division between the states and the Commonwealth on a matter of such fundamental importance to the future of our federal system of government. At the political level some focus has been placed on what would happen if a section 128 referendum proposal were passed by a majority but not unanimously by the states. For my part, I strongly urge and hope that this would not arise. Change should occur when Australians generally want it and that means generally across Australia.

In my speech on the principal question before this Convention on Wednesday last week I said that I thought it was absurd to contemplate the possibility that we would have a Commonwealth republic and states that retained the monarchy. But I do not see that as being a legal question; I see that ultimately as being a political question having a political solution. What the solution would be would depend upon the circumstances. But as I said in my speech, I do not believe the Australian people would allow that absurd situation to arise. I very much doubt whether Buckingham Palace would have it either.

I would urge all delegates to be looking to a process that is orderly, involves everybody and involves all the states and an outcome that is equally unanimous in nature.

**Sir DAVID SMITH**—I would like to ask the Attorney-General whether he is able or willing before the final votes to give this Convention a formal legal opinion, as the first law officer of the Crown, as to whether or not the conversion of this country to a republic requires the approval of four states or six states. It is a simple question. Is it capable of being given a simple answer?

**Mr WILLIAMS**—I think I have already answered that. The answers will be found in the advice of Mr Rose and the report of the Republic Advisory Committee. I am happy to take you to the particular passages. It involves more than one question.

**Father JOHN FLEMING**—Assuming that the matter of the states is a political question in the terms that have just been put to us, I for one cannot be so sanguine about what might actually turn out when matters go to a referendum. I think it is entirely possible that Australia could find itself in the position of being—as distinct from directly choosing—a republic at the federal level with monarchies at one or more of the state levels. This absurdity might happen per misadventure but it might happen, at least until I am given some guarantee that it could not; and the guarantee would have to be that before Australia became a republic, as Bishop Hepworth said, it would have to be incarnated in the structures of all of the states.

There is something that I find curious about Working Group M, which seems to contemplate the absurd. Councillor Tully has said that the unanimous agreement of the states is not necessary. The absurdity of that is that we are being persuaded to become a republic on the basis that our current symbols are not unified. Yet we would then tolerate the possibility of a situation where we would be massively disunified. A republic at the federal level and six monarchies is crazy. But the crazy is possible unless, as I say, I could be persuaded that a formula will be found that it will not be. That formula would be the agreement of all the states.

At the moral level, if people enter into an agreement—a compact—it seems to me that when some of the parties to the agreement want to change the agreement, all is up for grabs, as Mrs Rodgers has pointed out to us. All states are then free to renegotiate the terms of the federation and to secure the best deal for themselves. It seems to me to be the logical conclusion of all that has been put before us.

This millennial dreaming of which we have heard so much wants to ignore the complexities and the possibility that per misadventure,

rather than by actual design, we would end up with an absurdity, where our symbols are symbols of gross disunity rather than symbols of unity—a strange situation. Clare Thompson said a little earlier that the states are the rocks on which federation is built. I find this a singularly inappropriate simile. We are not rocks. Rocks are inert. The states are living, vital elements in an agreed compact. What the states might do will be out of their own free choice—not as merely rocks upon which some live edifice is built, but as the real heart and soul of life as it is lived in this country.

It is true that within the states a large measure of autonomy is enshrined in many areas affecting the local culture of the people. We are not rocks; we are the living veins. If you like, we are the organs that drive the country. To me it is very unfortunate and is putting the cart before the horse to talk about republic Australia before one talks about republic South Australia, Western Australia, Victoria, New South Wales, Queensland and Tasmania.

I return to the fundamental point that I want to make here. That absurd situation cannot be ruled out because somebody thinks that Australians would be far too wise. The problem is that, in putting something to us in a certain kind of a way, it may mean that per misadventure an absurd situation arises and then we have to find our way out of it.

I would say, therefore, that what this really means for us all is that the question of the republican models is incompletely thought through and thought out and must be rethought. I hope it goes to a referendum. I really do, because the more we think about it, the more the complexities become apparent and the more Australians will say that it is not a particularly sensible thing for us to be doing.

**Brigadier GARLAND**—If Australia is to become a republic, how should the links to the Crown at state level be handled? I believe that the states and the Commonwealth in relation to any move to a republic are inextricably linked. I could not disagree more with the proposal put by the Attorney-General.

We need to go back to the beginning of this Federation. The Federation is here because the

states put it together. If we decide to go to a republic, the current Constitution puts us into another ball game. That current Constitution says, 'One indissoluble Commonwealth of Australia under the Crown.' As my colleague Mrs Rodgers said earlier today, if we go to this system it is a brand new ball game and every state must be given the opportunity to say, 'Yes, we will join your new republic' or 'No, we will go our own way.'

I have heard lots of people talk about the need to maintain our Westminster system in all of this. The Westminster system consists of three basic elements: the Crown, the legislature and the judiciary. That applies at the federal level. It spells it out in our constitution. The same thing applies at state level; it applies to the Crown, the legislature and the judiciary. If you take one of those elements out, you do not have the Westminster system. You have some other system, but not the Westminster system.

All of these issues have to be addressed at the same time, not only at federal level but also at state level. We need to make sure that what goes on at the federal level is in fact endorsed, not just at the federal referendum, but where necessary and where the requirements are laid down in state constitutions, at the state level. If we do not do that, we do not have a democratic system at all; we are being told what to do by a centralist government. That is not what Australia voted for back in the 1890s which saw the beginning of federation in 1901.

The whole business is inextricably mixed. We have to take account of what goes on in the states and what their attitudes are, in addition to looking at a federal system. That is why it is absolutely imperative that, if we have a federal referendum on this matter, we not only need 51 per cent of the people across the nation voting in favour of it, but we need six of the six states.

**CHAIRMAN**—Before I call Mr Bartlett, could I say that we will have another limited opportunity to speak on the issue of the day which we have been debating since this morning, that is, links to the Crown at the state level, when we consider the reports in the resolutions at 3.30 this afternoon.

**Mr BARTLETT**—I talk to you on the basis today of independence. I was elected by Western Australian voters who knew I was undecided as to which path we should take. It is for that reason that I have waited to comment. I wanted to hear all sides, to listen to all arguments of this very crucial debate, before committing to a course of action.

I do have a great deal of respect for many of the keen minds in this chamber, and frankly I must say that I am surprised we have not taken advantage of them in a more positive and decisive way. To a large degree we seem to have concentrated more on emotion than on detail. Nevertheless, from the debate emerging so far, I must say that I have a lot of sympathy for the argument for change. The push to become a republic is a just one. I agree that the symbolism of Australia moving in that direction would indeed be significant. I am not convinced, though, that the change should be severe, nor am I convinced that a two-week sporting event in Sydney should have any bearing whatsoever on our decision here on Friday. The quality and the track record of our system of democracy says a lot more about us as Australians than how fast we can run or how high we can jump.

I came here believing most passionately in the power of people to make a difference. I still do. For that reason, I think it is crucial to maintain the dominance of the elected parliament in our system of government. That alone ensures that the final argument must always come back to the ballot box. There has been a lot of talk here at this Convention of the events of 1975. Regardless of your political bent, it serves to illustrate to me this most fundamental principle—that is, in the end the vote went back to the people of Australia; the people had the final say. This is surely a cornerstone worth preserving. It is also the process by which we as voters can insist that any blame for government failure ultimately falls back on those who caused it.

It is also the reason I find it difficult to wholeheartedly embrace the idea of popular election for a new president. In an ideal world it does sound like the answer. But in the imperfect sphere of politics I fear it would

actually damage the underlying strength of people at the ballot box. I also know from experience in the media that the moment you introduce an adversarial contest you end up with combatants, not statesmen.

Richard McGarvie was right when he alluded to the need to make a decision with your head rather than with your heart, and not be romanced by newspaper opinion polls. Remember, we are here for these two weeks effectively to provide advice—advice which may or may not be taken at the time of referendum. Rightly, the people once again have the last say, and that is why it is incumbent upon us to give them the right advice, not the advice we think they want to hear. It would be disappointing indeed to think that the keen minds in this chamber had allowed their intelligence to be usurped by simplistic telephone polling in a newspaper. Let us face it: if we were to live our lives by polling, there would be no taxes, free beer, and utter chaos.

The fathers of our Constitution were not swayed by popularity contests and strangely we do not see them as elitist. We see them in fact as having great wisdom. In fact, we all seem to be in general agreement that our current system has worked very well. I have heard the cliché, ‘If it’s not broken, don’t fix it,’ many times over the past six days. Why then are some of us advocating wholesale change? Clem Jones talked about the idea of restoring the concept of respect for our political leaders and politicians generally. I must say that he is right. We need to take big steps in that direction. But do we do that by introducing another presidential style election campaign in this country? That is exactly what we have now every time we go to the polls. At the end of the polls that we attend as voters in Australia, we end up with a national leader who is expressly chosen by the people. You can argue about theoretical rules of appointment all you like but the fact is that in practice, through one on one, head to head media campaigns, that is what we get.

Why would we want to go down the path of repeating the process and deliver to the people of this country another politically wrapped leader? In a similar way, we have

known about the pitfalls of the two-party system for years, but that does not mean the wheels have fallen off and the system needs completely overhauling. Let us first look at the reason why 496,551 Australians, almost half a million Australians, who were eligible failed to vote at the last election. Let us look at why another 360,165 people voted informally. Let us concentrate on encouraging participation in our current system before we worry about inventing a completely new one. John Hepworth spoke about putting people first, and it strikes me that the republican model we agree to should ensure that people are first and last. I have heard the phrases that the people want this and the people want that many times at this Convention and, frankly, it bothers me. It is, after all, positively roman-*esque*; all we are missing are the togas and the grapes.

I do not profess to have the answers but I do know this: we do not have to have a republic that fits a dictionary definition. We do not have to fit any preconceived republican criteria. We can have a uniquely Australian republic. I thought that that was what this Convention was all about. We have a unique system now which does not fit any mould. Reg Withers refers to it as the Washminster system—a bit of Westminster and a bit of Washington thrown in. Undeniably it has been strong. Let us have our own hybrid model and show some of that Australian character referred to by Graham Edwards—a man who has lost limbs fighting for his country. You cannot get much more character than that.

Let us move forward and strive for consensus here on Friday in the most equitable way for all Australians. Bob Carr said that if we are going to achieve consensus then we would have to drag along the conservatives. I put it to you that this is not about conservatism; it is about practicality, it is about commonsense. Most importantly, it is about using the talent in this room for the benefit of the people who put us here. It is no crime to use the wisdom of the senior monarchists. There are literally years of experience on those benches. There is a spirit and a commitment from Malcolm Turnbull and his team that is priceless and

there is a passion from the direct election group that we need to embrace.

The idea that true consensus will only deliver a Clayton's republic is a nonsense. What it would deliver is a safe republic—safe for our system of government and safe for its voters. I know some of you will construe 'safe' as a metaphor for cop-out, a failure to deliver a real republic. Remember that real republics are presided over by real people. People are only human. No matter which system you design, it will only ever be as good as the human element, that person who is placed in charge. That, in essence, is the question for us. Greg Craven has described the body of the Constitution as an organism and the preamble as the lymph glands. If we are charged with caring for the patient, we have to decide the level of treatment: do we attempt to conduct a life rejuvenating bypass or do we try an operation so complex that we could be left with a useless corpse? Sure, there is still minor surgery to be done.

Let us open up the nomination process. Let us make that more representative. Let us include all the states and all the territories and make it a truly national process. This, after all, is an Australian head of state. But let us strive for consensual agreement and deliver a responsible republic. The ARM's idea for appointment seems to me sound and responsible. Mr McGarvie's ideas on dismissal are also sound and responsible. These have both been variously criticised in terms of elitism, which puzzles me, because I find it very hard to entertain any proposal that could possibly be more elitist than the current appointment by the Prime Minister. By merging the McGarvie and the ARM models thus far, our challenge would seem to be to develop an open and accessible nomination process and marry this trifecta of responsibility so that it is truly acceptable and, more importantly, stands the test of time.

I am fiercely Australian and I suspect—I know—that each and every one of you are too. I urge you, on behalf of those Australians who have made the effort to put us here, to swallow your pride, put your self-interest firmly in your back pocket and make a decision for Australia. Make sure that, come

referendum time, they have a decent choice. They want it. They deserve it.

**Ms DEVINE**—This Convention, no matter what happens, is already a success. It has focused the public's thinking on the complex issues involved in becoming a republic, and the public continues to show that it wants a republic with a directly elected president. This Convention has also been a microcosm of the kind of egalitarian nation that we are—getting along with each other despite our differences.

This is the first time in the current republican debate that we have not seen something like the handing down of the Ten Commandments from on high. The problem with the debate over the last six years has been that it is based on so many negative ideas. The anti-British, anti-royal sentiment is negative and it has tarnished the republican cause from its very beginning. We have heard one delegate here even claim to be a genetic republican because of some Irish blood. Well, I am not a republican because of my Irish blood.

Another negative is the way that from the beginning the republican debate has been used as a kind of political manipulation. Then there is the ghost of 1975 which lurks around this chamber. For those of us who can hardly remember 1975 and do not have any rage to maintain, it is puzzling and irritating that the republican debate has been infected by a desire for vengeance and vindication.

This mean-spirited beginning is perhaps the reason that the republican models being seriously considered are so small and fearful. The McGarvie model, while elegant and original, is worse than no republic. It is rule from the elite for the elite and the whole idea goes against Australia's egalitarian ethos. To squander the enthusiasm of the public for a republic that they can own and to waste that enthusiasm on a pseudo republic would be a tragedy.

There has been a feeling in the ARM's republican position, too, that the people just cannot be trusted and that they should be kept in awe of the power of their government. There have been some very persuasive people here who have made what seem at the time to be solid arguments as to why an elected head of state is impossible. But, as Archbishop

George Pell said last week, I am not convinced that the people should not have what the majority of the people want, and that is Bill Hayden's full monty.

Neville Wran talked about the art of the possible, but what is not possible today is often possible tomorrow. Why constrain the possible by imposing an arbitrary deadline on achieving a republic or by linking it to something as trivial as the Olympic Games or a flip of the calendar? Republicans should not be shonky salesmen telling the public, 'Buy now or lose your chance forever'.

I admire the intellect and energy of the ARM and their contribution to this debate. I can sympathise with their impatience, but there is an analogy to be drawn from this building that we are in. In the past week we have heard long-time politicians waxing lyrical about the virtues of this Old Parliament House and how inspiring it is to mingle in the corridors and see the whites of your opponents' eyes in debate. There is no fondness for that shiny, new and expensive building up on the hill that is so alienating, so anti-people and so dishonest, posing as it does as a minimalist grass mound with a flag pole on the top. I fear that, if we rush into a half-baked republic without the full involvement of its citizens, we will end up with a constitution like that building—shiny, new, alienating, inhuman and ultimately hollow.

**CHAIRMAN**—Before I call Ms Victoria Manetta, I should say that I am going to include two speakers from whom we have not heard in this conference before I proceed to the list. Following Ms Victoria Manetta, I will call on Ms Dannalee Bell to be followed by Mr Lindsay Fox.

**Ms MANETTA**—I am humbled to have the opportunity to address such an assembly. I am not a distinguished Australian by any stretch of the imagination. Nor am I a celebrity. I am not even a politician. But as a serving officer in the Australian Army I consider myself privileged to serve the Crown. As an elected delegate of the people of South Australia I am proud to defend it in this place.

Like all of you, I listened with great interest to Mr Peter Costello's speech on the second

day of the Convention. I was intrigued by his objection to the hereditary nature of the monarchy—that it was inconsistent with what he thought was a growing conviction amongst Australians that all public office holders in Australia should be chosen by merit, a conviction that, with time, would render the monarchy less and less believable.

But what does he mean by merit? How, for example, can it be said that ministers and parliamentarians hold office by merit? With all due respect to those present, who really believes these days that parliament is composed of the best and fairest in their fields that the nation has to offer or that they have all been put there by the people for that reason? Being an MP is one of the few jobs left in this country which requires neither qualifications nor previous experience. The vast majority of them, it must be said, owe their positions less to merit than to the back-room machinations of the party machine. To insist otherwise bruises against reality.

The monarchy, on the other hand, supplies a succession of individuals who have been specifically trained for the job and who gain a lifetime's experience in it. That is the reality. What is more, and at the risk of being cynical, they are guaranteed wealth and privilege for themselves and their family provided they do not abuse their power and they would have no natural political support to rely on if they did. Those incentives are as real as you can get.

When nothing can tempt our monarchs to the abuse of power, how can you say that they do not merit their office, that they are not the best suited persons for the job of formally appointing or dismissing the Governor-General? How on earth can you say that the collective horse traders of the party machines are better suited to the task or that Mr McGarvie's Witenagemot of superannuated public servants will be miraculously free of guile; that, like Juvenal's guards, they will guard the Governor-General in case he cannot be trusted, yet need no guard themselves? Such optimism bruises against reality.

And what does it mean to say that the Australian people have a dislike of hereditary office? If it means that they resent people

who get to live in a palace, then that not only is an unworthy characteristic to ascribe to a people, it is also one that certainly should not be vocalised by those who live in the marble corridors of Capital Hill.

Our Constitution is not 100 years old; it is 1,000 years old and more. The Crown brings to it the depth and sophistication of centuries of virtually unbroken evolution, displaying an extraordinary degree of adaption and measured change which has continued into our own era, renewing its relevance and enhancing its value with every age.

What overwhelming arrogance is it for us to presume in this particular time and place that the monarchy has reached its shelf life, has no further to go, is of no further use and has nothing left to teach us? How can you say that an international monarch is an irrelevance in an age of global cooperation, or, for that matter, that the blinkered nationalism offered by the republican cause in this country can be regarded as a virtue in any age?

There is probably a generational aspect to the matter. I do not belong to the generation of Australians who grew up in the twilight of the British empire. It was already dead when I was born—an historical curiosity. I have no need to share the rage of the baby boomers against what it stood for or the cultural cringe that imperial Britain supposedly represented for them. So I do not join them in their hunt for its ghost in the monarchy in the 1990s. My generation has no such demons to exorcise. They bruise against reality.

Everything we have achieved in this country by way of social progress—first in female suffrage, first in comprehensive schemes of social security, pharmaceutical benefits, public education and multicultural tolerance and, despite some setbacks, real progress toward what I fervently hope will be a first and sincere indigenous reconciliation—has been achieved because of our enviable constitutional system, not in spite of it.

I embrace the monarchy not because I cling to all things British, but because I cling to something uniquely Australian—what John Hepworth called 'the exquisite balance of power the monarchy creates'. That is the

genius of our Constitution. It is irreplaceable and most definitely unforgeable.

**Mr FOX**—A couple of months ago, I drove a B-double truck from Melbourne to Adelaide. It was a Kenworth truck with 525 horsepower, an 18-speed gearbox, a total length of 75 feet and a gross tonnage of 72 tonne. I departed from the Melbourne depot at 5.30 in the morning with my co-driver—a fellow called David Spencer. We got out on the highway towards Ballarat and pulled up at Pykes Creek Reservoir. At Pykes Creek Reservoir there was a little roadhouse. David said, ‘We should go in there. It’s a good place to eat and have a cup of coffee.’ So we pulled up this big rig and stepped into the roadhouse. In the corner was a little old truck driver who had been driving up and down the highways of Australia for the last 30 or 40 years. He was just finishing his bacon and eggs. He looked. We came in. We sat down. He picked up his cup of coffee, looked at me and said, ‘Things must be tough at Linfox if you’ve got to be driving.’ Perception often overtakes reality.

One of the assets in my business is my education by practical experience rather than by my having an academic career. I want to put you people to a test and also you people up in the gallery. Most of the customers I deal with start with the letter ‘c’—Coles, Coca Cola, CSR, Caltex, Carlton United, Castrol—and we are currently in a Constitutional Convention. I would like you to pick up your right hand and make the letter ‘c’. You people in the gallery as well, because this is for you more than for anyone else. It is not difficult. Would you please lift your right hand and make the letter ‘c’? Watch me closely. Come on, it is not hard, dear lady. Now, touch your chin. Come on. What did I tell you to do? I told you to touch your chin, but you related to what you saw and you touched your cheek, not your chin.

We have a huge obligation to try to show in the simplest manner to the Australian people a story that they can follow; not about what they need to read but about what they can see and understand. I came to this Convention with a view that the Australian people wanted a republic. This is also my position.

To achieve this end, I looked at what I believed was a simple approach. Firstly, the Queen to be replaced as head of state by an Australian. Her or his title could be Governor-General or President. We have now agreed that ‘President’ should be the title. Secondly, how to appoint or dismiss the Governor-General or president to and from office. In essence, that the Governor-General’s job should be transferred to the office. Thirdly, changing the Constitution to allow the implementation of that simple change.

If I had a toothache, I would go to a dentist. If I needed surgery, the first thing I would ask is who the best surgeon was to take the scalpel and fix what I needed. Here we have the best constitutional lawyers in the land. They should be able to come up with the appropriate answer because, if I were doing these three processes in my own business, I would have them well and truly covered in a very short period of time without using 152 people to come up with that outcome.

That means that the issue to resolve is the appointment or the dismissal of the president. I believe this would involve a joint sitting of the House of Representatives and the Senate to elect the head of state. I guess this is the model most favoured by the Australian Republican Movement. A candidate would be nominated by the Prime Minister and seconded by the Leader of the Opposition, possibly after many hundreds of names were submitted by the public and state and local governments and organisations, and considered by a special parliamentary committee. The head of state would need to be elected by a two-thirds sitting of the parliament and this would mean that, to become head of state, the nominated person would need a majority of the representatives of the Australian people to support him or her.

As for the dismissal, there may be extraordinary circumstances in which it is necessary for the head of state to be removed. The favoured ARM position is for removal of the president by a simple majority of the House of Representatives on a motion from the Prime Minister. The Prime Minister’s action would need to be presented to a meeting of

the House of Representatives for ratification within 30 days of the removal of the president. This ensures that the Prime Minister's action must be ratified by the people's House. This model deserves our full consideration and it is up to us to choose the one which best suits the constitutional arrangements.

Let me tell you about the judgment of Solomon—not my mate Solly Lew, or Solomon Lew, of Coles Myer fame, but from 1 Kings, chapter 3, verses 16 to 28. Two women were arguing about the rightful ownership of a child. 'Bring me my sword,' said the King. A sword was brought into the King's presence. 'Cut the living child in two,' the King said, 'and give half to one and half to the other.' The first woman said, 'If it please you, my Lord, give her the child.' The other said, 'She will belong to neither of us. Cut him up.' Then the King gave his decision. 'Give the child to the first woman and do not kill him. She is his mother.' All Israel came to hear of the judgment that the King had pronounced and they held the King in awe, recognising that he possessed divine wisdom in dispensing justice.

Over the next few days, we need to act with the wisdom of Solomon and the commitment of the first woman, who was prepared to give up the child rather than let him be cut in half. We need to create an outcome in the interests of all Australian people, and some of us need to take a leaf from the first woman. Let us go forward with a republic for Australia and make our two-week commitment well worthwhile.

**CHAIRMAN**—In accordance with my intention to try to put those on who have not spoken at all, I intend again to vary the list and, after Ms Dannalee Bell, I will be calling Professor Judith Sloan and several other speakers. I am testing their availability at the moment. I think it is appropriate that those who have not spoken at all to this Convention should have an opportunity to do so.

**Ms PANOPOULOS**—I would like to make a point of clarification. While I was out of the chamber, Mr Edwards made a statement. He may have misheard or misunderstood my speech. What I said, Sir, was, 'When you put

two completely different republican dogs in one room, you get a mongrel.'

**CHAIRMAN**—I did not think it was a particularly appropriate statement. I urge you now to desist, please.

**Ms PANOPOULOS**—I would like to clarify that point, thank you.

**CHAIRMAN**—I think we might proceed.

**Ms BELL**—Mr Chairman, fellow delegates, ladies and gentlemen. A former Premier of New South Wales, the late Jack Lang, once said, 'If you can't win a debate, wreck it.' I am optimistic, however, that delegates will not adopt such a philosophy in the last three days of this Convention as we endeavour to reach a compromise.

At 19 years of age, I can hardly bring to this debate a doctorate in constitutional law, nor the wisdom of a politician, a governor, an entrepreneur or even the experience of an Australian who was alive at the time of the 1975 constitutional crisis. I bring the view of a member of a generation inheriting the choices which will be made here about our nation's political future.

I pondered last night over whether I should address you today. At this stage in the Convention, it seems that I would merely repeat the arguments that have been articulated so eloquently. But, at the risk of reiteration, I speak to emphasise the points made by my peers. For seven days we have listened—absorbing and analysing. Let me assure you, however, that silence does not necessarily equate to a lack of passion and concern.

One may question: how would the average youth respond if asked whether our nation should become a republic? Are they satisfied with the status quo? Are they desperate for direct election? Do they even care? Tell me: what is the average Australian youth? We are a generation diverse in culture, views, values, influences and experiences. Defining the average Australian youth can be as difficult as defining what the average Australian youth wants, yet we are united by one common sentiment. We want to be seen and heard and our opinions valued and considered. I am not alone in rejoicing that young people have been included in this Convention, unlike the

assemblies of our founding fathers almost 100 years ago.

This gathering has been described as a magnificent testament of a living, breathing democracy. I stand here today as an appointed youth delegate for Victoria. As part of the fourth generation of a Mallee farming family, I am honoured to be a representative not only of the young people of Australia but also of rural Australians.

Ms Ferguson spoke yesterday of her experiences in Gundagai. May I say that in the streets of Walpeup, Ouyen, Galah, Underbool in the Mallee, people share a similar concern. They are wary of a republic not because they oppose change but because they appreciate the stability of what we have, yet their minds are certainly not closed. I gather the impression that many would be willing to embrace a head of state who is one of their own so long as democracy is preserved. In reality, there is a greater passion directed towards ensuring the retention of our esteemed flag. There is a common remark in the bush, 'Do what you like with the Poms, but leave our flag alone.'

I have attended the Convention with an open mind, not overly disgruntled with the status quo but open to improvement. Mr Chairman, I believe that, from the rugged interior to the coastal perimeter of Australia, the voice of youth seems to unite on one fundamental issue. When listening to youth, whether it be through university debate, surveys in country high schools or city street walks, one gleans a common underlying message: the monarchy, with all due respect, is irrelevant to today's generation of young Australians—young Australians who are independent, multicultural and fiercely proud. How many under-25s have grown up in a country singing 'God Save the Queen' as their national anthem? The tradition of the Monday morning flag-raising ceremony accompanied by the sing-song chant 'I will honour the flag. I will serve the Queen' has faded into oblivion. I did not do that, even in grade prep.

We are not a generation who has experienced an allegiance to Britain as did our parents, whose fathers—and sometimes mothers—had served the nation in World War

II, or whose grandfathers had rushed off to the battlefields of Europe in defence of king and country. Whilst the strong ties to the motherland may be found in our history books, they are certainly not a part of our personal experience.

Our transition to a republic has been defined by some as a new stage in the evolution of nationhood. Following on from the unity birthed at Federation, the identity carved by the Anzacs at Gallipoli, and the abolition of the Privy Council by the Australia Act in 1986, the next logical step in our progression is symbolic independence: the replacement of the Crown in our Constitution with an Australian head of state.

How remains the question. In the words of Richard Hooker, 'change is not made without inconvenience, even from worse to better.' There is no simple solution. As we begin to scrutinise the 10 alternative republican models proposed yesterday, both pure and hybrids, it is imperative that we remember that we need a model which is both palatable and appealing to the Australian people.

The position of head of state is one of honour. It is one to which every Australian must be able to aspire. In an ideal world, in a political utopia, we would be able to elect a head of state without the overriding fear of a partisan President who stands as a rival power against the Prime Minister. We live in a stark reality; we cannot be caught up in a tide of emotion. We must lead, as was stated yesterday, first with our heads then with our hearts. Without adequately informing the public of the ramifications of direct election, we are appealing to their immediate self-interest and misguiding their trust.

One would hope that the call for direct election of a president has focused the attention of Australians on their own voting rights and reinforced their appreciation of the power they possess at the ballot box—the power to have a say in determining their national leader, the Prime Minister. Are we so disenchanted with our current rights that we have a desperate need to confirm our democracy by doubling it at the risk of creating imbalance and causing the potential destruction of our political system? Whilst there might be an

overwhelming support by youth for an Australian head of state, there is vigilance amongst many young people who recognise the strengths of the status quo and the need to preserve the delicate system of checks and balances. We are not campaigning for a revolution to completely overhaul a Constitution which has served us well for 97 years.

Personally, I believe that the strengths of the status quo, the criteria of an Australian head of state and public participation through nomination are embodied in the model proposed by Mr McGarvie. True, it is arguably the most boring and conservative option but it is one of the safest. It invests our trust in Australians recognised and praised for their wisdom, decisions and distinguished careers.

The ARM model also features public involvement and provides bipartisan support for the head of state. This, along with several similar hybrid models, is also an attractive alternative worthy of consideration.

The lyrics of Australian songwriter Geoff Bullock in his anthem *The Great South Land* proclaim that our nation's richest harvest is in her people. Ladies and gentlemen, I have a faith that the combination of intellect, passion and the healthy portion of commonsense in this chamber can produce something that we and the people of Australia will embrace. Let us not jeopardise our moment in time.

**CHAIRMAN**—I now call on another great Australian, Nova Peris-Kneebone, to be followed by Professor Judith Sloan.

**Ms PERIS-KNEEBONE**—Mr Chairman and fellow Australians, I come to this Convention as an average Australian, with very little knowledge about the Constitution and the preamble. But I come as an Australian proud of my heritage, and my heritage includes both Aboriginal and non-Aboriginal culture.

Every day at training at the Australian Institute of Sport my team mates ask me, 'What is going on, what is the latest development?' People are paying attention to what we are doing and saying here. Before I annoy anyone with what I have to say, I would like to congratulate all delegates for their inspiring words and their work.

I have learned a lot about my country's constitutional process over the past week and a half, and I believe it is time that this country took the natural steps towards becoming a republic. I say that as a representative of young people, women, indigenous people and my colleagues in sports. I will deal with that last point first.

I have been representing Australia for over six years, travelling consistently. Overseas, I mix with athletes who have a very clear sense of their own national identities and who recognise each other's cultures. I am sad to say that not many people recognise my country and few know much about Australia and our history. I have often had the experience of introducing myself as an Australian, only to have other athletes express surprise because they are not aware that black people exist in Australia. I am ashamed this happens.

The people I meet are often surprised and confused to learn that our head of state is also the Queen of England. I have talked with my team mates about these things, and I believe they share my experiences and concerns. When you are out there on the track or in the pool or on the slopes at Nagano, you know who you are and what country you represent. When you win a medal or break a record, you want everyone else to know who you are and where you come from. That is our motivation, and that is the whole reason the Australian public wants to see us out there.

But we are suffering an international identity crisis. I am offended, my team mates are offended and the viewer at home is offended when we are mistaken for New Zealanders or some other nationality. Why is this, why are we not immediately recognised for who we are? We are not a brand-new country. We have paid our dues in trade and war and sport. We have a range of international achievements to boast about, in sport, the arts, sciences and business. Yet people do not know who we are.

I came to this Convention with no doubt that we needed to make some changes. I have listened to the arguments but I have not learnt why we should not move forward and proclaim our independence. I have heard about tradition and how well the present system has

served us, but those arguments do not build a case for ignoring something better. I admit that I am a product of the present system. I appreciate the opportunities I have had. I also know that there is a lot at stake for indigenous Australians, and the arguments about preserving tradition have the effect of working against indigenous traditions and culture. My people in the Northern Territory and indigenous people elsewhere have very good reasons to look for a change from the system that has caused our families so much suffering and hardship and a loss of culture.

In my Aboriginal culture, I have traditional responsibilities for country around Cannon Hill in the Kakadu National Park. That is my grandmother's country. I hunt there. I take my daughter there to learn from the old people in the community. My responsibilities are more than 60,000 years old. That is a lot of tradition to maintain. It is a tradition that is much older than anything the monarchists support. The land I am responsible for is much more than 60,000 years old, and I am not ready to trade it in.

Yet this history is not mentioned in the present Constitution and is not acknowledged by our current system of government. Mr Djerrkura said that indigenous Australians are invisible in our present Constitution and that this excludes us from the political landscape. As an indigenous athlete, I know the wisdom of Mr Djerrkura's words. I suffer the double whammy. Not only do people overseas not know where I am from or anything about my country but when I come home I find the same thing with fellow Australians. I train hard and work hard to do the best for myself and my country, but my fellow Australians do not recognise my culture in the land. I never thought I would have to fight for recognition everywhere I go.

I want to see changes and move on from the ignorance held by Australians in 1901 and carried forward to today. Many of the younger delegates have been encouraging because they say we must recognise today's realities and see cultural diversity as natural and necessary. As Andrea Ang also made the point, young Australians believe that we should achieve the things we want in life

through our own merits. We do not see the relevance of a head of state who lives overseas. We do not believe anyone deserves to inherit that title.

As an athlete, there is a direct result from the work or lack of work that I put into my training schedule, and I know that as long as I am doing my best I will be respected for my efforts. I believe that this is the Australian character, that we believe in a fair go and in giving people credit where they do their best. For this reason, the concept of hereditary title is completely the opposite of this Australian ideal. We do not want a head of state who is not accountable and who does not measure up to our ideals.

I am pleased that there has been a wide range of support for including some form of recognition for indigenous Australians in the preamble. We are the original Australians, and it is a matter of justice that we be recognised as such. As Father John Fleming said, it is a matter of human rights not simply a matter of recognition. I would like to see a new preamble that sets out a vision for our nation. I want my daughter to learn the preamble at school, to be inspired by it as I am by our national anthem at the Olympic Games. And I would like to see a model for a republic that gives an indigenous woman—perhaps my daughter—the chance of becoming our head of state.

The model for a republic must be one that allows democratic input and lets the people nominate their candidates for a head of state. I agree that there are problems with the models for direct election, but I cannot support a two-thirds model that is not representative. The opinion polls show very clearly that the Australian public has a firm desire to be part of the process. My ideal is that we find a model that is a compromise, that both sides of the republican argument can live with.

Like many of my fellow athletes, I hope that we can have a truly Australian head of state to open the Sydney Olympics. We do not look forward to another identity crisis if the Queen opens the Games, unless it confuses our competitors and puts them off. At the same time, I agree that we should remain

in the Commonwealth because this is an important part of our history. But it is not the only thing that makes us Australians, and I want to see a head of state who symbolises that fact for every one of us.

**Professor SLOAN**—That is a hard act to follow, Mr Chairman. Thank you very much for giving me this opportunity to speak. I am really with Glenda Hewitt and Peter Hollingworth, being one of those people who were undecided and therefore decided to try to leave their time to speak towards the end.

*An incident having occurred in the gallery—*

**CHAIRMAN**—Excuse me. There is no need to throw papers over the balcony. If you or any other member of the Australian public wish to have a submission registered, there is an appropriate way to do it.

**Professor SLOAN**—Realising that our time was drawing to a close, I am very grateful for this shorter opportunity that I am going to take to speak on whether Australia should become a republic. Dare I say that when your trusted colleague asked me just then whether I would like to speak, I had only half a speech written so I will probably only be taking five minutes.

It has been a great privilege to be here. As most of you would know, I come here as an appointed delegate. It is amusing to read how one is described in the press. I have been described as undeclared. This is in fact inaccurate because ‘undeclared’ suggests that I hold a secret position perhaps weakly, perhaps strongly, but that I have refused to declare my position for reasons only known to me. I am actually undecided, and I have come to this Convention with an open mind to hear the arguments for and against a republic versus the status quo and to hear the arguments for and against the various republican models. Dare I confess it at this late stage—I remain undecided.

I am not sure I would describe myself as a forced republican, as Professor Greg Craven has described himself. I am, however, a reluctant one although I see the symbolic advantages of Australia becoming a stand-alone republic and removing its ties with the

British country and the royal family. By the same token, I feel compelled to consider the advantages and disadvantages of the various models and to measure these up against the benefits of the present arrangements, particularly the latter in terms of giving us stable government based on responsible, democratically elected parliaments.

If the sovereignty of the people is to mean anything, then ensuring that power rests with that group commanding the majority of seats in the House of Representatives headed by the Prime Minister is paramount, in my opinion. While I think the benefits of Australia becoming a republic are overstated by its advocates, speaking as an economist, for example, I can tell you that prosperity and job security will not prevail the minute Australia becomes a republic. There is likely to be strong symbolic value attached to the transition.

For this reason, it is imperative that we decide on a safe republican model, and I take up the theme of Liam Bartlett’s speech. We must have a safe republican model which guarantees the following: number one, the continuation of the existing powers of the executive and the parliament; number two, agreed rules or conventions that determine the powers of the head of state and in particular in relation to the reserve powers. I must admit that, notwithstanding the intellectual elegance of full codification and partial codification, in practical terms both those routes are fraught with difficulties. So there seems to be considerable strength in continuation of the current arrangements which are, of course, largely based on convention.

A third ingredient of the model would be public acceptance and confidence in the new means of selecting the head of state, which I agree should be known as the president. I listened carefully today to the two Johns up there—John Hepworth and John Fleming—about the need for that broad consensus right across the country should we move to this new model. On the point about public acceptance and confidence in the means of selecting the head of state, it will be important to take a practical approach in gathering public acceptance for the new arrangements. It is widely held and I think increasingly held

within this chamber that the McGarvie model is unsaleable because of its elitist overtones—‘all clubs and cigars’ except for the guaranteed place for a woman. I do not think you ever smoked cigars, did you, Dame Roma?

**Dame ROMA MITCHELL**—I’m not answering!

**Professor SLOAN**—My guess is that all the republican models, including direct election of the head of state, are potentially unsaleable. The current poll results of which there has been an awful lot made in this chamber remind me of that infamous episode of *Yes, Minister*, and I am sure many of you will recall it, when Sir Humphrey was explaining to Bernard that he could come up with any kind of survey result he so desired. The topic at hand was popular support for national service. You will recall the episode that there was one series of abutting questions in which everyone loved national service, and another series of abutting questions in which the reverse was so. So really on the Sir Humphrey model of polls: you want a result, I will deliver it.

Most people if confronted with the very simple option of saying, ‘Will we have a head of state selected by politicians?’ or, on the other hand, ‘Would you as an elector like to elect that head of state?’ would understandably choose the latter. But if it is pointed out some of the following, the results could be quite different: firstly, that only people with money and influence will be able to stand for the president’s position; and, secondly, that only the votes in Melbourne and Sydney will really count because of the numbers of voters in those cities. I am actually quite surprised that there seems to be some direct election support in some of the smaller states because the reality is that, if we were to have popular election of the president, it would be determined in Melbourne and Sydney.

A third point is that a person campaigning for the role of president would inevitably express opinion on matters of policy, thereby potentially undermining the legitimate role of the Prime Minister and the elected government. Fourthly, a person thus elected would understandably feel some sense of mandate for action. So, if I were in Sir Humphrey’s

position, those are the kinds of abutting questions I would be adding to my survey.

Finally, let me finish on a point about economics. I think, as one of the very small number of economists in this chamber—indeed, as a rational economist—I probably stand alone. Proudly. I actually do not think that Australia becoming a republic has much to do with economics, including the financial costs of Australia converting to a republic. It really is much more about the kind of country we want to be and the form of governance which suits us most. To be sure, there could be some economic damage from a scenario in which the new rules provide unstable government and uncertain power relationships between the Prime Minister and the head of state. Economies thrive in relatively stable environments in which there is certainty about the making and changing of rules governing commercial transactions. Should sovereign risk rear its ugly head in the case of an unsafe republic model, then the economic damage of moving to a republic could, in fact, be quite substantial.

As to the financial costs of the shift to a republic, they are in fact likely to be relatively trivial, particularly as most of us would tolerate a period of transition with symbols of the constitutional monarchy taking some time to be removed. When we moved to decimal currency, when we moved to the metric system of weights and measurement, we tolerated a transition period. But both moves were worth doing so we bore the costs willingly. My guess is that the cost of moving to a republic would be counted in the tens of millions of dollars. Given that the annual GDP is of the order of \$500 billion, the costs are in fact quite small. The key issue is whether the benefits are greater than the costs. To my mind, that issue turns on the model of the republic we decide on and the associated features.

**CHAIRMAN**—I will call on Jennie George, then I will go back to the list. There are still a number of people who have not spoken and I am going to try to introduce them at the earliest possible opportunity. I table a proxy received from Hazel Hawke

asking Ms Nina Blackwell to represent her this afternoon.

I also say to members of the public: the gentleman who threw the papers over the rail a while ago was trying to lodge a submission to the Convention. Any submissions will be received within the office of the Constitutional Convention. There is no need to throw them over the balcony. If you have a submission you would prefer to lodge, there are more civilised ways in which this can be done. In any event, the submission that was thrown over the balcony will be distributed in the normal way to all delegates.

**Ms GEORGE**—I am delighted to be back in this very robust debate in this very nice chamber. I am delighted also—as I think Jim Killen would be—that I did not need to call on Jim's services to try to help mediate a dispute elsewhere. I am glad Jim stayed in the chamber because, as I read it, Jim, you are actually moving somewhat from your previously held position as a very avid monarchist. I read in the paper this morning that you might even be tempted by the McGarvie model, so we will need to talk further about that.

On a more serious note, I am really pleased to have the opportunity as President of the Australian union movement to say a few words about this very important issue. An Australian head of state at the pinnacle of our system of government has, indeed, very important symbolic significance. Probably the economic argument is not strong, as Professor Sloan has just enunciated, but sometimes the problem with public debate is that we focus too much on economics at the expense of value and symbols.

An Australian head of state does reflect our sense of self worth as a nation and does acknowledge that we want one of our own to fill that very important position. Other delegates to this Convention have spoken eloquently on why this is so. It is now accepted, I think, that the great majority of Australians support this change to our constitutional arrangements. Certainly, those Australians that I represent do so. The change I envisage does not mean we as Australians do not embrace the historical, cultural and institutional links

between Britain and Australia. These links will continue to be important, as indeed, they should. They have in fact made Australia the country that it is today.

The very foundations of the Australian trade union movement are based on British democratic principles. It is our support for these democratic principles that underlies the strong support of all of the ACTU's affiliated unions for an Australian republic. Many prominent unionists were active in the debate that preceded Federation, though not as delegates to the conventions. A prominent unionist at that time, Ben Tillett, described the objectives of the labour movement, in having an Australian Federation, in the following terms, and I believe those objectives, as enunciated by him in 1898, are just as valid today:

If there is to be one destiny, there must be unity, there must be . . . equality of the individual as citizens; there must be democratic administration . . . We must have a share of sovereign power, the only sovereign authority that a free people will accept, is the sovereignty of the people themselves and the sovereignty of their will.

Since the current republic debate commenced in the early 1990s, the ACTU has had a formal policy position in support of the change. Resolutions to this effect have been carried unanimously at our 1993 and 1995 congresses. Last year, we sponsored a youth convention which involved young trade unionists and young students. A further report on progress toward achieving a republic was made at our most recent conference in September 1997. Our aim, as a union movement, has been to ensure that union members across Australia are fully informed about the issues involved, because this issue affects all of us—Australians from all walks of life.

In the course of the debate since 1993, the ACTU has supported the raising of issues broader than those specifically related to the head of state issue. These broader issues have included protection of fundamental human rights, as in a proposed Bill of Rights, and the setting out of the entitlements of citizenship, including things like the right to quality public education. I am, therefore, sympathetic to those who have sought to place these broader issues on the agenda at this Convention. However, I am also aware, given my

involvement in promoting many of these issues, that there is today but limited community understanding of and support for many of these broader propositions. For this reason I am supportive of continuing the debate on these issues and I support this Convention endorsing and putting in place a process and procedures to ensure the broadest possible community participation in that ongoing debate.

In relation to the work of this Convention, it has rightly concentrated on the head of state issue. This was recognised as the first priority in our own deliberations. Our 1995 congress considered the type of model and indicated support for the parliamentary selection model which is consistent with the ARM proposal at this Convention. I believe this model sits best with the twin goals of enhancing our system of representative government, and involving the community in the selection process. While I, of course, understand the democratic sentiment which underlies support for the direct election model, I believe there are grave dangers in adopting this method of selection for Australia's head of state.

It would, of necessity, result in the politicising of the selection process. All political parties would be involved and it is likely that, ultimately, a major party candidate would be selected. We would end up with a politicised office of head of state. We certainly would end up with a politician, even if we did not start with one.

Some delegates here are so passionate about not giving more power to politicians but, in my judgment, direct election would in no way prevent this from occurring. This likelihood has been exacerbated by the final direct election model that I read about—the model proposed by Mrs Gallus and Dr Gallop, the GG model. This would give the political parties a direct incentive to support a particular candidate. If the election for president were held at the same time as parliamentary elections, this politicisation process would be complete.

Popular election without full codification and curbing of the Senate's powers would, in my judgment, be a direct threat to the primacy of parliament in our system of government.

I know there is deep cynicism in the community about the representative nature of the political process. Many people that I represent feel that this has been distorted by party politics. We wonder about the effects of globalisation, technological change and economic imperatives on the political process and about the capacity, at times, of our politicians to effectively represent us. But if we elect politicians to govern on our behalf, I think as a nation we should be prepared to trust them with the selection of Australia's head of state.

The parliamentary selection model allows for indirect community involvement. In my judgment, this would be further enhanced if the nomination and consultative processes were opened up to the community, and I support any proposals that move in that direction. By requiring a two-thirds majority vote, the model that the ACTU supports would ensure bipartisan support for any candidate. It also, in my view, would offer the most likelihood of there being some gender balance in future appointments, consistent with the principle which has been tabled by Mary Kelly. Gender balance certainly cannot be assured through the direct election model, nor does the McGarvie model's nomination process offer much encouragement to women, to indigenous Australians or to Australians from diverse cultural backgrounds.

Further, with respect to the McGarvie model, I would suggest that the symbolism of creating such an elite group, drawn from such a narrow section of our community, would be at odds with giving the community more ownership of the position of head of state. There is also, in my judgment, considerable scope for confusion regarding the role of this group in advising the Prime Minister. I do not support the McGarvie model and I do not believe it would attract the necessary support that would be required in the community.

For these reasons, I endorse a method of selection which would involve the bipartisan support of federal parliament. I support as much codification of the powers of the head of state as possible. I support dismissal by the Prime Minister, which has been another

modification of the ARM position agreed to as a result of the debate at this Convention.

Finally, I would like to indicate my and the ACTU's very strong support for moves at this Convention for a revised preamble to our Constitution. A new preamble is necessary to draw people to our Constitution by outlining in simple language our fundamental shared values. It should be aspirational and inclusive, reflecting a community consensus about who we are as Australian people. The ACTU also supports a new preamble which would recognise the original occupancy by Australia's indigenous peoples and a recording of their history. It is very heartening to see the measure of consensus that has developed on this issue.

In conclusion, I quote from one of our congress decisions:

Unions and working people have a proud tradition of contributing to Australia's physical, social and political development . . . The move to an Australian republic is an important step in the development of this country . . . In asserting our independence as a nation we are highlighting confidence in Australia's future and to the contribution we can make to democratic systems of government throughout the world.

I would urge all delegates at this Convention to support the move to an Australian head of state and to ensure that we do endorse a workable model which we can proudly put to the Australian people at a referendum at the earliest opportunity.

**Dr TEAGUE**—Mr Chairman and delegates, I am committed. In Australia, the time has come for us to be a republic. I want a republic where the people of Australia are sovereign, not subject to the monarch of another country. I want a republic where an Australian citizen is our head of state, not a foreigner who lives on the other side of the world. I want a republic where our national symbols reinforce our independent democracy, not a colonial anachronism that is confusing not only to our neighbouring countries but also to our own people, especially young Australians, who should not be confused but rather empowered by a clear, relevant and inspiring Australian Constitution. I want a republic where our head of state is not determined by heredity, male priority and religious intoler-

ance but by an open inclusiveness of all Australian citizens—the best person for the job.

I have been elected to this Convention to support constructive change to our Constitution. As the leader of the Australian Republican Movement team in South Australia, I acknowledge the support of the ARM members and of the people of South Australia and thank them for their support. In regard to the republic, I will now refer to some parliamentary developments here in Canberra over the last five years. These developments also explain the foundations for this Constitutional Convention.

More than ever before, the issue of Australia becoming a republic was clearly raised during the March 1993 election. At that time the Labor Party, the Australian Democrats, the Greens and the Independents were all declared republicans, although there had not been any republican speeches or debates in parliament itself. In contrast, the Liberal and National parties did not then allow any freedom in this matter. They have changed their minds since but then, continuously since Menzies and Fadden over 50 years ago—and in fact long before that, in the earlier decades of Australia's universal support for the then British empire—the constitutional monarch had been firmly entrenched in the policy foundations of both parties.

On the first day of the sitting of the new parliament, on 5 May 1993, my own voice was alone in the coalition ranks when I introduced the following motion into the Senate:

That the Senate:

- (a) welcomes a variety of processes to prepare option papers to enable the people of Australia and the Parliament to consider the minimum constitutional changes necessary to achieve a viable federal republic of Australia, while maintaining the effect of our present conventions and principles of government;

In that motion I went on to set out what is very similar to the agenda of this Constitutional Convention. That was five years ago. In the five years that have followed, I have been strengthened in holding these views. During the fortnight of this Convention, I

have been further strengthened by the debate and exchanges and dialogue.

I continue clearly to advocate that the president of the Commonwealth of Australia be the best available Australian citizen, who will uphold the Australian Constitution, exercise all the existing powers of the Governor-General, enliven our unity as one Australian people and nation, represent our Australian values of equality, justice, a fair go, compassion, truth and democracy.

I believe there should be one nomination, made by the Prime Minister after wide consultation with the public and the states, seconded by the Leader of the Opposition and requiring endorsement by a two-thirds majority of a joint sitting of the Commonwealth parliament—one decision in one place at one time, powerfully reinforcing the unity of this nation. I believe that any dismissal of a president should be on the initiative of the Prime Minister, endorsed by a simple majority in the House of Representatives.

These new processes would be democratic, open, and bipartisan. In all three aspects, that would be a significant improvement on the status quo. This is the model for constitutional change that I support. Such a model is now being circulated in the Convention, and I am happy to be one of the signatories to it.

I was advocating this model in the parliament and around Australia long before I had heard about the Australian Republican Movement, to which I am now very proud to belong, and long before the so-called Keating model, which partly overlaps this, was announced in June 1995. I quote from my own first speech on the republic in the Senate on 29 August 1994. This was the first republican speech in the Senate from any side, I am told, and certainly the first from the Coalition. I said:

We are an independent nation—a country that has its own independence, its own sovereignty, its own integrity—and our national symbols should reflect that independence. Accordingly, I think it is quite inappropriate that Australia as has a foreigner as our head of state, a person who is not a citizen of Australia and who has prior allegiance to the United Kingdom . . . the time has come for an Australian citizen to be the head of state of Aus-

tralia and for that person to have no other allegiances but to Australia.

This speech 3½ years ago sets out the views that I still hold. At that time, there was no other coalition voice in the Commonwealth parliament calling for a republic or even prepared publicly to discuss the matter. This was in strong contrast to the situation, for example, in New South Wales, where in that state my Liberal colleagues John Fahey, Nick Greiner and Peter Collins clearly expressed republican views. In Canberra, however, the increasingly popular approval for an Australian head of state was taken up in internal discussion only. The coalition was then, as they say, paddling furiously under the water.

The outcome of this entirely internal ferment was that the Liberal and National parties agreed to hold a Constitutional Convention—this Constitutional Convention in Canberra. This agreement was announced in November 1994 and it was aimed, firstly, to diffuse the issue of the republic as any electoral liability for the coalition and, secondly, with some enlightenment, to hope that the Convention would prove a stepping stone to help the coalition parties cross the river from the status quo to embrace change, to move from the monarchy to a republic. Unfortunately, however, this Convention was only to be half elected, and much later it was announced that this election would unusually be only a voluntary vote and a postal vote at that.

However, the coalition had started out on the road for change. In 1995 John Howard was elected leader, and he embraced the Constitutional Convention proposal. He included it as the centrepiece of his June 1995 parliamentary speech responding to the Keating model and, on winning the election in March 1996, was resolved to keep his promise about this Convention. Here we all are.

It is important now, first, that we constructively define the best republican model for the 1999 referendum and, second, that this best republican model be not only workable but scrutinised as better than the status quo and, third, that this best republican model not cause any damage to the Australian system of government. I, for one, am confident that we

will achieve these goals by Friday. I think the great majority of us in this Convention are resolved to constructively reach a clear conclusion that will not let down the Australian people.

As a footnote to my story of the last five years, I add that in June 1996—three months after the last election and in my last week of service in the Senate, where I had as a Liberal senator represented South Australia for 18 years—I introduced a private member's bill entitled 'A bill for an act to alter the Constitution to provide for a president of the Commonwealth of Australia'. I table this bill, and I table my second reading speech. I note that it is still on the *Notice Paper* of the Senate, and I believe it consistently gives an example of how the Constitution would need to be changed to live out the principles that I have argued here over this fortnight. Certainly legislation of this type will need to be passed by the parliament in the next 18 months to provide for the 1999 referendum.

As a final point and a second footnote to these five years of development, I give a particular welcome to those of my coalition colleagues who have joined all of the other parties in the parliament in calling for constitutional change. I mention, in 1994, the now Senator Marise Payne; in 1996, Senator Alan Eggleston, the members Joe Hockey and Sue Jeanes; in 1997, the members of parliament Chris Gallus, Andrew Southcott and a number of others; this year, during the Convention fortnight, my close friends and coalition senior ministers Senator Robert Hill, Peter Costello, Michael Wooldridge, Richard Alston, Daryl Williams, Peter Reith—these are only a sample of the wide range of coalition parliamentarians in Canberra who are in the process of publicly declaring their support for constitutional change.

I note that this has been greatly reinforced by the excellent speech today of Premier Jeff Kennett; by the Premier in my home state of South Australia, John Olsen, a few days ago; and the other states through their state representatives. I underline that this coming-out by the coalition advocates for constitutional change represents the last essential block of public opinion, the last essential element to

ensure that the 1999 referendum has the prospect of success. This Convention will be a major stimulus to that final essential element being achieved.

**Ms HEWITT**—I am a proud Australian with ancestors going back to the First Fleet. I am a descendant of Thomas Everingham who was transported for stealing a law book and who became one of the magistrates of the colony. As it is unlikely that I will again get such an extensive public forum to do this, I would like to personally offer my apology to the indigenous people of Australia if any of my ancestors caused any offence since we came to this land.

I am mindful of the trauma of the stolen generation. I know a little of the history of the treatment of the Aboriginal people of this land and I can only hope that my ancestors have not knowingly contributed to many of the injustices which have been perpetrated on indigenous Australians since the establishment of the colonies.

While I can apologise for the past, I can also contribute to the future. I hope, for many reasons, that our future as Australians of any shapes, sizes, colours, religions and beliefs can be one of mutual harmony and goodwill. We live in a wonderful country and we risk taking it for granted. In the end, what we put in is what we also get back. No investment equals no growth. Today, and for the past few days, we Australians, we delegates have been investing in our future.

Maybe some people here are used to being involved in changing the path of history but I am not. As an elected delegate, I am proud and honoured to be here. I nominated because I keep hearing the statement, 'Why doesn't somebody do something.' Too often we sit on the sidelines and complain. Having taken part in this Convention, I can tell you it is a much safer bet being on the sideline.

However, while I am not a member of any of the major groups I do believe that individuals, people like myself, can have a little bit of an impact on influencing the agenda. It has reinforced the single thing that I can offer and the single thing that every Australian can offer to this process—a vote. I have a vote. You have a vote, fellow Australians. Fellow

delegates, you have a vote too. I think we all need to remember that we here now are not representing ourselves but are representing the people of Australia. I take this responsibility seriously. While I am mindful I am not one of the power factions, my vote matters and so does yours.

Think of me as the person you might meet on the bus or the train or the tram. Think of me as the person pushing a trolley around the supermarket and worrying because I drive an old car which is probably contributing to global warming. I have to work to pay the rent. I am not quite a baby boomer and not quite generation X. Though it is not glamorous or sexy, I am one of the people you pass in the street every day. I represent the people who do not make headlines, who just get on with their lives and will probably never have the opportunity to rub shoulders with the rich, the powerful, the famous and the politicians I see in front of me. But I have a vote. I am just like many of the people of Australia who are trying to come to grips with the changes that you and I have been discussing over the past few days.

I keep hearing that only 50 per cent of the population voted in the election for the delegates to this Convention. This is reported as a symptom of the lack of interest of the Australian people. I think that is wrong.

This election represented the first time that Australians did not have to vote. The people who voted had no incentive to do so, but they cared enough to work their way through a complex voting system, to read candidate statements which were in extraordinarily small print, to put aside their day to day commitments long enough to make a measured decision and voluntarily vote before ensuring that their ballot was posted back to the electoral office in time to be counted. These are the people who care about the outcomes of the Convention and who have been watching, reading and listening to the debate. All these people too have a vote.

Fellow delegates, Mr Chairman, Prime Minister: do not underestimate this. Half the Australian voting population has voluntarily chosen to be interested in something relatively obscure and which has no direct impact on

their lives. In this day and age, where people are under increasing pressure and many either working harder and longer than they have ever worked before in order to hang on to their job or coping with not having a job, the interest in this obscure, intangible discussion on constitutional change is astounding. It would be remiss to say that the Australian electorate is apathetic on this issue. A vast number of ordinary people are vitally interested in what we are doing, and they are listening to, watching, and reading about, the progress of this Convention—and they have a vote.

I suspect that at this point they are a little concerned that so many people are telling them what is good for them rather than listening to their voices and asking what they want. The polls might be wrong, but they are a useful tool. There is an extraordinary number of people who are saying that they are prepared for change, but they want that change to provide a better Australia and they want to be involved in that change. Happily, there are a good number of people here who are genuinely interested in good outcomes and who are listening. But there are others among the powerbrokers who are still telling people what they should think.

The strong message I have is that people are prepared for change. But, unless they are given good reasons for it and unless they are convinced that it will provide a better future, come the referendum they will vote for the status quo. But this is not necessarily what they want. After today's meeting of all the republicans at the Convention, I have to say I am hopeful that we will have an excellent outcome for which you can vote at a referendum with great confidence.

I have changed my views since coming here and listening to some wonderful inspirational and informational addresses. Like most Australians, I have always leant towards being a nation in our own right and cutting our last ties with England. But, in the same way you trust me as a voter to contribute to the democratic process and elect a government representative, I have difficulty in understanding why some of you think it would not be possible for me to make the same sort of

contribution to who will represent me as a president.

We Australian workers are quite capable of making informed decisions and understanding the problems. These are the people who have been writing, faxing, e-mailing and phoning to let us know what they think. It would be interesting to collate all the correspondence that has been received by delegates at this Convention. I think it would make compelling reading—because people do want to be involved.

I do not know about you, but I am not in this for me. Does that make me an idealist? I think it makes me a pragmatist and more willing to listen to other people's views. I think we should all remember that we need to put ourselves aside as we come through what has been a challenging, frustrating, exhausting and absolutely stimulating two weeks. As a representative of the Australian people, I cannot claim to be young, ethnic, indigenous, rich or famous. I can only claim to be one of the masses. But I have a vote, and that vote is precious to me.

What I want out of this Convention is leadership and a sense of direction for the future, and I will cast my vote for that. The symbol of the Crown no longer provides that for me. I am Australian. At this point in our history we have the ability to create Australian symbols with the same stature and meaning for us as the English symbols have for the English. But don't muck around with the stability of our political system; if you upset the balance here, then I will stick to what I consider to be inappropriate symbols and vote for the status quo.

This is not just a Constitutional Convention; it is a republican convention. We have focused on state issues, but there are other ongoing constitutional issues which also have to be addressed. We are only dealing with a very small portion of what is contained in the Constitution. I only hope the momentum for this Convention ensures that that process continues. I do not have the gift of flowery rhetoric and I cannot claim to have the passion of Delegate Stella, but I do have the laconic ability which so many Australians have to mull over the difficult issues and

make a commitment for change if it is going to be beneficial.

Our vote today and tomorrow is not just about you and me; it is about 19 million people we represent. If our decisions make a few politicians uncomfortable, so be it. If the vote you take is not what you personally want, then so be it; you are not voting for yourself. I would hope that the debate and the discussion we have heard over the past two weeks has modified your views as it has modified mine. The strong message is that, if you cannot offer the Australian people something better, they will vote for the status quo. I am now confident we can offer something better, and I will cast my vote for this. At the same time, there is a strong sense that this historic occasion gives us a chance to revise the conventions of the past. I remind you: you have a vote, I have a vote and the Australian people have a vote. Let us make it count.

**Mrs GALLUS**—As the only nation continent in the world, the only significant country that does not share its border with another country, a resource rich country, Australia should be one of the greatest nations of the world. But we fall short of our potential. We sit in the shadow of other nations and come to the international table as suppliants. We make excuses for our failures: our relatively small population, our dry centre, our distance from Europe and from America, our isolation in Asia. But the greatness of a nation does not depend on the size of its population or on its geographic location. A nation's greatness comes from the character of its people and the courage of its leaders.

There is in Australia a desire to be great and a belief that one day we can become a leader amongst nations. But that time is not yet. At this Convention I see little indication that the delegates have faith in our future. We cling to the past, we distrust change and consequently we are afraid of the future. We have formed our opinions, chosen our factions and like Martin Luther we say, 'Here I stand.' But Luther was a revolutionary. We are far from that. We are so conservative that those promoting democracy are regarded as the rabble, as radical revolutionaries. How did we come to this?

We have such little trust in ourselves in democracy that we fear a democratically elected head of state. There are a significant number of delegates here who wish to keep the British monarchy as part of our Constitution. While the Queen probably does us no harm, we must accept she is not our representative. She is the representative of Great Britain. What was appropriate for Australia 100 years ago is no longer appropriate. Symbols stir emotions. They are instinctive and compelling. As long as we keep the symbol of the British monarchy in our Constitution, as long as the British monarch remains our head of state, we are dragged back into another era; we are trapped by our past. The status quo we talk about at this Convention is the status quo of 100 years ago.

I look at the distinguished Australians who sat in this room and who sit here now, and note the sirs and the dames and the famous people of our past. I would like to plead with you: do not let the glory of your personal history tie us to that past, because the 21st century will be far different from the 20th.

The tragedy of this Convention is that so many have come afraid of what change may bring. We are afraid that, with a changed Constitution and without a British monarchy, we will not be able to hold our system of government together. We are afraid that, without the convention of the monarchy, we will choose a head of state who will seize power and destroy the structures of the country that have lasted a century. What nonsense. How can we have such little faith in ourselves? Disraeli said:

In a progressive country change is constant, change is inevitable.

Yet we have spent this Convention not looking at the opportunities that change may give us but at the problems it may cause. Our fights have not been about differing visions for the future but about whether or not the models put up by various groups have sufficient safeguards to stop an Australian head of state ignoring precedent, ignoring convention, ignoring the Constitution and ignoring the power of parliament. Why would we choose such a person? Whatever model we choose,

those who have the power of selection or election will do what is right for this country.

The fearful sceptics among you say, 'What happens when the president takes office? The power of the title may lead him or her to wreak havoc.' Why are we so afraid that the people will elect a demagogue? And would it be a non-remedial disaster if we did? Any person who sought such a power would be quickly thwarted by the Constitution and by the power of parliament to dismiss.

There is no guarantee that a head of state, selected or elected by any of the proposed models—McGarvie, parliamentary election or popular election—would be immune to the temptations of title. A Prime Minister selected president, appointed by McGarvie's select council, may turn on the Prime Minister just as Kerr turned on Whitlam. A president elected by parliament may turn on the parliament. There are no 100 per cent guarantees, so let us stop trying to find them. In the end, all three models—McGarvie, parliamentary election and people participation—contain and circumscribe the activities of the president. None are fireproof. When McGarvie-ites argue that their model gives a better guarantee than the ARM model, and the ARM model argues that parliamentary election gives a better guarantee than popular election, we are like medieval scholastics arguing over how many angels fit on the top of a pin.

One of the strangest arguments put forward in the Convention is that, despite the Australian people telling us clearly and unequivocally that they want to participate in the election of a head of state, we should not have any form of popular election because it would not get through a referendum. These same people say that only their model—that of a parliamentary election—could survive a referendum, despite Australians having clearly said that they will not endorse such a model.

Australia is a democracy. We are one of the most stable democracies in the world, not because of our Constitution and not because of the British monarchy but because of the people. The Australian people have shown faith in us. They have given us the power to look to the future. They have given us the power to set this nation on a path that will

take us into the 21st century. Shouldn't we show the faith in them that they have shown in us and say to them, 'This is your country, you should have some say in the choice of president'?

We can also say to them, 'Because there are always things that go wrong, we have built in safeguards. We have limited the presidential powers. We have given the government the right to dismiss a president who assumes more rights than intended.' We can say, 'We will prevent political ownership by having bipartisan candidates and we will stop commercial interests by prohibiting paid advertising.' We can say, 'But we cannot guard against every possibility. If that is what we aim for, we will never move forward.' Finally, if we only had the courage, we could say to the people of Australia, 'The future is full of opportunities and a popularly elected Australian president is an appropriate symbol for a nation that believes in democracy and that believes in itself.'

**CHAIRMAN**—I propose to adjourn the debate on the general addresses until the conclusion of the voting and consideration of the reports of the working groups according to the program. Before I start on that item, I wish to table a proxy for Mr Neville Bonner for tomorrow and Friday requesting that Professor David Flint serve in his stead.

Secondly, in trying to record the signatures of everybody, it has been decided that a further book will be produced to formally record the signatures of all delegates. This will be available in the office and, in addition, delegates might be approached by members of the secretariat. The book is to be embossed and done in a grand way so that it too will go into the records of the Convention.

I remind delegates that we are going through the working group reports and the provisional resolutions from them. That means that in this phase we will need support from only 25 per cent of delegates for the provisional resolutions to be referred to the Resolutions Group. After that has been concluded we will return to the general addresses. This evening, after the general addresses hopefully have all been presented, we will return to the continuation of debating and voting. At that

time we will be considering the preamble of the Constitution, the oath, qualifications for the office of head of state, and other transitional and consequential issues. That voting will all be requiring a majority of the Convention and I think the names of delegates need to be recorded at that time. We certainly need to have the numbers.

#### **REPORT OF WORKING GROUP M**

##### **Each State should be able to make individual decisions about retaining their links**

**Mr McLEAY**—I move:

1. The autonomy of the States in the federal system be reaffirmed; and the present balance of constitutional power between the States and the Commonwealth be retained.
2. Accordingly, each State will retain control of its own constitution, and any move to a republic at the Commonwealth level shall not impinge upon state autonomy.
3. The title, role, powers, appointment and dismissal of State Governors or Heads of State will be determined by each State. State Governors or Heads of State will not be appointed or removed by the Commonwealth Head of State or the Commonwealth Government.
4. While it is desirable that the advent of republican government occur simultaneously in the Commonwealth and the States, it is noted that each State has different legal arrangements and may not wish, or be able, to move to a republic within the timeframe established by the Commonwealth. In these circumstances provision could be made in the Commonwealth Constitution to allow States to retain their current constitutional arrangements.

**Prof. THOMAS**—I second the motion.

**CHAIRMAN**—We need only a 25 per cent majority. We had a full debate on these this morning. You will recall that the procedure is that, having been referred to the Resolutions Group, they are returned to the Convention for further consideration.

#### **REPORT OF WORKING GROUP O**

##### **Any change should be simultaneous but should only occur if majorities in all States support change.**

**Mrs ANNETTE KNIGHT**—I move:

1. A decision on change to a republic should be made in such a way that either the Commonwealth and every State simultaneously become republics or all remain monarchies.

2. The change to republics should only occur if majorities of Australian voters and of voters in every State support the change.
3. The most practical and symbolically satisfying way of resolving the republic issue is by a referendum in which the change will occur only if majorities of Australian voters and of voters in every State support the change and if every State Parliament requests it.
4. Only successful co-operative federalism can bring about the resolution of the republic issue and Commonwealth and State Governments must work together from the outset to facilitate an effective resolution.

**Mr McGARVIE**—I second the motion.

**CHAIRMAN**—The question is that the reports of Working Groups M and O be referred to the Resolutions Group for further consideration.

Motion carried and referred to Resolutions Group.

#### **WORKING GROUP P**

##### **The present arrangements for State links with the Crown and the defects of suggested alternatives**

**CHAIRMAN**—I note that there is a specific resolution included within the report of Working Group P. Sir James Killen, do you wish to move the resolution?

**Sir James KILLEN**—I do. I move:

That this convention recommends to the Federal Parliament that it extends an invitation to the State Parliaments to consider:

1. The constitutional implications upon their respective constitutions of any proposal that Australia should become a republic;
2. The consequences to the Federation of Australia if a State or States should decline to accept a republican status.

I will be brief. The resolution speaks for itself. During the course of the debate differences of opinion were expressed as to the impact of a republic on the states. Not surprisingly, the opinions were widespread. For example, my honourable and learned old friend Neville Wran said there were a few obstacles in the way. I disagree with him, but I think we should properly ask the state parliaments for their views. After all, as I observed this morning, the words 'state' and 'states' are used no fewer than 326 times in the Commonwealth Constitution. I think it

would be courtesy itself that the views of the states be considered.

Beyond that, we do not know what changes of attitude have taken place with the states. For example, when the Australia Act went through the Senate, the then Minister for Resources and Energy, then Senator Gareth Evans, with an agreeable display of tentativeness, said he guessed about some matters, but he said this of the Australia Act:

It would need to be accomplished at the request or with the concurrence of all the relevant parliaments which, for the purposes of the future, means the Commonwealth and the state parliaments. So I guess in this sense it would not be possible to contemplate a particular state going off on some frolic of its own so far as the repeal of the provision establishing the position of governor is concerned. That ought to give considerable comfort to those opposite, although no doubt it will not shut them up, who regard the Australian Labor Party nationally and certainly in some of the states as hell-bent on establishing republicanism by any available means.

Times have changed. Now the Australian Labor Party has a view on the matter. Again, looking at my friend the Premier of Western Australia, 60-odd years ago a petition from the people, the parliament of Western Australia, was heard by a joint committee of the House of Lords and the Commons. I do not know whether, if a state today for whatever reason said, 'No, we do not want a bar of it,' the parliament would give to that state the right to secede. I do not know, but it is a question that is open to very legitimate consideration. The power unquestionably was there in the British parliament, stated in clear, unambiguous terms in 1935. Attached to that decision was: but, the constitutional conventions being what they are, no decision will be taken. No constitutional conventions to that character now apply. I do not know. But I think it is very proper that this Convention should say to the parliament of the Commonwealth—not to the government but to the parliament of the Commonwealth—please extend this invitation to the state parliaments.

**CHAIRMAN**—I regret to advise you that your time has expired. Have you finished your argument?

**Sir James KILLEN**—That is a blessing for you and a misery for me, but with that combination of virtue I will shut up.

**Mr HODGMAN**—I second the motion.

**CHAIRMAN**—Are there any speakers against the amendment?

**Dr GALLOP**—I thought it important to point out to this Convention that, in relation to the motion moved by Mr Killen, some of the states have indeed already taken such steps. In my own state of Western Australia, the government of Western Australia set up a committee to examine this very question, and I believe the Premier of Western Australia tabled that report in the early days of this Convention. I believe that the state of South Australia has also examined this particular matter.

It ought to be pointed out that the issues that are on the table in terms of the implications of a move to a republic for the states have been very well canvassed, certainly in the states of Western Australia and South Australia, to the point at which I felt quite confident to come to this Convention with a clear set of arguments about that matter, which led me to support very strongly Working Group M, which said, 'Leave it to the states to follow on this process according to their own constitutions and their own political situations.'

Mr Killen, in terms of Western Australia and South Australia, this has been done and I believe the arguments are well known by all of the delegates. We ought to get on with the job of considering how we approach the move to a republic in terms of its implications for the states.

**CHAIRMAN**—The question is that the report of Working Group P be referred to the Resolutions Group.

Motion carried and referred to the Resolutions Group.

**CHAIRMAN**—I table a proxy from Hazel Hawke requesting that Mr Tom Kenneally replace Ms Nina Blackwell as her proxy for this afternoon's proceedings. There being no further debate or voting on the working groups on the states issue, I now propose to return to the general addresses. I remind

delegates that we have some outstanding addresses this afternoon, and I urge those who can be in the chamber to be here, as it is so much easier speaking to a full audience than to an empty chamber.

**Mr LEO McLEAY**—As we got through the voting so expeditiously then, Mr Chairman, could you reiterate what the arrangements are for the voting later this evening. What time is it likely to start? What are the issues that we will be voting upon?

**CHAIRMAN**—You must not have been here when I read it out before we started the proceedings.

**Mr LEO McLEAY**—I was, but I do not think many others were.

**CHAIRMAN**—The proceedings for the balance of the day are that we still have about 15 to 20 speakers on the general addresses. I propose to take all those who are on the list as well as a couple whose names are still not on the list that has been distributed. When those are completed, we will proceed to the next item, which is the continuation of the debate and voting on the item listed on today's Notice Paper as No. 7. I suggest that you look at your business paper and see the continuation of debate and voting, which at the moment is scheduled to commence at 7 o'clock. If we are able to complete the general addresses before then, we will proceed to do so.

Before we proceed to the proceedings at item 7, I have arranged for the bells in the New Parliament House to be rung for three minutes. When you hear the bells it will mean that we are about to proceed to item 7. With respect to the voting, in the normal course of things it will require a majority of those delegates present.

**Mr TIM FISCHER**—Just to assist with the Thursday and Friday proceedings, you will recall that, when we adopted those critical motions of business yesterday, it provided for debate between 9 and 11, and the taking of the first set of ballots under rounds 1, 2 and 3 from 12 noon onwards. That has now been corrected to 9 to 12. I ask for an assurance, because that is the witching hour for this Convention in more ways than one, that that

occasion will not be brought forward before high noon, because a number of us had made arrangements on the basis of what was printed in that motion yesterday.

**CHAIRMAN**—Mr Williams, can you tell us what the result of your Resolutions Group recommendation on that is? It has been the request of Mr Fischer that there be no voting tomorrow before 12 noon.

**Mr WILLIAMS**—That is the intention.

**CHAIRMAN**—The Resolutions Group report has so recommended and there will be no voting tomorrow before 12 noon.

Tomorrow, we will also be considering the manner of voting for the resolutions but, as they are a little complex, I will arrange for a paper to be distributed to all delegates before we consider that issue. Let me repeat for the benefit of delegates: there will be a three-minute ringing of the bells before we proceed to the debate and voting on item 7 on today's Notice Paper.

**Mr CLEARY**—I will be brief. It is kind of intriguing that, when triumphant politicians such as Jeff Kennett take to the national stage after an election, they extol the wisdom of the people. Yet, at this Convention, they tell us that the polls are a lie and that people do not really understand this thing called a republic.

The Premier's speech this morning carried the same hierarchical propositions as those which underpin, regrettably, the ARM model. He and they speak as one: neither want the people to participate in the process. At yesterday's ARM press conference, a concerted attempt was made to rewrite and reinterpret the mood of the people. This was despite the fact that approximately 70 per cent of Australians want a directly elected president.

Sadly, a number of young people, notwithstanding the articulate and well-managed delivery of their speeches, have sided with the elitism of some of the people in this chamber. We have heard expressions such as 'common people', as if we were wiser and above the people. Does it matter to the same people that an alleged eminent person such as the Hon. Peter Reith claims to support the popular election of a president? We have also had people query whether 'the people' outside

understand the questions that were put to them in the polls when they said yes to an elected president. In a room elsewhere, Gareth Evans was relating a story about a cleaner who, when asked about a republic, said, 'Yes, great idea, but codification is imperative.'

The so-called common people are writing and ringing en masse to affirm their commitment to the direct election of a president. It is not because they are dumb; it is because they are disenchanted with the suffocating party politics of the parliamentary system. The truth is that they do want to establish another site of political thought. Professor Trang Thomas was another who implied that the people do not know. How ironic that she supports an oligarchical style of republic: a republic where a politburo selects a party man. The truth is that that argument is inconsistent and fails to grasp what it is the people are telling us. The people do not want a politically controlled, bipartisan parliament or an old boys club to protect the Constitution and their way of life. They want to do it themselves. Why should we not trust them?

The conservatives in this chamber dream of past glories and extol the virtues of an Australia they fear is disappearing. Professor Geoffrey Blainey's heroic miners, the Brigadier's diggers, Bruce Ruxton's Aussie battlers and the women of Australia have all been the subject of passionate eulogies. But when the issue of allowing the people, those proud people, to vote for a president is raised, the conservatives either retreat into a mythical world of kings and queens or assert that a republic is a procedural and technical nightmare.

**Mr LEO McLEAY**—Who wrote this?

**Mr CLEARY**—Some idiot. How ironic that the direct election republicans should be drawing on the conservatives' history in their defence of a real republic. Yes, Bruce, we will extol the virtues of the Chartist movement and the inspired battle for the vote begun by your British ancestors 170 years ago.

Yes, I agree with George Winterton when he says that the president should be a unifying force. But I ask you this, George: how can the president unify the people when he or

she runs the risk of being an acolyte of a bipartisan parliament? If you thought that an elected president could have a destabilising effect on the nation why didn't you, as a wise person, expend one word on the destabilising effect of the multilateral agreement on investment which threatens to override Australia's rule of law? The truth is that the arguments against a direct election are built on deep-seated mistrust of the people and the tyranny of the masses concept, as developed by the 1800 conservatives of the Hobbesian ilk.

Of course, there may be elements of confusion in the population's understanding of a directly elected presidential model. If you are seriously worried about that then ban all elections and institute a dictatorship or a government with a benign constitution, such as we have in Victoria.

The Hon. Jeff Kennett, in typical style, affirms the need for strong leadership; but the club from which the McGarvie or the ARM president would spring would never allow a president to display leadership. Anyway, leadership is about building a creative and decent culture and taking risks where they really count—the kinds of risks that Professor Geoffrey Blainey's miners took when they descended into the shafts of Ballarat, or the things that Lawson and the poets spoke of, or what Lois O'Donoghue said in her speech here recently. Those things, rather than the building of casinos, freeways and a grand prix track, are what nation building is about.

George Winterton says that we should not become a shrunken, inward-looking country but an independent, freestanding nation—bold words unfortunately wrapped in an insipid, elitist and hierarchical Australian republic. What a waste, George, for those sentiments to be lost.

The notion that the desire for a directly elected president is founded on a myth and will lead to the triumph of the heart over the head flies in the face of history and established fact—take Ireland, for example. To the young people in the room I say this: you do not have to be a mimic of the old to find your way in the world. As Archbishop Powell and His Grace Peter Hollingworth well know,

idealism and faith should be the cornerstone of a thoughtful and articulate speech.

I ask you to remember that in 1916 and 1917 the Australian people voted against Prime Minister Billy Hughes when he gave them plebiscites designed to pave the way for military conscription for overseas service. There was nothing dumb about that. In 1951 they voted against Prime Minister Robert Menzies when he attempted to outlaw any Australians wishing to join the Communist Party. Coming at a time when the Cold War forces had whipped people into an anti-democratic frenzy, this was a bold and brave move by the Australian people. It was not dumb.

In 1996 they showed just how wise they were when they elected John Howard, the man upon whose vision this Convention was built.

The people want an elected president, and they know exactly why they want an elected president. They want exactly what George Winterton talked about; they want moral and cultural leadership in a world where the nation state is experiencing great tensions. If we do not use our wisdom to establish a democratic republic, we will have buried the aspirations of the people. I am not prepared to do that. I actually trust what the people are saying to us. I trust the polls because the polls reflect what we all know in our heart of hearts. The idea that people talking about a direct vote is simply based on some irrational notion is a contempt for the people that I simply cannot entertain.

I do not understand how we could walk out of this place with such insipid models as those, other than the direct election model, that have been proposed here. I would have thought that after 100 years we could have put together a bold and defiant model for the Australian people to decide at a referendum.

Neville Wran, I do not believe the ARM model will win at a referendum. I think the forces against it will be far too powerful. The irony is that the one model that could win will be the direct election model, because it will truly give expression to the sentiments of the people. So, if we go for the ARM model, I think we are in deep trouble. We would have voted for something that is shallow and

will still be defeated by the people. That will be a sad and uncourageous thing to do. So I am sticking with the direct election.

I would say this, finally, to the monarchists and conservatives to my left: if you trust the people, if you trust the traditions that you claim they have handed down to us, then you let the people who have done those grand and bold things over time, Professor Geoffrey Blainey, be the ones to determine what kind of republic we have in the sense of truly participating in that democratic republic. Shifting the Queen off the throne and putting an acolyte on will not give us anything to go forward with.

**Mr ANDREWS**—Mr Deputy Chairman and delegates, it has been said that there are two things best not seen in the making—namely, sausages and legislation, to which we might add a third, constitutions. Although there have been times when delegates have expressed frustration about the process, it has been an honour to participate in an assembly in which men and women of different backgrounds, of different ages, of different experiences of life representing the vast tapestry of this nation have joined in this debate about our future with enormous goodwill. If democracy is above all else an attitude of mind, then we have experienced it during this Convention. Whether appointed or elected, we come as representatives of all the Australian people—a fact that reminds us that a certain humility should accompany our deliberations.

Not having served in this place, I have a further perhaps selfish motive in being here—that is, to experience something of this Old Parliament House to which I have been privileged to come. In this case, I owe it to the further forbearance of my wife and family in being away from home for yet another fortnight.

While there is popular sentiment about the current monarchy and republic debate, the preservation of the institutions of democracy and the democratic nation should be our common goal. There are two issues in this debate. One, the question of symbolism, of national identity, of sentiment, has received considerable attention at this Convention. The other—the mechanisms of the Constitution

and their workability—has received much less attention but in my submission is ultimately of greater significance.

Much discussion about the republic has been at this level of sentiment and belief. Some people, for example, prefer the security of the current system. Others are comfortable with the monarchy. Others again believe that something is missing from our national evolution whilst the English Queen is still our monarch. Yet others say that our national identity is incomplete whilst the monarchy is retained. These arguments are unresolvable in the sense that sentiment and belief and feelings of loyalty and identity are not capable of logical resolution.

Let me illustrate: it is said by some that we will be more independent if we become a republic, yet we have severed our legal and constitutional ties with the government of Britain. Our links to Britain are like that of other Commonwealth nations. We have a High Commissioner in London. There is a High Commissioner of the UK here in Canberra. Indeed, the legal title of the monarch, Queen of Australia, was introduced in the Commonwealth parliament in 1953. We have maintained our own armed forces. We enter into our own diplomatic and treaty arrangements with other nations and we pass our own laws.

It is also said that a monarchy is inappropriate in a multicultural society, but Australia has always been a multicultural society. People have come to Australia in wave after wave because of our freedom, our tolerance and our system of government. So opinions based largely on sentiment fail to resolve this issue. Those who believe in a monarchy or in a republic will continue to do so, even if the stated reason is unconvincing to others. Sentiment has a place in our national life but it is not necessarily the best basis for establishing a constitutional system.

Another argument in favour of a republic centres on the notion of inevitability. ‘The polls support a republic’, we were told by the previous speaker, Mr Cleary. ‘Therefore’, he said, ‘it is inevitable.’ But changing the Australian Constitution has proved very difficult. In almost a century, only eight out

of 42 referenda put to the Australian people have been passed. Unless there is widespread bipartisan support for such a proposition, it will in all likelihood fail.

Thirdly, it is argued that there is a symbolic emptiness in Australia because the monarchy no longer occupies the place of importance, even attachment, in our national consciousness. This is difficult to measure. As a child in a country town I can recall a visit to the region by the Queen. It was an occasion of significance for what seemed like the entire community, but I doubt that today there is anything like that level of interest in a royal visit. Sentiment is valuable but it does not address the second more important question—about the workability of the mechanisms for government—to which I now turn.

In establishing this nation, the founding fathers created a federation in which the two chambers of the Commonwealth parliament were substantially equal. The Senate was not made subservient to the House of Representatives. Section 83 of the Australian Constitution provides that no money shall be drawn from the Treasury of the Commonwealth except under appropriation by law. While the ability of the Senate to block supply remains a central feature of the Australian Constitution, an independent umpire is required to mediate a dispute between the two chambers. Section 57 requires the current Governor-General to follow a certain procedure to resolve any such deadlock. That power to resolve deadlock, I submit, requires both the reality and the perception of impartiality on the part of the Governor-General or any head of state. Hence, a popular election, which was spoken about with such flourishing rhetoric by Mr Cleary, despite all his embellishments and rhetoric to the contrary, can only be available if the Senate's ability to block supply is ignored and if the federal compact is radically changed, something which even this assembly rejected last week.

As Edmund Barton, then a Justice of the High Court and subsequently the first Prime Minister of this nation, pointed out to the Adelaide Convention in 1897:

If we are to elect our Governor-General and to appoint the man who looms large in party politics

in our own country, we shall be placing in the position a man who by the necessities of the case and by the facts of his career must be partisan. I think if we continue under the system of responsible government and yet elect our Governor-General, it will follow that, by electing a man from one side we shall be electing a man who may have a strong temptation to the thwarting of one ministry and the unfairly assisting another.

In other words, the need for an umpire mitigates against a popular election under our existing constitutional arrangements.

If we are to embrace popular elections, I believe we should do so along the American lines. That is, we should elect a representative congress and an independent executive president. However, many of the arguments put forward for popular election here in this chamber seem to be a rejection of the notion of representative government—the 'We do not trust the politicians' syndrome. But, as James Madison said in the American constitutional debates:

It is the function of representative government to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens whose wisdom may best discern the true interest of their country and whose patriotism and love of justice would at least be likely to sacrifice it to temporary or partial considerations. Under such a regulation it may well happen that the public voice pronounced by the representatives of the people will be more consonant to the public good than if pronounced by the people themselves.

It is therefore not out of fear, as some delegates have suggested, that I reject the popular election. It is out of a consideration of the practical workability of the result, given the historical background against which we take this decision—which I reject—for popular election.

The task, therefore, of this Convention is to resolve upon an alternative model to be put to the Australian people—they themselves, not this Convention, will decide whether we should become a republic. My responsibility is, therefore, to decide which I believe is the best option. For reasons I have outlined today I reject the form of popular election which has been suggested here. For reasons I outlined last week, which I do not believe have been addressed in debate, I have considerable misgivings about a system comprising a two-

thirds parliamentary majority, particularly if that does involve dismissing as well as electing the head of state. Of the alternatives raised at this Convention I therefore favour the constitutional council, the so-called McGarvie model. While I recognise that there are some potential problems with this approach, I will nevertheless support it as a workable alternative to be put to the Australian people.

In balancing symbolism and workability the greatest weight must be accorded to workability. A system which is unworkable will import a symbolism that none of us in this chamber would wish to occur. Edmund Burke once said that a state without the means of some change is without the means of its own conservation. This option, this alternative, allows some change. It involves a symbolic transformation whilst providing the system most likely to work constitutionally. But the ultimate question is not mine or that of any of us here; it is for the people of Australia voting in a referendum.

I believe, though, that I should choose an alternative model on the assumption that it could be passed at a referendum, that is, that it is the best alternative available from those put forward by delegates at this Convention. The Australian people will decide whether we should become a republic. I will have discharged my duty by voting for the option I believe represents the best alternative. I trust that, whatever the outcome of these two weeks, we, as Australians from diverse backgrounds and places, will continue to recognise our rich heritage and redouble our efforts to work for the peace, happiness and welfare of all Australians.

**Mr McGUIRE**—Nothing I have heard over the past week has changed my view that Australia should become a republic and that we should become a republic now. Indeed, it is the great Australian qualities that I have seen on display in this chamber that have reassured me that we have nothing to fear. There has been division and heated debate. There has even been a bit of the old shirt-fronting that is not unknown in the other place of parliament in this town.

But my abiding memories of this Convention will be of the traditional Aussie virtues I have seen here every day—respect for a fair go, willingness to listen to those with whom we disagree, good natured humour, cooperation, love of Australia and a real respect for demographic practices and traditions. I do not believe that either side has a monopoly on these qualities; I have seen them from participants on both sides. The simple conclusion that I have been able to come to through this process is that the spirit of democracy is deeply ingrained in us as a people.

The Convention has been a great festival of democracy; views held deeply and with conviction have been put with passion and humour. Disputes over issues of fundamental principle have been conducted with civility and mutual respect. Are such a people incapable of ordering their governmental and constitutional affairs without a foreign head of state? Surely not.

My faith in Australian democracy has been deepened and reaffirmed as much by our opponents as by my friends at this Convention. That realisation has led me to this conclusion: our peaceable political process, our civic culture and our respect for the umpire's decision, whether at election or in the courtrooms, is not the product of the monarchy. It is the product of the uniquely Australian form of democracy for which we can all take credit. Not one resolution passed at this Convention has led to a walkout; not one delegate has had to run the gauntlet of violent protest to take his or her seat today; and, no matter what some alarmists may say, not one ounce of blood will be spilt over this issue no matter whose view ultimately prevails.

What that says to me is that Australian democracy has deep roots, roots in the fertile soil of Australian commonsense and decency. For that reason, I cannot accept the dire predictions that I have heard used to deny an Australian republic. It is not the Australian way to enable extremism. We laugh at ideologues. We see through fakers. We puncture pretension and pomposity. The type of change that the Australian Republican Movement is proposing at this Convention is

not a threat to our way of life or our liberty. That way of life and those liberties are not an indulgence of the monarchy; it is that shared experience of every Australian and the collective heritage of every last one of us.

The strength of our institutions lies not in our stars but in ourselves. Of course those institutions are of vital importance. The checks and balances of our Constitution determine how power is wielded in our nation. Indeed, they determine whether our leaders use power or whether power uses them. That is why I do not support dumping our entire Constitution. We have no mandate to do that. All of us on the republican side need to remember that. We came here with an existing Constitution and a limited agenda to consider. But, as Peter Costello has said, our symbols are losing believability. The genie is now out of the bottle. When most of the cabinet, who were formerly monarchists, change their mind, the time for change has come.

We live in times of great change. In such times we need symbols that unite us and give us hope. The events of the last week, especially the significant declarations of senior members of the government, show that royal symbolism is no longer providing the social glue vital to a cohesive nation. We cannot allow the failure of belief to continue into our second century as a nation. As Shakespeare wrote appropriately in *Julius Caesar*:

There is a tide in the affairs of men,  
Which, taken at the flood, leads on to fortune;  
Omitted, all the voyage of their life  
Is bound in shallows and in miseries.

The republican tide in Australia is at the flood. The time is now for Australia to become a republic. The time has come for our head of state to be one of us. The time has come for our Constitution to reflect the realities of modern Australian life. We must seize that moment. Thank you.

**DEPUTY CHAIRMAN**—Those immortal words from *Julius Caesar* were said even more memorably by Billy McMahon in Washington some years ago.

**Mr CURTIS**—Chairman and delegates, the main reason for changing our system of

government to a republic is to reflect the evolving nature of our nation. We are no longer the country we were 100 years ago. Community ideals have changed along with the role of governments, and we need to consider that technology is forcing us to confront a whole range of issues that we have never had to think about before. Technology forces us to consider how we interact with other nations. Technology makes us more aware of the social forces in our community and overseas than we have ever been before.

Just as we cannot afford to be left behind by technological changes, we cannot afford to ignore the social changes that occur in our community. They can be very confronting if we sit back and ignore the change that is all around us. As the opinion polls are showing, the community has changed its views on governments in a big way. Most of us do not want a distant monarch to rule over us. Most of us do not want a system of government that reminds us of privilege and discrimination, and most of us are very suspicious of what politicians might do if we cannot keep an eye on them.

I represent the people of the Northern Territory who have made it clear that we want an Australian head of state who is elected by the people. The people of the Territory are a fearless group that takes pride in the fact that we have very independent minds. We have made it clear that we want a Constitution that embraces all Australians and our right to equality and liberty, but we are not alone in asking for this. All of us in this chamber have seen the evidence that whether we like it or not the majority of Australians want a definite say in how we choose our head of state. If we go away from this Convention without delivering what the people want, we will have failed them.

The nation is in a mood for change. We would be rash and irresponsible if we did not respond to the needs of the people. In addition, we cannot go away without setting in place a process for continuing the change we have begun. The Australian people expect democracy and participation in every aspect of government. Good governments have nothing to fear from involving the people in

their processes. The Australian people have a right to a significant involvement in the choice of their head of state. This is a right that many countries have fought for. This is a right that many people have lost their lives for.

But, while we believe that we are a free nation, our constitution says otherwise. We need to make the changes in our constitution that provide independent status in the world. We will also need to develop an ongoing plan for consulting the Australian community as a part of continuing change. Just as we have a Law Reform Commission to review legal issues, so perhaps we need some sort of ongoing constitutional commission. We need a process that can look at issues not covered by this Convention: a Bill of Rights; a strengthening of the Constitution to ensure justice and equity; and an illumination of any provisions that might tolerate discrimination.

We need a process that will examine recognition of the importance of local government. We need to examine the issues to do with the linkages between the states and the Commonwealth. Indigenous Australians, in particular, want the Constitution to evolve into a document that provides representative and responsible government that is inclusive of all its peoples. We want a Constitution that upholds fundamental human rights, diversity and participation. We want to see something that respects indigenous links to land and cultural heritage. With many of our fellow citizens, we see the need to attend to a few technical issues such as amending section 117 that refers to Australians as subjects of the Queen rather than citizens of Australia. We need to come up with a Constitution that recognises the contribution that all states and territories make to our nation.

How do we go about this, given the limits to what can be achieved at this Convention? I think we are looking at a process of change that will take several years. That process must be conducted with the full involvement of the Australian people, not just a roomful of delegates. One of the most important prerequisites is that the people must be assisted with educational and informational materials to help them participate in the process in a

meaningful way. For example, the postal ballot that brought delegates here was difficult for many people to understand. We need to make sure that future materials dealing with constitutional issues are easier to understand so that no-one is denied the chance to make a contribution. We then must go on to look at setting up systems that involve consultation at the community level. That process should be properly funded by federal and state governments.

The key to any ongoing consultative process should be that it offers all Australians the opportunity to take part. No-one should be excluded because of educational, geographic or financial status. There are a number of existing structures in our community that could contribute to such a democratic process. Local governments can look at including constitutional issues in their ongoing agendas—after all, local government is far more involved in community issues than any other tier. Indeed, Professor Cheryl Saunders has already travelled around the country to discuss some of these issues with local governments, particularly in the Northern Territory. There was a very strong response to this process.

Also, the Aboriginal and Torres Strait Islander Commission has a network of 35 regional councils across the country that could be used to gather input into a national discussion about our Constitution.

We should take advantage of such technology as the Internet and e-mail to make sure that people everywhere, whether isolated in remote communities or confined for health reasons, can participate in discussions about our nation's future. It does not require much expense to make sure that all our fellow citizens are empowered in this process.

In conclusion, I wish to re-state my belief that we cannot pretend that we have done anything more than scratch the surface of constitutional reform during this Convention. It is up to us to go away from here and maintain the momentum in our own communities.

**Councillor BUNNELL**—Yesterday, in a near-empty chamber, Steve Vizard stood in front of us and said that he was not giving the

speech he made four weeks ago. I admire your resolve, Steve. Mine seems to keep changing by the hour, so you were very constant.

I thank you, Sir, for the opportunity to speak on the issue of the republic. I speak as a member of the Clem Jones team of Queensland, elected on a platform of a popularly elected president. For those in the gallery, this model was brought about by widespread consultation with a diverse group of Queenslanders. Public input was the cornerstone to its creation. The public is crying out for a popular election of the president. Both the *Courier-Mail*, a week ago, and the *Australian*, yesterday, reinforced the desire for a popularly elected president—a decision that many of my fellow delegates have brought here from their constituency. Many delegates have already stated that large sectors of the public feel alienated from government, from the political process and from politicians.

Mary Kelly, my colleague from Queensland, commented last week that Australians feel alienated from governments. This encapsulates, I believe, the feeling of our nation. Popular election of the president would go a long way to give ownership of the political process back to the people. Many opponents of the direct election of the president have said that its major weakness is that the president would have a nationwide constituency. That, my fellow delegates, is its strength. For, in reality, when people vote federally for the House of Representatives, they are only voting for their local member; for even a very popular PM, in reality, only has constituencies of 70,000 to 80,000 votes. One only has to look at the credibility given to mayors at local authorities, as approved by state and federal parliaments, to see that the public recognises and respects popularly elected leaders. Those who represent complete political entities, some of those populist, are delegates here today, and this fortnight—my colleague Sallyanne Atkinson, Ted Mack and Clem Jones.

Some of our critics, seeking information, have asked what motivates those of us that want a direct election. We are democrats. It continues to astound me that so many of my

fellow delegates, who themselves are, or have been, elected members are opposed to the popular electoral process of a president as our head of state. Many of us at this Convention have been elected mayors and councillors. We work directly for our constituents. We talk to them face to face, attend their christenings and their funerals. In short, we share their lives at a level not often shared by our state and federal colleagues. We know the public and we trust them to make good collective judgments when they vote.

Be honest, and ask yourselves in a non-political way: has the Australian voter ever really elected a bad government? Why be afraid that they would elect a bad president? This fear of the 'elect the president' model is very clear in both the previous and revised proposal of the ARM. They have stood on the model of politicians, not the people, choosing the president. That is their right and I have no problems supporting their right of difference. But what I am concerned about is the possibility, due to the proposed voting process, that the ARM model will go forward as the only recommendation of the Convention to the government. It has become very clear that the forthcoming proposed voting process will eliminate all but one republican model. It must be remembered that the ARM stated very clearly at the beginning of this Convention that they would deliver to the Prime Minister a model he can accept.

Over the past seven days, many of us elected on a platform of direct election of a president have put aside our personal philosophy and have worked to incorporate a republican model that incorporates both the direct election and the ARM models. This model provides a safeguard to codify a directly elected president. I am extremely disappointed that yesterday the threshold vote on the core issue of 'a monarchy or a republic' failed to gain the support of this Convention. To decide this issue after deciding on the type of republic model is like putting the cart before the horse.

The eyes of Australia are on this Convention. Any manipulation of the outcome of the final vote will be clearly seen by our fellow Australians. The voting public of Australia are

a very knowing group and they can smell political shenanigans a mile off. Delegates, we have an opportunity at this historic Convention not only to do the right thing but also to be seen to be doing the right thing.

Before closing, and as an elected councillor of 10 years, I wish to refer briefly to the longstanding issue of the recognition of local government in the federal Constitution. It is essential that history show that this issue was introduced to the Convention in the discussion of the republic. The role of the federal Constitution is to define and protect our federal system, yet the Constitution currently recognises only two of the three spheres of government in Australia. This is now not only an anomaly but also a complete misrepresentation of the true situation. The opportunity should now be taken to put it right.

When the Constitution was written nearly a century ago, local government covered only a small area of the nation, and had limited finances and few responsibilities. Only property owners were allowed to vote. Local government has grown and developed into the level of government closest to the people and virtually spans the whole nation. All Australian residents, of course, vote at this level. If the Constitution were written from scratch today, it is impossible to imagine that local government would be ignored.

Local government seeks a statement in the Constitution that asserts that each state shall provide for the establishment and continuance of its own system of local government, to operate and be elected according to the laws of the state. This is a reasonable reform, being neither tokenistic nor radical. Despite the fact that such a statement is largely descriptive of the current situation, its inclusion in the Constitution would be significant. The Constitution would be the definitive document of the structure of government in our nation, yet it could only define our federal system by accurately reflecting the federal system as it has now evolved. Despite not involving radical change, constitutional recognition of local government would provide a beneficial cultural shift in the operation of the federation. Local government would be acknow-

ledged as the legitimate and permanent partner in the progress of the nation.

The Constitutional Convention has extended the discussions beyond simply a republic and a head of state. It has included important issues about our system of government in Australia, such as basic rights for the human condition, the flag, the states issue and the all-important gender and racial equality. Our local government in Australia provides the delivery, on a day-to-day basis, of resources for the human condition. I ask my fellow delegates to keep the debate alive on constitutional recognition for local government. Vision and leadership are expected of us at this Convention to chart a new course for the Australian federation into the next century. This must include recognition of local government as the legitimate and permanent partner in the governance of the nation.

Yesterday I made the comment that I felt a little like Alice at the Mad Hatter's tea party. After a good night's sleep, and under the calming hand of the Chairman and the Deputy Chairman, I would like to add: it's a great party and I am pleased to be here.

**Professor BLAINEY**—In the course of eight days I have learned much and changed my mind on several topics, but my opinion on the basic topic remains the same. On the basis of the existing evidence I am not persuaded that Australia will be a worthier country if it takes the last step and becomes a republic in every sense of the word. The question of the republic is not the number one challenge facing the nation today.

I am not persuaded by the argument that Australia will at last be independent if it becomes a republic. More than three-quarters of a century ago, Australia was one of the pioneer members of the League of Nations, the forerunner of the United Nations. Indeed, in the Second World War, an independent Australia was at one time one of the three main nations fighting against Hitler. It is slightly strange that people who lived in countries under conquest in the Second World War come to Australia and say, 'It is about time we became independent.' We have been independent for a very long time.

I do not think that Australia will leap into the 21st century, its batteries recharged, if it becomes a republic. This is astrology posing as logic. I am reminded of the parallel idea, prevalent in the early 1950s, that Britain, then rather in the doldrums, would enter a new Elizabethan era as glorious as that of the 16th century as soon as Elizabeth II became Queen.

I do not believe that Australia will become more united if it becomes a formal republic. The danger is that it will become less united, because many of the foremost republicans are intent on relacing the flag, which is now the chief symbol of national unity. I doubt the wisdom of the National Gallery in Canberra showing designs of a rival flag. I think a gallery should not be used for partisan political ends, to attack a national symbol.

Some republicans will argue that the flag cannot logically be part of the debate about the republic, but they themselves have already made it part of the debate. A nationwide referendum on whether Australia should become a republic will not be a debate confined to the fine print of specific constitutional changes. The debate will become enmeshed with wider questions of who we are and what we believe in. Therefore, it will involve the flag.

I do not accept yet another republican argument that Australia's trade with Asia will increase substantially if it becomes a republic. I am suspicious of arguments that Australia should turn itself inside out to conform to the views of outsiders or to snatch at imaginary gains. It was only a few years ago that we were told emphatically, by the highest authority, that Australia had to become a republic so that it could share in the ever increasing, everlasting prosperity of east Asia. Imagine our feelings today had the people of Australia accepted that advice! A self-respecting nation must be guided largely by its own needs, its own traditions and its own principles. This is a matter for Australia to decide.

I come now to the argument which is widely used against the present system. It was voiced by Mr Turnbull. He said, 'We love this country too much to share its head of state with another country.' I think it is Sir

David Smith who says that we share our head of state with 14 other countries. In practice, the monarch is not our head of state. She has no political power here. She rarely comes here. She is not our political umpire, although she is in the United Kingdom. She is the head of the British armed forces but not of ours. The founding fathers of our federation made that clear when they drafted the Constitution.

The monarch does not represent our country overseas. She does not really represent our country in the United Kingdom; nor does Australia contribute to the daily cost of her British palaces and households. In real terms, we do not share a head of state with other countries. Rather, we share a powerful tradition and some of the royal symbolism. This symbolism gives pain or unease to many Australians, especially a section of the young. This is our dilemma today. What gives pain or unease to many of the young brings assurance to many of the old. I hoped that this Convention might find a compromise in symbolism, but no compromise seems possible.

The phrase 'the head of state' so far has dominated this convention. The phrase is largely camouflage. The phrase that has dominated this debate is largely camouflage. It does not appear in the Constitution. The Governor-General in nearly all respects is Australia's head of state and there would be merit in a simple act of parliament proclaiming that he is the head of state within a constitutional monarchy. Then so much of the debate we have heard in the last eight days could be seen in proportion.

On the other vital question, and it is vital, of the election and dismissal of the proposed president, I have not fully made up my mind. At Mr Bill Hayden's request, I have supplied the final signature needed to promote maximum debate and maximum choice on Thursday and Friday. I am sure a decision on a republican model will emerge, but I am unlikely to prefer it to the present system.

**Mr GROGAN**—We have entered the second week of this Convention with republicans from all sides trying to reach as much agreement as possible, and there has been an increasing number in the federal cabinet

coming out as republicans. The desire in the Australian community for an Australian head of state who reflects our values as a community is growing and will continue to do so. The Australian Republican Movement has grown rapidly over the last few years. We have thousands of members and active forums working in their communities all over the country. Our forum members regularly participate in community affairs, street stalls, debates and meetings.

But now at this Convention ARM delegates have a responsibility to do more than just represent this membership. Mr Deputy Chairman, we have reached a point in this Convention when each of us needs to review our task carefully. Many Australians are only now beginning to focus on the details of the move to a republic, and many who spoke to me over the weekend were very concerned that this Convention will decide finally on a model before a full debate has happened in the community.

So what is our task at this point of the Convention? In answering that question, each of us needs to remember that other Australians have only just begun debating these matters every day. They must feel ownership of this Convention and the process as we move forward towards a republic after the Convention. For many Australians this is the starting point of the debate, not the end point. But what should that starting point be?

Our responsibility as delegates is greater than that of individual Australians. Our responsibility as delegates is to do much more than simply argue for our own personal views. The time for arguing our personal views at this Convention is over. Our task now is to rise above our own view and to reach as much agreement as possible on a model which can be debated by the Australian people. That compromise must not be a tactical compromise but rather a compromise sought in a spirit of honesty and goodwill. By necessity it will not be a position which exactly accords with any individual's view, but rather will reflect as much as we can what we have learnt from debate here and which seeks to incorporate views and concerns expressed by the range of delegates at this

Convention. It will not be a tactical position which we believe deserves to fail. Rather, we must give the Australian people a starting point for debate which draws upon the best of what each viewpoint of this Convention has contributed.

Representing the diversity of views in our community is no easy task. Although this Convention is a broader mix than the white-bearded men of the 1890s, it is still not a complete representation of the Australian people. We should reflect on the fact that, although there are some very talented delegates here from diverse cultural and linguistic backgrounds, their numbers fall well short of fairly representing the cultural diversity of modern Australia. Some of the saddest moments for me in this Convention have been when delegates have felt the need to pledge that, although not born here, they consider themselves true Australians. They should not have to prove their credentials to any of us here at this Convention.

We should reflect on the view that indigenous Australians and Australians from different cultural and linguistic backgrounds will feel more a part of our system when our head of state is one of us rather than the monarch from the previous home of the dominant culture. Yet many delegates here have voted against any motions to discuss the preamble, against any motions to ensure that women are well represented among our future presidents, and for motions to limit the role of people under the ages of 40 or 65 in our top offices.

Our task, therefore, is no easy task. Prejudice has been not far below the surface in some of our debates here, and we need to ensure that prejudice is not part of our final decision. Each of us has argued strongly and passionately for our view of Australia's future. Now is the time to go beyond that. I would like to take a few minutes to review what that responsibility might be for the adherence of different views at the Convention.

First, as to the supporters of the status quo: the simple fact is that the monarchist view commands neither a majority at this Convention nor a majority in the Australian community. But that does not mean that the views

of monarchists generally should not be respected. It does mean they have a responsibility to recognise that it is not their place to control the agenda for change.

Those of us who do not share the monarchist view also have a responsibility. The monarchist delegates to this Convention have spoken of the strengths of our existing system—of a Prime Minister leading a government formed in the House of Representatives. This is a view from which we can all learn. There is value in respecting the strengths of what we have, so a conclusion from this Convention which honestly attempts to learn from the views of monarchists will seek to respect this view and respect the strengths of our model of government.

Now let me turn to the proposals for change. Republican models for change fall into three categories. The one which represents the most change is direct election. The case for direct election has been put in different ways here. But, essentially, the argument is that this is the only way to genuinely satisfy the desire for community involvement in the process. It is now clear that this model does not accommodate the concerns of other viewpoints represented at this Convention sufficiently to command a majority.

ARM delegates and monarchist delegates believe that this model does not respect sufficiently our system of government with a Prime Minister leading a government formed in the House of Representatives but accountable to both houses of parliament. They argue that it fails the test of providing a president who is non-partisan. They also argue that direct election is a larger change requiring us to revisit the powers of the president and parliament and, as such, would be politically much harder to achieve, particularly among the conservative parties.

However, all of us here must acknowledge the strength of the direct election model in involving the community. We must acknowledge that the proponents of direct election have argued their position passionately and with integrity. Accordingly, we have a duty to hear and learn from their view. As we vote for a starting point for community debate, we should incorporate some element acknowledg-

ing the strength of view for community involvement in the selection of president.

Secondly, let me turn to those models for change which involve a partisan appointment by the Prime Minister—that is, that the Prime Minister of the day would decide who will be the president, with minimal involvement of the community. These models do not command wide support either in the community or at this Convention. These models do not and will not satisfy Australians either on the test of being non-partisan or on the test of public involvement in the process. They represent the model which least represents the diversity of views of monarchists, supporters of direct election and supporters of non-partisan selection. The Convention cannot in all conscience support such a model if it believes, as I do, that this model learns least from other viewpoints, does least to accommodate the views of other delegates and does least to find a reasonable starting point for debate by the Australian people.

Other republicans have sought to learn from this model by considering the means of dismissal of a president. But the adherents of prime ministerial appointment have a responsibility to assess honestly whether their proposal attempts to accommodate any of a range of differing views around the chamber.

The final set of models has the support of the Australian Republican Movement and others in this chamber, now including coalition leaders and ministers. We are very pleased to have joined in proposing a model for the final vote, along with Gatjil Djerkurra, Lois O'Donoghue, Kim Beazley, Gareth Evans, Robert Hill, Peter Collins, Helen Lynch, George Pell, Peter Hollingworth and others.

This model involves bipartisan appointment by the parliament. It deals with the need for the role to be non-partisan by forcing the major parties to agree on a candidate. This model has now sought to acknowledge the need for public involvement in the process by using the people's elected representatives to indirectly elect the president and by having a broad consultation and nomination process to gather names and views before a candidate is selected by the parliament. That process could

now also include consultation between the Prime Minister and the state premiers.

The bipartisan models clearly meet the goal of being non-partisan and these models have a substantial degree of public involvement. Whether that level of public involvement is sufficient for the Australian people is a matter of judgment. In the debate which follows this Convention, the community will indicate whether it believes this level of public involvement is sufficient. The adherence of this view must accept, in all humility, that the community may not in the end, after debate, be satisfied that the balance is right.

For republicans who do not support this model, they too have a responsibility. Their responsibility now is to find a model which provides a good starting point for community debate. They must not vote for a model which they believe will fail. The notion of tactical voting on the models would be a corruption of this responsibility.

In closing, I remind delegates of the sentiment in this chamber when, as people with different views, we came together on resolutions retaining the name 'Commonwealth of Australia'. As a convention, we should seek that sentiment of coming together from different viewpoints when we take our final votes at this Convention. We should seek to go beyond our personal views and we should seek to learn from the arguments of other delegates at the Convention. Most of all, we should resist the temptation for tactical voting, and then the Australian people will be genuinely proud of the outcome of this Convention.

**DEPUTY CHAIRMAN**—I have to announce that the two co-convenors of the Resolutions Group, the Attorney-General and Gareth Evans, have recommended that there should be a further meeting of the Resolutions Group at 5.30 p.m. this afternoon in committee room 1 to consider the resolutions on the position of the states. I ask those who have close affiliations with some members of the committee not here if you could pass on that information.

**Ms WITHEFORD**—I strongly believe that Australia should become a republic—but why? Why are we at this Convention con-

cerned with changing an essentially symbolic constitutional arrangement that has little impact on day-to-day life? To me, we are here to speak to ourselves; to speak to both our hearts and our minds—hearts and minds that tell us that something is wrong and something is incomplete, and that this incompleteness is not merely an omission of innocuous relevance but a message of deep and reinforcing negativity.

The monarchy is not just inappropriate and out of date; it is not just baffling to our neighbours overseas. It offends the values of Australians—the values that Australians hold dear. Symbols send messages. They tell us who we are and what we want to be. They generate changes in thinking. They are catalysts for forging attitudes. They also reflect social values; indeed, societal values should be the source from which they spring.

But the monarchy speaks in tongues for the Australia of the 1990s. Let us look for a moment at the messages it sends. Let us look through my eyes, the eyes of a young Australian citizen. The monarchy says that my brothers are more entitled to public office than I. The monarchy says that my lack of religious commitment is a flaw. The monarchy says that the family I come from makes a difference. These three statements are anathema to the values with which I have been imbued. I have been taught values of egalitarianism, equality of opportunity, merit and to be suspicious of undue benefit. I have been taught not to respect vested privilege—not to accept it but to question it. I have been taught not to adhere to barriers—not to yield to them but to overturn them. I have been taught to judge not from where somewhere comes—not to pigeonhole them but to ask to where they are going. In short, I have been taught optimism, opportunity and possibility.

So what, to me, is becoming a republic all about? It is about rejecting the traditions of vested privilege, sectarianism and sexism that lie at the heart of the monarchy as an institution. It is about rejecting these alien traditions because they affront our democratic values and because they have no place in the Australia of the 1990s. It is about moving on from the constitutional status quo because it

is out of touch with the nature and values of Australian society.

Let us not ignore the fact that the monarchy is, in the most simplest sense, a sexist institution. It would not even pass Australia's own sex discrimination laws. Let us not ignore the fact that Australian society is growing ever increasingly ethnically and culturally diverse. Almost half of Australians have a parent who is not of Anglo-Celtic heritage. I am included in that growing proportion.

In Australia, the monarchy does not inspire. The Windsor family sparks interest because of its ongoing vicissitudes, not because of any sense of affinity or ownership. To those who say, 'Well, who cares? It's only symbols,' I say, 'Symbols are potent.' The national pride that swells in the lead-up to the Sydney Olympics and the emotions that arise during debates on the flag are cases in point. Symbols speak to us every day, consciously and subconsciously, reinforcing our beliefs in notions or rifling them. Symbols have the power to bring us together or to set us apart.

Australia has the chance to create a new and inclusive focus for Australian national identity. Our community is rich in diversity. Our commitment to multiculturalism is a source of national pride. We must seize this opportunity to create a symbol and an office that will unify our people and our nation. An office of head of state held by an Australian citizen with eligibility criteria consistent with every other public office in the country will reaffirm the values we hold dear—merit, unity, egalitarianism and, last but not least, national pride.

Fellow delegates, this Convention is our opportunity to recommend the legal detail that precedes this symbolic step. We cannot become a republic without putting forth a politically and legally workable model. The Australian community is expecting us to do this. Cynical, they may be; republicans, they may not be—but the fact is that they are waiting for us to do our task and do it we must.

For a moment, let us put aside our differences to remember why we are here. Let us put aside the divergences in means to achieve our goal in order to focus upon our common

overriding aim. Republicans won a majority of seats at this Convention. We all stood for and still stand for constitutional change to establish an Australian office of head of state. I understand the passion of the advocates of direct election assembled at this Convention. I too believe that the Australian people must participate in and have a sense of ownership over the process of selecting their head of state, but I cannot be relieved of the responsibility to come up with a workable republican model which will be approved by the Australian people in a referendum.

Thus, I cannot support direct election for two reasons. Firstly, I cannot support it on principled grounds. Our head of state must be a source of unity, not party political division. Direct election would inevitably result in the politicisation of our office of head of state. You could not prevent political parties being involved in the election process; thus, you would end up giving the Australian people exactly what they do not want—a politicised and politically partisan head of state who divides rather than unites the nation.

A directly elected office of head of state could also create a new and separate source of authority in our political system. Without fully codifying the powers of the head of state—a task that has not been able to be done at this Convention—the head of state could claim a mandate by which to rival the Prime Minister, the true holder of executive power in our political system and the person who is elected as such by the Australian people. How could we ensure that our head of state did not believe that popular election had conferred a mandate superior to that of the Prime Minister, who we must remember is not personally selected in a national ballot?

What would happen in the event of a Senate attempting to block supply? The direct election advocates have provided that the head of state will not be able to dissolve the House of Representatives by reason of the rejection or failure to pass a money bill unless the government begins to act illegally. All this does is entrench the problem exemplified by the events of 1975, rather than resolve it.

Secondly, I cannot support direct election on practical grounds. The record of referenda

in this country says that there must be bipartisan support for constitutional change if a vote is to be carried by the Australian people. I do not believe that a referendum endorsing a direct election model will succeed, given that the bulk of the conservative republicans, including those in the Liberal and National parties, will campaign against it.

We need to be both principled and pragmatic. Above all, we need to unite first and foremost as republicans. Personally I give that commitment. Time is running out. The media is reporting the current situation as a stand-off. I do not believe this to be the case though I am aware of the basis upon which this perception rests.

Fellow delegates, I ask you to consider this question: if we are too intransigent in our requests and not willing enough to compromise, will we unwittingly, in a fleeting error of judgment, throw the game away? If the answer to this question may be a yes, I put one final query that will echo in my mind and many other minds until the task of an Australian republic is achieved: how will you tell the Australian people that, on the brink of the 21st century, a century full of hope and aspiration for a confident nation, our highest constitutional office continues to embody values which are anathema to us, anathema to the egalitarianism with which we have been imbued, upon which we have strived and which we all hold dear.

**Mr WEBSTER**—I intend to cover three issues this afternoon: firstly, that secular government is impossible; secondly, that our current system is deeply rooted in priceless values that guarantee our freedom; and, thirdly, that republicanism's values undermine that freedom.

Some may be surprised to hear that our existing system is deeply rooted in timeless, biblical values. We have been taught that our government is secular, which means not based on any religion. But there is no such thing as secular government. It is an academic fantasy because of three simple propositions: firstly, that nations must have laws; secondly, laws attempt to define right and wrong—that is, values; and thirdly, that values are a matter of belief—that is, religion. So law is enacted

values. Nations cannot be secular because laws must be based on someone's belief about values.

The most critical question facing this Convention is this: if we became a republic, on whose values would our laws be based? Australia's constitutional structure is not just contained in this little book, the Constitution Act 1901. There are countless other principles, precedents and conventions from centuries of struggles against tyranny. Most are unwritten; others, like the Magna Carta, are written.

These additional elements connect us with the world's richest vein of freedom. In the sixth century, King Ethelbert of Kent, an absolute ruler, limited his own powers—an expression of Christlike compassion for those he governed. In the ninth century, King Alfred the Great subjected himself and England's courts to divine law. Courts tried all cases by reference to those laws. That is how our common law developed. His council of biblical experts was the forerunner of parliament. They drafted statute laws to overrule common law precedents that were contrary to divine law. In effect, Alfred made the *Bible* our first constitution; thus he took absolute authority out of mortal hands and yielded it to God, who alone is pure, just and loving enough to be trusted with it.

And what were we taught at school about King Alfred? Only that he burnt some cakes. Subsequent generations of judges have, according to Denning, guided our common law towards Jesus' command: love your neighbour as yourself. England's 16th century Chief Justice, Sir Edward Coke, insisted that neither king nor parliament was supreme, and that God's law should prevail over contrary legislation.

Notwithstanding momentous events since then, such as the defeat of the so-called 'divine right of kings', the transferring of supreme power from king to parliament and the fallacies of A.V. Dicey, authority, as distinct from power, has remained in trust with the monarchy. I say 'in trust' because our monarch cannot take office without surrendering that authority to God at a coronation service which has hardly changed since

King Alfred's day. Each momentous change signalled progress towards more Christlike kingship, such as servanthood. Such governmental wisdom and restraint is our inheritance, as long as we do not let republicans take an axe to our constitution.

Getting it right took us centuries. Demolition need only take a few unthinking moments. Our system has protected us. For example, England experienced the same harsh 18th century social conditions as France but did not succumb to revolution. The French heeded the atheistic scholars of humanism and got bloodshed. The English heeded the word of God, through preachers like Wesley, and enjoyed extraordinary national greatness and prosperity. The Christian MP, William Wilberforce, abolished slavery throughout the world, against fierce opposition. Another Christian, Hannah Moore, started a school for poor children. So revolutionary was her compassionate vision it eventually induced mass education, which we take for granted.

The price in blood of France's surrender to humanism and the blessings of England's return to biblical beliefs are compelling examples to us here, because the same two philosophies, I believe, are locked in mortal combat at this very Convention. I am reminded of the sombre warning emblazoned over the gates of what used to be Dachau concentration camp: 'Those who refuse to learn the lessons of history will be condemned to relive them.'

History's most vital lesson for this Convention is that Australia's freedoms came from legal and constitutional systems based on biblical values. Removing the monarchy would demolish the central pillar of that biblical system, as was so ably explained by Mr George Mye, the Torres Strait Island delegate.

Republican systems select their leaders and determine their laws on the false idea that the will of the people determines right and wrong. Fallible human politics decide values, instead of God. That is secular humanism. Describing itself as a non-theistic religion, secular humanism draws solely on human interests and value. Its values are based on what humanists think is the temporal well being of man, to

the exclusion of all belief in God. Giving such absolute authority to the so-called 'will of the people' is as bad as giving it to some king. Both are corruptible and both have histories of becoming tyrannical.

Many delegates think a republic would be more democratic. They seem to believe that freedom comes from democracy. A Chinese student embroiled in the tragedy of Tiananmen Square understood history better when he said to the world's television cameras, 'The source of democracy is freedom. The source of freedom is Christianity.' Republicanism, would sever the roots of Australia's freedoms and ensnare us for one world government. The humanist manifesto says, 'We look towards the development of a system of world law and order based upon trans-national federal government.'

Mr Wran warned us about intransigence—and, by the way, that is a word that comes from a Spanish phrase meaning extreme republicans. Conflict over the moral basis of government is certainly characterised by intransigence. That comes not from people like Bishop Hollingworth but from humanists. The manifesto of their non-theistic cult is antagonistic to the beliefs of the 80 per cent of Australians who adhere to a theistic religion.

Let us be clear: in contrast to non-biblical countries, Australian humanists are entitled to their beliefs. My concern is about their methods, which are very sly. Its own manifesto says that humanism is a religion. It is a non-theistic religion, and yet humanists promote their beliefs as secular, which sounds non-religious. By such language they replace biblical, governmental values with man-made religious values of the kind which caused the French Revolution. Some humanists here are senior politicians, committed to changing the godly values of 80 per cent of the people in this country. That is intransigence.

Our fellow delegate Gareth Evans was once quoted, on page 11 of the *Sydney Morning Herald* of 7 May 1976, as saying, 'Children . . . need protection from the influence of Christianity'. His mentor was Lionel Murphy, whose friend Professor Manning Clark was quoted as saying, 'It had been one of

Murphy's aims to dismantle the Judaeo-Christian ethic of Australian society.' That was on page 8 of the *Sydney Morning Herald* of 30 October 1986. Australia's biblical values are continually undermined by United Nations so-called 'treaties'. Foreign affairs minister Evans was asked in a Senate committee whether he would allow parliament to ratify those treaties. Senator Evans replied, 'No way, Jose.' A senator then suggested that Senator Evans did not want the will of the people involved. Senator Evans said, 'Dead right.' That is intransigence. That was reported on page 17 of the *Australian* of 23 June 1998.

Even minimal republicanism would subvert the biblical basis of our freedoms. Please do not inflict that on our grandchildren. I urge every delegate here today to give the deepest thought possible to the real agenda and the real consequences of this push for republicanism. Every delegate, including those who are republicans, is now entitled to vote against it because of its hidden humanistic agenda. Let us remember what Sir Winston Churchill said:

A thousand years scarce serve to form a state. An hour may lay it in the dust.

**Ms DELAHUNTY**—I do not know how you feel, but I feel that in the last 10 days or so I have lived the life of a nun. Many of us have emerged from our cells at dawn for communal meetings and prayers for the republic. All day on the floor of this chamber and in the corridors of this place we fight the spiritual battles with the gentle weapon of words. And we do penance for our tactical sins. As twilight comes we break bread together, have more prayers for the republic and finally there is the bliss of bed. As a young schoolgirl I may have felt for a moment the call to enter the convent but I realise now that the monastic life is not one for which I have a natural inclination—perhaps you also.

So why are we dedicating our hours, our hearts and our minds to this struggle? We do it, everyone of us at this Convention, because we love our country, we honour its achievements and we thrill to its prospects. I came to this Convention with a tremendous sense of possibility and I have referred to that before.

I was filled, and am filled, with the fervour of finishing off the job begun at federation. I wanted to echo the words of one of the fathers of federation, Henry Parkes, when he said:

The crimson thread of kinship runs through us all.

I wanted to extend that to Australia today, but most particularly into the next millennium. I want the crimson thread of kinship to extend particularly to our head of state.

As we are all acutely aware, with barely two days to go of this Convention, it is five minutes to midnight for the republic. The majority of us have been elected to work for and to achieve a republic—an Australian head of state. History will judge us harshly if we fail.

Delegates, this Convention—democracy in the raw, organic as it is and has been—is a bit like wrestling with an octopus: its many tentacles flay with great passion but often with not great precision. This is the moment of truth though. We have to wrestle that octopus because tomorrow we face a very clear choice. If we really want a republic we must vote for a model or more correctly bits and pieces of various models that through consensus have come together as a preferred option. The process we face is now very stark. The posturing and the positioning is now over. Tomorrow we vote.

I do not believe that republicans at this Convention, particularly those republicans voted into this process to work for a republic, could, in all conscience, either walk out or betray the cause by voting for the retention of a distant monarch as our head of state. After the broad meeting of republican delegates at lunch time today, I believe that is what we will work for and we will achieve. So as we grapple conscientiously with models and elements of models that have crossed the rubicon and become absorbed in the other models of compromise, we work towards the spirit of resolution.

I would like to urge all delegates to reread the important speech this morning of constitutional authority Professor George Winterton. He explained to us this morning in the clearest possible terms the central weakness of

direct election and indeed the model known as the McGarvie model. I want to repeat the central tenets of that speech that sovereign power rests with the people of Australia. We vest that power, as it does now and as it will continue, in the new republic. We vest that power in our elected representatives in parliament.

In the amended, improved and substantially increased ARM two-thirds majority proposal, the source of power both for the Prime Minister and for the president remains with the parliament. We just cannot scuttle around that central question. Unless we want to fundamentally change the way our political system works now, we cannot have two competing centres of power—a Prime Minister and a president. What I have described as the romance of direct election lies in the almost utopian hope that the president, the people's champion, will somehow single-handedly right the wrongs of our entire political system and whip our elected MPs into unerring and accountable representatives—a lot to ask of a single individual.

What direct election proponents almost must face head on is: do you really want an executive president with powers and the profile of something approaching the American president because that is what the mandate of direct election would begin to confer on an Australian president unless we dramatically contained his or her powers? I think we know the political reality, the paltry chances, of doing that. At this Convention we must clearly decide do we want our president to be a constitutional umpire or a coach?

Professor Winterton, again this morning, described the role of a president in our two-thirds parliamentary election model as a constitutional custodian—a beautiful description and a very accurate description, as it does replicate the existing power balance. Unaccustomed as I am to agreeing with much of what the Premier of Victoria, Mr Jeff Kennett, says, I welcomed today his considered statement of support also for the checks and balances in our two-thirds majority model. I have for some years, as a member of the Australian Republican Movement and indeed as a long time journalist, considered, tested and then as

a candidate campaigned on this model, yet I was always and remain open to being convinced of a better way. At this Convention, indeed before, in amicable and welcome discussion with former Governor McGarvie we have amended our proposals. We have adopted a more effective dismissal procedure, for example and, at the other end of our model, we have with pleasure, goodwill and extensive consultation with other delegates, including those advocating direct election, proposed a widespread and transparent community consultation process through local government, states and territories that encourages the Australian people to be part of this great nominating process for a fine Australian to become our head of state.

On our much amended—and, I believe, improved—proposals, we have now founded a unity ticket. Today this amended model—this consensus model—has been signed by the likes of Lois O'Donoghue and Gatjil Djerrkura, Robert Hill, Kim Beazley and Gareth Evans and it has been blessed by the church by Reverends Pell and Hollingworth. I believe, as they do, that this solution will have bipartisan support not only here on the floor of this chamber but, more importantly, when it goes to referendum and the Australian people decide.

Our deliberations, like the Constitution itself, are a work in progress. But unlike the Constitution, our concentrated common contribution ends on Friday. With the integrity and good humour we have already shown, I believe that we will by then proudly approve a republic to be put to a referendum.

**Mr MUIR**—Change from a constitutional monarchy provides an opportunity for the Australian people to be more involved in our political processes. It will be a sad day for Australia if at the end of the people's convention there is little support for the people of Australia having a say in electing their president. A minimalist republic would have virtually no effect on the esteem in which our political processes are held.

Many of those who are in the federal parliament at the moment and those who aspire to government do not want significant change. In 1991 Bob Ellicott, who served as

Attorney-General in the Fraser Liberal government, wrote:

The major political parties and institutions they run are becoming increasingly irrelevant and unresponsive to the need of the country and the silent majority of Australians who have long supported them. Indeed, Australia is like a Gulliver tied down by 1,000 Lilliputians, ravaging business tycoons, takeover merchants, union leaders, special interests, remote bureaucracies, complex regulations, indecisive and sometimes inept and even corrupt and lying politicians. Many other forces have combined an unwitting conspiracy to tie down the body and debilitate it.

Sir David Smith, also a delegate to this convention, wrote in 1992:

There is much that is wrong in the way this country is run, governed and administered. Never before has Australia had so many of its citizens who are hurting because of what has been done to them by their governments and by their fellow Australians.

What are we going to serve up at this convention? More of the same? Australians feel frustrated with their lack of say in government. The fact is that most elections in Australia are determined in relatively few electorates. At most one-quarter of all electorates may be considered to be marginal in most federal elections. In other words, three-quarters of the electorate have no effective say in determining who will head the government. These Australians feel alienated by the political processes in this country. Our political system gives power to the politicians and not to the people. So, I might say, does the ARM hybrid model. It gives power to the politicians; it is the politicians who will select the president.

It is no coincidence that the higher one goes in Australia in terms of levels of government, the more minimalist the approach that is adopted. Those in local authorities are closest to the people. Former long-term Lord Mayor of Brisbane, Clem Jones, the Deputy Mayor of Townsville, Councillor Anne Bunnell—a delegate to this Convention—and Ipswich City Councillor Paul Tully are examples of delegates who are close to the people. Ted Mack is another person who is deeply steeped in local authority representation. Likewise, it is no coincidence that these people support direct election by the people.

We then go to state and territory representation to find that many political leaders support direct election at this Convention, including Chief Minister Shane Stone, Kate Carnell and opposition leaders Peter Beattie, Geoff Gallop and Mike Rann. We then go to the federal parliament and find that we are keeping the company of minimalists with the notable exception of Christine Gallus MP and Peter Reith MP. The Deputy Leader of the Opposition, Gareth Evans, pretends to have some affinity for direct election, but attaches to his support the unwinnable albatross of reducing the power of the Senate. This approach by Mr Evans is unfair to those who seek direct election by the people, and is not supportable by logic or commonsense.

Those who seek a direct election of the president by the people—in particular, Clem Jones's team—have made substantial compromise with respect to nomination, tenure and dismissal of the head of state and have taken into account matters raised in debate in this chamber in the past week in an effort to obtain the support of this Convention for a direct election model. It is envisaged that nominations may come to the federal parliament from the federal parliament itself, state and territory parliaments and any eligible individual. A short listing by joint sittings of both houses of federal parliament should be by a two-thirds majority, with no fewer than three candidates chosen by the people for election. The tenure of the head of state will be for two terms of the House of Representatives, and the head of state will be ineligible to nominate for the next head of state election. Dismissal will be by an absolute majority of the House of Representatives for stated misbehaviour or behaviour inconsistent with the terms of his or her appointment.

This model, which is the first model you will find listed on the blue paper that has been circulated at this Convention, has the following advantages: the federal parliament has control of the nomination process, using a similar formula to the ARM model; one term of office means that the head of state would not be in a position where he or she needs to campaign for reelection—it is for one term only; the provisions with respect to

dismissal mean that the government of the day, through an absolute majority of the House of Representatives, is able to move swiftly to dismiss the head of state. So we do not have that concern that we may have an intractable head of state. That just does not apply under this model. Another advantage is that we have a codification of the powers of the head of state which avoids any destabilising conflict between the head of state and the Prime Minister. Some speakers this afternoon have suggested that you cannot codify. That is plainly not true. What they really mean is that they are not happy with the codification. The fact is that the powers have and can be codified. There is no issue about that. It has been done.

**Dr SHEIL**—Yes? Where is it? Give us an example.

**Mr MUIR**—Look at the RAC report, Glen Sheil, and you will see how it has been done in that document. The last point of advantage of this particular model is that campaign expenditure and support will be regulated and that party political campaigning will be banned. Some people have suggested that if you have a head of state elected by the people you are going to have a Liberal or Labor head of state. That is patently untrue with respect to this particular model. The reality is that there are proper provisions to rule out that situation occurring.

How could you possibly criticise such a model, I suggest? The only criticism one could make is perhaps that the powers of the head of state are a little too weak. We have left out provisions with respect to referring back legislation and any referral of bills to the High Court. At the end of the day, the only reason one would oppose electing the president is an unwarranted fear by federal parliamentarians of the people and the perceived self-interest of federal parliamentarians in ensuring complete control of the political process.

During the first week of the Convention we have witnessed a number of federal ministers coming out of the closet with respect to favouring a republic, although clearly a republic of a minimalist nature. Given more time and debate, these parliamentarians could

possibly move further. Sadly, for our country I do not believe that the balance of this Convention will be long enough for them to move further. My concern is that this Convention will adopt a minimalist republic which will go to the people in a referendum next year.

I firmly believe that that referendum will fail. The people of Australia will throw it out. Some years later the people of Australia may be given a choice which involves them having a say in electing their head of state. Only then will we get a republic that will be a proper republic, not a pseudo republic. The only way that this scenario can be changed is if monarchists like Bill Hayden, ARM delegates like Steve Vizard and appointed delegates like Moira O'Brien will lend their support to direct election.

There will not be any walkout or at least there should not be any walkout of delegates from this Convention. That sort of conduct I would have thought would not be on. It should not be said that we would be traitors to the republican cause if we voted against an unsatisfactory republic. We cannot make promises to the people and then break them. It is a matter of principle. So, in conclusion, I say that we need the support of you and your colleagues to make this happen. This is the only real chance Australia has of becoming a republic on the threshold of the next millennium. The status quo will prevail until the people of Australia are given a choice of a fair dinkum republic.

**Mr BRADLEY**—I thought a few moments ago listening to Delegate Delahunty how lucky we are that we had this Convention and not some plebiscite, because the wheeling, the dealing, the machinations and the mischief have happened in front of all the people of Australia. They have seen it for themselves; it has not been hidden behind closed doors.

Some here have said that our Australian Constitution is not an inspiring document, that it is not a statement of who we are as a nation. This is said as if it is a criticism, but I think it is mistaken. Nations can make constitutions but constitutions cannot make nations. In the words of another delegate here, Australia is not a rule book; it is an organism.

The obsession with rules, with politics and with power is part of the problem here.

Politics is a tiny part of Australian life and culture. Politics should be the servant and not the master of our fate. The intrusion of politics into the lives of Australian men and women should be viewed very sceptically. The growth of power and prestige attaching to government should be resisted. Like any other part of life, if politics becomes too large it unbalances the whole. In our Australian tradition we wryly smile at the pomposity and grandeur of others. For us, the understatedness and the quiet dignity of governors-general have seemed entirely appropriate. Not for us the self-aggrandisement of presidential palaces or bunyip aristocracy, forelock tugging toadies in a presidential entourage—only in Canberra could such ideas be taken seriously.

In our Australian tradition the role of governors-general is one of influence rather than power, with rights to be consulted, to advise and to warn, not rights to dictate or direct. Our Australian head of state role involves these notions which are really of a remarkably feminine kind rather than the power focused, dare I say, mannish obsession with control.

The role of Governor-General is more like the role of a High Court or a Federal Court judge than that of an alternative Prime Minister, and it is the only role within our legislative and executive sphere which is outside the manipulation and machinations of politics. The Governor-General, as our Australian head of state, can quietly and directly question the decisions of the parliament and the ministry without the filter of party policy, without concerns about vote catching or careerism. No wonder some of our political representatives want to get rid of it.

In our system of government the ministerial executive is already stronger than many of us would like, and it is clear that the McGarvie and the direct election republican proposals would increase the power and prestige of executive government at the expense of the parliament—whether that power and prestige were to attach to the president or to the Prime Minister.

The Australian Republican Movement's model, on the other hand, would transfer to the politicians sitting in parliament, and the parties controlling them, the powers that the Crown and the Governor-General currently deny them. The real importance of the role of the Governor-General as an independent umpire lies in the power that it denies to others. Obsession with politicians and with power threatens to damage our Australian way of life. It foreshadows a different, divisive, politicised Australia—an Australia of insiders and outsiders, of true believers and apostates.

The other great political divisions of the postwar era come to mind: the Labor splits of 1955 and 1957 and the Dismissal in 1975. What is it that makes some of us seek out divisive issues and events every 20 years or so? It is as if the old warriors of 1975, seeing that the ghosts of 1955 were finally reaching their eternal rest, had to renew their effort to divide Australia. The same fashionable cynics, the great negativists, the grudge bearers, made the same mistake many years ago when they launched their attack on Anzac Day. They said that it represented our imperialistic past, that it was militaristic, that it was associated with Britain and colonial subservience. They were so wrong. We do not mark Anzac Day as a military victory, because it was not a victory in military terms. We do not hold the day dear because Australians stood alone under their own name; we fought with our Tasman neighbours under an Anzac banner that we share with them. It is an odd and, some would say, perverse symbol but it is an Australian one.

What we decide here today does not sit in some vacuum. In our nation today there are two very important developments which must colour our considerations. Firstly, there is the widespread disillusionment with political parties and their leadership that John Anderson identified the other day. Secondly, issues of race, nationality, ethnicity and patriotism have become poisonously mixed. In this environment, all the talk about not wanting a foreign head of state, to use Mr Melham's and Councillor Tully's phrase, or wanting one of us, to use the euphemistic words of Mrs Holmes a Court, has very dark undertones.

It has been said to me for some time that the ugly underbelly of Australian nationalism is being gently tickled by the them and us rhetoric of the republican movement. Be warned: you don't make yourself better Australians by identifying and stigmatising and seeking to cast out the foreigner. In this environment, people rise up and say, 'I know what the cause of all our problems is. It is the Aborigines'—or it is the Asians or it is the migrants. Others who are disillusioned by the political process, or who feel their futures or their families are at risk, run to these people like lightning rods. The direct election models are tailor-made for these people to rise up like instant puddings with a success formula for Australia's problems. I do not speak lightly. I am a delegate from a state in which a major political party endorsed, and the voters in the federal division elected to parliament, the member for Oxley. Whatever her intentions and whatever her lowly position, she has made many Australians of many backgrounds distinctly uncomfortable in their homes.

Until this Convention began, most Australians understood the divisions between those who sought to preserve our successful system of government and those who sought to cast it off and make a new and different future. But since the second day of this Convention Australians have increasingly come to understand the deep divisions amongst the supporters of a republic. The republicans have suffered the fate of the builders of Babel. The republicans are divided. We must not let them divide Australia. We must put this debate to rest. I believe that the people of Australia will do so by uniting under the symbols and the system that they know, symbols which are above politics and a system which has served them well and which does not pretend to the Napoleonic extravagances of Mr Keating and Mr Turnbull or the demagogic rhetoric of Mr Cleary and Ms O'Shane.

In conclusion, I just say this: I love this country and, like many of my fellow countrymen and women, I do not express my Australianness by flying to Melbourne for a spiritual experience amongst the paintings of Drysdale in the National Gallery, marvellous as they might be, or by travelling to the

Wharf Theatre in Sydney to discover my national identity by watching a performance of *Cloud Street*, inspiring as it may be. I love this country because it is my country; because its history, good and bad, is my history; because its people in all their diversity are my people; and because its flag and its other symbols are my symbols, instantly recognisable to me from anywhere in the world.

I suffer no identity crisis. I do not have the baby boomers' adolescent need to rebel for the sake of rebellion. I did not choose my country as I did not choose my parents. It and they chose me. They nourished me, they taught me and they offered me the opportunity to live, to work, to love and to prosper in a sovereign, free, tolerant and independent nation as a sovereign, free, tolerant and independent person—or, to put it more simply, as an Australian. I am grateful for that privilege and I will not vote tomorrow to put it at risk.

**Ms SOWADA**—As an archaeologist it is my role to dig up history. Along with the rest of you at this Constitutional Convention, I am helping create it. What an honour it is to be part of this gathering, and I thank the voters of New South Wales and the Australian Republican Movement for the opportunity to be here. I want to also thank the many ordinary Australians who wrote to me in the lead-up to this Convention and during this Convention with ideas for constitutional change. There is indeed great interest out there in the community, and I want to assure those who took the time to write to me that I read as many of those contributions as I was able.

I was born in Australia of migrant parents—people who left their countries of England and Switzerland to start a new life in this nation. Europe was ravaged and war-torn, and my parents sought fresh hope in a young and vibrant country which was hungry for immigrants from around the world. They, along with millions of others, have helped build Australia into what it is today: a strong, independent nation able to hold its own on the international, economic, sporting and cultural stage; a country whose way of life is the envy of many other nations; a country who has overcome the tyranny of distance to

become a respected middle ranking power; a country who, despite these qualities, must still look to Buckingham Palace for its head of state.

The monarchy has served us well over the 210-odd years of white settlement. Since Federation, its presence at the head of our constitutional arrangements has provided an enviable degree of stability. Over the years, Australia has made the office of Governor-General its own in terms of powers exercised and the holders of that office. But the reality remains that this office is held at the Queen's pleasure. We may try to gloss over this fact by calling ourselves a Crowned republic or some other nonsensical term, but the Queen's position at the head of our constitutional arrangements is a fact recognised not only in our system of government but also in the very symbols surrounding our highest office.

Of the many events during this Convention, one is served a reminder of the Crown's overarching presence, and it helped reinforce my desire for change. Last Thursday we enjoyed the hospitality of the Governor-General and Lady Deane. Like many here, this was my first time at Yarralumla. It is a cream-coloured mansion set in a gracious park. Somehow the nature of the building—a low-slung, unpretentious and wholly inviting edifice set in acres of bushland—is totally in keeping with the Australian character, with its distaste for pomp and pomposity in all its forms.

As we were served drinks, the glint of gold on the breast of a waiter caught my eye—the unmistakable insignia of Queen Elizabeth II, Queen of the United Kingdom of Great Britain and Ireland. Friends, this debate is about symbolism, the symbol of who we are as a nation—a strong, independent and mature nation. For this reason, I support an Australian republic and will continue to work towards a successful referendum outcome.

I have spoken already of my support for the two-thirds parliamentary appointment model of president. It has been modified to address the many concerns of republican delegates present at this Convention. I believe that ultimately it will enjoy the support of most republicans here. Everyone has made compro-

mises but, as I have said before, it is better that we all settle for 60 per cent of something rather than 100 per cent of nothing at the end of the day.

As one of the last speakers in the general debate, it is perhaps an appropriate time to make some observations about the proceedings. I hope the Chairman will indulge me in this. Firstly, I think it is fair to say that, while the historic nature of this gathering was self-evident, for many of us this truism did not hit home until we arrived for the opening function on 1 February. I arrived here and found an eclectic and distinguished group of Australians, all desiring to serve our nation to the best of their ability.

Secondly, I think we have seen some reputations made and broken over the last eight days. I will let you decide which of those might be which. We have seen preselection campaigns enhanced and ruined, election campaigns launched and ex-politicians relive the ghosts of the past. As an ex-politician myself, I have been surprised at how easy it has been to slide onto the green leather and resume a former way of life. I know that others have felt the same way. And how enjoyable it has been to breathe new life into this lovely building, where the public, press and participants can rub shoulders and see the whites of each other's eyes. That is a quality sadly lacking in the magnificent edifice that sits behind us on Capital Hill.

Thirdly, I want to highlight the important contribution women have made to these proceedings. In the lead-up to this event, Old Parliament House played host to the Women's Constitutional Convention. Three hundred women from around Australia, including some of the delegates here, discussed women's participation and how these issues might be advanced at this event. I believe that history will record that the Women's Constitutional Convention was an important part of the republican debate. It helped redress issues of gender equity and it put these questions very firmly on the agenda.

As a result of this event and the work of the Women's Electoral Lobby and their supporters, we have continued to recognise the need to address gender equity concerns in

all our decisions. At every step of the way our procedures have been modified to embrace a more inclusive process. For pushing the envelope on reform, I want to pay tribute to Mary Kelly, Clare Thompson and those other delegates who have supported them. However, it still remains that only one-third of the delegates here are women. That is a very disappointing tally. Both the government, who appointed a large number of the delegates, and the opposition, who did the same in state and federal parliaments, must bear some of the blame for this. Let us hope that women are represented here in greater numbers next time we meet.

Fourthly, I want to applaud the government for their choice of appointed delegates. There was much criticism of the government when this list was announced. In hindsight, this group represents a wide collection of views spanning a range of experiences, ethnic backgrounds and ages. The contributions by the academics and the legal experts in their midst has given our proceedings intellectual rigour. The Aboriginal and Torres Strait Islander delegates have reminded us of the need to embrace a more inclusive Australia and of the need to rectify the mistakes of the past. The youth delegates have been a real inspiration—articulate, informed and eager to contribute to the future of Australia. If these young people, both appointed and elected, represent the breadth of talent and commitment to Australia, and I believe they do, then the future of this country is in very good hands indeed.

As an archaeologist and a student of history, I have been moved to think about how Australians of the future will regard our deliberations. What will archaeologists in 500 or 1,000 years time find? At the very least, the bare bones, the foundations, of this building will resonate with not only our ghosts but also those of Menzies, Whitlam, Chifley and countless others.

Perhaps they will find a garbage bin full of papers as dry as papyrus—Notice Papers outlining the daily ritual of plenary sessions and working groups. And perhaps someone will stumble on a cachet of computer disks—the library so treasured by archaeologists.

Their strange shape and lack of visible inscription may cause them to be regarded as cult or fertility objects by a culture which has moved beyond the simple technology of today.

Putting aside these whimsical observations, let us ask ourselves how seriously history will regard this Constitutional Convention. We have all worked to the point of exhaustion. We have debated each other ferociously and bargained hard. It has been a tough eight days and it is about to get tougher. But, whatever the outcome, let history record that we all discharged our duty with diligence, intellectual rigour and with the best interests of Australia at heart.

**Mr MOLLER**—In rising to address this Convention in this chamber I acknowledge the Ngunnawal people on whose land the national capital stands.

I was not born in this country—a fact that assumes some importance in my view as to whether Australia should become a republic. Having decided to make this country my home and once eligible to become an Australian citizen I found that I was required to swear an oath of allegiance to Her Majesty the Queen. Like the Roman tribune examining the apostle Paul, I considered that this, the cost of citizenship, was a large sum. Oaths are important and I do not consider that they should be taken lightly. The price was one that I was unwilling to pay. Solely because of the oath I would have had to take I chose not to become a citizen.

Before I incur the wrath of Ruxton, the story has a happy ending. In time the oath was changed and I became a citizen, taking an oath to Australia. Nevertheless, the experience was a sobering one. It made me think, distil, the reasons for my unwillingness to take that oath. Eventually I concluded that the reasons stemmed from my firm belief that the governance of Australia should be vested solely in organic, that is, domestic, Australian institutions. In most branches of government this is already the reality. Our parliaments, state and Commonwealth, are subject to the Constitution sovereign. The ominous spectre of the Colonial Laws Validity Act looms no longer over them. Our courts supply Austral-

ian law, as shaped by Australian judges and enacted by Australian parliaments. True, in shaping and developing that law they looked to English precedent. But they also looked to precedent from other jurisdictions. More importantly, they developed the law to suit Australia's unique society. They are beholden to no courts except Australian courts. Not even the most ardent of the monarchists would argue that appeals to the privy council be reinstated.

Yet when it comes to our head of state, monarchists maintain the importance of our links to an institution which has little or no relevance to contemporary Australia. This is the only area of our governmental arrangements which remains linked to another polity, the only of our institutions which is not entirely organic. I recognise that pursuant to the Royal Style and Titles Act the Queen is, nominally at least, the Queen of Australia. But I also recognise the reality that this is Commonwealth legislation repealable by the Commonwealth parliament. Should it be repealed, is there any argument that the Queen would not continue to occupy the position that she does now?

I considered the arguments posed by the proponents of the current system. They say, 'The Queen is not our head of state; the Governor-General is.' I considered that an intriguing proposition but its falsity was demonstrated when I observed the emblem which graces the gates of Kirribilli House, the official Sydney residence of the Prime Minister of Australia. That emblem comprises two simple letters: ER—Elizabeth Regina. It struck me that if the Governor-General was truly the head of state that emblem would say not ER but WD GG—William Deane, Governor-General. The blatant untruth that underlies the monarchist argument was thus revealed.

It could be argued that I was swayed by mere symbolism. I do not consider symbolism is a mere thing at all. How many Australians are not moved by the symbol of the red poppy, the strains of the Last Post echoing on a frosty morning late in April, those three simple poignant words 'Lest we forget'.

**Mr RUXTON**—Don't start bringing those extraneous issues into it.

**Mr MOLLER**—These are symbols, perhaps our nation's most precious.

**Mr RUXTON**—Where do you come from?

**CHAIRMAN**—Mr Ruxton, would you please be quiet!

**Mr MOLLER**—The veneration accorded to them demonstrates that symbols, like oaths, are important. They have meaning. They should not be regarded lightly. So let us hear no more about mere symbolism.

I turn to the other furrphies advanced by proponents of the status quo. In challenging these monarchist arguments I reflect on the observation of that most esteemed of Australian social commentators H.G. Nelson of *Triple J's This Sporting Life*:

There's nothing more enjoyable than seeing a couple of old boofheads championing the cause of the royal family. I love seeing old monarchists lurching about the country and young bucks prepared to come out and have a whack at the current state of affairs. I love all of that.

Monarchists rant about the central position occupied by the Crown. I doubt many of them would be able to explain the concept of the Crown and they fail to recognise the development of the Australian Crown which has occurred. They rail about the importance of the royal prerogatives. Most of them would not recognise a royal prerogative if it jumped up and kicked them in the head. As to the prerogative writs, which I doubt many monarchists could name let alone explain, they are already secured in section 75(v) of the Constitution. Michael Hodgman knows what the prerogative writs are because he has told me he does.

They rave about how this country has been independent since Federation, yet they ignore the inconvenient fact that were this truly the case there would have been no need for the passage of the Statute of Westminster or the Australia acts—provisions which they are so fond of quoting to the rest of us. They remonstrate that ours is the greatest Constitution in the world and that to tamper with it will bring about the end of civilisation as we know it. Nonsense!

Fundamentally, the Australian Constitution does two things: it specifies in section 51 the subjects in respect of which the Common-

wealth may legislate and in Chapter IV lays the ground for free trade between the states. Its greatest success lies in merging American federalism with British responsible government. Even then it does not specifically enshrine responsible government. That doctrine has to be implied from section 64.

The Constitution is not an immutable document, carved in stone and incapable of change. Nor is it, as monarchists claim, perfect and complete in all it contains and needs to contain. Many of its provisions are spent, the scope of others constrained by High Court interpretation. Notable instances are section 94 concerning the distribution of surplus Commonwealth revenue to the states and section 101 concerning the Inter-State Commission. I doubt many monarchists, even those who claim omniscient knowledge of the Constitution and the ramifications which will accompany its change, can explain the continued need for such provisions or how changing them will make us worse off. Rather, they are a flock of Chicken Littles running around the country crying, 'The sky is falling. The sky is falling.'

**Mr RUXTON**—I bet the new South African Constitution wouldn't suit you!

**Mr MOLLER**—South Africa is the nation of my birth, Mr Ruxton. I would probably know a damn sight more about it than you do.

**CHAIRMAN**—I suggest you might ignore interventions and continue your speech, Mr Moller.

**Mr MOLLER**—Recall that there was similar nay say before Federation—those who opposed the creation of the Commonwealth. If their view had prevailed there would be no Australia at all, at least not in the form we now know it. The Australian Constitution is a tired document. It no longer reflects the needs of country, let alone its aspirations. It is in this area that I think the true value of the republican debate and this Convention lies. Hopefully, the process will spark a renewed interest in the Constitution and Australia's system of government. An informed populace is an empowered populace.

I also observe the fact that the proponents of the status quo, those who claim the mantle

of the defenders of all that is right and good and true, are often the same individuals who engage in vitriolic criticism of the judiciary. They rail against decisions of the High Court and attack individual judges on a personal level. They thereby undermine the status of the courts and the crucial position they hold as the final arbiters of controversy in the community. The separation of judicial power is a fundamental element in our democracy. In impugning that doctrine they not only demonstrate their contempt for it but also do more to undermine the democratic governance of this country than any change to a republic would. It also demonstrates that many monarchists adhere to the status quo only when it suits them.

Having seen through the untruths underpinning the position of monarchists, I stand, at the beginning of 1998, on the verge of commencing my chosen career—the law. Yet I find that, before I can be admitted to practice, I must take an oath to the Queen. Again, I am stuck in a ludicrous position. In order to apply Australian law for the benefit of Australian clients in Australian courts, I have to take an oath to the Queen of England.

**Brigadier GARLAND**—Of Australia.

**Senator STOTT DESPOJA**—Support him, Chair; allow him to be heard in silence.

**CHAIRMAN**—Please allow Mr Moller the same courtesy you expect yourselves.

**Mr MOLLER**—Thank you, Mr Chairman. To paraphrase one of the world's most forthright legal thinkers, Horace Rumpole, I am certain that Her Majesty will lie awake at night fretting constantly about how Carl Moller, having sworn his allegiance to her, is performing that role.

As I said, oaths are important. Again, it is one I am unwilling to take. A specious and spurious connection with what is, for myself and many other Australians, a foreign institution impedes my ability to live my life as an Australian in Australia as I see fit. Fellow delegates, fellow Australians, in my opinion this is why our country should become a republic.

**Ms ATKINSON**—I am delighted to rise as almost the last speaker in this segment—I

believe' speeches, our professions of faith. Many of us have been elected by the people of Australia to come to Canberra to discuss, debate, evaluate and assess the very important question of whether Australia should become a republic, and the processes and choosing of a head of state. Even though we have now been here for nearly eight days and perhaps the shine has gone off the glow of our campaign idealism, I hope that the whole experience of being here with such a representative group of Australians has further reinforced our beliefs.

I believe that Australia has come to a stage in our history where we should have our own head of state who would reflect our status as an independent and autonomous nation—in other words, as a republic. For many of us, this has been something of a journey of faith, perhaps even similar to the experience of Saint Paul on the road to Damascus. For me, I guess, the journey began in 1988 with the referendum on constitutional recognition of local government. In that campaign I realised that the Australian Constitution needed revisiting and needed to be updated for our time. It was of its time and appropriate, but not for our time or for the future. Moreover, I have since come to realise that the Constitution has not really been what it was supposed to be then—a document of the government of this country.

Many advocates of no change are very passionate in their defence of what they call 'the system', and I agree with them that we have among the world's best practice in politics—a great democracy with a high regard for human rights. But is the system described in the Commonwealth Constitution? Absolutely not. In a sense, the Commonwealth Constitution has never operated as it was written. It was never followed in practice, even back in 1901. Those first generations of federal politicians worked out some very clever ways to operate around the constitution. Americans venerate their Constitution, which actually operates exactly as it was written. The US Constitution, operative from 1790—more than 200 years ago—is not showing its age; ours, operative from only 1901, I believe is.

One of the greatest frustrations for me at this Convention is that monarchists come to praise the Constitution but never to quote it. They refer to the systems as if they are identical and they are not. What are the central elements of the system as it has evolved? An indirectly chosen head of state, a consensus figure, without executive authority who can act as an umpire if an unexpected event—such as the death of Harold Holt—occurs; a Prime Minister and cabinet which exercise executive authority; and a House of Representatives, operating under the Westminster convention, which determines after a general election which party has or group of parties have a mandate to govern.

But the core of the system which monarchists venerate and republicans, indeed, admire is not in the Constitution. Section 61 of the Constitution reads:

The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative . . .

That is it, no ifs or buts—and I think, Mr Chairman, this is probably the first time that section has been read out at this Convention. Those who say we should not change a word of the Constitution—and, indeed, there are many—and insist that our Constitution is fine as it is obviously have not faced up to section 61; if they did, it would be to put in a side bar or a footnote which would read 'ignore' or 'do not read this'. Prime Minister and cabinet? There is no such thing. There is no reference at all to a Prime Minister and the cabinet system of government in the Constitution. It has evolved certainly in practice, but it is not in the document. The Constitution makes no reference to the role of elections, the House of Representatives or the party system in the making and unmaking of governments.

It has been argued that we have a dual system of government: the big 'C' Constitution and the small 'c' constitutional practice and history—and I very much hope that we can bring those two models together so that we can actually read the Constitution, teach it in schools and help people to understand how we govern ourselves. The big 'C' Consti-

tution is a monarchical top-down divine right model; and our small 'C' constitutional practice has evolved over 97 years of experience and is indeed, as Lloyd Waddy and Tony Abbott concede, a de facto republic or a crowned republic.

One of the persistent myths peddled in this chamber has been that, since the passage of the Australia Act in 1986, the Queen has no continuing constitutional role in Australia other than appointing or dismissing the Governor-General on the Prime Minister's advice. Under sections 59 and 60 of the Constitution, the Queen retains the right to veto Commonwealth legislation—unthinkable in practice, you would say, and I think that is certainly true, but it is still there. Indeed, the Australia Act of 1986 did absolutely nothing to change it.

The Australia Act provides in sections 8 and 9 that no act of a state parliament can be disallowed or vetoed by the Queen, and it is silent about the laws of the Commonwealth. This is because a constitutional referendum, of course, would have been required to repeal sections 59 and 60, and the issues were very much ducked. Obsolete? I guess so. But it demonstrates the need to entrench small 'c' constitutional practice into our big 'C' Constitution.

I must say, Mr Chairman, one of the more irritating assertions of the ACM at this Convention has been that, if we try to amend our Constitution to provide for an Australian head of state, we would somehow prove incapable of doing it or we would muck it up. It is as if our founding fathers—because, of course, there were no founding mothers—had the last word and that nothing can be added to what they wrote in 1898.

Have we learned nothing from 100 years of experience of working in the Commonwealth? Indeed, we have, and the time has come to legitimise our de facto arrangements and to put our small 'c' constitutional practice into the big 'C' Constitution. I think it was Sophie Panopoulos who argued that there is an Australian head of state, that it is there already. Regrettably, she did not quote the section in the Constitution that says so—and, of course, she could not because it is not to

be found there. There is no reference to an Australian head of state in the Constitution. I think the toughest challenge of all for any monarchist would be to read chapter II, the Executive Government, aloud to this Convention and say, 'That's an accurate description of our system, and I agree with it.' That is one challenge I am afraid that the ACM is never going to meet.

So, Mr Chairman, there is a striking division in the ranks of those who oppose the move to a republic. One group says, 'In practice, it will change nothing, so it's really not worth making the effort.' The other says, 'It's going to change everything; it will lead to raping the states, destabilising the region, possibly contributing to World War III and lead to the emergence of a Hitler or a Mao.' All those things have been said at the Convention. Can they have it both ways? Well, apparently.

But I think this Convention ought to make its decision on rationality, and reject the wild claims being put in the debate. As I have also said earlier this week or last, we now have an opportunity to put in place a framework and a structure which will serve us for the years ahead—and pivotal to this new structure and framework is an Australian head of state.

A head of state is an important symbol and I believe very strongly that symbols are important. They affect how we think and how we feel about ourselves as well as how others see us. A head of state should be someone who is able to go out not only to represent Australia but to actively promote Australia and to do this in a way that is free from political constraints, because any Prime Minister, no matter how good he or perhaps she is at speaking out internationally for the Australian people, is always going to be distracted and sometimes deterred by political considerations back home—and we have seen examples of that.

Back to my journey. I was a Brownie way back when the Queen came out in, I think, the early 1950s. I came by train from Southport, where we lived, to South Brisbane station and we walked across the bridge—for those of you who know Brisbane—and stood in the hot sun outside the Roma Street station, and

a marvellous experience it was. But I do not think that my granddaughters would ever feel that same degree of excitement about the Queen—the symbol as she was for us all then. I grew up as a small child in Sri Lanka. I was there at the time of independence and I remember the violence not only there but also in other places in the region. We, here in Australia, have an opportunity to become a republic in a way that is free of violence and free of fear and in a way that is truly Australian: by evolution rather than revolution.

Tomorrow, we are all going to be called upon to vote on the major questions before this Convention. Today, a model has been agreed upon by the republicans among us—a preferred model with the support of a broad group of republicans—and we all look forward to constructive debate on this model tomorrow. We all look forward to what we believe should be a successful outcome for this Convention and for the people of Australia.

**Ms KIRK**—At this Constitutional Convention, we are charged with the important responsibility of deciding whether Australia should sever its links with the British monarchy and become an independent republic. At the outset I should say that I am firmly of the view that Australia should adopt a republican Constitution. It is no longer acceptable that the executive power of the Commonwealth is vested by section 61 in a foreign monarch who is not resident in Australia.

I, like many delegates, have written this address a number of times. As the days pass, I become more and more conscious of the significance of the task that we face and the enormous responsibility we have been given by the Australian people. As a constitutional lawyer, I want to see a republican model emerge from this Convention that not only will be embraced by the Australian people in a referendum but also will serve this nation well into the next century and beyond.

I agree with the sentiments expressed yesterday by Professor Craven in the chamber, that is, the choice which confronts delegates is not between the status quo and the republic. The mood of the Australian people is, and has been for some time, that Australia

should move to a republic. As delegates, we must design a model which will reproduce and build on the strengths of the existing system.

I have decided to confine my comments today to three of the models that have been proposed and that we must vote for in the next two days. The contribution made to this Convention by Sir Richard McGarvie is to highlight what is the linchpin of existing arrangements. As he has observed, it is the sanction of immediate dismissal of a governor-general who acts without, or contrary to, advice that has given us our stable and secure democracy. Professor Craven has called this 'the McGarvie principle'. I believe that this must be reproduced in a new republican Constitution.

It is to the method of dismissal under each model that I will direct my comments. The McGarvie model itself provides for dismissal of a head of state by a constitutional council on the advice of the Prime Minister. The council may advise the Prime Minister but, ultimately, must accept and act on advice to dismiss the president. The sanction for failure to act on advice within 14 days is instant dismissal of the members of the council. As I said in the chamber last week, the weakness of this model is that it is little more than a rubber stamp on the Prime Minister's decision to dismiss a president. As Professor George Winterton said today, it provides no protection whatsoever against a Prime Minister who dismisses a president who warns of an intention to exercise the reserve powers to, for example, dismiss a government.

It is for this reason that I believe delegates should give serious consideration to the ARM's model for discussion. This model has now received support and endorsement from a broad cross-section of delegates at this convention. The ARM's model reproduces what McGarvie has identified as the strength of the existing arrangements. It provides for the removal of a president at any time by written notice signed by the Prime Minister. Dismissal of a president who acts without or contrary to advice under this model is prompt and effective. This satisfies the McGarvie principle.

However, the model goes further and requires the Prime Minister's action to be ratified within 30 days by the House of Representatives. This is an improvement upon the McGarvie model and, indeed, on existing arrangements. It submits the Prime Minister's decision to dismiss a president to scrutiny and questioning by the people's representatives. The Prime Minister will be required to account to the House of Representatives for his or her actions.

I would like to briefly refer to the method of dismissal proposed by the direct presidential election group. Its proposal provides for dismissal of a president by an absolute majority of the House of Representatives on the grounds of stated misbehaviour or incapacity or behaviour inconsistent with the terms of his or her appointment.

The problem with this model is that it does not satisfy the McGarvie principle—that is, dismissal of a head of state is not immediate but relies on a vote of the House of Representatives. If the president under this model retains the power to prorogue or adjourn parliament, the president could stop his or her own dismissal by preventing parliament from meeting. This is unlike the ARM model, which requires mere ratification of the Prime Minister's decision by the House of Representatives.

The ARM's model for removal of a president promotes prime ministerial government and the supremacy of parliament. Furthermore, it satisfies the McGarvie principle of providing for prompt and effective removal of a president who acts without or contrary to advice. But unlike the McGarvie model, which makes the Constitutional Council a mere puppet of the Prime Minister, the ARM's model puts the onus on the Prime Minister to account to the Australian people through their representatives. Delegates who wish to promote representative democracy in a new republican Constitution should closely examine the ARM's model.

Delegates, I urge you to look beyond the simplicity of the McGarvie model and ask to where it shifts the balance of power. My preference and that of the ARM is that a republican Constitution be designed to pro-

mote and enhance representative democracy. Delegates, I urge you to take the responsibility that we have been given by the Australian people very seriously over the next two days. We have the opportunity to define the terms on which we will live as a nation into the 21st century. Let's work together to get it right.

**The Most Reverend PETER HOLLINGWORTH**—I raise a point of order, Mr Deputy Chairman. The last speaker was referring to the ARM model. I would like some clarification as to whether it is the ARM model that you are talking about or the bipartisan proposal that I and others signed this morning. It is a very important point to me because I am not a declared republican. I have supported this important model that you described. It is a model for which we are seeking to get broad support right across the house. I think if it is continued to be described as—

**DEPUTY CHAIRMAN**—Archbishop, you are going beyond a point of order. You may be able to get away with it in the Synod, but you are really going beyond a point of order. I would interpret that what Ms Kirk was talking about was the historical evolution of the ARM model. I do not know that she was referring specifically to the composite motion of which you are a signatory. Do you want to clarify it?

**The Most Reverend PETER HOLLINGWORTH**—I would never let people get away with it in the Synod.

**Ms KIRK**—I apologise if there was any confusion, but I did say that the model which was originally put together by the ARM has now received broad support by a number of people, including yourself. It was just shorthand that I was using.

**DEPUTY CHAIRMAN**—This is the point in dispute as to whether it is exactly the model or a bipartisan model which suggests something different.

**Ms KIRK**—I was mainly focusing on the point of dismissal.

**DEPUTY CHAIRMAN**—I understand that. I think there has been enough clarification of it.

**Mr GUNTER**—In 1787 at another constitutional convention a leading delegate expressed his elitist view in the following way:

All communities divide themselves into the few and the many. The first are the rich and well born; the other the mass of the people.

He went on to say:

The people are turbulent and changing. They seldom judge or determine right. Give therefore to the first class a distinct permanent share in the government. They will check the unsteadiness of the second, and as they cannot receive any advantage by a change they therefore will ever maintain good government.

I disassociate myself completely from those sentiments. They are minimalist and very close to monarchist in their leanings. They deny ownership of the political process to the general public. They were the words of Alexander Hamilton at the US federal convention in June 1787.

I have heard the same views expressed by many delegates here, especially those who spend most of their professional lives inside the Parliamentary Triangle. Gareth Evans noted last week that he had taken part in every constitutional convention held since the 1970s. They were top-down exercises with little public resonance or support. I say to Gareth Evans—who, by the way, has now sat in every legislative chamber as an MP, Senator or delegate in both the old and the new Parliament House—that without public ownership in constitutional review it just will not happen.

To facilitate public ownership of the Constitution, working group I, which reported a few days ago, has suggested a useful start involving further public participation and education. I, along with others in working group I, recognise the limitations identified by Professor Patrick O'Brien and Tim Costello among others but want to place more emphasis on the use of indicative plebiscites at federal elections at the very least to attempt to gain public consent for the constitutional change process.

This public demand for constitutional reform is advanced by the resolution working group I even though it is incomplete. The amendments moved by David Muir and Phil

Cleary for a constitutional committee to be two-thirds elected improves the prospect of public ownership of the Constitution and a higher proportion of successful yes votes at constitutional referendums as a result. That necessarily implies referendum questions asking for change that the public wants to see and that parliament and the government will need to become resigned to accept. If parliament and Government are not prepared to accept such a process, the risk is a public reaction that recalls the infamous epithet of US President Lyndon Johnson, that it was better to have someone he disagreed with on the inside of the tent urinating out than on the outside of the tent urinating in—he did not put it in those words, of course. The Australian public does not want to treat the Parliamentary Triangle, or those inside it, like Lyndon Johnson's tent, but failure to consult them or to seek their consent must sorely tempt them to do so.

Proposals for continuing constitutional reform by overtly public mechanisms goes some way to helping to break the impasse between the Australian public and those inside the Parliamentary Triangle. With mechanisms such as this, constitutional change need not be feared. The public will, on balance, make a sensible and correct decision as often as or more often than any group chosen from among them.

This Convention has itself made great strides towards public constitutional ownership. This is one of its greatest strengths, whether it leads to a single model put to referendum against the status quo or to an indicative plebiscite between the status quo and three or four republican models, conducted on a preferential basis.

Be aware though that there are genuine reservations in the broader community regarding this Convention's processes and make-up. It would have been best, were justice to have been seen to have been done as well as justice actually having been done, that those holding offices whose powers are the subject of discussion here and whose powers may be affected as a result of momentum gained for specific models here asked themselves what the public would think if they voted to influ-

ence their own powers under the Constitution, except as normal voters of a referendum.

There is certainly an appearance of conflict which would raise eyebrows in local government, where legislation to deal with such potential ethical questions is in place. It is no wonder that eyebrows are raised when the subject is the Australian Constitution and the powers of those holding office under it. These problems increase the genuine—and even valid—perception that there is too much of a top down approach even to this partly elected Convention. It is only following dissipation of those genuine community concerns that a yes vote on any question becomes likely.

As things currently stand, many in the community are unsure about the weight to be given to the various arguments put by delegates over these two weeks. To all delegates regarding their proposed voting over the next two days, public participation and consent are not forthcoming instantly or under pressure. Hasten slowly or, if you cannot do that, hasten gently.

To those in the community who supported me to get a plebiscite or a referendum for a directly elected executive head of state, I say: that can be an agenda item for future constitutional committee work. Every idea for reform starts out as a minority idea. The job then, as in all constitutional matters, is to do your best to convince the Australian public and then to accept their verdict.

On the subject of constitutional renewal and the political health of the country, remember what French political philosopher Montesquieu said in 1748:

States are often more flourishing during the imperceptible shift from one constitution to another than they are under either constitution. At that time

there is a noble rivalry between those who defend the declining constitution and those who put forward the one that prevails.

**DEPUTY CHAIRMAN**—Before I call our penultimate speaker, Don McGauchie, there are three proxies that I have to announce. One is from Alasdair Webster to allow Graham McClennan to attend the chamber from 6 p.m. till 7 p.m. today. Unfortunately, he has only 15½ minutes—I think of 15 minutes as being one Andy Warhol. There is one from Sir

James Killen to nominate Professor David Flint as a proxy for tonight from 7.30 p.m. and Heidi Zwar gives her proxy to Dr Colin Howard.

**Mr McGAUCHIE**—Let me say, as one who has had the opportunity to serve a part of this community directly and to serve this country in a number of roles internationally, I am very proud of what this country has been able to achieve as an independent, sovereign nation that can stand proud in the world. I think we have achieved a remarkable number of things for the size of our country.

The system of government that we have had here has served us very well and has dealt with all of the circumstances in which we have found ourselves in need of our institutions to work. But there is no doubt that—as a nation, as a people—we must ensure that the institutions that support that nation must be relevant to the needs and aspirations of the people on an ongoing basis as those needs and aspirations change over time. Let me also say that because something is old it is not necessarily out of date. In fact, those institutions that have served the test of time and have evolved over time successfully are probably the ones that will serve us best in the long term.

Many Australians, though, are of a general view that the sharing of our head of state with another country, no matter what the historical links, is becoming increasingly less relevant to this country as we go into the next century. But overwhelmingly, people are not demanding change because the current system has failed us. There is some support for change for symbolic reasons associated with our perceptions of our nation's maturity and its position in the world.

But, in reality, the Prime Minister determines the appointment and dismissal of a Governor-General who is, in effect, our head of state. The role of the monarch—the Queen of Australia as we have now determined to call her—is only to give legal effect to the wishes of the Prime Minister. All Governors-General since Casey in 1965 have been Australians. So for all practical purposes we have an Australian head of state, and the

supremacy of the Prime Minister and the parliament is intact.

Australians are not demanding change because the system is not delivering acceptable government and yet there is no doubt, out there amongst the people, that there is some uneasiness about the symbols that we operate under. There is a widespread view that the removal of the role of the monarch in this process is inevitable. There is an increasing amount of support for change, but not support for change at any price. The support for change is not so overwhelming as to accept risk in the change that is put in place. There is no support for change that creates risk to our system of democracy as we understand it, live with it and support it.

I could only support a change that strengthens our version of the Westminster system of democracy and reaffirms the authority of the Prime Minister and the parliament in that process. The McGarvie proposal and the Kennett proposals, *prima facie*, appear to take us in that direction but, as is so often the case, the devil is in the detail. We need to look a great deal more at the detail of those sorts of proposals.

Whilst I am of the view that the role of this Convention is to settle on a workable proposal that can be put to the people in a referendum, we must be very careful not to rush into compromise simply to achieve that objective. I have no doubt that the Australian people will be very unforgiving of such behaviour and any referendum that was put to the people on that basis would almost certainly fail.

I welcome this debate. I think it is a very important part of our development and maturity as a nation. It is a great national occasion on which we have all had the opportunity to participate, and I think it will be an important part of our determining the relevance of this very important national institution.

**Ms THOMPSON**—Thank you, Mr Chairman and delegates. This is the general address which many of us have been wandering around the corridors for the last eight days calling, in shorthand, the ‘I believe speech’. I think that shorthand is indicative of what this occasion means to us. It is indicative of where we come from and what we believe in

as Australians, as citizens and as delegates of this Convention.

You would all be aware of course that I am a republican. The question is: why? I am a republican for a lot of reasons. I am a republican because this is my home, because this is what I love: this country of ours. I am a republican because at 10 o'clock last night I went to the War Memorial, looked down the avenue and sighed and thought of our freedom, and three great kangaroos hopped in front of us and I thought, ‘Wow, this is Australia.’

I am a republican because this country gave me the opportunity to come here to be part of this historic occasion, to be part of it with some magnificent and notable public names—people whom I have enjoyed moments with such as Sir James Killen and Stella Axarlis; people who are such an inspiration to me such as Nova Peris-Kneebone and Gatjil Djerrkura; people who are less famous, too—people of integrity and belief such as Mary Kelly; the young people, whom we all have been in awe of this week—Misha Schubert, Moira O'Brien and Andrea Ang.

I believe in a republic because in late January 300 women met at the new parliament to debate our great democracy and work constructively together, despite political differences, despite differences on the republic, to enhance our democracy but maintain our freedom. I am a republican because each Anzac Day morning at dawn I stand at Kings Park and look over the Swan River and thank in my heart the thousands of Australians who gave their lives for my freedom and my democracy.

Years ago I was a Rotary Exchange Student in Oaxaca, Mexico. That was one of those forming experiences of my life. It was a chance for me to learn about my country because it was a chance that I had to explain it to people who just did not know anything about us. That meant a great deal to me. I remember with extreme clarity the moment 12 months after my departure to Mexico when the Qantas jet landed at Adelaide airport—40 degrees, Waltzing Matilda playing. I was as emotional then and I am emotional now about my country because this is my home; this is

what I love; this is my country. And as well I might be emotional. We have such a great country. A republic for me is not about jobs. It is not about the monarchy and it is certainly not about overseas perceptions of us. It is about how we feel in our hearts about ourselves.

I have a nephew, William, who is six years old. He lives on a station called Mulyungarie on the South Australia-New South Wales border. When I saw him in Adelaide two weeks ago, he said, 'Can you do me a favour, Auntie Clare?' I said, 'What do you want?' He said, 'Are you going to meet Mr Howard?' I said, 'I expect so,' and he said, 'Can you get me a picture of him, please?' I thought, 'This is a great country when my six-year-old nephew wants a photograph of the Prime Minister because he regards the Prime Minister as someone to be looked up to.' I share that with him.

I want a republic because of the way I feel about this country. I say that with no shame. I want a republic for all the reasons I have said. But, more than any other reason, I want a republic so that my nephew William has as much chance as any other person to be a home-grown, true-blue, dinky-di Aussie head of state.

**CHAIRMAN**—As far as we are aware, all those who have sought to speak on the general addresses have now spoken. I am delighted we have been able to give everyone a guernsey. I would also like, as somebody who sat through most of the speeches, to compliment each of you on what I regarded as a very high calibre of addresses. I know for many of you it has been a rather awe-inspiring occasion, but I assure you that for those of us who have sat here and listened to you what you have said has made sense. I trust the members of the Australian public have enjoyed the speeches and respected the degree to which you are committed to the task of this Convention.

We are now going to proceed. The bells are still ringing, so there is a little time before we actually start, but there are a few processes that I need to identify for you before we start on the part of today's proceedings that are identified under clause 7 of the Notice Paper.

You recall that it said there would be continuation of debate and voting from seven to 8.30 p.m., and the matters we are to discuss are then identified. In addition, there is a report from the Resolutions Group which I intend, when the two rapporteurs of the Resolutions Group are with us, to get them to present to us. As they are not here at this stage, we will have to wait until they arrive. Mr Williams, I might invite you in a moment to present the supplementary draft resolution so that delegates are aware of it. I have been given it and I presume you have considered it and deliberated.

On another housekeeping matter, as the Convention tonight will be meeting later than originally scheduled, I have been requested to advise that the departure time of the coaches from Old Parliament House to the hotels in which you are staying has been changed to 8.30 p.m.

It is important to register that, while on the Notice Paper we have set this stage of our proceedings down from 7 to 8.30, much will depend on the progress of our consideration. I know numbers of you have seen me about the question of amendments tonight. What I propose to do is to allow a person who is moving an amendment to have five minutes to speak to that amendment. Thereafter all speakers on the amendment will be restricted to three minutes. That should allow consideration of issues that have been raised and, where you feel that your views have not been taken into account, for them now to be considered.

I intend to go through the resolutions that are immediately before us in the green package one by one. So we will look at each one of them, take amendments to them and try to vote on them in succession. There are a number of you who have given notice of amendment, and I hope that I will be given a paper with those amendments on soon; it will make life easier. Secondly, for those who feel that the point of view that they had which was referred to the Resolutions Group is not reflected in the recommendations of the Resolutions Group, I will try to ensure that you have an opportunity to have a say.

The time that we spend tonight will depend on the time we take in debating each of these items. There is a supplementary report from the Resolutions Group. I ask Mr Williams to talk to it because I have just received it and I am not aware of its content. Would you please explain it so everybody will know? I intend to proceed with those matters that we dealt with this morning as well as those earlier reports.

### RESOLUTIONS GROUP

#### (1) Preamble

Mr WILLIAMS—I move:

- A. That this Convention recommends that, in the event that Australia becomes a republic, the Constitution include a Preamble, noting that the existing Preamble before the Covering Clauses of the Imperial Act which enacted the Australian Constitution (and which is not itself part of our Constitution) would remain intact.
- B. That this Convention resolves that the Preamble to the Constitution should contain the following elements:
  - B1. Introductory language in the form "We the people of Australia";
  - B2. Reference to "Almighty God";
  - B3. Reference to the origins of the Constitution, and acknowledgement that the Commonwealth has evolved into an independent, democratic and sovereign nation under the Crown;
  - B4. Recognition of our federal system of representative democracy and responsible government;
  - B5. Affirmation of the rule of law;
  - B6. Acknowledgment of the original occupancy and custodianship of Australia by Aboriginal peoples and Torres Strait Islanders;
  - B7. Recognition of Australia's cultural diversity;
  - B8. Affirmation of respect for our unique land and the environment;
  - B9. Reference to the people of Australia having agreed to re-constitute our system of government as a republic;
  - B10. Concluding language to the effect that "[We the people of Australia] asserting our sovereignty, commit ourselves to this Constitution".
- C. That this Convention recommends that the following matters be considered for inclusion in the Preamble:
  - C1. Affirmation of the equality of all people before the law;
  - C2. Recognition of gender equality;
  - C3. Recognition of local government;
  - C4. Recognition that Aboriginal people and Torres Strait islanders have continuing rights by virtue of their status as Australia's indigenous peoples.
- D. That this Convention resolves that:
  - D1. The Preamble should remain silent on the extent to which it may be used to interpret the provisions of the Constitution;
  - D2. Care should be taken to draft the Preamble in such a way that it does not have implications for the interpretation of the Constitution.

The first subject dealt with in the Resolutions Group is the preamble. In preparing draft resolutions for you the Resolutions Group had a rather difficult task because there was quite a range of subjects dealt with and they were dealt with in quite a range of forms. In some cases there was a draft preamble, in others there were extensive references and in others there were short lists of subjects.

The approach that the Resolutions Group took, and I think that it was close to unanimous in its deliberations, was to identify in the briefest and simplest form those subjects that the Resolutions Group thought the Convention would wish to deal with. It means that those who have gone to the trouble of putting in a full form of preamble have not been satisfied but the Resolutions Group view was that it would not be feasible to debate such a document in the time allowed between now and 5 o'clock on Friday.

When it came to the broad question of a preamble, a preliminary question was raised astutely by Mr Waddy. He pointed out that, while commonly the preamble is contemplated as being a preamble to the Constitution, it is not in fact a preamble to the Constitution; it is a preamble to the Constitution Act. So if you have your little pocket Constitution you can see that the opening words of the act are in fact a preamble:

Whereas the people of New South Wales, Victoria, South Australia, Queensland; and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

Be it therefore enacted . . .

in the time honoured formula. The act then goes on to provide machinery provisions like the title of the act, the act would extend to the Queen's heirs and successors, when the Commonwealth would be proclaimed and a number of other machinery provisions that are not actually in the Constitution. The Resolutions Group formed the view that the Convention probably intended that the revised preamble be a preamble to the Constitution. Hence in resolution (1)A it is provided that:

. . . in the event that Australia becomes a republic, the Constitution include a Preamble, noting that the existing Preamble before the Covering Clauses of the Imperial Act which enacted the Australian Constitution (and which is not itself part of our Constitution) would remain intact.

There has been over a number of years—certainly since 1974—an ongoing debate amongst academic lawyers as to whether, in fact, exercising the powers under section 128, the Australian electors can amend the preamble to the act and those covering clauses 1 to 8. I do not want to go through the issues involved there. Two of the participants in that academic discourse are Professor Winterton and Professor Craven, who are both here. I am sure they would be very happy to give tutorials in the delegates' lounge on the subject if that is your wish. The view of the Resolutions Group was that the issue should be presented as a preamble that relates to the Constitution which is really in a form enacted by section 9 of the Constitution Act.

In part B, the Resolutions Group has set out in the simplest form those subject matters that it believes had broad support on the Convention floor when the working groups reported. In Part C it has set out those matters which it regards as rather more contentious, which did not receive that same broad support. Part D deals with another issue altogether. The issue involved there is the extent to which the preamble, when revised or when written in a new form, should be relevant to the interpretation of the Constitution. The issues were expressed on this in the working group reports. Professor Craven has raised the issue

on the Convention floor on a couple of occasions.

The Resolutions Group's suggestion is that there should be in effect a drafting instruction that care be taken to avoid drafting a preamble in such a way as to give rise to implications that affect the meaning of the substantive provisions of the Constitution, but that the preamble should not in itself express that point. Mr Chairman, my suggestion would be that, rather than report on the other issues, which I think can be dealt with rather more quickly probably, we proceed to consider this preamble. A number of working groups were involved in the recommendations which would therefore be separate potential movers.

**CHAIRMAN**—Thank you very much, Mr Williams. Is there any question to Mr Williams before we move to considering the draft resolutions on the preamble?

**Mr COWAN**—I listened to the comments of the Attorney-General. As I am not a lawyer, I am not able to contest the remarks he made. We had a number of groups set the task of examining the preamble. I was on one of those that made a decision that the preamble we were examining was the one contained within the Constitution. Now we are told that effectively you cannot touch that and that there is to be a second preamble. Chairman, I find that a nonsense.

I think everybody who debated the issue through the working groups believed that we would be discussing the preamble as it existed and that there would be a decision taken as to whether it would remain or whether it would be amended. I know that my group indicated that the preamble as it existed would be a starting point, that it should be amended and that there should be three or four particular conditions attached to that amendment. The Resolutions Group has thrown that out. Therefore it is not an accurate reflection of the view on the floor of this Convention.

**Mr GARETH EVANS**—I want to repeat exactly what Daryl Williams said in this respect. If you look at your book, the Australian Constitution does not start with a preamble at all. The Australian Constitution is only something you get to after you have waded your way through a preamble and an

imperial act, followed by eight now utterly inconsequential and irrelevant historical clauses, also in an imperial act. When you get to Section 9 of that imperial act, you finally find something which is called 'The Constitution'. That has 128 separate sections in it, as we now know. That is what we refer to and think of as the Australian Constitution.

It may well be that one or more of the working groups were focusing in their work on the preamble on the language of that existing provision in the imperial legislation. What I think all of us here want to achieve, having focused on the technical issue involved, is a preamble in appropriate modern language in our own Constitution. We do not want to fiddle around rewriting the language in a now spent, effectively, imperial act of 98 years ago. So the language we are proposing to put to you and which we believe reflects the overwhelming mood of the Convention is language which would be appropriate to go into the Constitution—in other words, the stuff which starts in section 9 of that imperial act. We think the appropriate starting point for that preamble—this is the view of the overwhelming majority of delegates that we pick up from reading the reports and listening to what people are saying—is that the language to start with is 'We the people of Australia.' That is what is proposed and what is put to you.

**CHAIRMAN**—Part of the problem has been that, once the Convention referred every working group resolution, on the basis of the resolution we passed the other day, with more than 25 per cent support, the only way by which the Resolutions Group meaningfully could deal with those reports and bring them back to us for digestion was for them to produce their interpretation.

If individual delegates from particular working groups feel their views are not reflected in the resolutions that we now have, they should lodge appropriate amendments. Can I urge that you do so in writing, putting the name of your seconder. At this stage it is only necessary to have a mover and a seconder. If you give the secretariat those amendments, we will endeavour to proceed through them seriatim.

**Brigadier GARLAND**—I am trying to clarify in my mind that there is no smoke and mirrors here designed to confuse us. As I understand what the Attorney-General has said, those lead-in paragraphs to clauses (1) through to (8) will remain and somewhere in clause (9), which will become, say, 1A, we will get a preamble which covers all the new bits and pieces. Is that right?

**Mr GARETH EVANS**—Yes.

**Mr GUNTER**—Will the amendment on the screen from Father Fleming and Dame Leonie Kramer and the other amendments that were received prior to the deadline referred to earlier this afternoon be circulated?

**CHAIRMAN**—Those amendments already have been circulated. They are attached to that paper which has only recently been distributed and which Mr Williams referred to as being in the second batch. They are on the back of that paper. It now has a blue cover.

**Professor WINTERTON**—I understand, of course, the position that the Attorney-General and Gareth Evans have pointed out. This is a suggestion that is probably in a sense somewhat counterproductive to the republican cause, and it would certainly be easier to include this new preamble in the Constitution, which only needs a section 128 amendment. I accept that. But the reality is that the covering clauses and the preamble can be changed. It may involve a more complicated procedure through the Australia Act, requiring state participation, but I think the Constitution would look bizarre having two preambles.

As I understood it, the position was that we agreed that the new preamble should build on the existing preamble. This one does not. I think two references to 'Almighty God' would look a bit ridiculous, with all respect. I would suggest that the appropriate thing to do would be to build on the existing preamble. If that is more difficult for the republicans, that is unfortunate, but one must be principled in these matters.

The second matter relates to paragraph C3. I want to point out to representatives of the states that in the past the view has been that local government should be recognised in state constitutions, and it is in most state

constitutions. If it is recognised in the preamble of the federal Constitution, that may severely restrict the ability of the states to regulate their local governments. I would think that state representatives would be severely critical of this.

**CHAIRMAN**—Professor Winterton, if you wish to pursue the first of your proposals, I suggest you do so by way of an amendment to 1A. It would seem to me that that would be the appropriate course. There is also the problem that if you wish to preserve the present preamble as it is in the Australia Act without having one in the Constitution, about the only course you have is to vote against everything. I do not know whether that is necessarily the best course.

**Senator ALAN FERGUSON**—I presume this is the appropriate time to ask for a point of clarification about the proposal by the Resolutions Group.

**CHAIRMAN**—Go ahead and we will see whether it is the appropriate time or not.

**Senator ALAN FERGUSON**—In B6 I think there has been unanimous agreement amongst the delegates here that the preamble should include ‘acknowledgment of the original occupancy and custodianship of Australia by Aboriginal peoples and Torres Strait Islanders.’ I think that has been a general agreement amongst all the delegates here. I move on to C, where we talk about the Convention recommending that the following matters be considered.

**CHAIRMAN**—Unless this is something new, could you raise these when we get to that particular point?

**Senator ALAN FERGUSON**—I was only going to ask about what I think might be an inconsistency. In C1, where we are talking about matters to be considered for inclusion, we are talking about affirmation of the equality of all people before the law. I presume they mean all Australian citizens. Then we go to C4 and we talk about recognition that Aboriginal people and Torres Strait Islanders have continuing rights by virtue of their status. If that was to mean traditional rights, I could understand that because that is a term that has been used in a lot of legislation that

has passed through the Australian parliament. I am wondering whether there is a certain inconsistency, if it does not mean traditional rights, between ‘Recognition that Aboriginal and Torres Strait islanders have continuing rights by virtue of their status’, as against C1, which talks about all people being equal before the law. I just want a point of clarification.

**Mr WILLIAMS**—Mr Chairman, I think you should bear in mind that these are not the Resolutions Group’s ideas necessarily. They are an attempt to put things into language that is as plain and unambiguous as possible. The question raised by Senator Ferguson is an extremely difficult one. I do not think it is really one that we can debate to any useful finality. Dealing with a list of subjects like this, it is put in C because it was regarded as contentious. If the Convention supports it, it will have to be the subject of very detailed examination, particularly if the Convention also supports D.

**Dr TEAGUE**—My question is to the Attorney-General and concerns (1)A. I draw your attention to the words ‘remain intact’. You are putting to us from the Resolutions Group that clauses (1) to (8) are not subject to the kind of change we are contemplating where the new preamble is going to be put. The words ‘remain intact’ is a fact of history but they need not be in any new publication of this Constitution; they could be put as an appendix. In other words, it is a question of historical fact that the Westminster parliament in the UK adopted eight covering clauses, and they can be in the appendix, but the actual new preamble and the Constitution as such could be set out such as it has the reading that Hendy Cowan and others have referred to. It is a meaningful document that is inspirational from the first page as you read it—‘we the people’ and so on.

**Mr WILLIAMS**—The answer to that is: in my view, yes.

**Mr CLEARY**—I have a question for the Attorney-General re C4. Am I not under the impression that the High Court has already ruled that indigenous Australians have particular rights by virtue of their status as indigenous people? Can I get a confirmation

from you as to the truth of that matter? If I am wrong and you are right, are you challenging the High Court at this Constitutional Convention?

**Mr WILLIAMS**—Yes and no. The issue is how far those rights extend and that is what I suggest this Convention is not really in a position to be debating.

**Sir DAVID SMITH**—I would like to ask Mr Gareth Evans if he is aware that the Hawke government's 1988 Constitutional Commission, of which his former leader was a very distinguished member, recommended that it was open to the people of Australia to amend or add to the original preamble?

**Mr GARETH EVANS**—Yes, of course I am aware of that and of course the provisions of the Australia Act which we passed in 1986, at least on my reading of the relevant law, could be used to change those covering clauses and the old imperial preamble. Sure, you could do that. One option—and it may well be moved from the floor—is for those provisions which do have some continuing force, or are believed to have some force, to be in fact picked up and put into the text of the Australian Constitution proper, and for those provisions which do not have any continuing force to be repealed using exactly the process that you have described. Maybe that would be one way of achieving cleanliness and godliness in the expression of all this and not having a preamble left in the old imperial legislation, as well as having a brand spanking new preamble as part of our own actual Constitution. Yes, you could do that.

But you do not have to do that. It is perfectly possible to do exactly as Dr Baden Teague said: leave the old imperial bits and pieces off to the old imperial side of this or any other publication and, in all future publications of the Australian Constitution, start with the bit that we actually call our Constitution and have in front of it some language which does seem to be relevant. In terms of what Hendy Cowan was saying, there is absolutely no reason why—

**Ms SCHUBERT**—Mr Chairman, on a point of order, I think that Gareth Evans is actually providing opinion rather than clarification. In the interests of us all concluding

this debate with some level of efficiency I would ask that he constrain his comments and let us get to the substance of debate.

**CHAIRMAN**—I think we will move on.

**Mr GARETH EVANS**—It is a very clarifying opinion.

**CHAIRMAN**—Just think what they would all be like if they were in parliament.

**Mr TURNBULL**—I have a question, which Gareth Evans has preadvertised, for Gareth and Daryl Williams. Would they accept an amendment to A which would just add these words:

... and that any provisions of the Constitution Act which have continuing force be moved into the Constitution itself and those which do not be repealed.

I think that then resolves the problem that Hendy Cowan raised and ensures that we have one Constitution that is an Australian document with an Australian preamble and that does not start off as an imperial act of parliament.

**CHAIRMAN**—The easiest way to deal with it so that everybody will have the words is for you to write them and make an amendment. We will deal with it then.

**Professor CRAVEN**—Every other lawyer has troubled the Convention, so I will. In the uncharacteristic role of supporting Mr Evans and the Attorney-General, my view is that it is not easy to amend the covering clauses under section 128. There may be other ways of doing it, but I warn the Convention that this is a contested area. If you go into it and you are going into it unnecessarily then you are opening yourself up to legal complication and challenge. You would be better off accepting the preamble at the start of the Constitution rather than at the Constitution Act.

**Professor PATRICK O'BRIEN**—I think I have seconded an amendment which you have, but to support something that Mr Turnbull said in the spirit of compromise and in the spirit of trying to get fundamental principles into the Constitution rather than into the preamble, the spirit of what is said in B10 is obviously something that should go into the Constitution in the first clause. If we

are going to introduce a new republican order, the source of supreme political authority, generally known as sovereignty, must be clearly defined.

I would imagine there would be no disagreement amongst republicans that that source of all political power lies in the people. Therefore, the source of sovereignty must be defined in the body of the Constitution, not in a preamble which may or may not have the effect of fundamental law. I think that anything—I agree with Mr Turnbull on this—that is fundamental to the actual Constitution must go into the main body to ensure that it becomes a part of fundamental law.

**CHAIRMAN**—Are there any more interventions on the general issue before we start moving to the consideration of the preamble?

**Mr RUXTON**—This morning at about a quarter to nine I lodged an amendment to the preamble, and I do not see it printed anywhere. The amendment that I proposed was that the national language of the new Commonwealth of Australia be English.

**CHAIRMAN**—I do not seem to have a copy of it. I will ask the secretariat if they can identify where—

**Mr RUXTON**—It was lodged down at the office.

**CHAIRMAN**—I will ask the office if they can find a copy of it and to make sure that we have it so that it can be considered at the appropriate time. If anybody else has amendments, I urge them to put them in as soon as possible.

I want to identify what I will be doing in each instance. As Mr Williams has moved the report and Mr Evans has seconded it, it is formal and we can treat everything as amendments. What we will be doing is going through each of the items as an amendment to their resolution. I think that will be the easiest way to deal with it. We might begin with the preamble. We have A as printed, and the first amendment I have is that for which notice was given by Professor Winterton. I do not know whether it has been distributed to everybody. I will ask Professor Winterton to speak to it. Unfortunately, many of them have just been received. What we will do is ar-

range for all these to be distributed as soon as they are received. I will ask Professor Winterton to speak to his amendment with respect to item A of the preamble.

**Professor WINTERTON**—I move:

After paragraph A insert:

"Any provisions of the Constitution Act which have continuing force should be moved into the Constitution itself and those which do not should be repealed."

Basically this amendment is in line with what I suggested a short time ago: that is, that paragraph A be deleted and that paragraph B line 1 have inserted after the word 'Constitution' 'Constitution Act.' I agree with Malcolm Turnbull's suggestion that the distinction between the Constitution Act and the Constitution be deleted. If that were adopted, this amendment would be unnecessary.

Basically, as I said before, it seems to me that notwithstanding the legal complications we should not be governed by those matters. The lawyers of the Attorney-General's Department and elsewhere can work out the details. The reality is that it seems to me the Constitution would look ridiculous if it had two preambles, both referring to Almighty God and so on.

The point is that, if we think back on all the discussion we had as to the purpose of the preamble, about how it was to indicate to the world who we are, what we think of ourselves and so on, if the preamble says that we are united under Almighty God and so on and then we have a new preamble mentioning these values, it does not present a very good picture.

Besides, I strongly believe that if the Constitution's preamble is to tell our national story, in effect, it ought logically to begin at the beginning. I think this is an important point, especially to indigenous people. If you are going to begin at the beginning, you should mention indigenous people first, rather than the states, which came later. Therefore, it would be contradicted by the idea of having a preamble in the Constitution Act and then a subsequent preamble in the Constitution, one referring to the Crown of the United Kingdom, and the other to a republic. It

would present a very muddled and confused picture to the world. And there is absolutely no reason for it. The lawyers can work out the details of what is necessary, but I think we should have only one preamble.

**Mr MYERS**—I second the amendment.

**CHAIR**—If the seconder does not wish to speak to the motion, are there any speakers against Professor Winterton's amendment?

**Mr HODGMAN**—I will be very brief. I completely agree with Professor Craven. I am not here to advance the republican cause, but what he said is completely correct. I am sorry, Professor Winterton and Malcolm Turnbull, I am once again in disagreement with you. Do what you are about to do and you will create a legal problem which you do not have to have, as Professor Craven has told you. But, if you want to have the fight, you will have it and you will lose the whole ship. Pay attention to Professor Craven, because he is absolutely correct.

**CHAIRMAN**—I will just point out to you, before we have further debate on Professor Winterton's amendment, that you need to have in mind that, if this is defeated, Mr Turnbull has given notice of an amendment which relates to very much the same subject matter. It was a bit difficult in the circumstances for the rapporteurs of the Resolutions Group to accept it, but I will read it to you, because I have a copy of it here. It was that we would add to A, as printed, the words:

and that any provisions of the Constitution Act which have continuing force should be moved into the Constitution itself and those which do not should be repealed.

So there is another amendment which relates to very much the same subject matter. Professor Winterton, do you accept Mr Turnbull's amendment or do you wish to proceed with yours?

**Professor WINTERTON**—No, I am happy to accept that. It might, for the sake of clarity and more abundant caution, add 'preamble and' Constitution Act, although really the preamble is part of the Constitution Act. Then I would have no problem. It might be appropriate to move Malcolm's first.

**CHAIRMAN**—Is there any comment for or against?

**Dr SHEIL**—I am against the removal of anything from the Constitution. I suppose quite a few of us here have been involved in making constitutions for small bodies or associations, and we know how difficult it is to get a clause included in them; even if it is just for the West Preston old boys poker school, it is hard to have a clause included.

When it comes to constitutions, I think it is just as important to know where you have been as it is to know where you are going. Even if a clause is in the Constitution and is now effete, it shows the sorts of issues that were exercising the minds of the gentlemen who wrote the Constitution.

There are some who would say that, even if a clause is in there and it has never been used, that is probably one of the safest and best clauses you can have in a Constitution because they cannot do anything to you with it. There are clauses like that in our Constitution—for example, the one where the Queen can knock back any act of parliament. That has never been used. But I do not see why it should not be left there. Ours is not a long Constitution so we are not pushed for space. I make a plea to leave these clauses in because they were considered very important in their day.

**CHAIRMAN**—Is there a speaker in favour of the resolution? Mr Turnbull, you have not technically spoken to it, so we will let you have another go.

**Mr TURNBULL**—Mr Chairman, there is clearly a tidying up exercise that needs to be done with the Constitution Act.

**Dr SHEIL**—Who says?

**Mr TURNBULL**—Thank you, Dr Sheil. It is hardly appropriate for Australia to have a new republican constitution which says, 'be it therefore enacted by the Queen's most excellent majesty by and with the advice and consent of the lords spiritual and temporal'—although we have a few lords spiritual and temporal here today.

There is a cleaning up exercise to be done. The Attorney-General's Department will no doubt attend to that. All this clause is intend-

ed to do is to make clear that which will inevitably be done in due course by the Attorney-General and presented to the parliament when the Constitution amendment bill is put before the House of Representatives.

**CHAIRMAN**—Is there a speaker against the amendment?

**Mr BRADLEY**—Mr Chairman, delegates: when it comes to constitutional alterations, I think the best principle to apply is that, if it is not necessary to change something, it is necessary not to change it. This discussion, which was meant to be about putting some fairly significant matters into a preamble, whether in the Constitution or the Constitution Act—matters upon which most of us agree—now seems to have been hijacked into some sort of arcane discussion about what we ought to do with provisions in an act passed by the imperial parliament in 1900. We really ought to get on to the matters that we agree about and that we want to decide, and leave aside these entirely unnecessary suggestions which are being made at the moment.

**CHAIRMAN**—Is there a speaker in favour of the amendment?

**Mr GUNTER**—Mr Chairman, I do support Mr Turnbull on this one. It is a matter, though, of not preventing the passage of other changes to the Constitution that the Convention might agree on. I am assuming that the wording chosen by Mr Turnbull allows this matter to be put separately so that the question is not tied in inexorably to the other changes, given that there is some argument between Professor Craven and Professor Winterton as to whether the hurdle is the same as section 128 or a higher one. So, on that ground, assuming that they can be dealt with separately, I would be happy to support this.

**CHAIRMAN**—Is there a speaker against?

**Mr RAMSAY**—I do not claim to be a lawyer, but I find the drafting of this amendment completely bewildering. The Constitution itself is, in fact, clause 9 of the Constitution Act, and here we are about to provide that any provisions of the Constitution Act—including the Constitution itself, which has continuing force—should be moved into the

Constitution itself. The amendment, read literally, is a nonsense and I do not see how I could support it.

**Mr WRAN**—It is almost as if we are dividing on this issue on ideological lines. This is a tidying up exercise in which Mr Turnbull will have no involvement, I will have no involvement and you will have no involvement. It will be left to the federal Attorney-General of Australia to carry out the wishes of the Convention. It is just extraordinary that such a simple household matter of tidying up this Constitution, which speaks of Queen Victoria et cetera, should cause this measure of debate. I move:

That the motion be put.

**CHAIRMAN**—Regrettably, this is not parliament and, as you have already spoken, I cannot take the motion. Is there a speaker against the motion?

**Mr GIFFORD**—I am concerned that we are going to be—

**Mr LEO McLEAY**—You can't speak against the question being put.

**CHAIRMAN**—I cannot put the question that the question be put. This is not parliament. Mr Wran has spoken and it is not appropriate that a delegate who has already spoken move that the question be put.

**Mr GIFFORD**—I am concerned at this proposition that the drafting can be left to some later stage; it cannot. Mr Turnbull giggled or laughed about the suggestion that there should be a provision saying that English has to be used. If he had looked up his relevant case law he would have found that there is a case from Wales and that case contended that people living in Wales were entitled to—

**Senator FAULKNER**—It was Jonah.

**Mr GIFFORD**—I do not find it a laughing matter. The result of the decision was that it had not been specified that documents or otherwise in Wales had to be in English. Since they did not have that, the situation is that about 20 per cent of documents and people are using Welsh and not English.

**Mr TIM FISCHER**—I move:

That the motion be put.

Motion carried.

**CHAIRMAN**—The question is that the amendment moved by Mr Turnbull and seconded by Mr Wran, which is the addition of those words to A in the document that has been distributed to you, in the preamble, be added.

Amendment carried.

**CHAIRMAN**—In those circumstances, are you withdrawing your amendment, Professor Winterton?

**Professor WINTERTON**—Yes.

**CHAIRMAN**—As far as I am aware, and I have so many papers in front of me it is a bit of a problem, that is the only amendment relating to A. Therefore, I put the question that (1)A, as amended, be agreed to. Those in favour, please raise your hands. Those against. I declare the motion carried.

**Brigadier GARLAND**—I would like a count.

**CHAIRMAN**—Those in favour, please raise their hands. Those against. The result is ayes 87, noes 44.

Motion carried.

**CHAIRMAN**—We will now move down to B. What I am going to do is put each of these—B1, B2 and so on. I have about 30 amendments on loose sheets in front of me and I could well miss out. If anybody has an amendment and I do not call on it, will you please so signify and we will ensure that we pick you up.

**Professor WINTERTON**—I would seek clarification from the Resolutions Group. For clarification, I would suggest that they might like to change line 1, so it reads:

That this Convention resolves that there be one Preamble to the Constitution which contains the following elements:

Otherwise, it still leaves it ambiguous that there are going to be two in the one document.

**Mr GARETH EVANS**—We could do that, but we could run into problems, in the way that Professor Craven describes, legally, in getting rid of the irrelevant bits of the Constitution Act preamble if that is the interpretation of the courts. So, rather than getting into

that minefield and that debate all over again, and given that the context here is clear—and that what we are talking about is a preamble in the Constitution itself and what we are all trying to do is get a single one—perhaps we can leave it on that understanding rather than actually committing ourselves to that language.

**CHAIRMAN**—Could I also explain that nothing that we are passing today is going to be in the final, legal form that any legislation that might follow will pursue. So it is not that we are drafting any referendum bill or drafting any preamble; we are really passing resolutions which will be referred, if passed, to the government, and the government in due course will consider what action it will take upon them. No doubt the Attorney and the Attorney-General's Department will have some input into the final form of the words. On that basis, can I put B1? Are there any amendments to B1? I do not seem to be able to find any. If there are no amendments, are there any speakers on B1—for or against? As there are no speakers, I put B1.

Motion carried.

**CHAIRMAN**—We come to B2. Are there any amendments? I do not have any. Are there any speakers on B2? There being no speakers, I put B2.

Motion carried.

**CHAIRMAN**—We now turn to B3. I have no amendments. Are there any speakers on B3, for or against?

**Professor CRAVEN**—I do not intend to detain the Convention long. I am sure that everyone here is painfully aware of my position on preambles. When the preamble went to the Resolutions Group, we were informed they would do their very best not to put dangerous expressions in it, and I accept that they have worked hard to do that.

Nevertheless, they have failed. The expressions are pretty and the notions are lovely but the expressions are legally dangerous, and I will simply point to all of them rather than come back and trouble you again. We have 'democratic' put into the preamble with the possibility now that electoral laws will be challenged by the court on that basis.

We have 'representative democracy' there which is, of course, the most controversial phrase in the implied rights cases of the present court. We have 'affirmation of the rule of law', and I am sure there are many people who support that who would be doing a lovely essay for me on its meaning, but it would not get a good mark. We have 'affirmation of respect for our unique land and the environment', and I have no idea what that means in legal terms.

We have C, which goes, I suppose, the full monty in the preamble, to use the expression of the Convention, and which is even worse. We have a proposed amendment which shows 'recognition of our responsibility to future generations', which I presume has been put in by a right to life organisation because that is one of the organisations which will rely upon it in the future.

I also note that one of the main arguments for having these values in a preamble was a clause which would provide that they not be justiciable—that was heavily advanced by proponents. It now disappears in paragraph D. I do not propose to move amendments to the preamble. I do propose to vote against it in its present extraordinarily flawed form which will provide every opponent of a republic with ample information and ammunition to shoot it down.

**Professor PATRICK O'BRIEN**—I will not repeat the remarks I made in this chamber the other day because I would not want to offend the sensibilities of Delegate Thompson once more. However, I just want to make one comment in this regard, and it is not a personal attack. Professor Craven sometimes speaks as a constitutional lawyer and sometimes as a politician. No opinion given by a delegate in this chamber has any legal standing whatsoever. We have not been elected to this Convention as constitutional lawyers or judges; we are here as delegates.

A constitution belongs to the people; it must be written by the people—you might have lawyers tidy it up. So I do suspect that Professor Craven, like many lawyers, is merely putting political opinion under the guise of some ex cathedra legal statement. It is nonsense; it is we, the people, who write

the Constitution. If lawyers and judges want to quibble about it later on, fine, but we must write the Constitution ourselves, eventually. So these sentiments must remain because they are what we, the delegates, particularly prefer and hopefully what the people will want.

So I see Professor Craven's statements on this and other issues as having no more standing than the opinion of any other delegate at this Convention. He can warn us about the consequences just as the priests might warn us about the consequences of doing certain things to ourselves in the middle of the night.

**CHAIRMAN**—Is there a speaker for Professor Craven's concern?

**Mr ANDREWS**—Whether Professor O'Brien likes it or not, the Australian Constitution is a legal document pored over and interpreted by lawyers and fought over in the High Court—resolutions are given by the High Court. It is, at the end of the day, a legal document. Whether Professor O'Brien likes it or not, we are giving a form of drafting instructions to the federal Attorney-General and his department as to a bill to be put before the Commonwealth parliament. It is simply nonsense, Professor O'Brien, for you to come in here, flourishing your democratic rhetoric, saying, 'We, the people, are going to put any form of words we want into this document,' as if the High Court does not exist, as if this is not going to be treated as a legal document. Let us have some sense about this matter and not listen to this nonsense. This whole debate is quite absurd. This is going to be looked at by lawyers. They are going to decide what can be put in proper legal terms to the parliament. We should not be wasting time with the sort of nonsense that is going on at the present time.

We have heard advice from an Attorney-General, a former Attorney-General and two distinguished professors of constitutional law in this country and yet we are acting as if that advice should count for nought. I ask for some sense in this matter. Let us simply take into account the fact that, at the end of the day, what we will have had a part in creating is a legal document.

**CHAIRMAN**—Dr O’Shane, are you for or against?

**Dr O’S HANE**—I am for the retention of these words. The fact of the matter is that we are engaged in this exercise at this Convention because we are about designing the future. We are not about fossilising the past. We are not about casting it in reinforced concrete and steel so that nobody can ever move it. The fact of the matter is that these principles, these values, this language, is the language of today and tomorrow.

Constitutional lawyers—any lawyers—should be servants of the people; they are not directors of the people. And, by the way, I also speak as a lawyer. Since when do lawyers tell the people what they may or may not say in determining their future? They do not and people should not get carried away with that elitist rhetoric. If the people of this country say, ‘We have evolved into an independent democratic and sovereign nation,’ then they will say it. If the people say, ‘We have a democracy,’ and they understand the practice, then we will have it. If the people say, ‘We affirm the rule of law,’ then they can say it. If lawyers want to play around with it and earn millions of dollars while they are at it, thereby increasing the gulf between themselves and the ordinary people of this country, then let them go as far as they can. And when the people stop them do not cry blood over it. If the people of Australia want to say that they will acknowledge the original occupancy and custodianship of Australia by Aboriginal peoples then they will say it. And the governments that they elect will enact it and they will act on the enactments. But the important thing is that we are shaping the future. That is where we are going. We are not going back to the past, fuzzy and warm as it might be.

**Mr TIM FISCHER**—I have a procedural motion. It may help to expedite matters, given the nature of the debate with the last couple of speakers, that I move a procedural motion that items B3 to B10 be put as one question. Clearly people are going to be either for or against that grouping. Under C, if you look closely, you see that they then come back in a couple of critical areas. I move:

That items B3 to B10 be put en bloc.

**Mr ANDERSON**—I second the motion.

**CHAIRMAN**—We have a procedural motion. I have a number of amendments that will intrude on that. If we were to put that procedural motion, I would have to allow for consideration of those amendments when they appeared.

**Mr TIM FISCHER**—Absolutely.

**CHAIRMAN**—Mr Turnbull is giving notice of another procedural motion. I will hear his foreshadowed procedural motion before we proceed.

**Mr TURNBULL**—Now that we are into a group confession here, I am prepared to let you all know that I am a lawyer too. I foreshadow a procedural motion that we move immediately to consider items D1 and D2—in particular D2, which is a recommendation that care should be taken to draft the preamble in such a way that it does not have implications for the interpretation of the Constitution. As we all know, there are three things that we are trying to achieve.

**CHAIRMAN**—You are foreshadowing it?

**Mr TURNBULL**—Yes, I foreshadow it. If that is passed, it will make a lot of delegates much more comfortable about voting for the earlier motions.

**CHAIRMAN**—Mr Fischer has moved a procedural motion to deal with B3 to B10 as one. Mr Turnbull has foreshadowed a procedural amendment that we deal with D1 and D2 before we proceed to considering further B3 or any of the subsequent items under item B.

**Mr GARETH EVANS**—On the procedural motion: I have the greatest respect for Tim trying to help us out in this respect. But I think the real problem is that, if we treat all these together, move all the amendments and then debate them all simultaneously, we are going to be in an even more protracted muddle than we are at the moment. What we really need to do, bearing in mind the time and the length of the agenda, is limit the course of this debate. I would suggest that we agree that there be no more than two speakers for or against any given proposition or amendment, save by leave of the Convention

to do otherwise. If we do that, I think we will expose the issues that are involved here and be able to work through them systematically in a reasonably expeditious way. I suggest that Tim might be prepared to accept that as an alternative.

**CHAIRMAN**—I think one of the difficulties with the course of action Mr Evans proposes—which, for time, I am sure all of us would be happy with—is that it does presuppose a lot of delegates have a greater understanding than I think they might have. We are at the moment considering a procedural motion by Mr Fischer. Are there any speakers in favour of that procedural motion?

**Ms MARY KELLY**—It is a question of the intent of the procedural motion. Was it an act of intention to include 10 or to stop at 9? B10 does not strike me as being in the same area of controversy.

**Mr TIM FISCHER**—I am trying to expedite, not cut out, the amendments which would still be dealt with. Looking at B10, I am prepared to amend the motion, if it suits you, to B3 to B9, excluding B10.

**Mr COWAN**—I cannot support this amendment because if you look at each of those particular items, some of them are statements of fact and some of them are, as put by Professor Craven previously, matters of abstract values. Those are the statements of fact I would be prepared to support; others I wouldn't. I would rather deal with them separately.

**CHAIRMAN**—I put the procedural motion of Mr Fischer that we deal with B3 to B9 en bloc.

**Professor WINTERTON**—It has been drawn to my attention that B6 is in a different position. It is not what one might call a civic value but it is referring to prior occupancy. I suggest to Mr Fischer that he might like to exclude B6.

**CHAIRMAN**—Mr Fischer is leaving it as it is.

Motion lost.

**CHAIRMAN**—We have a procedural motion from Mr Turnbull which he has fore-shadowed.

**Mr TURNBULL**—I move:

That the Convention considers items D1 and D2 together forthwith.

There are three things that we are trying to achieve in this preamble discussion. I say, firstly, that these are only literally guides to drafting which we are offering as a suggestion to the Commonwealth parliament. The three things we are trying to achieve are: first, the long overdue recognition of the Aboriginal and Torres Strait Islander people of Australia in the preamble; second, some reflection or recognition of Australian values; third, to take care that by doing so we do not create the spectre of unforeseen change in terms of its impact on the interpretation of the Constitution. I propose to you that we should consider items D1 and D2. I am particularly concerned that we consider D2 because if that is carried, I believe that will give the Convention a great deal of comfort in knowing that in voting for some of these abstract terms, notwithstanding the issues that have been raised by Professor Craven and others, we can rely on the good sense and the legal advice of the Commonwealth government to ensure that they are incorporated in a manner that does not create the sorts of interpretive problems that the law professors have mentioned.

**Mr WRAN**—I second the motion.

**Mr HODGMAN**—I want to say this to the Convention, with the greatest of respect: how can you ignore what you have just heard from Professor Craven and Kevin Andrews? I am not a spoiler. What you have put in D1 and D2 would be laughed at by any first year law student in the Commonwealth. I will tell you why.

**Mr TURNBULL**—Just deal with the motion.

**Mr HODGMAN**—I am dealing with your motion, Mr Turnbull, and you do not have control of the chamber. The motion is that the preamble should remain silent on the extent to which it may be used to interpret the provisions.

**CHAIRMAN**—We are not talking about the substance; we are talking about a procedural motion.

**Mr HODGMAN**—None of you have apparently read the Commonwealth interpretation of statutes legislation by which every court in the land, including the High Court, can read—

**CHAIRMAN**—Do not talk to the substance of the motion.

**Mr HODGMAN**—I am not talking to the substance of the motion at all. I am saying that Mr Turnbull is asking you to vote on something which is a legal nonsense.

**CHAIRMAN**—No, he is not; he is asking that we deal with that before we deal with the other motion. I suggest you address the procedural motion and not the substance of the motion.

**Mr HODGMAN**—I oppose the procedural motion because if you do this, it is an absolute nonsense.

**CHAIRMAN**—Is there a speaker in favour of Mr Turnbull's procedural motion?

**Professor WINTERTON**—Greg Craven was rubbished quite wrongly. The arguments he points out are very valid. I take a different view, but the concerns he expresses are valid. All Malcolm's motion is doing is suggesting we should address this issue, as the Chairman has pointed out, not in any particular way. Mr Hodgman, it is precisely because we take your point and Greg Craven's point seriously that I support Malcolm Turnbull's motion.

**Mr ANDREWS**—I have lodged with the secretariat a proposed item D3 to the effect that the preamble state that it not be used to interpret the remaining provisions of the Constitution. That way there can be a clear vote of the delegates because if you vote in favour of remaining silent it still, as Professor Winterton and Professor Craven have indicated, remains uncertain.

**CHAIRMAN**—We are speaking to the procedural motion. I don't want people identifying the contents. I am more interested in whether we consider those propositions D1 and D2 before we proceed with B3.

**Mr WRAN**—I move:

That the question be put.

Motion carried.

**CHAIRMAN**—The question is that we consider D1 and D2 before we proceed to further consider B3.

Motion carried.

**Mr ANDREWS**—In order for it to be absolutely a clear vote of this Convention, I move:

That the Convention consider item D3 before considering item D1 or item D2.

**Professor CRAVEN**—I second the motion.

Motion carried.

**Mr ANDREWS**—I now move:

That Chapter 3 of the Constitution state that the Preamble not be used to interpret the other provisions of the Constitution.

We now have a choice between D1, D2 and D3 as to the import of the preamble—that is, it can remain silent, we can remain uncertain about it, it can have an impact which can be taken into account in interpretation, or we can decide that the advice is that the preamble should not be used by way of interpretation of the remaining provisions the Constitution.

Delegates, if you wish that the preamble not be used by the High Court to interpret the remaining provisions of the Constitution, which would then cater for the views put by Professor O'Brien and Ms O'Shane—that is, that we can use any words—then we can use whatever words you like and you will not have to worry about them having an impact on the rest of the Constitution. I propose that that is what we should do.

**Professor CRAVEN**—I second the motion.

**Mr GARETH EVANS**—Okay, that is now clear. You are saying that 'chapter 3 should state . . . '. Might I indicate, from my own perspective and that of a number of people with whom I have just canvassed it—and I never thought I would say this, Kevin—that that is a remarkably sensible suggestion and I am happy to endorse it. The reason why we were very reluctant to have language of this kind in the preamble itself was that it detracted from the literary, aspirational and inspirational character of it. But if you put it elsewhere in the Constitution you have exactly the same legal effect and it means the draftsmen of the constitutional preamble can have a much freer hand and we can all have a freer

hand in expressing our aspirations in the way that we want to. It is an excellent suggestion and I, for one, would endorse it.

**Mr CLEARY**—I will be very brief. I did move an amendment to actually delete D2, Gareth, and I am disappointed that you would be leaning with the people who want to take aspirations and values. That is what the people up in that little corner will want to do. You do not actually want those things to have veracity in the Constitution. That is what Greg Craven has been arguing throughout the whole debate. I think we should be arguing that they go into the Constitution.

**CHAIRMAN**—Is there a speaker in favour of Mr Andrews's motion?

**Mr LAVARCH**—This is an important issue for us. It seems to me that, if we wish there to be specific provisions in the Constitution in relation to particular rights or other matters, then they should be argued on the merits and pursued in that way. There is no doubt that the points which Professor Craven and others have raised are perfectly legally valid ones. We need to be very conscious about this. This does seem to me to be a way to resolve the issue. It does not, as Gareth Evans has pointed out, detract from the preamble itself but does quarantine the legal effect of the preamble. So I would urge that delegates support it.

In relation to Professor O'Brien's comments earlier, sort of impugning the motives of Professor Craven, I found those to be offensive. In my observations over the last two weeks Professor Craven has been nothing but constructive and a highly valuable delegate to this Convention.

**Professor PATRICK O'BRIEN**—I raise a point of order, Mr Chairman. I raise the point of order because I did not impugn Professor Craven's motives. What I said was that he is not here acting as a legal adviser to the Convention delegates; he is here as a delegate to give an opinion. I take the gravest exception to Mr Lavarch's comments because I was not impugning the motives. I request Mr Lavarch to be a gentleman and withdraw that remark.

**CHAIRMAN**—Your intention is noted.

**Ms RAYNER**—I wish to say something about the purpose of a preamble and to point out that the careful language used in paragraphs D1 and D2 I understand were drafted by Mr Daryl Williams QC, the Attorney-General of this country. I do not believe—and nobody in this chamber should accept—that aspirations, values and reference to status in a preamble create rights.

I have been quite misrepresented by one or two unintelligent media commentators who have suggested that I thought it was possible that a Bill of Rights could be created by reference to such matters in a preamble. The most that could happen in the interpretation of a Commonwealth Constitution and laws made under it is that a preamble might be, and very infrequently is, used to effect an interpretation of a Commonwealth law or the Commonwealth constitutional provision in a particular case. It has only been done once in recent history.

*Mr RUXTON interjecting—*

**Ms RAYNER**—Please don't interrupt me. It is very rude. I do not suggest, nor should you be frightened into thinking, that a Bill of Rights could ever be created by the words used in a preamble. It is equally well known to all the members of this Convention that I would like to see a Bill of Rights some day and that it is not going to happen today and it is not going to happen by way of an amendment to the preamble or any words used in it. In fact, when I spoke in relation to this matter of a preamble, I made it clear that my preference would be that in the ongoing constitutional reform process the Commonwealth should consider, after consultation, the enactment of a statutory Bill of Rights one day. I would like to see that now, but it is not going to happen, nor is it being sought by way of stealth.

In this particular matter, may I make it very clear that paragraphs D1 and D2 were worked upon by the Resolutions Group, and I reluctantly assented to them because in my view it has the effect of calming the unreasonable—if not almost hysterical—fears rising in the hearts of some non-lawyers who believe that is the intention.

*Mr RUXTON interjecting—*

**Ms RAYNER**—Will you stop interrupting me, Mr Ruxton.

**CHAIRMAN**—I am afraid that your time has now expired.

**Ms RAYNER**—May I have an extension to complete my remarks?

**CHAIRMAN**—No, there are no extensions of time. Finish your sentence.

**Ms RAYNER**—D2 reads that in the instructions to the parliamentary draftsmen ‘care should be taken to draft the preamble in such a way that it does not have implications for the interpretation of the Constitution’, in order to ensure that the draftsman is fully aware—as he or she would be—that that is a possibility. Therefore, careful language should be used and it should not be a matter which is undertaken lightly or frivolously, which it would not be in any event.

**CHAIRMAN**—Thank you very much, Ms Rayner. I think you have had a reasonable extension of time. Are there any speakers in favour of Kevin Andrews’s amendment?

**Mr WILCOX**—I am in favour of the amendment moved by Mr Andrews. I would like to make two comments. Firstly, it says chapter 3, and I do not know that it should be chapter 3. Lower down it says ‘to interpret the other provisions’. I am not sure that the word ‘other’ is necessary.

The reason I support the amendment is that it is the most sensible one that I have heard for dealing with this problem of the preamble and the many things that are put in it. As I said yesterday, there are a great number of things that I agree with but you have to be so careful. There is no way that anyone here can say that the words in a preamble will not be interpreted by the High Court. If you get a whole lot of Bill of Rights type words in it, you are only opening the way for more and more litigation.

As I said yesterday, I sounded a warning when I said that those with experience know that so often when you change not a clause but even a word you can cause endless litigation. With today’s propensity for litigation, anything could happen. That is absolutely right. The amendment is a very sensible one. It is a matter of suggesting to the Common-

wealth draftsmen—if and when they deal with this—that they look at the matters that have been set out in the preamble in the earlier ones.

**Mr TURNBULL**—I move:

That the question be put.

Motion carried.

**CHAIRMAN**—I put the question that Chapter 3 of the Constitution should state that the Preamble not be used to interpret the other provisions of the Constitution.

Amendment carried.

**CHAIRMAN**—We will proceed to D1. I have an amendment of which notice has been given by Mr Phil Cleary. Do you wish to move that amendment, Mr Cleary?

**Mr CLEARY**—I withdraw my amendment.

**Mr TURNBULL**—In the light of the amendment, D1 and D2 need not be put. I move that D1 and D2 not be put.

**CHAIRMAN**—It has been agreed by the rapporteurs of the Resolutions Group. D1 and D2 therefore, with the leave of this Convention, will be withdrawn.

**Professor WINTERTON**—For the reasons expressed by Professor Craven, with all respect, I think D2 would be valuable if retained. It is not entirely covered. For more abundant caution, I suggest D2 should stay.

**CHAIRMAN**—There has been an objection to the withdrawal of D2. Is there any objection to the withdrawal of D1? There being no objection, D1 is withdrawn. Are there any delegates who wish to speak on D2.

**Mrs MILNE**—Given that it has been moved that the preamble will have no legal effect on interpretation, surely the door is now open to that preamble being a really inspirational document that is poetic, inspiring and so on. If you leave in the fact that care should be taken, et cetera, you are restricting the language and the nature of the preamble as you would have it. If it is accepted that the preamble has no legal effect, surely we should now leave it open to be written in whatever language and however inspiring and aspirational a manner we like, so I would support the view that they both should be deleted.

**CHAIRMAN**—As I understand it, Mrs Milne has spoken against D2. Is there anybody in favour of D2?

**Professor WINTERTON**—I suggest that those who doubt whether D2 should remain might study the jurisprudence of the High Court and other courts on ouster clauses. They should have a look at the Anisimic case, and they will see why I think D2 should stay.

**CHAIRMAN**—Those in favour of D2 please raise their hand. Those against please raise their hand. D2 is carried. I have an amendment from Mr Bullmore. Could you please speak to your amendment, Mr Bullmore. I am not too sure what its implication is.

**Mr BULLMORE**—Mr Chairman, as D1 has now been removed, the amendment will have to take place with D3, I suppose. As the Convention has so elegantly hobbled the preamble so that it has no meaning or the meaning it has is irrelevant, I believe we should have a bill of rights inserted into the main body of the Constitution. I move:

Add new D3:

That a Bill of Rights be added to the main body of the Constitution to establish the people's sovereignty.

I have moved this amendment only because the meaning of the Preamble now has no veracity. A Bill of Rights would declare the people's sovereignty and the rights of the people. What is wrong with declaring that all people are created equal, and so forth? There is nothing wrong with that. It would not be the first time, anyway, that a convention has been convened and put to the people without a Bill of Rights being added. Way back on 12 September 1787, the American Constitution was ratified without a Bill of Rights anyway. I appeal to all those here to at least consider adding a Bill of Rights to our Constitution.

**CHAIRMAN**—Thank you, Mr Bullmore. I am afraid that, because you are now going to add it to the Constitution, it is outside the terms of this Convention. We note that the amendment would have been seconded, but I do not believe it is within the terms of this Convention. I therefore propose to rule the amendment out of order.

Item D was put as amended, and it was passed. So we now revert to where we were, which is item B3. Mr Fischer's procedural motion was lost, so we are dealing only with B3. As we have had speakers for and against, the question is that B3 be agreed to.

Motion carried.

**CHAIRMAN**—We now move to item B4.

**Mr MACK**—Mr Chairman, I would just point out to the Convention that B4 is in conflict with B3. Item B3 refers to a democratic sovereign nation. Democracy is something where every person has a right to be involved in decisions that affect them. That is something that the majority of the Australian public believe.

But representative democracy is a democracy where you have a right not to be involved in decisions that affect you but only to elect someone else to make decisions for you. That is something, of course, that the majority of this Convention believe, but it is not what the public believe—and it is in strict conflict with B3.

**CHAIRMAN**—I take that as a speaker against B4. I put the question that B4 be agreed to.

Motion carried.

**CHAIRMAN**—I put the question that item B5 be agreed to.

Motion carried.

**CHAIRMAN**—I put the question that item B6 be agreed to.

Motion carried.

**CHAIRMAN**—I put the question that item B7 be agreed to.

Motion carried.

**CHAIRMAN**—I put the question that item B8 be agreed to.

Motion carried.

**CHAIRMAN**—An amendment has been moved to B9. Is this amendment to be proceeded with?

**Ms SCHUBERT**—We have submitted an amendment to this, inserting this clause at C4. So we would deal with it then. Also, there is a slight wording change, in light of Professor Craven's illumination.

**CHAIRMAN**—Mr Waddy, you had a point of order?

**Mr WADDY**—It was just that ‘Labor Party meeting’ I was attending was preventing me from attending to the business—but has stopped now, Mr Chairman.

**CHAIRMAN**—As far as I am aware, there are no other amendments to B9. Is that correct? I put the question that B9 be agreed to.

Motion carried.

**CHAIRMAN**—I think that Mr Bullmore has an amendment to B10. Do you wish to proceed with that amendment, Mr Bullmore?

**Mr BULLMORE**—Yes. I move:

That the principle expressed in B10 be included. All I am looking at with B10 is that it be added to the main body of the Constitution. We have hobbled the whole preamble and it means nothing. Let us add something to the main body of the Constitution and see if we can get something out of it, at least. The power should be derived from the people and it should exist with the people.

**CHAIRMAN**—That has already been covered. I do not see that we can reopen the question. B1 specifically referred to that. You are suggesting that it be in the Constitution but it is in the preamble so you cannot deal with it twice. I rule that amendment out of order. We will proceed to B10. Are there any other amendments to B10?

**Mr RUXTON**—On a point of order: what about my amendment that I lodged at 8.45 this morning? It was received by the secretariat.

**CHAIRMAN**—Mr Ruxton, it was provided to the Resolutions Group and treated by them. But I will treat it as another amendment now. It would come in between B9 and B10.

**Mr RUXTON**—I move:

Insert new B9:

That English be established as the National language.

**Mr SUTHERLAND**—I second the motion.

**Mr RUXTON**—It is not so much of a joke. I have tangled with Al Grassby over the years and he has always slammed at me the fact

that we do not have a national language in this country. The same thing happened in the state of California; under a citizen’s initiated referendum they voted as to whether English should be the national language. They found they were getting into legal difficulties over what was a national language. I do hope that one of these days in this country, which we seem hell-bent on destroying, we are not going to get into the same situation as Canada and other bilingual countries.

**Ms RAYNER**—With due respect to Mr Ruxton, it seems to me that there is no question of Australia being a bilingual country. In view of the many expressions of concern today there is no question that you cannot legislate to establish a particular language as a national language in a preamble. Unless Mr Ruxton can identify a second language other than strine as the Australian national language competing with English I consider and suggest that the amendment be ruled out of order. It has no meaning and it is a waste of the valuable time of this meeting.

**Mr GARETH EVANS**—On a point of order: I support the proposal be ruled out of order. The proposal is that English be established as the national language; we are talking here about the preamble, which is not doing anything which has any substantive legal effect whatsoever—as we have just decided by incorporating D3, which says that it cannot be used to establish rights or be interpreted in any other way. Under those circumstances the provision here that the preamble seek to establish something is at odds with the rest of the content of the preamble and should be ruled out of order.

**CHAIRMAN**—I suggest that if it were that English ‘be the national language’ it would be in order. Are you prepared to have it in that form?

**Mr RUXTON**—Yes.

**Sir DAVID SMITH**—We have had a great deal fed to us about the virtues of the Irish Constitution. I should like to remind the Convention that the Irish Constitution specifies that the Irish language, as the national language, is the first official language. The English language is recognised as a second official language. We have been fed the Irish

Constitution all week. I do not see why our Constitution should not specify the English language.

**CHAIRMAN**—The question is that Mr Ruxton's amendment be agreed to.

Amendment lost.

**CHAIRMAN**—The question is that item B10 be agreed to.

Motion carried.

**CHAIRMAN**—The question is that item C1 be agreed to.

Motion carried.

**CHAIRMAN**—The question is that item C2 be agreed to.

Motion carried.

**Professor WINTERTON**—I move:

That item C3 be deleted.

I understand what motivates this. I can see the value of recognising local government but, with all respect, as I said before, the place is the state constitutions. I would urge those who want to protect state autonomy not to deprive the states of power to regulate their own affairs by including something in the Commonwealth preamble.

**Mr MYERS**—I second the motion.

**Professor PATRICK O'BRIEN**—In opposing what Professor Winterton has said, I would remind him and every delegate here that none of these motions has any meaning whatsoever, constitutionally or legally. Therefore, we may as well vote for it. It is a serious point. It was Professor Winterton, Professor Craven, Mr Michael Lavarch and others who said, 'None of these things can have any meaning.' It was Mr Malcolm Turnbull who wanted to do that. Now, totally self-contradicting himself, he wants to vote it up. If it has no meaning, why vote it up? We might as well vote to put Caligula's horse's backside into the preamble.

**CHAIRMAN**—Are you in favour of Professor Winterton's amendment, Dr Flint?

**Professor FLINT**—I would like to add some information, if I may.

**CHAIRMAN**—I would like to know whether you are for or against.

**Professor FLINT**—I am for.

**Mr RAMSAY**—I rise on a point of order, Mr Chairman. I did not understand that Professor Winterton had moved an amendment. I understood that he had spoken against the motion to include those words.

**CHAIRMAN**—He has moved an amendment that C3 be deleted. We are considering that amendment.

**Mr RAMSAY**—What motion were we considering when he moved that?

**CHAIRMAN**—That recognition of local government, C3, be accepted. It is virtually the same as voting against it. I think you are right.

**Professor FLINT**—There is an assumption that the attempt to exclude any justiciability for the preamble is a comfort to us. That is a false comfort, I would suggest. First, the High Court is not always constrained by the written words of the Constitution and, indeed, finds unwritten words of the Constitution. Secondly, and more importantly, in international law, the laws of evidence and the laws of interpretation are completely different to ours. In international bodies such as those established under the International Covenant for the Protection of Civil and Political Rights, in the International Court of Justice in arbitral tribunals, for example, those in relation to the Timor Sea, an international tribunal will not in any way be constrained by an attempt to exclude the legal effect of the preamble.

**CHAIRMAN**—On reflection, I rule Professor Winterton's amendment out of order but I take his speech as being a vote against C3.

**Councillor BUNNELL**—I am in favour of C3. The role of the federal Constitution is to define and protect our federal system, yet the Constitution currently recognises only two of the three spheres of government in Australia. This is now not an anomaly but a complete misrepresentation of the true situation. The opportunity should be taken now to put this right and many delegates have spoken on the floor of the Convention in support of local government being given constitutional recognition. I urge my fellow delegates to put this forward for consideration.

**CHAIRMAN**—Professor Winterton, I have ruled your amendment out of order. Do you wish to raise a point of order?

**Professor WINTERTON**—A point of clarification. Lest Professor O'Brien's point be taken as me contradicting the earlier resolution, we only resolved that the preamble should not be used to interpret the Commonwealth Constitution. It could still be used to interpret the state constitution.

**CHAIRMAN**—Is there a speaker against C3 being included?

**Brigadier GARLAND**—I am against this being included in the preamble because I see this as the first step to undermine the responsibilities of the states in relation to the states versus local government. I do not believe that this is a responsibility to be spelt out in a Commonwealth Constitution. It is one of those things that should be dealt with by the states. On that basis I would ask delegates to be responsible, not get in and start undermining the states but to reject this particular proposal.

**Senator HILL**—I move:

That the question be put.

Motion carried.

**CHAIRMAN**—I put the question that C3 be considered for inclusion in the preamble.

Motion lost.

**CHAIRMAN**—I put the question that C4 be carried.

Motion carried.

**CHAIRMAN**—There is now an amendment to be moved by Ms Schubert to C5.

**Ms SCHUBERT**—I move that we add to C the following:

C5 Recognition that our decisions today will affect future generations.

Just to briefly explain this amendment, there were initial suggestions from the working group that we did have an explicit recognition—at the risk of being self-evident—that today's decision making does have an effect for future generations. I know that some who have argued in support of a recognition of God in the preamble have jovially suggested that a reminder to politicians that they themselves are not divine might be a useful thing

in our Constitution. Similarly, this decision making is consequential for future generations, particularly in the context of environmental management. I think it would be a strong statement, with no effect, in our preamble.

**Ms HANDSHIN**—I second the motion.

**CHAIRMAN**—Are there any speakers against?

**Professor WINTERTON**—I have supported a great range of civic values but, with all respect, this one is merely stating the obvious. We are going to next legislate that the sun will rise tomorrow. With all respect, this is ridiculous.

**CHAIRMAN**—The question is that the motion to include a new C5—recognition that our decisions today will affect future generations—be agreed to.

Motion lost.

**CHAIRMAN**—We now have an amendment by Father Fleming. That amendment is attached to the printed sheet on late amendments to resolutions.

**Father JOHN FLEMING**—I move:

Add the following resolution to (1) The Preamble:

- E. That this Convention resolves that, in the event of the failure of the Republican model at a referendum, another referendum be put to the Australian people which would add to the Preamble a clause recognising Aboriginal peoples and Torres Strait Islanders as the original inhabitants of Australia who enjoy equally with all other Australians fundamental human rights; and
- E1. That there be wide community consultation and negotiation with ATSIC and other relevant bodies to reach an agreement on the form of words to be used in such a proposed constitutional change before it is put to the people.

I seek leave to change the word 'Preamble' to 'Constitution'. I think this motion has now achieved a greater importance after the debate we have just had on the preamble. I am accepting that I now want this to go in the Constitution. My original point was that there are many of us who are not inclined to support any republican model but who do believe passionately and strongly that Aboriginal peoples and Torres Strait Islanders ought to

be recognised in our Constitution, and that the continuing omission of this historical fact is a moral issue which stands in its own right and irrespective of any view that we might have about republics or monarchies.

What concerns me is that, the way the preamble has gone and the way that it has been dealt with, which basically says that the preamble is aspirational now and has no further interpretative value for the rest of the Constitution, this is even more important. I do not want that to be just interpretative; I want it to be recognised. What I am saying is that if the republican model fails at a referendum I still want this matter to be brought back to the people. Originally the working group that I convened had it that it would come up at the same time. On advice from Councillor Tully and others, the possibility was put to me that people might be encouraged in a Vote No campaign on the republic to vote just no without thinking anything more about it. I have accepted that advice, after consultation with other members of the group, and I have now said, okay, if the republican model does not get up, we should still deal with this matter as a matter of urgency.

I feel even more strongly about this now that the preamble has been in a sense neutered in the way it has been by D3; nevertheless, that has now been achieved. I would hope that, across divisions among us here on the substantive matter of republic versus monarchy, we could find it in our hearts to support an in-principle position that it is in itself wrong for to us continue with a lie, and the lie is one of omission: that when we came to this country either there was nobody here or there was but we do not want to recognise them.

I have also said in E1 that the precise wording of such a constitutional change should be a matter of consultation and negotiation with ATSIC and other relevant bodies. Clearly it would be nonsensical to have a form of words which did not meet the legitimate desires of others.

**CHAIRMAN**—Thank you, Father Fleming. The difficulty is that, now you have deleted 'preamble', it is no longer in order. It is a very important issue and one which I would

suggest might well be considered for future amendment of the Constitution; but it is not one directly pertinent to the question of a change from a monarchy to a republic. I therefore rule that amendment out of order. There is another amendment, of which notice has been given, from Councillor Julian Leaser. Do you wish to proceed with that?

**Councillor LEESER**—Yes, I do. I move:

That the Convention recommends that—

A referendum be held in conjunction with the referendum on the republic posing a separate question to ask the Australian people if the Preamble should be amended to recognise the original occupancy and custodianship of Australia by the Aboriginal people and Torres Strait Islanders.

I do not wish to amend this particular amendment; I wish it to continue to go into the preamble. Basically, Father Fleming outlined the main issues in relation to the committee that we had. It was a bipartisan committee, if you like, on the issue of a republic. We had Mr Peter Grogan, from the ARM; we had representatives of ACM; we had indigenous people on the committee; we had non-indigenous people. I do not want to see the issue of recognition of indigenous people in the Constitution become subsumed by the republic debate. I want to see the possibility of keeping the Constitution the way it is, but recognising indigenous people in the preamble to the Constitution. That is why I have put that, at the same time as we have the referendum on the republic, a separate question be put to ask the Australian people whether the preamble should be amended to recognise the original occupancy and custodianship of Australia by the Aboriginal people and Torres Strait Islanders.

Father Fleming mentioned that he felt some concern, and concern was expressed to him, that in a heavily weighted 'no' campaign people would vote, 'No, no. No republic, no recognition of indigenous people.' Let us look at the history of referenda that have succeeded. Let us look at the 1967 referendum, which recognised the Commonwealth power to make laws in relation to indigenous people. That referendum was put and it got 90.8 per cent approval. On that same day, at that same time, a referendum looking at the nexus between the number of House of Representa-

tives members and the number of senators was put up. It was defeated—40.3 per cent.

The same thing happened in 1977. Four questions were asked and three questions got up. In 1946, when the question of social services was put up, there were three questions asked. The social services got up, despite the others being defeated. The same thing happened in 1910, when the taking over of state debts by the Commonwealth got up and the finance question went down. I do not think there is a fear in this. I do not believe recognition of indigenous people in the preamble to the Constitution is a matter that should be owned by the republicans. I think it is a matter that should be owned by all Australians, regardless of their view on the republic. I beg you all to support this amendment.

**CHAIRMAN**—Thank you, Councillor Leeser. Because we have already taken decisions prior to your raising this matter in earlier matters regarding the preambles, particularly in B6 and in C4, I rule that amendment out of order.

**Sir DAVID SMITH**—Mr Chairman, I appeal to you: is there no way in which this Convention can support what we have just heard from my friend Councillor Julian Leeser without it being ruled out on a technicality? Please, this is not the place for a technicality on this issue. I ask you to reconsider your ruling, Mr Chairman.

**CHAIRMAN**—Sir David, I have just pointed out that we have already taken decisions not on the wording but on the principle. The principle is identified—and I understand this to be the principle that Councillor Leeser was referring to—in B6 and in C4. The proposal put by Councillor Leeser is that there be a referendum asking the Australian people whether the preamble should be amended to recognise original occupancy et cetera. Those matters have already been decided. It is on that basis, not on the substance of the principle, that we have already decided the proposition put by Councillor Leeser. I rule that amendment out of order.

**Councillor LEESER**—If I may make the distinction, item B relates back to item A, which says that this Convention recommends

that, ‘in the event that Australia becomes a republic’. This means, essentially, that you can only look at B6 in the context of Australia becoming a republic in itself. My particular amendment addresses the fact of having a separate question put at the same time as the question or questions we have on the republic that deal with the issue of recognition of indigenous people in the preamble.

**CHAIRMAN**—On that basis I am afraid it is even more out of order because we have been charged with deciding the outcome of one referendum which is to do with the republic. There is another point of order from Mr Ruxton. Do you wish to pursue it?

**Mr RUXTON**—Mr Chairman, on a point of order: I was elected to come here about the republic.

**CHAIRMAN**—I am delighted to have your endorsement, Mr Ruxton.

**Mr RUXTON**—No more extraneous issues thanks.

**CHAIRMAN**—Thank you. I am afraid that is out of order. We will now proceed to (2) Oaths and Affirmations.

## (2) Oaths and Affirmations

**Mr GARETH EVANS**—I move:

This Convention resolves that, in the event of Australia becoming a republic:

A. The Head of State should swear or affirm an oath of allegiance and an oath of office.

B. The oath [or affirmation] of allegiance might appropriately be modelled on that provided by the Australian Citizenship Act as follows:

[Under God] I pledge my loyalty to Australia and its people, whose democratic beliefs I share, whose rights and liberties I respect and whose laws I will uphold and obey.

C. The oath [or affirmation] of office might appropriately be modelled on the following words:

I swear, humbly relying on the blessing of Almighty God, [or, I do solemnly and sincerely affirm and declare] that I will give my undivided loyalty to and will well and truly serve the Commonwealth of Australia and all its people according to law in the office of the President of the Commonwealth of Australia, and I will do right to all manner of people after the laws and usages of the Commonwealth of Australia without fear or favour, affection or ill will

or

I swear [or affirm] that I will be loyal to and serve Australia and all its people according to law without fear or favour.

This reflects the recommendations of the committee. Hopefully it is quite uncontroversial. There is no provision in the existing Constitution providing specifically for an oath or affirmation of office by the head of state. Arguably, there should be. We are not here getting into a detailed drafting exercise. You will notice that the language used to introduce both B and C says that the oath might appropriately be modelled on this language. So we are not getting into a detailed drafting, we are simply explaining or identifying a way of approaching this issue which can be considered by the government and parliament, and it is recommended to delegates accordingly.

**CHAIRMAN**—I propose that we make A our resolution and the other two illustrative rather than parts of the resolution. Are there any speakers on this?

**Mr EDWARDS**—As the convenor of this working group I second the motion and again reiterate that there was consensus for the view, mainly expressed here, and I do not think it needs to be dwelt on. I just think it demands support.

**Professor BLAINEY**—It seems to me that the final sentence in that resolution has been added since it left our last meeting. I just wonder what the significance is of that last sentence because it contradicts the essence of the previous resolution that there should be undivided loyalty.

**CHAIRMAN**—I am sorry, I was only trying to get them to throw it up. I presume you mean the sentence, ‘I swear that I will be loyal . . .’

**Professor BLAINEY**—Yes, that is right. The last sentence seems to have crept in since we discussed it and, since it contradicts the previous paragraph, I wonder what is the purpose of its insertion.

**CHAIRMAN**—Mr Edwards, would you like to respond?

**Mr EDWARDS**—I was not involved with the group that added the words but, as I see

it, it is simply an option for consideration at the stage that the matter would be considered.

**CHAIRMAN**—I must admit that was why I suggested to Professor Blainey that we treat A as the substance and the others as illustrative. In other words, B, C and the alternative are illustrative of what A is intended to cover. The final drafting would have to be left until a later occasion. Are there any speakers for or against on this proposal? Professor Blainey, did you want a further explanation?

**Professor BLAINEY**—No.

**CHAIRMAN**—Are there any speakers for or against. If not, I will put (2) as proposed by the Resolutions Group.

Motion carried.

### (3) Miscellaneous Transitional and Consequential Issues

**Mr WILLIAMS**—I move:

This Convention resolves that in the event of Australia becoming a republic:

A. The Government and Parliament give consideration to the transitional and consequential matters which will need to be addressed, by way of constitutional amendment or other legislative or executive action, including:

A1. The date of commencement of the new provisions;

A2. The commencement in office of the head of state upon oath or affirmation;

A3. Provision for an acting head of state in certain circumstances;

A4. Provision for continuation of prerogative powers, privileges and immunities until otherwise provided;

A5. Provision for salary and pension;

A6. Provision for voluntary resignation;

A7. Provision for the continued use of the term Royal, Crown or other related terms, and use of the royal insignia, by the Defence Forces or any other government body;

A8. Provision for the continued use of the term Royal, Crown or other related term, and use of royal insignia, by non-government organisations;

A9. Provision for notes and coins bearing the Queen's image to be progressively withdrawn from circulation; and

A10. Provision to ensure that any change to the term Crown land, Crown lease or other related term does not affect existing rights and entitlements to land.

B. Spent or transitory provisions of the Constitution should be removed.

I think this should not detain us long. The Miscellaneous Transitional and Consequential Issues are listed in paragraph 4 of the principal document. They represent merely the Resolutions Group's attempt to simplify and put in brief form those issues that were raised by working groups as matters that require consideration in the preparation of any documentation relating to transition. I do not propose to say anything about the individual items. I think it is merely guidance for government.

**Mr GARETH EVANS**—I second the motion.

**CHAIRMAN**—As far as I can see, we have no amendments. Are there any amendments that anybody has given notice of?

**Mr LEO McLEAY**—Mr Chairman, I will chance my hand at this late hour and wake up the Generals over there by proposing that we delete A7 only on the grounds that it would look a bit bizarre if we had a provision that said we had become the republic of Australia, but we call the Mint the Royal Australian Mint or we call the air force the Royal Australian Air Force. If we are not a monarchy, it is pretty hard to say who owns the Mint if it is the Royal Australian Mint.

I have no objection to A8, which says that people can go on calling themselves the Royal Automobile Club or that sort of thing. It is a matter for them as members of that organisation to call themselves whatever they like, but I think we would look rather bizarre in practical terms by saying we are not a monarchy any more but we are going to name public institutions after those monarchies.

**Brigadier GARLAND**—Privatise them all!

**Mr LEO McLEAY**—I do not think anyone would suggest that you should privatise the military in any way, shape or form although I bet you know a lot of blokes who would probably try to buy it. Mr Chairman, on practical grounds we would look a bit silly if we were going to do that. I know the covering note says that we asked them only to have a look at it but what is the point of asking them to look at something stupid?

**CHAIRMAN**—I propose that we therefore deal with item 3, Miscellaneous Transitional and Consequential Issues. As Mr McLeay has spoken against A7, I propose we consider A1, A2, A3, A4, A5, A6 and A8, A9, A10 and B, and consider A7 separately. If people wish to speak on A7 they may do so, but we will put the other questions.

Motion carried.

**CHAIRMAN**—Mr McLeay has spoken against A7. Is there a spokesman in favour of A7?

**Ms HEWITT**—While we might be discussing a republic and the changes to our relationship to the Crown, I did not realise that we were actually rewriting the dictionary as well. Does this mean that we cannot have 'royal blue' any more? I think the absurdity of this is that the word still exists and it still has meaning. Why treat this in this way? Why eliminate the word from the dictionary?

**CHAIRMAN**—Thank you, Ms Hewitt. Mr Turnbull wants to move an amendment.

**Mr TURNBULL**—In A7 I think we can resolve the concerns expressed by Mr McLeay simply by inserting after 'continued use' the words 'if and where appropriate'. So it would read 'Provision for the continued use if and where appropriate of the term Royal, Crown or other related terms' et cetera. That can then be dealt with in an administrative fashion.

**CHAIRMAN**—Is approval given for that insertion? Approval has been given and we will consider it in that form. Is there a speaker against A7 in its amended form?

**Councillor TULLY**—On a point of clarity: could Mr Turnbull tell us if there is any occasion when he would think it was 'if and when appropriate'?

**CHAIRMAN**—I think 'royal blue' would be a very good indication.

**Mr TURNBULL**—I honestly cannot think of any appropriate occasion and I do not imagine that the government will be able to either, but if we put it in we save ourselves an argument.

**CHAIRMAN**—There being no further speakers on A7 I put the question that item A7, as amended, be agreed to.

Motion carried.

**(4) Qualifications of the Head of State**

**Mr GARETH EVANS**—I move:

This Convention resolves that in the event of Australia becoming a republic:

- A. The head of state should be an Australian citizen;
- B. The head of state should have been an Australian citizen for at least 15 years;
- C. The head of state should have been a resident of Australia for at least 15 years;
- D. The head of state should be eligible to vote in an election for the House of Representatives at the time of nomination;
- E. A person cannot be nominated if that person has been a member of the Commonwealth Parliament, a State Parliament or Territory Assembly in the preceding 12 months;
- F. The head of state should not be a member of any political party;
- G. The head of state should be subject to the same disqualifications as set out in section 44 of the Constitution in relation to members of Parliament; and
- H. Any future amendments to section 44 of the Constitution should also apply to the head of state.

Because we will be addressing the question of qualifications when we consider each one of the models for a republic tomorrow, because each one of those models contains a reference to qualifications, this is an issue that we will have to take into account when we revise the language of this for Friday. There is no point in being repetitive about it. If it is addressed in the model, we will not need to come back to it again in the final tick on this on Friday.

Point A, that the head of state should be an Australian citizen, is something that is in fact spelt out in every one of the four models now before us, so we are hardly likely to need to endorse that on Friday. It will come up. However, B and C, the requirement for 15 years citizenship and residency, are addressed in none of the models before us at the moment. So this is a substantive question and is a controversial question, which we will now have to resolve effectively one way or the other.

Similarly, D, that the head of state should be eligible to vote in an election for the

House of Representatives at the time of nomination, is addressed in Bill Hayden's model but none of the others, and may or not be controversial; we will have to form an opinion. Equally with E and F, both addressed only in the direct election model before us: We may need to have a specific view about now. Point G is addressed in both the direct election and the bipartisan one but not in the others. Again, this is one on which we may need to have a final opinion now and indeed on Friday.

I indicate that because those are considerations which might influence delegates. Most of them would appear to be uncontroversial with the possible exception of B and C. That is a matter for individual delegates. We make no recommendation.

**Mr WILLIAMS**—I second the motion.

**CHAIRMAN**—I will explain the way I propose to deal with this. It seems to me that B, C, E and F are matters that might well be considered separately. I would therefore propose that we first deal with (4)A, that the head of state should be an Australian citizen; D, that the head of state should be eligible to vote in an election for the House of Representatives at the time of nomination; G, that the head of state should be subject to the same disqualifications as set out in section 44 of the Constitution in relation to members of parliament; and H, that any future amendments to section 44 of the Constitution should also apply to the head of state. I propose that we deal with those four together because they seem to be less contentious.

**Brigadier GARLAND**—I have a question of clarification in relation to D. It allows the head of state to vote in an election for the House of Representatives at the time of nomination but says nothing about the ability to vote for the Senate. Are we excluding him voting for the Senate or is that also included?

**CHAIRMAN**—I think we can include the words 'for the House of Representatives and the Senate' and that will cover that. I put the motion that A, D, G and H be agreed to.

Motion carried.

**CHAIRMAN**—I then move to B. They are each slightly different. We will need to put B and C differently.

**Professor BLAINEY**—The wishes that the head of state should have been an Australian citizen for at least 15 years and also that the head of state should have been resident here for at least 15 years are placed here not with the idea of being harsh but with the idea of stressing that this is an important and difficult post and has to be taken seriously. By the standards of the world these are low qualifications. If any of us at the age of 20 went to Indonesia we would not be eligible, as long as we lived, to become president. If we went to Italy, we would not be eligible. These are not harsh recommendations. They are simply a way of saying that this is a difficult post and we must take it seriously.

**CHAIRMAN**—I did have notice of an amendment which I was going to exclude because voting against achieves the same result. Councillor Tully gave notice of that amendment.

**Councillor TULLY**—I had circulated an amendment to exclude B and C. I will speak in opposition of the proposal. This is a simple and fundamental but very important proposition which delegates need to consider. I really think the key issue, as I said yesterday, is whether or not we wish to create two classes of Australian citizens: those who are born here and those who are naturalised. It is my view that when people take an oath of office or an oath of allegiance to Australia they should have equal rights along with all other Australians. To me, to put in an arbitrary figure of 10, 15, 20 or even 30 years or higher—figures which were suggested yesterday—does discriminate against people who have taken an oath of allegiance and should assume the full rights of all Australian citizens. I would urge all delegates to oppose this particular matter and vote it down.

**Mr WADDY**—Mr Chairman, I have a question. Is it the intention or effect of specifying that the person be an Australian citizen that someone who is a resident here under the residency laws before 1948—it may be a later time—such as the late Leslie Bury or former Governor-General Sir Ninian Stephen who

were born in England—I have no idea if they took out citizenship—be cut out? Under the old laws they were able to come here and vote. Is it the intention and the effect to cut out those citizens—I think Mr Turnbull has estimated about half a million—or would they be eligible for this office through their residency?

**CHAIRMAN**—I take that as somebody speaking against B and in favour of C, because C refers to residency. I suggest we therefore look at C in relation to Mr Waddy's question rather than B. I put the question that B be included as a qualification for a head of state.

Motion lost.

**CHAIRMAN**—The question now is that C be included as a qualification for a head of state.

Motion lost.

**Professor WINTERTON**—I want to speak briefly in opposition to E. It seems to me that we should not deprive the Australian people of as broad a choice as possible. I think we should do nothing to denigrate those who wish to serve in public life. Therefore, I urge that E be deleted.

**Professor PATRICK O'BRIEN**—I wish to speak in favour of the motion because there has been considerable concern expressed by delegates to this Convention, particularly by republicans—by supporters of the McGarvie model and by the ACM. So it has been almost unanimous that we have to try to avoid the politicisation of the office of head of state. I think it is a reasonable requirement that there be a 12-month interim period. We are not saying that people who have served in parliament are unworthy, but to me a one-year decontamination period of party politics is a reasonable request.

**CHAIRMAN**—The resolution is that a person cannot be nominated if that person has been a member of the Commonwealth parliament, a state parliament or territory assembly in the preceding 12 months. I put the question that the resolution be agreed to.

Motion lost.

**CHAIRMAN**—We now move to F. I have a notice of an amendment by Ms Panopoulos.

**Ms PANOPOULOS**—I move:

After "not," insert "or ever have been".

I have moved this amendment because we have heard for the last week and a half that people want a representative president. Less than two per cent of the Australian population are, or have ever been, members of a political party. I suggest that those wanting an inclusive representative president support this amendment.

**Councillor LEESER**—I second the amendment. We could even include this as something that would benefit the current system. I think it would be great if we had governors-general who had never been members of political parties as well.

**Mr BEATTIE**—One of the great attributes of our democracy is that people have the right to join a political party. It is, in fact, one of our strengths. I have argued, as many people here have argued, that the head of state should not be a member of a political party. But, just because someone has been a member of a political party, that should not preclude them from being the president or the head of state. This amendment denies basic rights and takes away, I believe, a field of people who may well be acceptable to the whole Australian community as being great for this country—a good president and a good head of state. I urge everyone to defeat this amendment.

**CHAIRMAN**—I propose to put the amendment. Those in favour of the amendment—that is, insertion of the words moved by Ms Popadopolous—

**DELEGATES**—Ha!

**CHAIRMAN**—It is getting too late at night. The question is that the amendment be agreed to.

Amendment lost.

**Mr GUNTER**—At this point I am not sure if this is appropriate, but it is unclear whether this is intended to apply only during office rather than during the choice mechanism for finding somebody to take office. Are those

from the Resolutions Group able to clarify that please?

**CHAIRMAN**—The intention of this—"in the event of Australia becoming a republic"—I took to mean at the time that he is appointed. I think we will take it as that. The question is that the resolution be agreed to.

Motion carried.

### (5) Flag and Coat of Arms

**Mr WILLIAMS**—I move:

This Convention resolves that the flag and coat of arms may only be changed if approved by a majority of voters in a national vote.

The Resolutions Group has crafted this in the form of a broad motion with an amendment. The broad motion contemplates that the Convention would resolve that the flag and the coat of arms may only be changed if that is approved in a national vote by a majority of voters—in other words a simple majority. The amendment, which is in three parts, contemplates that there will be a constitutional provision added. This would also contemplate no change without a national vote. But, in item (ii) the majority is identified as being a majority of voters in a majority of states, so it is not a simple majority. The third leg contemplates that this amendment would only proceed after Australia became a republic.

**Mr GARETH EVANS**—I second the motion.

**Sir DAVID SMITH**—I withdraw my amendment. I was misled by the original green covered set of resolutions from the Resolutions Group. When Adam Johnston and I moved the amendment which is now on page 8 of the blue covered document, we did not have before us the resolution which the Attorney-General has just moved. We withdraw our amendment because it has now been taken up by the Resolutions Group. I thank the Attorney-General for the amended resolution from the group. I am grateful that I let off steam in your office, Chairman, and not in this chamber, after seeing the first document.

This resolution came from a working group which I had the honour to chair. We reaffirmed that the national flag and the coat of

arms should require the double majority that is in section (ii) of the amendment.

**CHAIRMAN**—You will have to move that amendment. As I understand it, we have in the new amended (5) the recommendation of the council, which is the first two lines.

**Sir DAVID SMITH**—I move:

- (i) That the Constitution should be amended to provide that the Australian flag and coat of arms may not be changed without a national vote of the Australian people.
- (ii) The flag and coat of arms may only be changed if approved by a majority of voters in a majority of States.
- (iii) A proposal so to amend the Constitution should only proceed after Australia becomes a republic.

I think the motion is self-explanatory. You will notice that in clause (iii) it is not an attempt to put this in the referendum which this Convention has been called to consider. We make provision for this to be done at a subsequent referendum, so I am hoping you will not rule it out of order. I invite delegates to support it. It entrenches the flag and the coat of arms and, for the purposes of those delegates who have reminded us so often of the merits and virtues of the Irish Constitution, I should like to remind them that the national flag of Ireland is entrenched in that country's Constitution.

**Mr JOHNSTON**—I second the motion.

**Professor WINTERTON**—I rise on a point of order. We have clearly concluded that a bill of rights is irrelevant to the republic, even though there are many republican political theorists who would argue that you cannot talk about a republic without rights. This is completely remote, and I would make the point of order that this is irrelevant to the debate and we should not discuss it.

**CHAIRMAN**—I ruled earlier in the debate that this could be considered only if it were part of the preamble. This is no longer part of the preamble and, therefore, I do have to uphold the point of order raised by Professor Winterton.

**(6) Ongoing Constitutional Change**

**Mr GARETH EVANS**—I move:

That this Convention resolves that:

- (1) The Commonwealth should establish a broadly representative and gender balanced Constitutional Committee (numbering around 27). No more than 1/3 of the Committee should be comprised of serving members of the Commonwealth parliament, a State Parliament or Territory Assembly. The remaining members should be persons appointed by the Government as community representatives.

*Amendment: replace (1) with*

*The Commonwealth should establish a broadly representative and gender balanced Constitutional Committee (numbering around 27). No more than 1/3 of the Committee should be comprised of serving members of the Commonwealth Parliament, a State Parliament or Territory Assembly. These members should be appointed by the Government. The remaining members should be elected by the people.*

- (2) The Constitutional Committee should oversee a three year community based consultation process about constitutional change, including the role of the three tiers of government; the rights and responsibilities of citizenship; whether the Commonwealth should have an environment power; the system of governance and proportional representation; whether the mechanism for constitutional change should be altered; constitutional aspects of indigenous reconciliation; equal representation of women and men in the Parliament; and ways to better involve the people in the political process.
- (3) This consultation process should lead to a plebiscite on concrete constitutional proposals. The results of the plebiscite should be converted into a constitutional amendment proposal and put to referendum.
- (4) The Constitutional Committee and the consultation process should be funded by the Federal Government's Federation Fund.

The motion before you on ongoing constitutional change is in revised form on page 7 on the blue document. It simply reflects the language coming forward from the relevant working group. It is, accordingly, now formally before the Convention for debate.

**Mr BEATTIE**—I want to raise one matter of clarification, if I can, with Gareth. The original proposition had a B. It seems to have disappeared. I know that clause (2) has been enlarged.

**Mr GARETH EVANS**—Clause (2) has exactly the same language as B. It just does

not spread it out into multiple dot points and encourage people like you to want to debate it. The same language is there.

**Mr BEATTIE**—Heaven forbid that you should suggest I don't debate it. Mr Chairman, I just get back to that issue. Gareth, that is not B at all, if you have a close look at (2). It is not the point at all. In fact, B is removed and (2) does not reflect what is in B.

**CHAIRMAN**—I intended to cover (1), (2) and (3), but we have to look at (1) first. We have an amendment to (1), so therefore I have to consider that before we get to (2). I think we will pursue your point indirectly.

**Mr BRADLEY**—On a point of order. Mr Chairman, you have ruled that consideration of entrenching the flag in the Constitution is out of order even though that issue was debated in the course of elections for this body. I would say on the same basis that it must be the case that discussions of establishment of some constitutional committee to look at further later changes and other issues in the Constitution must also be out of order.

**CHAIRMAN**—We have not reached that point of our consideration. Therefore, I suggest we look at what business is before us. We are now looking at 'Ongoing constitutional change' and we are dealing with the proposal of the resolutions group, which is that this Convention resolves that. The first group is in 6(1). I see that there is an amendment. Before we can deal with the amendment, I need to get somebody to move it and second it. We will deal with your point of order when we reach it.

**Mr BRADLEY**—My point of order is that the entire matter of page 7 is out of order. If the flag is out of order, this is out of order.

**CHAIRMAN**—I think you are right. On that basis, we declare 'Ongoing constitutional change' not a matter of this Convention.

**Ms MARY KELLY**—I would like to move dissent from that ruling, Mr Chairman. My dissent from your ruling is based on the fact that on the first day, as I recall, of this Convention we established by vote that we would have discussion on the preamble and discussion on ongoing constitutional reform and that those things would come back. We did not

decide so on the flag, and that is what distinguishes this from that issue and puts it in the same camp as the preamble issue. We added it by vote to the agenda.

**Ms RAYNER**—I wish to affirm what Mary Kelly has said. It is on the agenda. In fact, it is on the order of the proceedings of the next two days—'Matters to be discussed and votes on which to be taken'. With due respect, Mr Chairman, I think you have made an error.

**CHAIRMAN**—I make many errors but I do not think I have on this occasion. I said at the very beginning that I would allow debate on a range of issues and I would allow consideration by the Convention of those issues. I did not at that stage say that I would accept resolutions on them unless they were within the overall ambit of matters that were consequential on Australia changing from a monarchy to a republic.

The point of order raised by Mr Bradley, in my view canvassed with respect to this issue, is the same basic argument as I pointed out in relation to the principle of the flag. This is not a specific constitutional change that follows from our change. On that basis, I took my decision. I will now put the motion of dissent. Those in favour of dissent? Those against? I will take a count to be sure. The result of the vote is 63 for, 64 against. I declare the motion lost. I thank the Convention for the confidence it has expressed in me.

**Councillor TULLY**—Mr Chairman, I formally call for a division.

**Ms RAYNER**—I second the motion.

**CHAIRMAN**—There is no such provision in our rules of debate. I therefore proceed with the next item. The next item is No. 7.

**Ms RAYNER**—Mr Chairman, I raise a point of order. In that case, can we have a roll call to ensure that no error was made?

**CHAIRMAN**—No, there is no provision. We have taken the count and the count, I am afraid, is final.

#### (1) Preamble

**Sir DAVID SMITH**—Mr Chairman, I raise a point of order. When Mr Johnston and I withdrew the amendment which is on page 8 of the blue covered sheet, it was in the belief

that the Resolutions Committee had faithfully translated into a resolution the recommendation of the working party which I chaired. The resolution which my working party came forward with proposed that a provision be added to the preamble of the Constitution. However, the Resolutions Committee has duded us by bringing forward a resolution in which the word 'preamble' has been changed to the word 'constitution'. On that basis, Mr Chairman, you have ruled the amendment out of order. I now seek leave to reinstate the amendment on page 8.

**CHAIRMAN**—I do not really think at this late stage we can do so. I know how strongly people feel on the flag, as they do on the question that I have just ruled out of order. In my view, these are matters that are very important—I am not denying that—in each instance.

But I would suggest that what we do is note in our proceedings that these issues have been raised, and I would propose in our final memorandum to draw the government's attention to the fact that these matters were raised but they were not held to be within the purpose of the Convention. On that basis, both the question that you are raising and the question I have just ruled out of order will be referred to the government where I believe they would properly consider the consequences another time. I believe that is the right course to be taken.

**Sir DAVID SMITH**—Mr Chairman, this matter went to a working group on the advice of this Convention—

**CHAIRMAN**—I understand.

**Sir DAVID SMITH**—when, as to the original amendment we moved, we were told by the legal experts opposite that it had no effect. When the document with which we are dealing came out this afternoon, as we now know, item 5 in the green covered document was defective; it was incomplete. I moved, and circulated quite early, the amendment which Adam Johnston and I have proposed on page 8. This was circulated later under cover of a document which also included the expanded recommendation of the Resolutions Committee.

I reiterate that we withdrew our amendment in the mistaken belief that the resolution from the Resolutions Committee replicated the recommendation of the working group. I now wish to reinstate our amendment. It is properly worded, and it calls for an addition to the preamble. We have debated other items to be added to the preamble and, with the greatest of respect, Chairman, I submit that the recommendation of the working group should be put to this Convention.

**Mr GARETH EVANS**—On that point of order I submit two things. One is that there is no automatic right of transmission from the Working Group to the body of this Convention—otherwise we would not have had a Resolutions Group mandated with the task of crafting resolutions for the consideration of this particular Convention. That is the first point. The second point is that you have had your opportunity and you missed it. We debated the preamble earlier on; that was obviously the occasion to be debating any possible further amendment to the preamble. You failed to take advantage of that opportunity. You should now accept that gracefully.

**Mr WADDY**—As a member of the Resolutions Group I was approached by Sir David Smith, who was ropable when he saw the first draft which was circulated. I then went to the Resolutions Group and, in what was a very acrimonious and difficult meeting, asked that the Working Group's recommendation be reinstated in toto as it was. I pointed out that the Resolutions Group was the handmaiden of this Convention and that it was not there to alter the substance of resolutions—that was for all delegates together. I then informed Sir David that that had been done. I thought at that stage, having both the ruling of the Chairman and the agreement of Mr Evans, that a new page 6 and new page 7 to that effect would be circulated. I am astounded to think it has not been done.

**CHAIRMAN**—In the light of these various recriminations, if it is to be added to the preamble and if there is a genuine misunderstanding, I have no alternative but to allow you to move that. But there is no reason why delegates should not vote against that if they feel that is the course.

**Mr GARETH EVANS**—On a further point of order: the language in which these particular three propositions is cast is manifestly inappropriate for the terms of the preamble. They are referring to provisions determining the voting procedures that are to be followed if there is to be any change in the flag or the coat of arms. We have already decided earlier on that the preambles have no substantive effect at all; therefore, by definition, these provisions, even if enacted in these terms, would have no effect. They are manifestly inappropriate there. They could have a place elsewhere in the Constitution. That is why they were drafted in the way they were, in order to reflect what was your apparent intention, which you are incapable of executing in understandable prose.

**CHAIRMAN**—I take that as a speech against the amendment. Is there a speaker for the amendment? Mr Lavarch, do you wish to raise a point of order?

**Mr LAVARCH**—We have two separate items here. One is the resolution dealing with the flag. We also have the resolutions dealing with ongoing constitutional—

**CHAIRMAN**—That has been resolved.

**Mr LAVARCH**—Please hear me out, Mr Chairman. I am certainly not going to reopen your ruling. But in taking on your ruling that the government may well accept the work that has been done and take regard to it, may I suggest that the government may also benefit, in terms of their consideration, from there being a vote taken on the particular matters even though they are not strictly within the domain of this Convention. I wonder if there is some sort of procedural mechanism or suspension of standing orders or some other mechanism which would allow the resolution on the flag and the ongoing constitutional reform to be voted upon so that an indication of a view can be put forward.

It seems a very great shame for working groups to have been formed, for there to have been discussion at the Convention, for a morning to have been taken up by a debate on these things and for it to have gone to the Resolutions Group only to find that at the ultimate conclusion of it we are unable to express a will on it. It is an unfortunate

outcome. It is technically correct but maybe it would benefit the Convention and the government if we were able to take that particular course of action.

**CHAIRMAN**—It had been my intention to make reference to that in the communique. As I explained before, there is obviously very strong support for the proposal for further consideration of constitutional reform, and I intend to ensure that reference is made in the final communique to the very strong view, demonstrated by the reference within that working group. Similarly, had this motion been lost, it had been my intention to refer to the fact that there was also a very strong view on the flag and the Commonwealth coat of arms. I intended that that should also be expressed in the communique. Therefore, I put to Sir David the request made by Mr Lavarch, and I ask for a response.

**Sir DAVID SMITH**—I would like to respond to my friend, Gareth Evans.

**CHAIRMAN**—I will first ask you to respond to Mr Lavarch. Mr Lavarch has put a request to you. Will you withdraw your amendment and allow it to go forward in the communique, or do you wish to proceed?

**Sir DAVID SMITH**—I wish to proceed. I move:

That a provision be added to the preamble to the Constitution which would ensure:

(K1a) That the Australian national flag and coat of arms of the Commonwealth of Australia may not be changed without a national vote of the Australian people:

(K1b) That passage of any proposal for change to the flag or the coat of arms should require a special majority of the kind required under section 128 of the Constitution; and

(K1c) That the submission of any proposal to add such a provision to the preamble be at a time to be decided by the government of the day, but subsequent to any referendum on a republic.

**Mr JOHNSTON**—I second the amendment.

**CHAIRMAN**—You wish to respond to Mr Evans?

**Sir DAVID SMITH**—Yes.

**Mr RUXTON**—I rise on a point of order. I was elected to come here to a convention on the republic. On all the information sheets

that went out it was the republic versus the constitutional monarchy. I believe the flag and the coat of arms are part of that deal, but ongoing constitutional change was never mentioned in anything that went out to the people who voted. There was nothing.

I have said time and again that I believe that the whole matter of the republic has been a vehicle to get stuck into the Australian Constitution. These extraneous issues are coming up all the time. More are coming up, and more amendments are coming up. I believe that all these people who were elected were elected to debate the republic and the constitutional monarchy, and that is all. Nothing whatsoever went out in any of the pre-voting papers to say that they were going to discuss ongoing constitutional change.

**CHAIRMAN**—I think you have finished your point of order. Are you in favour of the flag and coat of arms going on?

**Mr RUXTON**—I believe that ongoing constitutional change has nothing to do with what we are talking about in this Convention, but the flag and the coat of arms are very much part of the republic debate.

**CHAIRMAN**—We are now debating the flag and the coat of arms. Sir David, you have had your say, do you wish to pursue the amendment?

**Sir DAVID SMITH**—Yes.

**CHAIRMAN**—I am afraid your time has expired, so you have no further call. Is there a speaker in favour of the proposal by Sir David Smith, seconded by Mr Adam Johnston.

**Mr BRADLEY**—It is quite important that this matter be voted on, and it is quite important that people understand why it has come before the Convention in this form. It has come this way because resolutions moved to entrench the flag and the national coat of arms in the Constitution were ruled out of order. Therefore, the only way they could be considered was if they were put in the Preamble. That was the earlier ruling of the Chairman. The only way the matter could really come before this body was in that form. It is quite ludicrous for people to now suggest that it is inappropriate to vote on this because

it is to do with the Preamble, when we were forced to do it that way.

The second thing, and the most important point, I think, is that the Australian Republican Movement has been playing snakes and ladders on this issue of the flag and the national symbols. Throughout the discussion they have pretended, time and again, that they do not have an agenda to alter the Australian flag. Yet it is so transparent, from their behaviour here at this Convention, from their membership of the Ausflag organisation and from their promotion of exhibitions for other flags, that quite clearly central to their agenda is a change to the Australian flag. The more that they try to squirm out of facing that issue, the more ridiculous they look. Tonight is the time for them to stop playing snakes and ladders and to vote on the issue of whether or not they support protection of the Australian flag and national symbols in the Constitution, as is the case in the Irish constitution.

**Mr TURNBULL**—Mr Chairman, I have never seen more inappropriate language to be put into a preamble. Mr Bradley acknowledges that this is just a mechanism to put the Commonwealth taxpayers to the expense of a referendum to entrench a flag which is already there—to entrench a flag which I dare say every single person in this room, including every member of the ARM and every member of the major political parties agrees should not be changed without a national vote. What on earth are we wasting time over this for? Nobody here believes the flag should be changed other than by a national vote and Sir David Smith, who claims to be a supporter of the flag, wants to put it on trial. Sir David, you should recognise that there will not be a national vote until someone comes up with a good alternative. You want to put the flag you love on trial before there is even something put up against it. This is a ludicrous amendment—the most ludicrous of all we have seen.

**CHAIRMAN**—I do not think that we need any more debate. I am putting the amendment that Sir David has presented.

**Mr WRAN**—Mr Chairman, you ruled out of order yesterday a substantive motion in

relation to the flag being enshrined in the Constitution.

**CHAIRMAN**—Yes.

**Mr WRAN**—If you read the words on the screen it says that the Constitution preamble be amended to ensure that these things happen. In other words, it is an effort to use the preamble of the Constitution to obtain a substantive result, that is, to ensure that the flag cannot be changed except by the methods stated, and I do not think we can have two bob each way on this. I think it is completely out of order and, consistent with your previous rulings, you should so rule it now.

**CHAIRMAN**—Mr Wran, what I am afraid is likely to happen is that, when the government considers this if it goes to them, they may well rule just as you have suggested. But, because we have been considering the preamble, I believe it is still appropriate for this Convention to consider it even though I doubt in its present form the government will accept it as something suitable for them to be able to include in the preamble—but that is an opinion like you as a lawyer, rather than me as Chair. In the circumstances, I do not accept—

**Mr WRAN**—I am happy with that, Mr Chairman. I am well aware of your influence.

**CHAIRMAN**—In the circumstances, I believe that, because it is a motion to amend the preamble, whatever the consequence, I should put it. The question is that the amendment be agreed to.

Amendment lost.

**Mr MOLLER**—I rise on a point of order. It seems to me that the only reason you entertained consideration of that motion was on Mr Ruxton's powerful argument that he had campaigned and had put out election material.

**CHAIRMAN**—No, it was not. It was because it was in the preamble. I made that quite clear. I only ruled it in order because it was on the preamble. It has been lost. I intend to move to the next motion.

**Ms MARY KELLY**—I would like to ask a question of the Chair and, depending on the answer, perhaps move something procedur-

ally. My question is this: the ruling about ongoing constitutional change being out of order was based around a notion that it was not a requirement in a post republic situation.

**CHAIRMAN**—I did not rule it on that basis. I ruled on the basis that the decision on whether Australia should become a republic was not relevant.

**Ms MARY KELLY**—Very well. My question is: if that had been reworded in some acceptable way as relevant to the preamble, would it have been ruled out of order?

**CHAIRMAN**—I am afraid it is a hypothetical question. Therefore, I am not prepared to deliberate on it. We will move to the next part of the proceedings which is the second part of the report.

**Mrs MILNE**—I would like to seek the leave of this Convention to suspend so much of its standing orders as would prevent consideration of ongoing constitutional change.

**CHAIRMAN**—We have no such proceedings, I am afraid, Mrs Milne; this is not the parliament. We will proceed to the next item of the report.

**Mr WILLIAMS**—The subject 'implications for the states' is on page 8 of the supplementary document.

**Professor WINTERTON**—I raise a point of order, Mr Chairman. Would you take a motion to the effect that the Preamble ought to include a provision encouraging ongoing constitutional change?

**CHAIRMAN**—Yes, I would.

**Professor WINTERTON**—I move:

That the Preamble contain a provision allowing ongoing constitutional change.

**Ms THOMPSON**—I second the motion.

**CHAIRMAN**—We have an amendment by Professor Winterton that the preamble include a provision for ongoing constitutional change.

**Mr TIM FISCHER**—I move:

That the motion be now put.

Motion carried.

**CHAIRMAN**—The amendment moved by Professor Winterton is that the preamble contain a provision permitting ongoing constitutional change.

Amendment carried.

**Mr RUXTON**—I move the adjournment.

**CHAIRMAN**—I am afraid you will have to wait for a while.

**Mr RUXTON**—We have been going 13 hours.

**CHAIRMAN**—I have been sitting here for a few of them, too.

**(7) Implications for the States**

**Mr WILLIAMS**—I move:

A. This Convention recommends to the Federal Government and Parliament that it extend an invitation to State Governments and Parliaments to consider:

A1. The implications for their respective Constitutions of any proposal that Australia become a republic; and

A2. The consequences to the Federation if one or more States should decline to accept republican status.

B. That this Convention is of the view that:

B1. Any move to a republic at the Commonwealth level should not impinge on State autonomy, and that the title, role, powers, appointment and dismissal of State heads of state should continue to be determined by each State.

B2. While it is desirable that the advent of the republican government occur simultaneously in the Commonwealth and all States, not all States may wish, or be able, to move to a republic within the time frame established by the Commonwealth. The Government and Parliament should accordingly consider whether specific provision needs to be made to enable States to retain their current constitutional arrangements.

This, I think, is the last one in the Resolutions Group's work. The subject 'implications for the states' is of some significance. There are three parts that the Resolutions Group has divided the consideration into. The first part is the amendment moved by Sir James Killen. It is a process motion recommending that the government and parliament, in effect, involve state governments and parliaments in consideration of their own constitutions on the question of becoming a republic.

The second part is the distillation of the recommendations of the working group chaired by Professor Winterton. This involves the retention of, in effect, existing state

powers and state roles. It contemplates that the Commonwealth might adopt a republican status and that the states might not at the same time move uniformly to that status, although obviously four would have to support a referendum. The amendment to B, the third component, is the resolution that requires the Commonwealth and every state simultaneously to become a republic or remain under the constitutional monarchy. There is more detail in that. The choice between B, which represents the existing situation, and C, which on some arguments is also supported by some constitutional provisions, is that all states have to agree. So the choice is between a majority of states agreeing and all states agreeing.

**Mr GARETH EVANS**—I second the motion.

**CHAIRMAN**—We have heard the report from the Resolutions Group. It is covered by the statement on page 8 of the blue document—'Implications for the states'. There is a series of proposals. I suggest that we might consider first A1 and A2. Are there any amendments to A1 and A2? Is there any comment on A? There being no comment, I put A to the vote.

Motion carried.

**CHAIRMAN**—There is an amendment to B.

**Professor FLINT**—I move:

**Amendment: that resolution B be replaced by the following:**

That this Convention is of the view that

(i) A decision on change to a republic should be made in such a way that either the Commonwealth and every State simultaneously become republics or all remain monarchies.

(ii) The change to republics should only occur if majorities of Australian voters and of voters in every State support the change.

(iii) The most practical and symbolically satisfying way of resolving the republic issue is by a referendum in which the change will occur only if majorities of Australian voters and of voters in every State support the change and if every State Parliament requests it.

(iv) Only successful cooperative federalism can bring about the resolution of the republic issue and Commonwealth and State governments must work

together from the outset to facilitate an effective resolution.

**Brigadier GARLAND**—I second the motion.

**CHAIRMAN**—Do you wish to speak to it, Professor Flint?

**Professor Flint**—Yes. It is self-evident. There are, of course, two opinions. One opinion is that you need to move simultaneously. That is also desirable. The other opinion is that in the RAC report. We are of the view that, even if you do not accept the view that you should move simultaneously, we should do it prudently. The amendment is the correct way to go.

**CHAIRMAN**—I think we know what the alternatives are. We have had a good deal of debate on it today.

Amendment lost.

**CHAIRMAN**—I put B to the vote.

Motion carried.

**CHAIRMAN**—I think that is it. Does anybody have any further amendments?

**DELEGATES**—No!

**CHAIRMAN**—The voting rules and sample ballot papers for tomorrow's exhaustive ballots have been circulated. I urge delegates to study them for tomorrow.

**Convention adjourned at 10.01 p.m.**