

# CONSTITUTIONAL CONVENTION

[2nd to 13th FEBRUARY 1998]

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TRANSCRIPT OF PROCEEDINGS

Thursday, 12 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  
Mr Green

### **PROXY**

Senator Minchin  
Mr Iemma  
Mr FitzGerald  
Mr Griffin (6 and 11 February)  
Mr Hodgman  
Ms Webb  
Mr Burke  
Ms 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)  
Mr Nockles (6 February, afternoon)  
Mr Melham (9 February)  
Mr Castan (6 February)  
Professor Flint  
Mr Mackerras  
Mr Paul (9 February)  
Mrs Jackson (9 February)

**Proxies continued—**

**PRINCIPAL**

**PROXY**

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 Kramer	Professor Flint (11 February)
Mr Bonner	Mr Longstaff (11 February)
	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)

COMMONWEALTH OF AUSTRALIA

# CONSTITUTIONAL CONVENTION

Hansard

1998

OLD PARLIAMENT HOUSE, CANBERRA

2nd to 13th FEBRUARY 1998

*Thursday, 12 February 1998*

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

**CHAIRMAN**—The administration of proxies over the last few days has allowed a large number of delegates to go and come as they wish. I point out that under the rules of debate, while heads of government and leaders of oppositions demonstrably are given considerable flexibility, other delegates are only to be given a proxy on compassionate grounds.

Accordingly, due to the significance of the votes that are to take place over the next two days, I suggest that all delegates, other than heads of government and leaders of oppositions who wish to have a proxy, need to re-tender that proxy. Strictly, they need to be on the basis of the compassionate grounds that were accepted by the Convention at the beginning of proceedings. If we do that, then nobody will be in a position of being able to question the outcome of votes on the basis that the person who voted is a proxy who may or may not be entitled to attend.

I also want to go through a few other matters. I want to go through the Notice Paper and identify how we intend to proceed today. The debate on the proposed republican models will be the basis of our proceedings this morning. We have four models. I propose to allow the mover of each of the models 10 minutes to present his particular model. All

subsequent speakers, including the seconder, will be allowed five minutes to speak. We will then go into the voting at 12 noon.

The voting procedures will be amplified prior to our voting commencing, but I believe they will allow a fair indication of each person's vote, the way in which they have cast their vote, and for it to be seen in the public in a way which ensures that nobody can have any questions about the outcome. After the luncheon adjournment from 1 until 2, we will proceed to the debate and vote on the final preferred model.

The difference between amendments as of this morning and this afternoon is that, if there are any amendments to any proposed model this morning, they have to be supported by at least 10 of the persons who support that model. This afternoon it is any 10 delegates, but this morning if there is to be any amendment to a model it must be supported by the person who proposes that particular model and those 10 or more delegates who are the supporters of it.

As soon as possible, the secretariat is going to circulate a consolidated package that consists of the following: the Notice Paper, which has already been circulated; the four republican models receiving the endorsement of 10 or more delegates, as circulated yesterday; the procedural resolution about today's and tomorrow's processes; and the paper on voting procedures which was circulated last night.

Shortly before voting starts at 12 noon, I intend that we ring the bells for three minutes

and we will cease proceedings while that happens. I propose that, as there is to be voting by paper, to save having to appoint individual scrutineers, the voting be done on the Bar table. That means that everybody will see the votes. The voting will be conducted by the Convention secretariat and the piles will be there for everybody to see. It seems to me to be the most open way by which the process can be conducted.

Shortly before voting starts, delegates will receive envelopes containing ballot papers for the exhaustive ballot and any yes or no ballots that might be necessary. Delegates are to ensure that they are in their correct seats when the envelopes are distributed and during the voting. As I have mentioned, proxies are going to be strictly in accordance with the rules at the commencement of voting at noon today. I do not believe that we can allow there to be any question that any person is voting unless they are fully entitled to vote within the Convention process.

Let me also repeat, for those who were concerned about the outcomes of some of the processes yesterday, that delegates should remember that there was a very strong endorsement given by the Convention to a resolution moved by the Reverend Tim Costello about ongoing constitutional reform. It would be intended that that particular resolution, plus the voting and the very strong support given by the Convention to it, will be included in the Convention communique.

**Sir DAVID SMITH**—I seek leave to make a personal explanation. Last night, during the debate on the flag and the coat of arms, Gareth Evans and I exchanged epithets about the quality of our respective reports relating to this matter. After the debate had concluded, we discovered that this unpleasantness had been brought about quite inadvertently and through the fault of neither of us. The document which had been passed to the Resolutions Group as a copy of my report on behalf of Working Group K was, in fact, some other document. As a result, the report from the Resolutions Group had been based on a wrong document. In these circumstances, Gareth Evans and I exchanged apologies and shook hands. As *Hansard* quite properly will

have recorded our original altercation on the floor of the chamber, it should also record what took place later behind the Speaker's chair.

**Brigadier GARLAND**—I wish to make a point of clarification. Yesterday, during the debate on the preamble, I posed the question to the Attorney-General that the leading paragraphs in clauses 1 through 8 would remain and somewhere in clause 9, which would become, say, 1(a), we would get a preamble which covered all the new bits and pieces. I asked whether that was right. I was under the impression that the Attorney-General answered that question, but when I read the *Hansard* this morning there is no record of any answer being given by the Attorney-General or by his colleague Gareth Evans. For the record, I believe it is necessary that an answer to that question be recorded. I ask you to have the Attorney-General answer that question. It was posed on page 793 in the *Hansard*.

**CHAIRMAN**—I might ask the *Hansard* people to check whether it has been omitted. I think that would be the best way to proceed. If necessary, it not being in the *Hansard*, then I will call on the Attorney at a later stage to respond before voting this afternoon. At the end of proceedings this morning, if there has not been an answer, I will ensure that the Attorney finds an appropriate opportunity to give you the answer. Are there any other questions or matters delegates wish to raise before we proceed to the debate on the proposed republican models? If there are no other matters, then I call on the mover of the first model, Dr Gallop.

#### MODEL A

**Dr GALLOP**—I move:

#### MODEL A

Direct Election Model

#### ELIGIBILITY:

Every Australian citizen qualified to be a member of the Commonwealth Parliament and who has forsworn any allegiance, obedience or adherence to a foreign power shall be eligible for election and to hold office as the Australian Head of State, provided that he or she is not a member of the Commonwealth Parliament or a State or Territory Parliament at the time of nomination nor is a

member of a political party during the term of office of Head of State.

**NOMINATION:**

Nominations for the office of Australian Head of State may be made by:

- (a) Any Australian citizen qualified to be a member of the Commonwealth Parliament;
- (b) The Senate or House of Representatives;
- (c) Either House of a State or Territory Parliament;
- (d) Any Local Government.

**SHORTLISTING:**

A joint sitting of the Senate and House of Representatives shall by at least a two-thirds (2/3) majority choose no fewer than three (3) candidates from eligible nominees for an election of the Head of State by the people of Australia.

**ELECTION:**

The election of the Head of State shall be by the people of Australia voting directly by secret ballot with preferential voting by means of a single transferable vote. Parliament shall make laws to regulate campaign expenditure by and for candidates contesting an election for Head of State and to provide advertising and campaign support through a single body authorised and funded by the Parliament.

**TENURE:**

The Head of State shall hold office for two (2) terms of the House of Representatives and shall be ineligible for re-election at the next Head of State election.

**DISMISSAL:**

The Head of State may be dismissed 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.

**CASUAL VACANCY:**

A casual vacancy in the office of Head of State shall be filled by the appointment of a caretaker by an absolute majority of the House of Representatives who shall hold office until the election of a new Head of State at the next House of Representatives election.

**NON-RESERVE POWERS:**

The existing practice that non-reserve powers should be exercised only in accordance with the advice of the Government shall be stated in the Constitution.

**RESERVE POWERS:**

Existing reserve powers shall be partially-codified as generally provided in the Republic Advisory Committee's 1993 report (see attached) where the

Head of State retains appropriate discretion. However, the Head of State shall not dissolve the House of Representatives by reason of the rejection or failure to pass a money bill unless and until the procedures under section 5A of such report have been followed or unless an absolute majority of the House of Representatives has requested such dissolution.

**REPUBLIC ADVISORY COMMITTEE 1993:**

**1A Executive Power of the Commonwealth**

- (1) The executive power of the Commonwealth is vested in the Head of State and is exercisable either directly or through Ministers of State (including the Prime Minister) or persons acting with their authority.
- (2) The executive power of the Commonwealth extends to the execution and maintenance of the Constitution, and the laws of the Commonwealth.
- (3) The Head of State shall exercise his or her powers and functions in accordance with the advice tendered to him or her by the Federal Executive Council, the Prime Minister or other such Ministers of State as are authorised to do so by the Prime Minister.
- (4) Subsection (3) does not apply in relation to the exercise of the powers or functions of the Head of State under sections 2A, 3A(4), 4A, 5A and 6A.

**2A Appointment of the Prime Minister**

- (1) The Head of State shall appoint a person, to be known as the Prime Minister, to be the Head of the Government of the Commonwealth.
- (2) Subject to subsection 3A(4), whenever it is necessary for the Head of State to appoint a Prime Minister, the Head of State shall appoint that person who commands the support of the House of Representatives expressed through a resolution of the House, and in the absence of such a resolution, the person who, in his or her judgment, is the most likely to command the support of that House.
- (3) The Prime Minister shall not hold office for a longer period than 90 days unless he or she is or becomes a member of the House of Representatives.
- (4) The Prime Minister shall be a member of the Federal Executive Council and shall be one of the Ministers of State for the Commonwealth.
- (5) The Prime Minister shall hold office, subject to this Constitution, until he or she dies or

resigns, or the Head of State terminates his or her appointment.

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

### 3A Other Ministers

- (1) Ministers of State shall be appointed by the Head of State acting in accordance with the advice of the Prime Minister.
- (2) One of the Ministers of State may be designated Deputy Prime Minister.
- (3) Subject to this section, the Head of State shall only remove a Minister from office in accordance with the advice of the Prime Minister.
- (4) Upon the death of the Prime Minister, the Head of State shall appoint the Deputy Prime Minister or, if there is no Deputy Prime Minister, the Minister most senior in rank, to be the Prime Minister.
- (5) In this section, "Minister" does not include the Prime Minister.

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

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

Minister or the Government other than by an absolute majority of its members and does not name another person in whom it does have confidence, and the Prime Minister does not, within seven days of the passing of that resolution, either resign from office, secure a reversal of that resolution or advise the Head of State to dissolve the Parliament, the Head of State shall remove him or her from the office of Prime Minister.

### 5A Dismissal of the Prime Minister—constitutional contravention

- (1) If the Head of State believes that the Government of the Commonwealth is contravening a fundamental provision of this Constitution or is not complying with an order of a court, the Head of State may request the Prime Minister to demonstrate that no contravention is occurring or that the Government is complying with the order.
- (2) If, after giving the Prime Minister that opportunity, the Head of State still believes that such a contravention or non-compliance is occurring, the Head of State may apply to the High Court for relief.
- (3) If, on application by the Head of State, the High Court is satisfied that the Government of the Commonwealth is contravening a provision of this Constitution or not complying with the order of a court, the High Court may grant such relief as it sees fit including a declaration to that effect. The High Court shall not decline to hear such application on the ground that it raises non-justiciable issues.
- (4) If on an application by the Head of State, the High Court declares that the Government of the Commonwealth is contravening this Constitution or not complying with the order of a court and the Prime Minister fails to take all reasonable steps to end the contravention or to ensure compliance with the order, the Head of State may dissolve the House of Representatives.
- (5) If the Head of State dissolves the House of Representatives under this section, he or she may also terminate the Prime Minister's commission and appoint as Prime Minister such other person who the Head of State believes will take all reasonable steps to end the contravention and who will maintain the administration of the Commonwealth pending the outcome of the general election following the dissolution referred to in subsection (4) above.

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

#### 6A Refusal of dissolution

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

- (a) on the advice of a Prime Minister in whom, or in whose Government, the House of Representatives has passed a resolution of no-confidence, if the House has, by an absolute majority of its members, also expressed confidence in another named person as Prime Minister;
- (b) on the advice of a Prime Minister in whom, or in whose Government, the House of Representatives has passed a resolution of no-confidence, if the House has, other than by an absolute majority of its members, also expressed confidence in another named person as Prime Minister, unless the House has reversed the resolution;
- (c) while a motion of no confidence in the Prime Minister or the government is pending; or
- (d) before the House of Representatives has met after a general election and considered whether it has confidence in the Prime Minister or the Government, unless the House of Representatives has met and is unable to elect a Speaker.

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

I would like to take this opportunity to say a couple of things about the direct presidential election group model. The first is to indicate that that model emerged from a good deal of discussion amongst people from all parts of the political spectrum with different views upon how you would achieve a republic. In the end, we believe that the focus should be placed on a central element of a republic, and that, of course, is the direct election of the people.

We entered into the spirit of this Convention by taking on board many of the arguments that were raised within this chamber and within the working groups about the problems that might result from having a direct election of a president or head of state in a future republic, and we have tried to

overcome the criticism that there would be the creation of two centres of power.

In our model, as you will see, we make it clear that our system is still a system of responsible government, of parliamentary government, and we do that through a couple of devices: the device of codification, inasmuch as this Convention has required us to take that idea; and the device in terms of the dismissal process.

We have also tried to address the criticism that if you have a direct election, of course money will take over the process. We make it absolutely clear that any direct election process should be regulated and, in those regulations, provision should be made to ensure that money will not play a role in the process, that there will be regulation of the election and that public funds will enable candidates to be on an equal playing field.

We looked at the question of supply between the House of Representatives and the Senate. This Convention, of course, argued very clearly that there was only a limited degree to which that issue could be addressed. We took on board the recommendations of the Republican Advisory Committee, as outlined in their report, which make it absolutely clear that the only occasion on which a government would be put at risk would be where there is a clear contravention of the Constitution and a clear, proven illegality involved.

In relation to the criticism of our model that political judgment has it that it is not achievable because of the range of forces in our community, I will leave that to delegates to judge.

Let me conclude my comments today by going to the heart of the issue—by looking very clearly at the case for direct election. You all know what is in our model and the issues concerned. I have canvassed some of them already. My role today, I think, is to make clear to you why we believe that direct election is so important. We need to remind ourselves that in moving to a republic we are creating a new political institution, that is, an Australian head of state. It will need to be an important institution. It will need to be a respected institution. This does not mean that

it will have to possess great decision making political power.

Surely delegates would acknowledge that there are many institutions in our society of great importance which do not possess direct decision making powers in relation to society as a whole. They have authority, they are respected and they are important. At one time, of course, the British monarchy played such a role in our community, and it would seem that it still plays that role in the United Kingdom today. It is a powerful force for unity in that country, but no longer in our own nation because of the social, economic and political changes that have occurred over the last three decades. The fact that it is no longer the case in Australia today is, of course, the very reason we are meeting in this Convention.

I turn now, with those thoughts in mind, to the aspirations of our people. What the opinion polls tell us is what I would hope we would expect: the people want to be directly involved in the republic beyond the vote to establish that republic. They want a vote for who is to be their head of state. This is an aspiration, it is a desire; indeed, I would say that it is a longing of the people to be involved in the election of the head of state. It is a reflection of the deeply held view in our community that the people are the ultimate power in this land—a land which proclaims democratic traditions and credentials to be at the core of its system. It is also a reflection of the view that they want a choice as to who will be the head of state. They want a direct say in this rather than have some other institution make the final decision.

I now return to where I started: the creation of a new Australian institution. If our republic is to work properly by capturing not just the interests and intellect of people but also their hearts and their souls, it will need some connecting threads. It will need a head of state who symbolises and represents the nation and with whom the people can feel a connection. That is where direct election comes in. Take that out of the equation and we risk creating a purely utilitarian republic, a purely soulless republic. By placing a small portion of the monarchical power in each of

us, we ensure a degree of personal ownership of the new system we are creating.

I can hear already the objections to this point of view from those well versed in the daily skulduggery and backstabbing that occurs in the house on the hill behind us. I take those points into account, but reaffirm that we must establish our new system in a way that connects it to the people, to their sentiments, to their desires, to their beliefs and to their aspirations. We need to do that. Let me conclude by saying: take the people out of the system and you take the system out of the people. That is not a republic.

**CHAIRMAN**—I call on Mr Peter Beattie as the seconder of the motion to speak to it. It is my intention to allow the mover and seconder to speak. I then intend to have each of the models presented before we start to debate them.

**Mr BEATTIE**—I second the motion. I came to this Convention as a strong supporter of the direct election of the president, and I remain a strong supporter of the direct election of the president. This is all about giving the Australian republic heart. It is about empowering Australians in the political process.

I have been associated with a loose group of direct election republicans. It has been an honour and a privilege, because they are committed Australians who came here to represent the will and the wishes of the Australian people. It has been a difficult road, but the wishes and the will of the Australian people are reflected in this model. For those handful of you who have not made up your minds, I urge you in the dying parts of this debate to think about this model, because it reflects the will of the Australian people. That has been demonstrated in poll after poll. I am not going to go through that—but it reflects what Australians want.

To those who have come out and said, 'Well, we don't know that Australians fully understand the pitfalls of a direct election,' I say that I do not accept that argument. I have faith in the Australian people. I have faith in their intelligence; I have faith in their commitment; and I have faith in the fact that they want to have a direct say.



We are living in a new era. It is an era of new politics. The era of the old politics is gone. When you talk about how referendums were lost in the past because they needed the support of the federal government or this government or that political party, let me tell you, delegates: that is the politics of old politics. It has gone. These days people want power for themselves. You see, they are sick of political parties and politicians doing all the deals. They want new politics where they have a say. That is why, in my view, the referendum that has the most likely—

**Senator Boswell interjecting—**

**Mr BEATTIE**—You see, the old process produces politicians like you. That is why people want a change. Mr Chairman, if you will protect me from the interjections of the National Party, I might proceed. What we want is simply to give the Australian people a say. That is what we want, and that is what Australians want. They want new politics. That is why, when it comes to a referendum, they will vote for a model that empowers them—that gives them a say. I think those who do not understand that are misunderstanding the Australian people.

Certainly, any model has its difficulties, but the Australian way has always been to overcome those difficulties. We did it right back in our history—right back from the Anzacs. We had the courage and the guts to take problems head on. I believe we can overcome any difficulties with this model. Codification or partial codification is one of the ways to do it.

Let us look at what the model says: every Australian citizen qualified to be a member of parliament and who owes no allegiance to any other country is eligible to nominate, provided she is not a member of parliament or a member of a political party. So all Australians can nominate. The election will be by Australian people in a secret ballot with preferential voting, so we are empowering the people to determine who the president will be. The tenure will be for two terms of the House of Representatives with the president not being eligible for immediate re-election. The nomination process is clearly set out. The model covers partial codification of powers, and the

president can be dismissed by an absolute majority of the House of Representatives. The bottom line, Mr Chairman, is the direct election of the president and the empowering of the Australian people.

I remind delegates of what I said last week. It is no good winning the argument at this Convention and losing the referendum. What we have to do is go out and win this referendum through a majority of people in a majority of states, and that includes states like mine. As you know, Queensland, Western Australian and South Australian leaders have been very strong on this issue because we have to win the referendum in those states, not just in Sydney and Melbourne. Therefore, it is not good enough just to win the argument at this Convention; it has to be won in the hearts of the Australian people.

I conclude by saying that this proposal for the direct election of the president is about restoring the faith of the Australian people in the political process in this country. It is about giving a heart to democracy in Australia.

**CHAIRMAN**—Professor Winterton has suggested that it might be helpful to delegates, instead of immediately proceeding to the next model, if there is a little time to put questions or probe the details of each model before we go on to the general debate. I therefore propose to allow some opportunity for that, although I do not intend to allow too much time. This is really Mr Chipp's suggestion from the other day. It seems to me to be worth giving an opportunity to talk on this before we go on to the next model.

**Professor WINTERTON**—I have, of course, expressed my opinion on what model I personally prefer, but I think I can be more useful to the Convention if I make suggestions as to how the proponents of each model could improve them. Perhaps I could do that very briefly with this model. As you know, I do not favour popular election, but I think there are some strengths and weaknesses with the model so, rather than move amendments or seek to get nine other people to sign, I think I can be more useful this way.

If I may say so, I think its great strength is in the removal clause, although I suggest to

the proponents that they obviously ought to include some provision for the House of Representatives to be convened if it is not sitting, or not to be dissolved or prorogued if it is sitting. It seems to me that its principal weakness in regard to the method of nomination is that it does not adequately take into account the public's wish to vote on candidates that the public might favour.

Could I suggest to the proponents that there would be a lot of sense in combining this with the second model, the Hayden model. I can see what motivates the proponents of this model. They want parliament to put forward candidates who have broad support. If you are going to get someone like Sir William Deane, Sir Zelman Cowen and so on to stand in this kind of election, if that is ever to be possible, it could only be done on the basis that parliament has bipartisanly nominated them. I fully support that idea, but there is no reason why Mr Hayden's idea could not also be brought in. Other candidates proposed by a number of voters could be brought in as well. So I urge them to consider combining those two things.

As to tenure, for several reasons, I think there is risk in linking it to the term of the House of Representatives. First, there are different issues in a general election and a presidential election. You would not want the two to be mixed up together, which is inevitably going to happen because, as I understand it, everyone would want to keep politics out as far as possible. I know it is not achievable but, as far as possible, you do not want to encourage it in a presidential election. Secondly, there is the point made by an earlier commentator that you would not want a president to take his or her term of office theoretically into account in deciding, for example, whether to grant a double dissolution.

On the powers, my suggestions here are more for clarification. First, there is no express reference here to incorporation of the conventions, and I think this is an oversight. Bill Hayden has this as paragraph 11. The movers of this I presume have no objection to it. The point in brief is that, as to the conventions of the monarchy existing now, it would be desirable to have some provision—as

South Africa did in 1961—for these conventions to continue under the republic. Secondly, it is unclear in this model whether there are any grounds for dismissing the Prime Minister other than 4A and 5A. Thirdly, in regard to paragraph 5A, there is an element of ambiguity—and the same applies to Mr Hayden's model. If it is the intention of the movers that the Prime Minister can be dismissed on the ground of lack of supply solely when supply runs out and section 83 is breached, then could I urge them to consider adding to 5A of the Republic Advisory Committee's attachment 5A(1), in line 2, 'contravening a fundamental express provision' or 'an express fundamental provision.' Thank you.

**CHAIRMAN**—I think that was more of a speech about the proposition than comment or criticism that might allow exposure of the model itself. The purpose really was to allow exposure of the model. I thought Mr Chipp's proposition the other day was really to allow more exposure than anything else. I propose to allow brief dialogue about the model only.

**Dr SHEIL**—Professor Winterton has exposed quite a few things. I wonder why, if the people are going to be brought into all this, the Senate has been left out of the equation. It is more representative than the House of Representatives.

**CHAIRMAN**—I think they can take that on board.

**Dr O'SHANE**—I want to be clear in my mind what exactly it is we are doing right now. Are we actually discussing each model as it is presented?

**CHAIRMAN**—No. Mr Chipp suggested the other day that, when we move a motion, to ensure there is a complete understanding of the issue, there be a little time allowed to expose that particular model. We are therefore not going to the general debate. I think Professor Winterton intended to do so, but the purpose was only to ensure that people understood the model. If there were questions on the model before we go to the next one, I was allowing a limited time for people to put questions on the model.

**Dr O'SHANE**—Your announcement this morning was that each mover and seconder would actually present their model and then we would go into general discussion and debate about it.

**CHAIRMAN**—We are going to do that.

**Dr O'SHANE**—I have to confess I was thoroughly confused by what George Winterton has just done.

**CHAIRMAN**—I think that his speech tended to be a speech on the model rather than originally intended. Mr Chipp's proposal, which seemed to me to get a good deal of support, was only that if people had questions that they wanted to put to expose the resolution, they could do so. It is not intended that we do more than ask and propose questions.

**Mr RANN**—I want to address some of the criticisms that have been explained over the past week of the direct elect model.

**CHAIRMAN**—I think this is a response. It is not a matter of responding to it. You will have plenty of opportunity to debate it. The purpose was only to expose questions you cannot understand about the paper before you. Otherwise, we are going on to the next model.

**Mr JOHNSTON**—I would like to raise a point with Dr Gallop. I do not know how feasible it is to restrict people's ability to spend either their own money or their supporters' money on a campaign. How does he possibly see such a bill being drafted and not being challenged in the High Court as undemocratic?

**CHAIRMAN**—I will ask in due course when he responds. At the end of the debate I am going to allow each of the movers of the proposed models to respond at the end of the debate, so that they have an opportunity to canvass any of the issues before we actually go to the debate. If there are no more questions, we will proceed to Mr Hayden.

#### **MODEL B**

**Mr HAYDEN**—Before I commence, I have been asked by two of the signatories of my model to mention that they were signatories solely to allow me to get the model onto the floor of this Convention. I appreciate that, but it is important to understand that they are not

bound in any way by anything that is in that model or anything I say. I move:

#### **[A] Nomination Procedure**

1. A person who receives the endorsement of one per cent (1%) of voters, by way of petition, enrolled on all Federal Division rolls at the time of nominating should be nominated to stand for direct election.

2. No voter should be able to endorse more than one candidate for election as the Head of State.

#### **[B] Appointment**

3. The Head of State should be elected by a national poll at which all voters enrolled on Federal Division rolls should be eligible to vote.

4. Election should be on an optional preferential voting system.

#### **[C] Dismissal**

5. Dismissal should only be for proven misbehaviour or incapacity.

6. Dismissal for misconduct should be on a resolution moved by the Prime Minister or his or her deputy and supported by an absolute majority of a joint sitting of the Commonwealth Parliament.

#### **[D] Powers**

7. The powers of the Head of State should be the same as those of the Governor-General.

8. The Constitution should expressly provide that non-reserve powers should only be exercised on the government's advice.

9. There should be a partial codification of the reserve powers in line with the Report of the Republic Advisory Committee recommendation (see pp 102-106).

10. The exercise of the reserve powers, whether codified or not, should be non-justiciable.

11. The existing conventions applying to the Governor-General should govern the Head of State. These conventions should be provided for, by way of reference, in the Constitution.

12. Obsolete powers should be removed.

#### **[E] Qualifications**

13. The Head of State should be an Australian citizen of voting age and enrolled on Federal Division rolls.

#### **[F] Term**

14. The Head of State should be appointed for a term of 4 years.

15. No head of State can serve more than 2 consecutive terms in office.

Mr Chairman, this is described as a people's Convention. It is not. It is a gathering of politicians, not just politicians from parlia-

ment, but politicians from outside of parliament, some of whom I have no doubt want to quite reasonably enter parliament at some stage. After nine days of politicking we are all a seasoned bunch. I do agree with the implication in Archbishop Hollingworth's comment about two days ago that this assembly is clearly factionalised. The factions are tightly disciplined and it limits the opportunity for free spirits to independently explore views and to look for compromises in propositions which are being put forward. In those respects, the factionalisation and discipline are as tight as any party conference I have been to.

Saying that gives some explanation of the difficulty several people experienced in obtaining signatures for their models, and allows me to say how much I appreciate the kindness of people who were prepared to sign my model to get it on the floor. We must go away from this Convention with something. If we do not, the public will be very angry, and properly so. But we cannot go away with anything because they will be just as angry, probably even more angry, for the way in which their wishes have been flaunted by delegates to this Convention.

The only thing that is going to appease their anger is direct election; not a fudge on key principles like the Direct Presidential Election group model. A rose is a rose by any other name and so is a toadstool. Earlier this month, the Morgan polls showed that overall 50 per cent of Australians would vote for the McGarvie and the ARM model of a two-thirds election by parliament. But the best majority in the states would be three states. As things stand at the moment, these propositions are going to be doomed at a referendum.

It may be argued as some have argued that there is an education process after this Convention up to the referendum. I fail to be persuaded that the proponents of that view will achieve in the next 15 months what has eluded them for the past five years. The only genuine democratic process open to the people to determine, in all important respects, is the one I put forward. Any voter can nominate. I accept there can be vexatious, eccentric people who can clutter up polls, as

is becoming evident with Senate ballot papers. I put in there a petition of one per cent of voters from the national rolls, as a necessary precondition to nomination. Every voter can vote. Any person can nominate and every voter can vote.

It is just nonsense for the people from the Direct Presidential Election group to say their model allows people to choose whomsoever they want. It does not. It allows people to choose whom they might prefer from a very limited slate of candidates. That is vastly different. That is not democratic. That is quite elitist.

Under my model that is true democracy. It is the authentic practice of the principle—from the people, by the people, for the people. It is the only model that respects the community; the only real direct election proposition before this Convention. I must ask the people who put forward the other models: why are they so mistrustful of the ordinary people? Why do they have such a low regard for the good common sense and sagacity of ordinary people? After all, ordinary people elect us into parliament. Peter Beattie might be critical of some of the people who get into parliament that way, but Ron Boswell and I are rather glad it works that way. Why be so mistrustful of the people and their common sense?

We trust them to elect candidates to this Convention and to parliament. But of course, there is no choice. We do not trust them; we have no choice. But where we do have a choice about going further, about allowing a vote to the people who voted for us if we are elected representatives here—as happened in my case when I was in parliament—no, we do not want that. Somehow we have got to restrict the people. They do not know what is good for them, but we are wiser souls and we will decide that within, at least, some limits. The people will be angry if there is no result, but they will be angry if there is not full participation in any result that goes out.

Under my model people can nominate, people can vote. Reserve powers are partially codified. I notice that the Bolkus model, which was withdrawn yesterday, also provides that, in spite of a flurry last week about that

sort of principle. The conventions will be alluded to by reference per the Republic Advisory report. One of the things that always worried me about election processes such as this one, the earlier ARM one or even the present ARM one, is that an elected president has a great deal of freedom and independence of government, and that is undesirable.

But what I am proposing puts the head of state on a short leash, very much like the Governor-General. He can be dismissed for proven misbehaviour or incapacity by an absolute majority of a joint sitting of the parliament. I do not know why other models have left the Senate out. Whether we like the Senate or not—and I have no problem with it as a house of review—they are part of the parliamentary institution, they are elected representatives and they should participate. This arrangement means that the Prime Minister will have to state a case publicly. It means he will have to have a seconder supporting him and that those opposed to it will have to state their case of opposition. It will all be done publicly and reported. If it is done capriciously by the Prime Minister, he will pay a high price, if not because of repudiation by the joint sitting, at the very least by public will. The public are not fools.

I was in parliament for 27 years and I got close to being defeated a couple of times, which I did not care for, but that was not our fault and the public were wise. When governments go out, they go out for good reason and, when new governments come in, they come in for good reason—because the public have a great deal of commonsense and wisdom.

In this arrangement, any person tending to be a demagogue would be putting his or her head in a hangman's noose and, as a result, the consequences would be sudden and decisive. At least it is as effective as anything else proposed in the other models and more effective than most. Overall, it is better because it is not smugly precious like the others—not pretending that some group of omnipotent, wise custodians of the people's destiny will make choices for them about who they should vote for. It respects the people.

I mentioned the misnamed Direct Presidential Election Group. This consists of a confabulation of politicians choosing a handful of candidates for general election—it is two-thirds of a joint majority. Gosh, what a ballot round that is going to be from time to time! What sort of horse trading is going to go on? What sort of indignities will the names that are before the place be subjected to? On the basis of the submission of names, how will the parliament ever be able to get through the truckloads and truckloads of names which come through?

What this boils down to once again is that we have a quality test. What is the basis of the quality test? Who do politicians think they are that they are able to better assess the quality of someone else outside for a representative office? We are all very ordinary people. The trouble with a lot of us is that, when we get into parliament, we think there is something special and indispensable about us and we are pulled up with a sharp jolt from time to time by the electorate. What is going to happen is that the political parties will end up carving up this process between them.

The McGarvie model is far better than the other three models, but it still has a problem. It is trying to substitute a constitutional council for the present system. That will be seen by the public as a front for the government of the day. It is not a convincing replacement for the sovereign. Frankly, no self-respecting Premier would allow his Governor to go on such a body as a precaution against some sort of contentious action the council had to take, such as a dismissal in sensational circumstances. It is a thin armour plating to deflect flak from the government.

Then we have the ARM model with a new coat of paint—an unsteady variation on an old theme. We are back to a committee of wizards and warlocks drawn from our midst—people very much like ourselves, but we are scarcely representative people, I would suggest to you. Eventually, this wise body will choose a short list of candidates for consideration by the Prime Minister and the Leader of the Opposition. The single nomination will come from the Prime Minister and the Leader

of the Opposition, but who says so? There is no certainty about that. The Leader of the Opposition may well have his own agenda.

**CHAIRMAN**—Your time has expired, Mr Hayden.

**Mr HAYDEN**—Can I say something about some of the other models?

**CHAIRMAN**—No, I am afraid you have run out of time. You will have to do it later.

**Mr CLEARY**—I second the motion. I have great pleasure in following Bill on this particular question of the direct election. I think the people outside—the real public—will be laughing and will mock this Convention simply because it has shown such a distrust of the people. It seems that the educated people here—not all the people, there are many good people who are saying decent things about the people—are imbued with this notion that the only people who have knowledge are those who are formally educated. Jennie George, who works in the trade union movement, would surely laugh at that proposition.

Throughout history, where have people come from? Are the only people who have contributed to our history those who have been educated in our universities? That is the problem; it is the assumption that runs through all of this. Any number of people in this place would praise democracy and praise the people but, when it comes to the crunch about giving the people the vote, what do they say? ‘They can’t be trusted, they don’t have the knowledge and they aren’t formally educated.’

I said yesterday—and I will say this as politely as I can to a number of young people: just remember, there is wisdom in the community. The wisdom does not just centre in a university tutorial. You learn things in the course of life from many people. Someone digging a ditch somewhere can give you a great many understandings about the world. Eddie McGuire from the ARM would have to concede that. He runs a football show that is in praise of ordinary perspectives on the game. It does not have to have the analytical writers in there giving a treatise on the game. People have all sorts of perceptions. It is

probably true that the place is just full of the old bourgeois notions about the ordinary punter.

I think it is intriguing too the way the media has addressed this question. I see them up in the gallery today. In the paper this morning what are we told? The ARM puts a little bit of sugar coating on a nasty toffee, and what do the media tell us? ‘We now have a democratic process; we are going to do a bit of consulting.’ So they wheel out the standard old figures to tell us what a grand, participatory model we now have under the ARM banner. You must be kidding. The only way you can have true consultation is to go to the people.

Bob Carr, the Premier of New South Wales, known around the place for reciting American history—the great American tradition, the tradition founded on the notion that the people are supreme—gets up in this place and says, ‘Don’t you dare trust the people. Trust me, I am wise. I am a politician.’ What are the people outside saying? They are saying, ‘We don’t want to trust you not because you are not a good person.’ It is not that the people who occupy the halls of power are not good people. There are many good people, many thoughtful people. The problem is the machines dominate to such an extent that the intellect is just suppressed. You do not get a divergent thought. We have had more divergent thoughts in this place over the last seven days because the machinery has not dominated.

**Senator BOSWELL**—Why did the people throw you out at the last election?

**Mr CLEARY**—I accept the will of the people, Ron. The people voted against me at the last election, so be it. I just cannot understand why we simply cannot offer the people a choice.

The other major point is that the ARM model at a referendum is highly likely to lose. I just cannot see it winning. I know the ARM people say that the machinery will be out and the parties will support it but I do not think the public will. I think the public will see it for what it is. This Convention has been a fabricated arrangement. It was set up from day one by the Prime Minister to get a par-

ticular outcome. The people know that. They are saying it en masse in their letters and their phone calls. If you sit here thinking that they do not know anything, you are committing a deep sin, Archbishop. Just to finish, someone wrote to Pat O'Shane:

I am a resident of the ACT who is increasingly disgusted with the manoeuvrings of the Convention. The only terms under which I would vote in favour of an Australian republic in a referendum are that the head of state is directly elected by universal adult suffrage and that the powers of the head of state are clearly delimited in an amended Constitution. It seems that neither of these conditions are likely to be met. If they are not, I will vote against a republic. I will not vote for a false god republic.

**Brigadier GARLAND**—If we have words on paper, we need to know exactly how they are going to be implemented. The question I have relates to the nomination procedure. We have suggested here that we have one per cent of the voters to endorse any one nominee. That is going to require between 150,000 and 180,000 people. That is not easy for most people to do. You would have to have some sort of party machine behind you to be able to get that number. The second thing is that no voter should be able to endorse more than one candidate for election. I am not quite sure how that is going to be implemented. Archbishop Hollingworth found that the first person in—

**Dr O'SHANE**—On a point of order: with all respect, Mr Chair, the delegate is entering into debate.

**CHAIRMAN**—He has asked a question at the moment. I thought I would wait until he finished his question, then I will ask Mr Hayden to respond. Have you finished your question, Brigadier Garland?

**Brigadier GARLAND**—What I would like to know is how you are going to implement this proposal.

**CHAIRMAN**—The question is there. I ask Mr Hayden to answer.

**Mr HAYDEN**—Pat O'Shane, it is not that he is speaking a lot; he is a slow thinker so it takes a long time for him to express a thought. Of course people should be required to get a substantial number of nominees because this is an election for a national

position as president of this country. One would hope, and I thought the implication would have been rather clear, that a person nominating would have some national status, whatever it might be. On checking the nominations, I should not have thought this to be a terribly difficult task with a properly constructed form with electoral roll numbers against names and so on—I think it is still done that way. It should be capable of being processed through a computer arrangement rather simply and quickly.

**CHAIRMAN**—Any more questions?

**Professor PATRICK O'BRIEN**—Mr Hayden, I support 100 per cent of the things you said but there is a question and one that confuses many people: you sort of indicated that you are a constitutional monarchist yet you have put up a model supporting what I 100 per cent support. Will you vote for your model?

**CHAIRMAN**—I think that is not necessarily a question.

**Mr HAYDEN**—Wait a minute, let me make a point. I do not belong to the constitutional monarchist group. I have never been to one of their meetings. I have never joined them. I have consistently said I stand for the status quo because I am worried about the implications of processes of change. Those worries are still there but I have no problem at all in voting for this. The dismissal procedure satisfies a worry I did have about a demagogue. But, if it is defeated, I am not going to vote for the other half-bred sorts of things that have been put forward because they are gratuitously offensive to the Australian public and what it rightly expects to happen.

**CHAIRMAN**—Professor Winterton, I suggest you ask a question. We are not really at the stage of debating. The last one, I am afraid, was a debate and I do not intend to allow you to make that sort of contribution on this model.

**Professor WINTERTON**—A question on dismissal of a president: Mr Hayden, how do you plan to overcome the problem of a Prime Minister who has been dismissed? I just wonder whether you might not simply provide

that the parliament can dismiss, not require it on the motion of the Prime Minister, in case the Prime Minister is gone. Also, what do you think about the issue of convening parliament if it is not sitting and preventing its dissolution or prorogation?

**Mr HAYDEN**—I agree that is a deficiency. All the models, as I look at them, have deficiencies, as you have already pointed out in respect of the one presented before mine. I presume from what the chairman said earlier that whatever is chosen will go back for some sort of scrubbing up and refinement, and things like that can be taken into consideration. But it is a very important point.

**Mr MOLLER**—I ask one question: approximately what is the voting population of Australia? Is it between eight million and 10 million? I am trying to determine what figure would encompass one per cent of voters.

**Mr HAYDEN**—Mr Jones tells me 120,000. I figured 100,000 as a rough calculation.

**Mr MOLLER**—Speaking as someone from Tasmania, 120,000 would be over 25 per cent of the Tasmanian population, let alone the voting population. It is half the electorate so we would probably never see a Tasmanian president under this model.

**CHAIRMAN**—I hope the person might be known outside Tasmania.

**Mr HAYDEN**—Some of these special provisions and concessions are made for Tasmania. Someone might like to move an amendment: 'except in the case of Tasmania, where only 0.005 per cent of the enrolled voters are required'.

**CHAIRMAN**—I call on Mr McGarvie to move his model. I remind each of the speakers that motions have to be moved as well as seconded at the appropriate time so that the model gets on deck.

#### MODEL C

**Mr McGARVIE**—I move:

#### MODEL C

President chosen by the Prime Minister and appointed or dismissed by a Constitutional Council bound to act as the Prime Minister advises

#### (A) Nomination

Any Australian citizen may at any time nominate any other Australian citizen to be listed for consideration by the Prime Minister when choosing a President.

#### (B) Appointment

The citizen chosen by the Prime Minister is to be appointed President by a Constitutional Council in accordance with the Prime Minister's advice (ie binding request) to do so. The Council can only appoint or dismiss a President on the Prime Minister's advice and on receiving that advice is bound by a convention backed by the penalty of public dismissal for breach, to do so.

The three members of the Constitutional Council, who can act by majority, are determined automatically by constitutional formula with places going first to former Governors-General or Presidents, with priority to the most recently retired, and unfilled places going, on the same basis in turn to former State Governors, Lieutenant-Governors (or equivalent), judges of the High Court or judges of the Federal Court. The membership, if it ever reaches the Lieutenant-Governors, would be most unlikely to extend beyond them, but the whole line of categories is necessary to ensure that there will always be people from permanent constitutional positions available to constitute the Council. A temporary provision is to operate for thirty years so that if there is no woman in the first two places filled, the third place will go to the woman with the highest priority among the eligible persons.

#### (C) Dismissal

The President will be dismissed within two weeks of the Prime Minister advising the Constitutional Council to do so.

#### (D) Powers

The President will have the same range of powers as the Governor-General, but, except for the reserve powers, they can only be exercised on the advice of the Federal Executive Council or a Minister. Otherwise there will be no codification of the constitutional conventions. The conventions which are now binding in practice because backed by an effective practical penalty for breach, remain equally binding because the system and its operation and practical penalties remain the same.

#### (E) Qualifications

The President must be an Australian citizen but otherwise no qualifications are specified.

#### (F) Term

As with the Governor-General now, the Constitutional Council will appoint the President at pleasure, without any defined term and legally liable to be dismissed at any time. The President, like a Governor-General, will have the political



security of tenure which comes from public knowledge that the President has arranged informally with the Prime Minister to serve for a period, usually five years, and the adverse political reaction against the Prime Minister which would follow the dismissal during that period of a President the community regards as complying with the conventions and meeting expected standards. A President who did not comply with the constitutional conventions and those standards would lose public support and the political security of tenure.

In moving the adoption of model C, I make a comparison between that model and the model that I expect will be its main rival. What was called the Turnbull model but is now better described as the Turnbull camel model—

**Mr TURNBULL**—Never!

**Mr McGARVIE**—seeks to reinvent the basic unit of our system of democracy. Our ancestors a century ago were wise enough to retain the basic units developed in the states since the 1850s with their balance between governor, parliament, government and courts and joined them together in a federation with a similar unit for the Commonwealth. I repeat Bagehot's wise words:

Whatever is unnecessary in Government is pernicious. Human life makes so much complexity necessary that an artificial addition is sure to harm: you cannot tell where the needless bit of machinery will catch and clog the hundred needful wheels; but the chances are conclusive that it will impede them somewhere, so nice are they and so delicate.

The Turnbull camel model reinvents not only one of the needful wheels but a whole host of them. Invented during the long night before last, the model has had no exposure while mine has been open to scrutiny for nine months. Their model has obviously been designed in a rush to get the numbers on the floor of this Convention, not to maintain the strengths and safeguards of our democracy for future generations.

Its fundamental flaws would see it confined to the wastepaper basket in a referendum and give impetus to the weakening of the bonds of our Federation as in Canada. Nominations are to be published. Overseas tabloids will have a field day with the more ridiculous of them. It transfers to the opposition final say on the president instead of the political

responsibility staying with Prime Ministers who have exercised it so well. For the Prime Minister and Leader of the Opposition to reach their deal, it will have to survive the vetoes of the party rooms and will produce relative mediocrity.

Mr Turnbull has said, 'No former active politician could conceivably be our head of state under the methodology we have proposed.' That would forfeit the advantage to the nation of such experienced people as outstanding governors-general Hasluck and McKell. Parliamentary election is to occur without debate. In this media powerful community there is bound to be a public inquiry, and anyway the debate will start in the media, the Internet and elsewhere as soon as a name gets to the party rooms. Baseless allegations of disgraceful conduct will get saturation media coverage as in the case of Judge Clarence Thomas's nomination to the Supreme Court of the United States. There will be many who, like me, would never allow their name to be put forward.

**Senator FAULKNER**—One down, 18 million to go!

**Mr McGARVIE**—Different kinds of people will become president than those who have been Governor-General. The Prime Minister's right of instant dismissal demeans the president to a position less than that of any base grade clerk. The misconception of 1975 that the Governor-General would have been dismissed instantly on a phone call from the Prime Minister to Buckingham Palace becomes the reality of this model with all its sorry consequences. The lessons of history of the unique advantages of decisions by one being implemented by another, with the time for second thoughts and political sense to exert themselves, were obviously overlooked during the long Tuesday night. The Turnbull camel model is a sadly misconceived one.

Delegates, I put to you that the model I support should be put to the people in the first referendum because it alone has, in reality, the capacity to resolve the republic issue. It should not have to wait for the second referendum after the scrutiny of a failed first referendum has revealed the flaws

of the Turnbull camel model. That is the road to the Canadian impasse.

Mr Turnbull himself has said that my model is a 'blindingly obvious minimal development. It is a perfectly sensible model if you start from the premise of having absolutely minimal change'. That premise is the safe one for democracy. Professor Winterton has said my model is not a republic. The Republic Advisory Committee said that 'all that is required to convert Australia into a republic is to remove the monarch'. Agendas other than becoming a republic have intruded. The monarchists brought in their big guns last week to criticise my model with singularly little effect. Their prime complaint is that it is only the monarchy which keeps our constitutional conventions binding. That myth comes from reading English textbooks.

Any observer of Australia knows that, with our harsh constitutional and political culture, conventions are in practice binding here only if a practical penalty for breach leaves no real option but to comply. As the system, its operation and penalties remain the same in my model, the conventions remain binding.

We must not destroy the institution of head of state, which Australia has developed in the office of Governor and Governor-General over 200 years. We should heed the words of my distinguished predecessor as Governor, Dr Davis McCaughey, in his 1987 Boyer Lectures:

'The characteristic danger of great nations, like the Romans or the English', wrote Walter Bagehot, 'which have a long history of continuous creation, is that they may at last fail from not comprehending the great institutions they have created.' That applies to the languages, the literature, the art and the music of people, and of peoples, as it does of the institutions of government, of the law, of commerce and of science.

With our institutions of government we must resist the tendency we have developed towards historic buildings, which that great Governor-General, Sir Paul Hasluck, identified when he said:

We have a lust to destroy in Australia. It is not that Australians are cynical—they are just unaware of what they are doing. They really think they are engaged on work of national progress and are unconscious of being on work of national destruc-

tion. What we need to spread throughout this land is the idea that before you knock something down you take a second look at it. We need to decide whether you knock it down or whether it is valuable enough to keep.

Delegates, I put it to you that you have faith in Australians—when the position is identified and argued before them, as it has only started to be this month—seeing the dangers to democracy in the other models and the safety to democracy of the model whose adoption I now move. We must all remember that the eyes of history and posterity will be upon each one of us for the way we vote today. We must put in our forefront those of future generations, unable to vote or be represented here today, whose democracy is at issue.

**Professor CRAVEN**—I second the proposal. I sense the mood of the Convention is not in favour of a harangue, so I will be brief. I am proud that I am standing here putting before you the model of this Convention which is the only model that is not a model attached to a faction. It has emerged as an idea rather than as a series of numbers. I am proud that I have no idea how many votes it has in this Convention, although I understand that if I get the person who has been doing the counting for Councillor Tully we actually have 170 votes out of 152!

I do not want to come before you and pretend—and I think I may be one of the first people to do this—that our model is perfect. There are no perfect models in this Convention. Those looking for the 100 per cent model are doomed to failure. We have copped our bit of ridicule. We have had the 'three wise men'. Somebody else has now got the wizards and whatever it was.

**Mr WADDY**—The warlocks!

**Professor CRAVEN**—Yes, the 'wizards and warlocks'. We will no doubt get the 'wimps and the wallies'—they are all coming out. We can laugh at it too, but we know that, at the end of the day, it is a misrepresentation. The Constitutional Council is not the head of state. The head of state is not going to be some sort of geriatric goanna limping from crisis to crisis. It is merely a postage box for the appointment of the head of state—and that has been a misrepresentation of that model. It

is a fair thing to say that the McGarvie principle, as I called it the other day, of dismissal of the head of state by the Prime Minister moving through parliament has been pretty well adopted in most of the other models. That is an unconscious tribute.

I put it to you that all the models have problems. We are going to have to work on it. The time for compromise, regrettably, is not yet over. The direct election people have never moved from their original position. They still cannot explain how it is going to work. The bipartisan model still has problems of whether it will actually be bipartisan. No doubt they can be worked on, but the McGarvie model still has one fundamental, lucid advantage. It is a simple, achievable republic. If the people are so in favour of a republic as we are told—and as I am inclined to believe—then they will vote for that republic.

I put it to you that it is a republic, and there is a simple test of this. We are, in a sense, metaphorically cutting off the head of the Queen. Someone else did that before—Oliver Cromwell. Was not Oliver Cromwell's Commonwealth a republic? If so, this is. I think we should remember that.

Nobody here can say that their model is going to win. I think this model should win, but if it does not win, if perchance it does not commend itself to the Convention, then I will look very carefully at the model that does win. I will look very carefully to see if amendments may be moved and if compromises may be reached. If that model is the one that we cannot call the ARM model and we cannot call the Turnbull model, but we may well be able to call the model of the bench of bishops, then so be it—I will look at the model of the bench of bishops.

However, I would say one thing: we must remember the dreadful consequences of stalemate. We must remember the dreadful consequences of not coming up with a model. As I have repeated again and again to this Convention, no doubt to the point of irritation, those consequences are five more years of constitutional destabilisation and then, I believe, constitutional catastrophe. That is not

something that I am likely going to be driven to agree to.

Finally, I pay a personal tribute to Mr McGarvie as a person who has made a great contribution to this Convention, who has informed its deliberations, and who has done a very great thing for this Commonwealth of ours. I second the motion.

**Mr WADDY**—I rise on a point of procedure. I would have hoped that in the goodwill of this Convention and the traditions which we have established in the last nine days it would be possible for a professor or anybody else to address his arguments to the intellect of ourselves and the Australian people, without making extravagant remarks about the Queen. I will not dignify it by repeating it. It is irrelevant to everything else that has been said and I ask that it not happen again.

**Mr BEATTIE**—I might add, Mr Chairman, that I think we could do with a little less individual attack as well. Let me raise the issue that I am seeking clarification on. Mr McGarvie, when you referred to the model, you referred to it being the Turnbull-Campbell model. It is on the Notice Paper as being the 'bipartisan appointment of the president' model. I am just curious as to who Mr Campbell is.

**Mr McGARVIE**—Not 'Campbell', 'camel'.

**Mr BEATTIE**—I see, it is camel.

**Mr McGARVIE**—Campbell is innocent.

**Mr BEATTIE**—I see. I am obviously reading too much of that London press you talk about.

**Mr WRAN**—Mr McGarvie, at the working party consideration of your model, you conveyed to us the upper and lower age limit for the members of the Constitutional Council. Could you remind me of what those limits were?

**Mr McGARVIE**—Certainly. I will give you the reason for them.

**Mr WRAN**—First of all, give me the limits.

**Mr McGARVIE**—The lower limit is 65; the other limit is 79. I know this draws derision from some of those in the younger

generation who have nothing but derision for those of retirement age, but the reason is that they must be people who have retired from a permanent constitutional position so we will not run out of them. The lower age of 65 is to cover those who have not really served as judges, who have been judges for a year or so and then have retired. They would be cut out by the early retirement age. The other limit is for obvious reasons.

**Mr WRAN**—My second question is, in relation to dismissal, your paper reads:

The President will be dismissed within 2 weeks of the Prime Minister advising the Constitutional Council to do so.

What if the Constitutional Council refuses to do so?

**Mr McGARVIE**—Mr Wran, I expected some dorothea dixers, but not from you. There will be, as you will recall from reading my papers, an express provision in the Constitution, not legally enforceable but a clear statement, that the Constitutional Council is obliged to act on the advice of the Prime Minister. There will be a provision that, if the Prime Minister chooses to advise—we must remember that the word ‘advice’ is used in a very special way in the constitutional context—if that binding request is made in writing to appoint or dismiss, and the members of the council will be obliged to do so within two weeks or will be publicly dismissed for a clear breach of the Constitution. I am sure Mr Wran, who is a partly retired man at least, will agree with me that, when one reaches the age of retirement, to be publicly dismissed for breach of a constitutional duty is something that such people would avoid at all costs.

**Professor WINTERTON**—I have three questions, Mr McGarvie, if I may. The first one is you do not expressly provide for continuation of the conventions, but I presume that is a part of your model.

**Mr McGARVIE**—Professor Winterton, I am very glad to answer the question. I am sure that as my friend you will not mind if I describe you as the most monarchist republican I have ever met, because your notion of the conventions has also come from English textbooks, not from observation of what

actually happens in Australia. Conventions apply in practice because they are backed by a practical penalty so that the person has no real option but to comply. Because the system will remain exactly the same under the model that I support, those conventions which are binding now will remain so.

**Professor WINTERTON**—Perhaps I can ask since they are conventions—

**Mr McGARVIE**—Is this another question or a second part of that first question?

**Professor WINTERTON**—Perhaps I could just ask my three questions if you do not mind.

**DEPUTY CHAIRMAN**—You have had one, so you can ask two more.

**Professor WINTERTON**—I can add another one. There is no rule that you are limited to three. I said three to start with but—

**DEPUTY CHAIRMAN**—No, but we need to move on.

**Professor WINTERTON**—I will be quick. One is really a supplementary question. Firstly, where is the problem in stating expressly that they should continue since the present conventions are conventions of the monarchy? Let me just finish the other two. Secondly, why no term of office? I think it would look very strange to people if the president does not have a term of office. I cannot see that it is incompatible with your model. Why not? Thirdly, how do you respond to the fatal structural flaw of your model that a president about to be dismissed can always dismiss the Prime Minister and end the whole process? How do you overcome that totally fatal flaw?

**Mr McGARVIE**—There is no need to make a statement that the conventions apply. That would bring the courts into the political process, and the worst thing you can do is to bring the courts into the political process. It would stultify the political process and it would do great damage to the courts. What you say about being able to dismiss each other was the misconception to which I referred in my main address. In practice, the assumption that there be immediate dismissal upon a prime ministerial phone call to

Buckingham Palace is just plain wrong. The Queen has a right to counsel. The Queen has a right to seek information and to inquire. There would be a time delay. There would be time for the political process to operate, for the colleagues of the Prime Minister to bring pressure on the Prime Minister. So the position will remain exactly as it is, and that is entirely satisfactory.

**Professor PATRICK O'BRIEN**—A very simple and direct question, Mr McGarvie. With great respect to you and your position, do you think that the Australian people will ever be fit and proper to elect directly their own head of state? If so, when do you think that the Australian people will become fit and proper to do so? If you do not believe that the Australian people will ever be fit and proper to directly elect their head of state, why not?

**Mr McGARVIE**—I said the other day that the Australian people are a wise people. Being a wise people, they will be far too wise, when the implications of the direct election models are put before them, to throw out the democracy that we have inherited. That is the short and complete answer.

**Mr VIZARD**—Mr McGarvie, much of what you said was by way of contradistinction to what you termed the Turnbull camel model, which I think is an unfair naming. But, that being the case, I have a question on the McGarvie peacock model. The problem with peacocks is that they do not look at other things; they spend much of their time looking in the reflection of themselves.

**DEPUTY CHAIRMAN**—Less preamble to the question, please. We dealt with the preamble last night.

**Mr VIZARD**—The question is how, having regard to that, the lack of nexus with the Australian people and the fact that your model is built on the status quo, do you expect people of indigenous background, people of different gender, people from smaller states, to penetrate to the position of head of state?

**Mr McGARVIE**—I have had the advantage of talking to numerous citizens in three states and one territory about this. They understand the implications immediately.

Unfortunately, the debate has been conducted in a way that did not introduce them to any. They have learnt more in the last month, and especially during this Convention, with the aid of the media, which deserves credit for it, than they did in the five years of the debate. They are very quick learners. They may not have written theses on political science, but history has shown they understand practical reality and they know Australians.

**Dr SHEIL**—Mr McGarvie, in your presentation you said you had taken high legal advice and been advised that all that was necessary to convert Australia to a republic was to remove the monarch. I put it to you that, if Mr Turnbull got on his camel, went to England and wiped out the entire royal family, it would have very little effect in Australia because the Crown is the operational instrument here, not the monarch.

**Mr McGARVIE**—Dr Sheil, you misheard what I said. What I said was: that is what the Republic Advisory Committee said was involved in becoming a republic. I agree with you, and I dealt with that in my response, you will remember, to Mr Tony Abbott. It does involve eliminating both the monarchy and the Crown and my model does that completely.

**Professor TANNOCK**—Mr McGarvie, I have two questions. The first one relates to the necessity for the Constitutional Council to accept the Prime Minister's advice—whatever that advice may be. What happens if the Prime Minister proposes, in this secret conclave, a Governor-General who is blatantly political in a partisan sense? Are they bound to accept it?

**Mr McGARVIE**—That is a very good question. It brings home something that is often overlooked in looking at the system that is usually referred to as the 'articulated system', in which one with political power makes the decision, and others without political power implement it. In fact—and I speak with some experience, having been Governor; indeed, the experience of Amnesty International is an excellent example—when they are being looked at people tend to act more responsibly than if they are not. The council, like the Queen, would have the right to

counsel the Prime Minister. If it was someone unsuitable, they could counsel.

A Prime Minister would be very reluctant to face the risk of being counselled by three people who have community respect that a particular person was inappropriate. Ultimately, if the Prime Minister insists, just as is the case with the Queen, the council would be bound to act on the advice, but the Prime Minister would have to accept political responsibility for that. Our history has shown that prime ministers have accepted and have acted with great discretion in exercising that responsibility as the elected head of the elected government.

**Professor TANNOCK**—I have one more question. The age range for members of this Constitutional Council is 65 to 79 and the ex-officio appointees according to their seniority, as I understand?

**Mr McGARVIE**—No, according to their date of retirement, most recent retirement—first priority.

**Professor TANNOCK**—Okay, but they remain as members of the Constitutional Council until they reach 79?

**Mr McGARVIE**—No. As you will remember from when you read that lot of papers I sent to you, what happens is that, except for the period during the time advice has been given and is still being acted on, it has a changing membership. No-one gets control of it because the most recently retired has priority. It is something that, in the ordinary course of events, it will only ever do anything about every five years. There are bound to be different people every five years.

**Professor TANNOCK**—What I am leading to is: what if they are physically unfit for office? Who determines that?

**Mr McGARVIE**—Again, you will remember from reading my papers that the High Court will have jurisdiction to declare beforehand that someone who would otherwise be eligible is unfit, in the ordinary way in which that can be done.

**DEPUTY CHAIRMAN**—At the end of the questioning, I propose that we bring on the fourth model.

**Ms THOMPSON**—Mr McGarvie, I have two short questions. Firstly, under ‘qualifications’ you state that the president must be an Australian citizen, but otherwise no qualifications are specified. I assume you actually mean that the president must be an Australian citizen within the terms of section 44 of the Constitution or be entitled to vote or be aged 18 or something of that nature?

**Mr McGARVIE**—Anything unnecessary in government is pernicious, as I have mentioned. There is absolutely no need to do that. I want to get people here away from thinking like lawyers to thinking about the way a constitution operates. There is not a ghost of a chance of a Prime Minister recommending for appointment someone who infringes section 44. It is quite unnecessary.

**Ms THOMPSON**—The second question that I have is in relation to the temporary provision to allow a woman to be on your constitutional committee. Can you explain why you regard it as appropriate to have a temporary position for 30 years?

**Mr McGARVIE**—Yes. I was the original Chairman of the National Discrimination Commission on Employment and Occupation. In 1973, when we started doing our work, there was enormous discrimination in this country against women. There is still a good deal of discrimination, but the change has been dramatic. The community has seen that there is no justification for it. While I was governor, I went to many secondary schools and the schools that were most keen to talk about these issues and who often had the best understanding of them were the girls schools. The discussion was very often led by women. I am confident that, within 30 years, women will have caught up.

**Ms THOMPSON**—Mr McGarvie, some of us would argue that we would be confident that men might have caught up.

**Mr McGARVIE**—It is not part of my approach to treat women as second-class citizens. That is why it is temporary.

**Mr BRADLEY**—Mr McGarvie, as you are aware, many of the delegates here lack a willingness or a capacity to understand the distinction between a Governor-General as a

constitutional head of state and the role of the Queen in the appointment of a Governor-General. How will you enable them to understand the distinction between your president and the Constitutional Council that appoints the president?

**Mr McGARVIE**—Mr Bradley, you are speaking about the moments before I started speaking. It has changed; they understand now.

**Mr BRADLEY**—That is great. I hope they understand the current system better now, too.

**Ms RODGERS**—Mr McGarvie, you said we should not bring the courts into the political process, but does not your proposed automatic formula quite possibly provide a Constitutional Council comprising three judges? In WA, we have had a retired judge as Governor and our Lieutenant Governor is the Chief Justice. Could this not happen under your formula?

**Mr McGARVIE**—They will only be retired governors and judges because it is essential not to have a conflict of interest between an existing position. You must not overlook the fact that, although some judges become governors, there will be other components. My predecessor was the head of a university college and a minister of religion. Sir Paul Hasluck, the greatest Governor-General we have had, was a journalist, a historian, a member of parliament, a minister and a Governor-General. Practically never will it go beyond retired governors-general, governors and lieutenant governors, but you must have that full line because the system cannot operate without someone to fulfil the head of state role.

**The Most Reverend PETER HOLLINGWORTH**—Mr McGarvie, I have listened very closely to your argument from the beginning to the end. This Convention is greatly indebted to you for everything you have done. There has been consistent misinterpretation of what you have said and I think it comes down to the critical thing that I have not heard an answer to. I suppose it is this business of ageism. Would you consider an alternative option? For example, do they have to be retired governors? Would it not strengthen the federal system, for example, if

serving governors were on the Constitutional Council?

**Mr McGARVIE**—Thank you for that question, Archbishop. The fatal error that was made in India in the 1940s when they set up their state system without having the state governors properly, practically bound by binding conventions was that everyone assumed that those in future would be liberal, relaxed gentlemen like themselves—as the textbook writers say—and that they would comply with conventions. It is enormously important to look at the practicality of conventions being applied.

In India they made the mistake that the one who has the right to dismiss is not the state premier, not the chief minister; it is the president. That has led to fatal error—I do not need to remind delegates of what has happened at the state level in India. For governors who are serving, they have their responsibility and the penalty that is imposed on them is dismissal, but at the instance of the Premier. If you had state governors exercising a function without being bound by a practical penalty, the system would be inclined to run amiss in a country where political passions run as deep as they do in Australia. For example, in relation to a president, it would be the Prime Minister who, under my model, would have the effective decision on dismissal, but the Prime Minister could not make an effective decision about the dismissal of a state governor. As we are catering for a century or centuries ahead when conditions might change again, that would be, I regret to say, an unfortunate deficiency which would come to be regretted as much as the deficiencies in India.

**DEPUTY CHAIRMAN**—Thank you very much, Mr McGarvie. Before I call Mr Malcolm Turnbull, Brigadier Garland earlier this morning questioned whether a response had been received to a point of clarification that he sought from the Attorney-General. The relevant paragraph appears at the top of the second column of the *Hansard* report, at page 793.

I am advised by the Chief Hansard Reporter that the *Hansard* log records the following response from Mr Gareth Evans to the ques-

tion: Yes. I have noted the *Hansard* log and confirm that advice. That response will be included in the final version of the official transcript. I now call Mr Malcolm Turnbull to move model D.

#### MODEL D

Mr TURNBULL—I move:

#### MODEL D

#### Bi-Partisan Appointment of the President Model

##### A. Nomination Procedure

The objective of the nomination process is to ensure that the Australian people are consulted as thoroughly as possible. This process of consultation shall involve the whole community including:

- . State and Territory parliaments
- . local government
- . community organisations, and
- . individual members of the public

all of whom should be invited to provide nominations

All nominations should be published.

Parliament shall establish a Community Constitutional Committee which shall consider and propose a short-list of candidates for consideration by the Prime Minister and the Leader of the Opposition. The Committee shall:

- . in its composition, reflect the diversity of the Australian people having regard to gender, race, age and geographical considerations;
- . include representatives of peak community organisations, Commonwealth, State and Territory Parliaments.

This process for community consultation and evaluation of nominations is likely to evolve with experience and is best dealt with by ordinary legislation or parliamentary resolution.

##### B. Appointment or Election Procedure

Having taken into account the report of the Community Constitutional Committee, the Prime Minister shall present a single nomination for the office of President, seconded by the Leader of the Opposition, for approval by a Joint Sitting of both Houses of the Federal Parliament. A two thirds majority will be required to approve the nomination which shall be done without debate.

##### C. Dismissal Procedure

The President may be removed at any time by a notice in writing signed by the Prime Minister. The President is removed immediately the Prime Minister's written notice is issued. The Prime Minister's action must be presented to a meeting of

the House of Representatives for the purpose of its ratification within 30 days of the date of removal of the President. In the event the House of Representatives does not ratify the Prime Minister's action, the President would not be restored to office, but would be eligible for re-appointment. The vote of the House would constitute a vote of no confidence in the Prime Minister.

##### D. Definition of Powers

The powers of the President shall be the same as those currently exercised by the Governor General. The non-reserve powers of the President should be codified, and the reserve powers incorporated by reference.

##### E. Qualifications for Office

Australian citizen, qualified to be a member of the House of Representatives (see s. 44 Constitution).

##### F. Term of Office

Five years.

The bipartisan appointment model, unlike the one moved previously, has not flowed from a single mind uncorrupted by the opinions of other people, and if that is a fault, then so be it. The bipartisan appointment model is genuinely the result of many ideas, many people and an effort to accommodate many different aspirations. Mr McGarvie in, I assume, a generous remark, described it as the 'Turnbull camel model'. It is certainly not the Turnbull model, but I take 'camel' as a compliment. Camels have great endurance, are fleet of foot and survive in the desert long after other animals have died of thirst.

I will speak briefly about some of the other models. I have a quotation, which is very pertinent, from Mr Hayden's excellent autobiography. He writes:

More to the point, a presidential system based on a national election to the office of head of state will result in more not less friction than our system of political government. It is reasonable to anticipate that this would happen more frequently in a presidential system, especially where a strong national campaign was successfully mobilised behind a charismatic presidential candidate by one party while strong local campaigns gave control of the houses of parliament to an opposing party.

These words have always been of great guidance to me—as, indeed, have of all Mr Hayden's thoughts, and I felt it important to share them with you today.

I noticed that Mr McGarvie cited as a merit of his model that it involved the decisions of



one being implemented by another—that is to say, the decision of the Prime Minister would be implemented by a constitutional council. He made it very clear in his remarks today that, of course, the decision is the Prime Minister's, but it is this council of genial retired governors—like Mr McGarvie, no doubt—who will implement it. This, Mr Chairman, is a recipe for immense confusion.

Most people will think that the council actually appoints the president. If you think that is drawing a long bow, if you think that ordinary Australians will not be confused, then I would refer you to page 200 of the *Hansard* of these proceedings where Dame Leonie Kramer, Chancellor of the University of Sydney no less, proceeds to criticise the McGarvie model on the basis that the Constitutional Council is not necessarily qualified to appoint the head of state. Dame Leonie was mistaken, but if the chancellor of the University of Sydney is going to be confused and misled by this, how will ordinary Australians who are not so well educated and astute and who have not been following the debate so carefully react?

We republicans believe that power should be exercised and seen to be exercised by those people who have the responsibility. It is an utter nonsense to cloud the issue and confuse people and pretend that a group of wise old men, and perhaps one woman, are making the decision when in fact it is nothing more than a partisan political decision. Those who advocate prime ministerial appointment, with great respect to Mr McGarvie, and he is the only person who has put a name to a model in these proceedings—the only person—would be better emulating the practice of most countries in the world that have non-executive presidents—that is to say, presidents with similar powers to our Governor-General—and have that person chosen by parliament. Why would it not be a motion of the Prime Minister supported by a majority of the House of Representatives?

The people understand that the parliament manages the country. They understand the Prime Minister is the head of government. Why not have a transparent mechanism? Why not respect parliament? Why not uphold

parliament? Why confuse and muddy the waters with this Constitutional Council? I am fully expecting that, if the bipartisan appointment model survives the exhaustive ballot today, somebody will move that instead of a two-thirds majority it be a simple majority of parliament. We do not think that is a better model than ours obviously, but at least it is transparent. At least people will understand what is going on instead of being bamboozled by this council. Anyway, that is enough of Mr McGarvie's model. I will concentrate on the merits of the bipartisan appointment model.

I would like to take delegates firstly to the nomination procedure. I would remind delegates that this is essentially a draft: all of these models are drafts. If this bipartisan appointment model survives into this afternoon, there will be every avenue open to this convention to move amendments to finetune it, to refine it, into something that the majority of the convention support. I would ask delegates in looking at it not to be overly concerned with a detail here or a detail there. The thing to focus on is the principle.

What is the principle of the nomination procedure? The principle is that the Australian people should be involved, that the Australian people should be consulted. Is it really so outrageous that people, community organisations and state and territory parliaments should be asked what their opinion is on an appropriate president? State governments and territory governments are already consulted about judicial appointments. This is a perfectly appropriate course of action in a democracy.

There has been some concern about our suggestion that nominations should be published. Mr McGarvie suggests that this is an appalling suggestion. During the work of the Republic Advisory Committee, we spoke to Sir Zelman Cowan about this very matter. Sir Zelman said that there would be no more dishonour in being nominated to be head of state and not being chosen than there is dishonour for an actor to be nominated for an Academy Award and not win it. What possible dishonour could there be in that?

If a nomination was published, if I, for example, nominated Mr Wran or Mr

McGarvie, no doubt when they were contacted by the press in the midst of the hundreds of names there would be they would say with great charm, 'I am very flattered that Mr Turnbull has nominated me but I will reserve my views as to whether I would be interested in this appointment until I get a call from the Prime Minister,' which is exactly what judges and barristers do today when their names are floated as being potential judicial appointments. Let's face it: this goes on now.

When Bill Deane's term comes to an end there will be speculation about his successor just as there was speculation about Mr Hayden's successor. All we are doing is formalising a process and allowing ordinary people to get involved. So we do not see any harm in nominations being published. But let me say this: if that is a big issue, it is not a die in the ditch issue for us if delegates are concerned about it. Why? Because all the leading nominations will be published in the press anyway. The only thing that this ensures is that ordinary Australians who are not necessarily of great interest to the media will get their names published.

We have proposed a Community Constitutional Committee. Let me just outline the principle behind that. The principle is that in the sifting and assessment of these nominations which must be done—plainly that has to be done—it should be done by a group of people that are not a bunch of middle-aged men from Sydney and Melbourne. What we are talking about is having a group which has women, indigenous people, geographical diversity so there are people from the smaller states—a recognition of the nature of our society. This does not have to be a body of 100. It could be a body of 10 or 12 or 15. Plainly it cannot be too big. That is the core principle.

If you think about it, what else would parliament do? Do you really imagine that in appointing a group to assess these nominations parliament would sit down and say, 'Let's get seven, white middle-aged Anglo-Celtic men from Sydney and Melbourne. Of course, they would not.'

**Mr RUXTON**—Hey, hey, hey!

**Mr TURNBULL**—Bruce Ruxton would certainly approve of that—in fact, he's nominating. But, again, I would emphasise we should focus on the principles Lois O'Donoghue, Gatjil Djerrkura and I have spoken about this morning. We are open to suggestions how this language could be improved, refined or whatever. We, unlike others in this room, have no pride of authorship in this document. This language is as a result of discussions between Mr Wran and myself and Gatjil and Lois. We are not pretending to be writing the great Australian novel. We want to get some input into this, but I think the principles are valuable.

I will just talk very quickly about dismissal. We acknowledge that prime ministerial dismissal is the best option. We have no argument with, if you like, the principle of Mr McGarvie's proposal. Again, we feel the mechanism to enshrine that principle is better effected by an act of the Prime Minister ratified by a simple majority of parliament. If there was great commitment to Mr McGarvie's Constitutional Committee, if there was any role for it, the role would be in dismissal but certainly not in appointment.

Let me just say in conclusion, very briefly, that the key to this model is bipartisanship. There is more to democracy than winner takes all. There is more to democracy than 50 per cent plus one. We have an opportunity here to improve the quality of our public life. We have the opportunity to say that one public office in this country shall be the result of cooperation between the two leaders in our parliament that will have bipartisan support and through those representatives the support of the vast majority of the Australian people.

**Dr O'DONOGHUE**—I second the proposal. I came to this Convention as an appointed, committed republican but with an open mind about the model. I am not a member of the ARM. But after receiving the 10 models submitted on Tuesday, overnight I considered carefully the merits and the benefits of each model and decided that the ARM model had been significantly improved by adoption of a simple and inexpensive nomination process for candidates for the presidency that also had public participation. I believe this revised

model offers the best prospect for indigenous involvement in the nomination and selection of candidates and the best prospect for an indigenous candidate to succeed.

A number of us are giving our support to the model that we believe will deliver the best results for the widest range of Australians. This is not to say that we are giving up on other aspirations or that other constitutional issues are less important but, if we are to come out of this Convention with something that has meaning and something that the Australian people can begin to consider, we need to give them something of substance.

The Aboriginal delegates who support this model have listened to the debates, attended meetings of delegates and argued in the corners and corridors of this place from early in the morning to late at night—like many of you. I have also spoken to members of the community as they wait in the queues in Kings Hall and as they leave. They have listened and understood, as they have listened to debate in this chamber, and not too many of them support the direct model.

We are acutely aware—and I mean the Aboriginal people who support this—that many things have been promised to our people and few things have been delivered. By supporting this model of a head of state, we are signalling that there needs to be progress sooner rather than later. We need to be part of the process of change, having an influence on it rather than standing back and waiting for the perfect moment to occur. There are very few perfect moments and we cannot afford to wait.

In our proposal, the establishment of a community constitutional council can reflect the diversity of the Australian people with regard to gender, race, age and geographical representation. It is important to have an open and transparent process. Our proposal picks up the most important aspects of the direct election models which call for greater participation by the people. In comparison, however, our proposal is cheaper than a direct election model and other proposed models. We also believe this revised ARM model—and I understand there is to be further revision—is representative of the people and, therefore,

likely to receive favourable consideration at a referendum.

I urge all delegates to deliberate over these concerns and realise that this is the best and most viable option that will meet the widest range of our concerns for the selection of a new head of state. I commend the bipartisan appointment of the president model to you and I second the motion.

**Mrs GALLUS**—Mr Turnbull, I understood you to say, and do correct me if I am wrong, ‘Don’t worry about the details, they can be worked out later; trust me.’ The only line you left out was, ‘Trust me, I am a politician.’ I do not think, at this stage, that that is good enough. We do need a few details in this model.

My first question concerns what you have left open: how many do you envisage will be on this constitutional community council? Is it three, five, 15, 50 or 500? Do you have any idea at this stage what sort of number you are looking at, or is this just to be worked out later as one of those little details?

I have other questions: how does parliament establish a community consultation committee? You have just said, ‘Parliament establishes.’ Is this the Prime Minister, a majority of the House of Representatives, two-thirds of the House of Representatives, two-thirds of a sitting of the joint houses or does each party get to nominate a few? What happens there?

You have said also that the number of nominations will be published in the paper. But I also understood you to say during your speech—and I may have been wrong—that all the leading names would be published. Could you clarify that? Will it be every name or just the leading names? Could you tell me what sort of procedure of selection the community council would undergo to sift through these 20,000 or so nominations that it receives? Will it receive principles from the Prime Minister or from the parliament? Will it be left to itself to say, ‘Look, this guy looks like a good chap and the other 19,999 don’t’? What sort of procedure will be used to select them?

**Mr TURNBULL**—Thank you, Chris Gallus. The document—I don’t know whether

you have had time to read it; I am sure you have been very busy with parliamentary matters—says:

This process for community consultation and evaluation of nominations is likely to evolve with experience and is best dealt with by ordinary legislation or parliamentary resolution.

I trust that answers your question as to how it will be dealt with. We have great confidence in the Australian parliament to be able to take on board the principles here and, by a resolution of the House of Representatives, by a resolution of both houses or by enactment of special legislation, whichever is appropriate, to come up with the appropriate model.

In terms of how many people should be on the committee, I do not have an answer for that. It is clear that a committee of 100 is too big and a committee of three is too small. We have all been involved in lots of committees. It plainly has to be a workable size. You are grinning, Chris Gallus, but you are a member of parliament and you seem to regard it as ludicrous for us to suggest that the Australian parliament—

**Dr O'SHANE**—I have a point of order, Mr Deputy Chairman. The delegate is entering into debate. I understood that this part of the proceedings—

**DEPUTY CHAIRMAN**—I think your point is well taken. The question is just seeking information. I think, too, that questioners will be well advised not to be provocative and not to personalise.

**Mr TURNBULL**—The point is that we have great faith in our parliamentary system of government. We believe that the parliament is well capable of working out a committee that recognises diversity appropriately and is of a size that is workable.

In terms of publishing the nominations, our proposal is that all nominations be published. The point I made about leading names is that if you were not to publish all the nominations, if you said that nominations would not be published, the leading names would get into the media anyway. By saying all nominations should be published, all you are conceding is that people who are not particularly newsworthy should have their nomination recognised.

As far as the procedure for the committee is concerned, I would think that a body of people that would sit on this committee would have a pretty good idea of what Australians need in a head of state and would hardly need direction from the Prime Minister, nor would it be appropriate to get direction from the Prime Minister in recommending a short list to the Prime Minister and Leader of the Opposition.

**DEPUTY CHAIRMAN**—There are a lot of questions and I would ask, if it is possible, that people make their questions short and try to make them non-provocative. You make your answers short as well.

**Brigadier GARLAND**—In relation to the Community Constitutional Committee, I think we need to know a little bit more detail. Can you tell us how long people will be appointed and give us some idea of the numbers? The second question relates to paragraph E, where you talk about reserve powers incorporated by reference. Would you explain what you mean by that and how you are going to do it. The next question relates to paragraph E, where you have said, 'Australian citizen qualified to be a member of the House of Representatives'. Why has the Senate been left off their list; is that just an omission or was there some reason for leaving the Senate out? Do you intend, in this particular model, that there will be any gender balance in relation to the appointment of heads of state; that is, a male, a female, a male and a female? Could you spell that out for us?

**Mr TURNBULL**—I would refer you to my answer to Ms Gallus. As for the number of people on the committee and its term of sitting, plainly it would only sit when there was a need to appoint a president. It would sit, presumably, every five years or thereabouts. As for the number of people, I think that would be best dealt with by parliament. There is a lot of consideration that can go into that. As I said, I think you have to balance the need for diversity versus the need for workability. I think it is a commonsense issue.

As far as the definition of powers is concerned, you asked for an explanation of incorporation by reference. The sort of lan-

guage that we and everyone here who has referred to that concept is talking about is language in the Constitution along these lines:

The president shall exercise his or her powers and perform his or her functions in accordance with the constitutional conventions which are related to the exercise of the powers and performance of the functions of the Governor-General, but nothing in this section shall have the effect of converting constitutional conventions into rules of law or of preventing the further development of those conventions.

I have spoken to Mr Williams, the Attorney-General, about this. We would also refer the government, if this motion were to go through this afternoon, to what I would call the non-contentious parts of the partial codification model on pages 102 to 105. What I mean by the contentious part is the section headed 'Constitutional Contravention', which is an innovation for which I think it is generally felt here that there is not sufficient support. Many also feel there is not sufficient need for it to be incorporated in the Constitution.

**Mr RUXTON**—Gender balance?

**DEPUTY CHAIRMAN**—Gender balance is in the text.

**Mr TURNBULL**—I am sure the committee will take that into account, Brigadier Garland.

**DEPUTY CHAIRMAN**—It is in your text.

**Mr TURNBULL**—Yes, I know it is.

**Mr GUNTER**—I raise a point of order. At what point was it proposed to move on from questions on this particular specific to the general debate?

**DEPUTY CHAIRMAN**—I make the point that we had nine or so questions for the McGarvie model. There are about an equivalent number of questions here. The current list is: Kevin Andrews, Senator Stott Despoja, Mr Bullmore, Mary Kelly, David Muir, Professor Geoffrey Blainey and George Winterton. If you want me to I can draw the line there. I will put in Kerry Jones and I will draw the line there. Then we will go on to the general debate. It is obvious that many of the issues that will be canvassed in the general debate are being dealt with now in a fairly efficient way.

**Mr ANDREWS**—Mr Turnbull, I am surprised that, after five years, we have very little detail and we are being told that we should be trusting of the process. It is a bit like that old line, 'I will still respect you in the morning.' What happens when you do not get a two-thirds vote? Is this process allowed to go on? Can a joint sitting of parliament suspend its deliberations on the matter? Where is the end of this?

**Mr TURNBULL**—That is a very good question, Mr Andrews. Again, I am surprised that a second member of parliament seems so unwilling to recognise that parliament has the capacity to incorporate these principles into legislation.

**Mr ANDREWS**—It is a question, give us some detail.

**Mr TURNBULL**—I am answering the question. I am giving you the detail. As all delegates know, we have already agreed that a casual vacancy in the office of president would be filled as is the current practice by the senior state governor. If the Prime Minister and the Leader of the Opposition were not able to agree on a new president, then all that would happen is the senior state governor would serve as administrator until they did. No doubt public opinion would in due course compel them to grow up and agree. But there is absolutely no vacancy in the office or lacuna or anything like that.

**Mr ANDREWS**—This is my second of three questions. You say, Mr Turnbull, in the proposal that 'a two-thirds majority will be required to approve the nomination which shall be done without debate'. Why should not the parliament be entitled to debate the person who, after all, is to represent the people and this is the way in which the people are having some say in the choice of the president or head of state? Why should that be refused? Secondly, even if that inquiry cannot occur, when the 10 nominations are put forward, what is to stop the parliament or a committee of the parliament, at that stage, carrying out, of its own volition, an inquiry into the suitability of those nominations before it even reaches the Prime Minister's stage of the process? Do you accept that such

an inquiry can occur? If so, how do you then avoid the Clarence Thomas type of situation?

**Mr TURNBULL**—It is perfectly obvious that an inquiry of the kind you refer to could not occur without the support of the government or at least the opposition. What we are proposing is a mechanism whereby a constitutional committee—

**Mr ANDREWS**—Can I just interrupt and say that Mr Turnbull is having a go at me. He should know that parliamentary committees can initiate inquiries of their own volition, particularly in the Senate.

**DEPUTY CHAIRMAN**—This is something you can raise at the debating phase.

**Mr TURNBULL**—I would like to answer the question without being hectored by Mr Andrews. The underlying concept here is that the Prime Minister and the Leader of the Opposition agree on a single nomination. There is no debate simply because by doing that you ensure there will not be the sort of character attacks or criticisms of that single candidate. That is done to protect people's reputations. It is a standard procedure in many other constitutions for parliamentary appointment.

As far as the issue of a committee having an inquiry into the morals of a potential candidate for president, they could do that today, if they chose, for a potential candidate for the office of Governor-General or indeed a candidate for the bench. The fact is that, because the government and the opposition agree, does anyone seriously suggest that any parliamentary committee could conduct an inquiry into anything without the support of either the government or the opposition?

**Professor PATRICK O'BRIEN**—If you have a real parliament, yes, but not the poodles that you want, Mr Turnbull.

**DEPUTY CHAIRMAN**—You will have plenty of time to repeat those lines no doubt at length in the formal debate. Do not do it now, Professor O'Brien.

**Mr ANDREWS**—My final question is: before we get to the panel of 10, Mr Turnbull—

**DEPUTY CHAIRMAN**—Can you not raise these points as matters of debate? They are not seeking information.

**Mr ANDREWS**—I am, Mr Chairman. We have been provided with no detail of this model. If Mr Turnbull seriously expects that we as a Convention are going to vote for a model when he cannot provide us with any detail that speaks for itself. If that is the situation, I will sit down now because there is no detail.

**DEPUTY CHAIRMAN**—You are not now asking a question, you are debating.

**Mr ANDREWS**—I will ask a question, if I can get on with it. My question is this: Mr Turnbull, in this bipartisan system, will there not be politicking and lobbying in relation to the appointment of the Constitutional Council and then the activities of that council or committee in relation to coming up with the 10 names? Will that not occur?

**Mr TURNBULL**—I imagine that there will be discussion by whatever process you have to consider nominations which will come up with a short-list or even perhaps a medium list. But at the end of the day, the Prime Minister and the Leader of the Opposition will agree. I am sure Mr Beazley, as the Leader of the Opposition and a potential future Prime Minister, will be able to enlighten you that leaders, at least in this parliament, are a little bit more responsible than you are suggesting.

**Senator STOTT DESPOJA**—I have two quick questions. I recognise this is a bipartisan model. Are you prepared to make it a cross-party model? In the nomination stage, will you include, with the Leader of the Opposition and the Prime Minister, the leaders of any parties with party status in the federal parliament?

**Mr TURNBULL**—We could certainly take that on board. I would be concerned that that might make it too cumbersome. If you sought to move that as an amendment, you could do so. My own off the cuff response would be that I think, realistically, that could make the process too cumbersome. There is a certain simplicity about what we have proposed, which I think has a deal of merit, although I

recognise the special position of the Australian Democrats in regard to your remarks.

**Senator STOTT DESPOJA**—My second question is in relation to dismissal proceedings. I understand that the Prime Minister has the power to dismiss the head of state in written notice with 30 days ratification by the parliament. I note that, if the parliament does not ratify the Prime Minister's action, the head of state still cannot be restored. I acknowledge reappointed but not restored. Is there an issue of natural justice here?

**Mr TURNBULL**—Not really. I think the point is that, if the president is dismissed, he or she can be reappointed. If the Prime Minister has acted without the support of the House of Representatives, it is undoubtedly the end of his or her political career and then it is really up to the new Prime Minister and the Leader of the Opposition to decide whether they want to reinstate the president. I think there would be something unseemly with someone being removed and then waiting at a Colombey-Les-Deux-Eglises in the Australian bush to return to power 30 days later. Obviously, they are eligible for reappointment.

**Mr BULLMORE**—Mr Turnbull, as you moved your bipartisan model, you quite passionately deliberated that it would be absurd if the people were not consulted. Could you please explain how you intend to consult the majority of the people without a direct election?

**Mr TURNBULL**—You consult people by asking them to express their views—in the normal way that the community is consulted by different groups, governments and so forth. Direct election is not the only way to ascertain community opinion. A lot of people may not have a view or an opinion on who should be the president. Why should they be forced to express a view in this context? It is perfectly possible to achieve widespread community consultation without the formality of an election, as you know.

**Mr MUIR**—Mr Turnbull, in relation to this model, apart from the two-thirds parliamentary majority, which has always been a part of your position, the balance of it appears to have been cobbled together very quickly

and there are some vague concepts where I need some clarification. There are three issues. In the nomination procedure, you speak of the process of consultations. That is the first one. Then you say that parliament shall establish a community constitutional committee, and then in the appointment, you talk about 'having taken into account the report, the Prime Minister shall present one nomination'.

If I could just go back to the first one, the process of consultation, it is not clear what that means in relation to what you have established here. People can attribute to the word 'consultation' all sorts of meanings, and in fact it could well be a meaningless concept. In relation to the parliament establishing a community committee—and I need clarification—does that mean that the parliament shall appoint each of the committee members? Lastly, in relation to the Prime Minister taking into account the report of the committee, does that mean that the Prime Minister not necessarily follows the recommendation of the report?

**Mr TURNBULL**—We approached this from a pretty commonsense point of view, Mr Muir, and we asked ourselves, firstly: if you were to go to the people and consult—go to state parliaments, go to territory parliaments, go to community organisations—and solicit their views, you would obviously get a wide range of opinions. Plainly, there has to be a mechanism for processing them. That could be done by a couple of distinguished members of the civil service in the privacy of an office in a government building here, but I think it is more likely that a committee of some kind would be established to assess them and prepare a short list, prepare some recommendations or whatever.

So we asked ourselves, having established that commonsense would suggest a committee would be established, what should that committee look like? That is why we are expressing the principles that the committee should reflect the diversity of Australia in terms of geography so smaller states and the bush are not left out, in terms of race so indigenous people are present at the table, in terms of gender so it is not all men, and so forth. I

think this is just a matter of commonsense. I am not troubled by the thought that parliament will be able to put this into a workable framework consistent with these principles.

**Mr MUIR**—I still have no clarification. Will the parliament appoint each of the committee members?

**Mr TURNBULL**—What we would suggest is that the committee be appointed by a resolution of the parliament, yes.

**Mr MUIR**—So the answer is yes?

**Mr TURNBULL**—The answer is yes.

**Mr MUIR**—Thank you. The process of consultation is still pretty vague.

**Mr TURNBULL**—Consultation with whom? There is consultation with the Prime Minister and the Leader of the Opposition. Do you mean with the people?

**Mr MUIR**—It is in this. I am asking you what you mean by ‘The process of consultation’. Can you explain what you mean by that?

**Mr TURNBULL**—The process of consultation, at least as I understand it, is soliciting people’s opinions, discussing them with them, giving them feedback, having a discussion in exactly the same way as all of us do in our lives in endeavouring to shape public opinion or influence or whatever. You talk to people and consult. You do not just lecture them; you do as much listening—and that is what would happen.

**Mr MUIR**—I still have a very vague notion of what you mean by that. The last point, which I still do not have an answer to, is whether the Prime Minister can, under your model, ignore the report of the committee?

**Mr TURNBULL**—There is no question. The Prime Minister and the Leader of the Opposition could in theory turn to the committee and say, ‘We utterly reject your suggestions; they are all bad and we are going to appoint someone else.’ But, if you think that is politically realistic, frankly, I think you are dealing with fantasy. The reality is that the committee would produce a short list of people that they would regard as being qualified, and the Prime Minister and the Leader

of the Opposition would agree on at least one, and that person would be nominated.

**Ms MARY KELLY**—My question is about powers. It was part answered by a previous question, but I want to make sure I have it right. It is prompted by the strange brevity under what is the definition of powers compared with the thorough detail that was in earlier models. By codification, do you mean the Republic Advisory Committee general drift minus section 5A?

**Mr TURNBULL**—What I mean is the Republic Advisory Committee partial codification model, pages 102 to 105, minus clause 4, which is the clause relating to the head of state having the ability to seek an advisory opinion from the High Court. That is a contentious one. It is perfectly plain there is not sufficient support for it here, or indeed recognition for there being sufficient need. The balance of the provisions in that partial codification model are absolutely non-contentious, as far as I am aware.

I have spoken to Mr Williams about it. I think we should simply refer to the parliament as a reference point. Again, as we said in that report, drafting is an art not a science. The principle is that the non-contentious rules relating to the exercise of the head of state’s power should be spelt out in the Constitution for the purpose of clarity. Where there is an area of reserve power in that field of constitutional convention, that is incorporated by reference.

**Ms MARY KELLY**—So with that suite of things, that would allow the premature dismissal a la 1975 to still occur?

**Mr TURNBULL**—It would indeed.

**Professor BLAINEY**—Can I ask Mr Turnbull a question about the vital dismissal procedure, which I think is relatively new in the form we now have it. My worry is that if a situation like November 1975 should occur again, under this model—if I understand it correctly—the following would be the course of events. Let us say that parliament is not sitting and the Prime Minister decides that the president should be dismissed. Under this formula, it can be done with great speed. Presumably, there is an acting president—and



I am not fully clear who is the acting president—

**Mr TURNBULL**—I will answer that.

**Professor BLAINEY**—or what prestige he or she would have in such a delicate and vital crisis. What is more, under the proposal, parliament does not have to be recalled for 30 days in order to resolve or sanction the action of the Prime Minister. I therefore wonder whether, with political passions already running high, the country might be in a very dangerous state indeed.

**Mr TURNBULL**—Professor, thank you for allowing me to highlight a very important merit of this proposal. It is widely regarded here that, although dismissal is a very remote possibility—it has never happened—it is something that we have to cater for. It is widely felt that the Prime Minister must have the right to dismiss the president. That is to say that if the president and the Prime Minister cannot get on, the Prime Minister must prevail.

That is certainly the case at the moment. If the Queen is advised by the Prime Minister to dismiss the Governor-General, she is bound to do so. This mechanism recognises that in a transparent fashion, but—and here is a very important point—at the moment the Prime Minister can recommend to the Queen that she sack the Governor-General and appoint one of his cronies, stoolies, buddies or whatever in his place.

Under this model, the president may be dismissed but the Prime Minister cannot appoint a replacement of his own motion—that can only be done with the agreement of the opposition—and, in the interim, the senior state governor, over whom the Prime Minister has absolutely no control and has had no role in the selection of, stands in as administrator.

So you give the Prime Minister the power to remove the president, but you retain the integrity of the office. You can remove the man or the woman, but you retain the independent integrity of the office because a replacement cannot be effected on the sole say of the Prime Minister. With great respect, delegates, I believe that that is a considerable virtue of this proposal.

**Professor BLAINEY**—The other question was: given the high excitement and the near chaos in the 30 days, I wonder if you would consider a reduction of that period?

**Mr TURNBULL**—I would suggest you move that as an amendment, Professor Blaine, and we will certainly take it on board.

**Ms SCHUBERT**—I move a procedural motion that, in light of the time ticking away that we still have left to debate all the models across the board, we now move into debate about the substance of the models, rather than continuing this discussion.

Motion carried.

**CHAIRMAN**—I propose to identify the way in which we are now going to proceed. We have a large number of people who have their hands up. Mr Turnbull suggested, and I think I am inclined to agree, that we probably need to go through for at least an hour on this general debate. We had proposed to allow five minutes but I think it might be better if we allowed three minutes. I urge delegates to try to keep their remarks within that three minutes. We will start our voting at 12.15 instead of at 12 o'clock—that will give us a full hour. Yes, Dame Leonie?

**Dame LEONIE KRAMER**—Could I please seek leave to make a correction to a remark that Mr Turnbull made which related to me?

**CHAIRMAN**—Certainly.

**Dame LEONIE KRAMER**—In his criticism of the McGarvie model, he had me saying some things which I did not say, and all I would like to do here is to refer him to page 200 of the transcript of proceedings in *Hansard* on 4 February.

**CHAIRMAN**—I have a few people who have had their hands up. I call Ms Pat O'Shane first, to be followed by Mr Lloyd Waddy.

**Dr O'SHANE**—I rise to speak in support of the direct election model. The people of Australia do not want 'just a republic' as proposed in the McGarvie model. Our fellow Australians want democracy. We, the people of Australia, can only have a truly democratic

system of government through a democratic republic: that is, a system of government in which the people's will is supreme.

The direct election model proposed by our team, moved this morning by Geoff Gallop, delivers such a model. You will note, Delegates, fellow Australians, that, under our proposed model, nominations for the head of state may be made by any Australian citizen qualified to be a member of the Commonwealth parliament and by all of the levels of representative government in this country—the Senate, the House of Representatives, state and territory parliaments and any local government—obviously a process of direct involvement of the people.

Millions of Australians have stated their desire for this republic. More particularly, at this very moment, they say they want the option of a popular election for head of state. In the course of the past week, we have received hundreds of faxes, letters, e-mails and telephone messages, letting us know this, not to mention Newspoll, the Morgan poll, et cetera, which politicians and other conservatives try to scornfully dismiss. The direct election model which we propose delivers the goods. You will note that, in our proposal, the election of a head of state shall be by the people of Australia, voting directly by secret ballot with preferential voting by means of a single transferable vote.

Hundreds of thousands of our fellow Australians want reconciliation between indigenous and non-indigenous Australians. The direct election model proposed by our team allows reconciliation to advance. Only through a direct election model will Aborigines and Torres Strait Islanders have a real opportunity to participate in the process of creating the head of state. Under other models, Aborigines would only be able to participate in the time-honoured paternalistic way, that is, by the grace—not always gracious—of the elite. I have to say on this floor that I sorrow for the proposal put up by my fellow Koori Lois O'Donoghue this morning when she proposed what she did, given that it was only a few days ago that she stated that ATSIC elections be conducted only by direct election.

**CHAIRMAN**—Thank you, Dr O'Shane. I have a long list of people. I am trying to give everybody a go and I am trying to pick them from different sides and different factions. I have quite a number of your names down, but I have too many down at the moment to give you all a position.

**Mr HAYDEN**—Mr Chairman, I raise a point of order. I noticed before that the clock is not giving speakers five minutes. It is cutting it short by about a minute. It is down to about 2½ minutes.

**CHAIRMAN**—It is three minutes now, as I announced a while ago, Mr Hayden. I suggested that, in order that we can accommodate as many speakers as possible in the hour that is available, for this purpose we allow three minutes. At the end of it, each of the proposers of the motion will be allowed another five minutes to respond in any way, if they wish to do so.

**Mr WADDY**—The house is presently engaged in discussing four models to reduce it to one, and then this afternoon that one model will be put under immense scrutiny when any part of it may be amended by the movers or by those sponsored by 10 people. We, who are opposed to any of these models, rise to deny the statement made by Professor Craven earlier that there are no perfect models in this Convention.

On the whole, I think any unbiased observer would notice that what is going on at the moment in all the models is to give the new creature, president or whatever you call him eventually the same powers as the Governor-General. All this debate so far is about who you can trust to appoint him and who you can trust to get rid of him and who you can trust to get on the list and who you can trust to work out who might do that. Of course, in the present system there has never been a crisis of trust. The Prime Minister is trusted to nominate a statesman and always has done so; the Queen has always appointed the person nominated, and none of these issues arise at all.

In the Gallop model, we are confronted with Dr Gallop saying, 'We are creating a new political institution.' So symbolism has gone from day one. He is completely clear

that he is creating a new political institution. We are living in a new era. This is the era of new politics.

The Hayden model is designed if you can get 120,000 signatures—and he could not get eight for his model—and Australians for Constitutional Monarchy in four years has three times the membership of the ARM, and we got to 20,000 in five years. He said, ‘A demagogue would be putting his head in the hangman’s noose.’ Let me remind the house that it is to protect ourselves from a demagogue getting away, that we or you are trying to create, that all the confusion arises. No-one has anything to fear from the Queen of Australia, and no-one has ever suggested it.

Under the McGarvie model, it is designed by four gentlemen and ladies to work on an honour system of people who will protect their reputations. It strikes away the monarchy and there go all the conventions. It exists on hope; it is hopelessly elitist, and I do not think it will receive much support.

The Turnbull camel-O’Donoghue model is key to bipartisanship. No-one has mentioned that bipartisanship depends on how you fiddle the electorate. Before we had proportional representation, there were many majorities where there would have been one side of parliament appointing against the other. You are confusing politics with the legalities of the state. At the moment the Governor-General acts above politics. All your systems are bringing politics into it. I thank the house for the indulgence.

**Mr SAMS**—Mr Chairman and delegates, I want a republic for this country and I want it soon. It is why I have supported and signed model D, the O’Donoghue model. If you do not want a republic, which a lot of people here do not, then vote for a model which will not be supported by the major political parties and will therefore be doomed to failure. If we entrust our parliament with the enormous responsibility of governing our lives and making laws for the governance of this country, why is it so wrong that we cannot entrust them as our representatives with finding and selecting a symbol of national unity as a ceremonial head of state?

Surely the argument that we need a popularly elected head of state would have more force and consistency if we applied the same principle to the Prime Minister, and no-one seriously has put that proposition. Ask the punters out there if they would like to elect their Prime Minister, and I guarantee you that you will get the same result as you will get for asking them if they want a popularly elected head of state.

I am not one who is spooked by opinion polls. Get any pollster to ask the right question and you are guaranteed to get the answer you want. I have, like Peter Beattie, a great faith in the Australian people that, when the arguments are put, when the debate is had, when the arguments are developed, they will readily appreciate the dangers of what is now seemingly so popular. On the subject of opinion polls, I was astounded when some delegates the other day were trumpeting the *Newsweek* poll showing that Australians supported by 56 per cent a popularly elected president. Last week we were told that support was as high as 70 or 80 per cent. I would have thought that a collapse of that magnitude was more a cause for mourning than for celebration.

Those who argue for a popular election say that any Australian should be able to seek and secure the highest office in the land, whereas parliamentary election will produce a politician from politicians. I reject this view absolutely. Popular election will restrict it to an elite group of people, an elitist group of people, and I believe we would not see an Aboriginal appointed, we would not see a migrant, not see a scientist, not see a journalist and, dare I say, not see a trade union official. Most certainly you would not see anybody from outside New South Wales and Victoria. We all want a right for any Australian, no matter what their birthright or financial means, to have an opportunity to achieve the highest office in the land. Popular election will deny that.

This is the time for real leadership. This is the time that we are called upon to make a decision. It is not the time for platitude and rhetoric. It is not the time for this country to go down the path of popular election. What

will history think of us if we allow this Convention to be used as a publicity stunt or a platform for grandstanding? I say: do not condemn the republic to the drain of history by supporting a model that has no chance of support from the major political parties and therefore no chance of survival at a referendum.

**Ms MARY KELLY**—I want to talk about the relative and absolute merits of the direct election model and in doing so make some comparisons with other models. I think ours has got about five clearly superior characteristics. One of them is in the eligibility clause, where we appear to be the only group that has dealt with the current unfair provisions about dual citizenship. We ask that where people have forsworn allegiance to a foreign power that be sufficient. Secondly, on the nomination process, we listened when people said that there should be a role for parliament; we listened when people said that direct election is too broad and messy. Everyone is involved in our process. The more diverse sources of evidence you have, the less likely cloning is to occur.

But mostly it is about powers. I am astounded that the new ARM model has squibbed on section 5A, on codification of powers, and left intact the possibility of the only known crisis we had, which was in 1975. We have not squibbed. We did listen when people said, 'No, we do not want to strip the Senate of the power to block supply.' 'Okay,' we said, 'but we had better tidy up what happens afterwards so it is not left open as it has been in the past.' Our tidying-up way of doing that was to say, 'Yes, the new President Governor-General can still dismiss, but not alone in a premature or absolute way. They have to seek some advice, and so on.' That is what is in section 5A, and that is what has been left out. I think that is actually a significant betrayal of what people would expect from a codification of powers.

The second last point is that ours is winnable. That is not its main strength, but I still believe that out there in the community any model that has direct election in it will overcome other models. But mainly I think its absolute merits lie in the fact that it has the

best chance to harness that civic energy that is out there that is exhibited in the desire for direct election, to say to people, 'Lessen your alienation—re-engage with the process.' That is our common quest and it has the best chance to do that. It not only gives people what they want; more significantly, it gives them what they need.

**Mr RUXTON**—Mr Chairman and delegates, when I got out of the unit this morning and saw this headline—'Mr President'—I thought, 'Oh my God, they've elected him!' However, it seems to me that the rift is just as bad as it was yesterday and last week. I want to speak about the Gallop method quickly. First of all, in relation to the nominations, I think they can scrub B and C; A is enough. With regard to short listing and a two-thirds majority of both houses choosing three candidates, I believe that a two-thirds majority on political lines has only been achieved about three or four times since Federation, for goodness sake! Then Mr Beattie went on about politics influencing referendums. I will have you know that I have seen both parties—both Liberal and Labor—lie in bed together to change the Constitution, and they have still been duded.

In relation to the Hayden model, its weakness is of course one per cent on a petition. That means that the person would have to get 120,000 signatures at least, and I think that is nigh impossible. Money and politics would come into it. In relation to the McGarvie model, any Australian can nominate to become the Governor-General for the Prime Minister to appoint. Couldn't you imagine chaff bags of mail going down to Dick Pratt's Visy Board for goodness sake? Also, Professor Craven mentioned Cromwell. That is all right. He was the first President of the United Kingdom and look what he did in Ireland, if you don't mind. Then there is Mr Turnbull—the Godfather. Ninety-seven years have passed and there have only been four times when there has been a two-thirds majority in the parliament.

We will have general nominations from everywhere, and again they are going to come in from everywhere. Then a community constitutional committee is going to select

them. I tell you what, that is where I become very suspicious. You would be better off with the RSL. All of these models have deliberately left out section 5 of the Constitution. In my book, it is the only safety valve for the people of Australia where the president or the Governor-General may prorogue the parliament or dissolve the House of Representatives. Now you are going to codify all of this business, different sections of some constitutional committee that has been held in the past.

I go along with Kevin Andrews. When that nomination from Mr Turnbull's model goes before the parliament, there will be one candidate and no debate. Oh, for goodness sake! I have never heard anything like it in all my life. I tell you what, after all I have heard this morning, I have come back to the conclusion that you are destroying the best system on earth. We are the freest country on earth. It is no good mentioning the United States of America. That is no good at all. They murdered their presidents and other people. Thanks a lot.

**Mr BEAZLEY**—Bruce, I have here Cromwell's shilling. It says 'Commonwealth of England'. When are you going to campaign against the title of our republican nation?

**Mr RUXTON**—I am going to be campaigning against you!

**Mr BEAZLEY**—You always have and I am still here. Mr Chairman, I would like to lend my support to the bipartisan appointment of president model, which I signed on to yesterday, which I think is a very good one. Can I just remind all delegates here, particularly on the republican side who are advocating various different models—

**Professor PATRICK O'BRIEN**—Mr Chairman, I raise a point of order.

**CHAIRMAN**—Must you, Professor O'Brien?

**Professor PATRICK O'BRIEN**—Yes. Correct me if I am wrong, and if I am wrong I apologise, but there are many people who had their hands up. I noticed that Mr Beazley walked up to you a moment ago and talked to you and you were writing with your pencil—

**CHAIRMAN**—He is the alternative Prime Minister of Australia. As far as I am con-

cerned, he has a priority. I do not accept the point of order and call on Mr Beazley.

**Mr BEAZLEY**—Can I just say this to all those who are advocating different republican models: whenever this referendum is held to change things, the only permanent thing that will change, if the change occurs, will be to move from a system of constitutional monarchy to a republic. It is unthinkable that we would go back to a constitutional monarchy after having taken a decision to make that change.

Anything that is subsequently arrived at will be subject to the normal tests of the Australian Constitution and will be capable of further refinement and change. But to bring our Constitution home, to nationalise our Constitution, it is that prior question which is absolutely critical. When we go out and advocate this change—and it will be difficult to get it through—to the Australian public we must remember that. That is the prior question and we must unite behind it. Anything else can be altered as time goes by.

The good thing about this particular model is that it has combined some of the good elements from all the republican models that have been put forward. There is a complex process of community consultation. It is not necessary on any of these models to dot every 'i' and cross every 't'. That will be done by parliament when it puts forward a referendum proposal and this Constitutional Convention ceases to exist. We will be able to get from this direction, I think, a very good formula that people will be satisfied with.

This model contains that essential element of the proposal, that is, a parliamentary process to secure the election of the president—and a bipartisan one at that. I happen to think that that is absolutely critical. That is what ensures that a non-political person that the public can identify with will come through, without producing a train wreck in the Constitution itself. Both those things must be achieved by whatever outcome it is that we secure here. Finally, it has a process of dismissal which leaves the centre of power in the elected government. I think that is critical too.

What has been put forward here is a good hybrid model; one that can, I think, be advocated effectively, but one that must be advocated by all political parties if it is to succeed. I have been enormously encouraged by the contributions of Liberal delegates here. There is a degree of confidence that what is a very transparent model that ensures a bipartisan approach will, at the end of the day, secure their support, which will be absolutely vital when this question ultimately is put to the Australian people.

**CHAIRMAN**—I call Ms Poppy King, to be followed by Mr Don Chipp.

**Ms SCHUBERT**—Point of order. We have just had a speaker in favour of the bipartisan model. I request that we have a speaker supporting one of the other models next.

**CHAIRMAN**—I am trying to distribute it as much I can. I have about 50 speakers and I am trying to distribute them as equitably as I can. Ms Poppy King.

**Ms KING**—Thank you, Mr Chairman. I also would like to express my support for the bipartisan model. Many people have placed the onus on republicans to propose a system that warrants change, that provides something better than what we have at present. I believe this model does. It is an improvement on our current system.

Firstly, the consultation process for nominations opens up the political process much more than it is now and allows all of us to have a voice, yet it maintains the balance of power between the Prime Minister and the President by requiring the appointment to pass a two-thirds majority of a joint sitting of parliament. The head of state can then continue in the role of an impartial umpire. It is the best example of the community and their elected representatives working together.

At present, the Governor-General is appointed by the Prime Minister with a monarch acting as a rubber stamp. We have very little protection from a partisan choice and there is no involvement from the community. The bipartisan model adds a new requirement for both the Prime Minister and the Leader of the Opposition to endorse the nomination, ensuring that this choice is truly bipartisan in a

way the McGarvie model and direct election never could. Add to this the community involvement and you have a truly unifying head of state who can represent the nation as a whole. How can a person do this if they have been appointed by an elite council or have had to launch a public campaign where political reality would require them to align themselves with one of the political parties in order to be successful.

This model is the best way to ensure that our head of state is above politics. The most important objective of this Convention is maintaining and protecting our democracy; a democracy that has given us one of the most harmonious and cohesive societies in the world. I believe this model fulfils that.

**Mr CHIPP**—There are four recipes for change before us. The motivation for change is natural in any human endeavour. It is the motivation for and explanation of human progress, so we must not oppose change. The danger here is those who propose change for the sake of change. We have to ask: is the present system perfect, seeing that we are contemplating change? I would not pretend to say that it is perfect. There is room for improvement.

In 1975 I spoke at a pro-republican rally in the Sydney Town Hall organised by Professor Donald Horne—6,000 people turned up. I said, simply, 'In a democracy it is perfect if people in positions of power are elected and not appointed.' I have been searching for 25 years for a safe recipe for a system to be substituted for our present system. I have yet to find one. The ARM has been meeting for five years. They have not found one, as is evidenced today by the division among the groups arguing here. I have only spoken once at this Convention; for the rest of the time I have listened to the debate. I have listened to everybody sincerely putting up proposed changes, and I have to say to you: I have not heard one that I regard as safe and simple that would allow this country to keep on governing in a safe way.

I think we ought to apply a test. Has our present system worked? It has. It came to an acid test in 1975 when tempers were high and an application of our Constitution was applied

by the then Governor-General; it worked. Why did it work? It worked because it was referred immediately to the people who, in an overwhelming way, gave their voice to the solution, and it was solved.

There are many models and many possible solutions. With great respect to the sincere people at this Convention who have given their all, there is an old saying: you can jump from the frying pan into the fire. I ask you to contemplate that, but it is more eloquently expressed in a proverb from Thailand: if you escape from the tiger, beware of the crocodile.

**Ms SCHUBERT**—First of all, I want to endorse the comments of Mary Kelly who addressed the specific detail of the benefits of the direct presidential election model, which builds in both a role for the parliament in ensuring that the supremacy of parliament in our Westminster system is preserved but which also answers that fundamental question: how will the people be involved and how will they own the decision about this election of a head of state?

Malcolm Turnbull, in his address earlier, made two very clear statements with which I heartily agree. He said, 'Today's task is to focus on the principle,' and, 'We will refine the detail of each of the successful two models by amendment tomorrow.' So it is really clear that what we are arguing about in this debate is the principle behind each of these models.

The second statement he made was on the issue of public consultation. He said, 'You do not just lecture them'—the people—'You listen to them'. I think it is really important that we take this opportunity to listen to what the public are telling us at this juncture in our history. They are telling us that representative democracy serves us only so well, that it is the stuff that provides stability for our parliaments, but what it does not provide is a fundamental identification with leadership in this country.

This is the choice with which we are faced. The model that is being proposed by the Direct Presidential Election Group allows parliamentary democracy as we know it to remain intact. What it also does is provide an opportunity for the broader public to actually

have a direct hand in selecting their figure-head. The two are not incompatible; they actually fit and blend very well.

One of the ethics that has come out of my background in the community sector is that participation not membership creates ownership. It is one thing to be an inactive member of a club, a society or part of the community; it is another thing to have a direct hand in shaping the outcomes, the vision and the direction of an institution, an organisation or a community. That is what the Australian people are asking for when they say in those huge, overwhelming numbers that they want a direct hand in the selection of their figure-head.

There is a pernicious feature that I have seen in public debate over the last five to six years, particularly out of a university environment. I call it the Politics 101 syndrome. It is where people who are newly arrived in the debate acquire a little bit of knowledge and therefore think they have a separation of themselves from that broader mass of the ignorant public. Well, you're wrong. I think it is really clear that what that broader public movement is is a sense of instinct and the instinct is right. If we listen to the instinct and build it into the principle of a model, then we can get the detail right as a matter of political will and commitment to actually recognising the will of a community. I thank you.

**Senator STOTT DESPOJA**—When I spoke to the Convention last week I said that my party, certainly the federal wing of the Australian Democrats, would be supporting a model that sought to maximise public involvement in the process and that public election that we supported came with very strong conditions and guarantees. What I want to address today is my concern that the two preferred models from my party—namely, the Gallop model that was proposed this morning and the two-thirds model—both completely undervalue the role of the Senate in these processes when it comes to nomination and in fact dismissal.

We have two chambers in our federal parliament. We have one, I believe, that is more representative by virtue of its proportional voting processes, one that is fairer

when it comes to representing the Australian people. I put on record very strongly the concerns of my party that neither models we are considering have approached this issue or considered the importance of the Senate. We believe both the nomination process under the direct election model and the appointment or ratification process under the two-thirds model are brought into question because of the voting system.

I am encouraged by the two-thirds model which has introduced an electoral college. I put on record my concerns this morning that that did not involve necessarily the leaders of other parties with party status in the parliament. I raised my concerns with the natural justice; that is, the possible implications of a Prime Minister dismissing a head of state without ratification of the parliament and then that person not being able to be restored. I am concerned that the criteria for the decision making process under the two-thirds model by the Prime Minister and Leader of the Opposition are uncertain. I think they are unspecified. I think that is arguably a failure of accountability. So I am very keen to hear those specifics.

There seems to be no requirement for the Leader of the Opposition or the Prime Minister to outline their reasons for choosing one candidate over another. I think that perhaps there should be a requirement for reasons for any decision. I put that to the movers of the two-thirds model. Again, I reiterate that the Senate should have a role in the dismissal processes. That has not been taken into account in three of the models.

I would also like to support Mary Kelly's comments in relation to eligibility. We are aware that section 44 has grave deficiencies whether it comes to dual citizenship or office of profit under the Crown. Certainly Phil Cleary and Senator Ferris would be able to attest to the disenfranchisement provisions in that particular section. I hope the comments at this Convention will ensure that the parliament acts, because the Democrats have had a bill to repeal this aspect of section 44 on the *Notice Paper* for more years than I can remember.

**Ms MANETTA**—I rise to address some defects in the Hayden republican model before the Convention. I do so with the greatest deference to Mr Hayden. He is, of course, amongst the few here who have had direct experience of vice regal office, an office in which I think we will all acknowledge he acquitted himself with great distinction and, if I may say so, his public statements since retirement have only served to enhance our appreciation of the value and dignity of the governor-generalship.

However, the problems we as monarchists perceive with the model are as follows: popular election creates political power. That means codification and even partial codification is a labour of Hercules. But, even if you can codify, an impasse between president and Prime Minister must be swiftly resolved and that cannot be the case where, first, the president cannot be removed except when parliament votes to dismiss him, remembering that the president will have the power to prorogue the parliament or dissolve the House of Representatives before they have had a chance to vote. Secondly, even if the parliament gets to vote it must form the view that he has misbehaved. Thirdly, even then the High Court can rule on whether or not the president has misbehaved within the meaning of the Constitution and thus whether or not the dismissal was valid in the first place. In the meantime chaos reigns in place of the monarch.

Election to definitive power is a noble thing. It works well in America. The undefinitive code of the viceroy is also a noble thing. It works well here. But marry the two and the result is disaster. Indeed, the fact that Mr Hayden's model is, I think, the most intellectually honest attempt to do so at this Convention is testimony to the hopelessness of the task. Election to undefinitive power is nothing less than an invitation to tyranny. As Evelyn Waugh wrote of an overindulgence of wine, 'It is neither the quality nor the quantity that is at fault but rather the mixture. Grasp that and you have the root of the matter.'

**Mr BACON**—I am a supporter of the direct election model moved very eloquently and in a very positive fashion by Geoff



Gallop and Peter Beattie this morning. I remind delegates that it is not just the nationality of the head of state that we are talking about changing. We are also talking about changing from having a monarch as the head of state to having a citizen. I think in that case that most Australians believe we should have the most democratic method possible for selecting the one citizen who is going to be head of state out of all of us who are citizens of Australia. In my view, the most democratic method is direct election. It also has, as other speakers have said, an added advantage in that it clearly meets the desire of very many people in Australia to have a direct say in the republic that we are talking about creating.

There are two models for direct election. In the Hayden model, relying on a petition of 120,000 or more signatures means that inevitably it would only be very large national organisations, like the Labor Party or the Liberal Party, and very few other organisations—certainly only organisations with very large networks in Melbourne and Sydney—which could possibly get that sort of petition up in what would be a limited time frame. I have checked with the Parliamentary Library this morning, and in only four cases since 1980 have petitions with more than 120,000 signatures been tabled in the federal parliament. That shows just how difficult it would be for ordinary people—that the supporters of that model claim to be representing and claim would be able to get up under that model—to actually do so. It would be impossible.

Finally, we are still in the stage of selecting the best model. I believe we all should still be arguing and certainly voting for what we believe is the best model for the Australian people. I believe that the best model is one that involves direct election. I think our model is the best here, but if it does not get up and the second best—which I believe is the bipartisan model—does get up, then I will certainly fight alongside other republicans for a yes vote at the referendum. I have noted Kim Beazley's words that, if in the future we have a model that is not absolutely perfect from our own point of view, then of course we can continue to discuss it and argue it. But

I will be voting today for the one that I believe to be the best, which is the direct election model option A.

**Mr LAVARCH**—I think the test that we have to apply to the models before us are twofold. We have to apply both a policy test and a pragmatic test. In terms of the policy test, we have to make sure the model that we recommend go forward to the Australian people will ensure what is best in terms of the strength of the parliamentary system. I have not heard any great argument from any delegate that it should be changed. We should ensure that that strength is maintained but, at the same time, it gives us the vehicle to move forward. That is, we accept that the threshold issue here is not a broader issue of reform, as valuable as particular items must be, but that the time has come for Australia to have one of us as our head of state.

In terms of this first level of the test, clearly the bipartisan model is superior. I accept that those proposing the direct election model have made a very genuine attempt to look at the criticisms that are made about direct election and have attempted to address those criticisms in the way that they have structured their model. However, I still think at the end of the day it fails because of the inability to tackle the issue of powers.

The question of powers is, of course, one which is consistent and needs to be addressed by all of the models. It is not something that is peculiar to direct election. But why it is absolutely crucial that it has to be addressed in the question of direct election is because of where the authority of the president is coming from. When the president is directly elected from the people that mandate, that authority comes directly from the people. As a consequence, the relationship between the office of the head of state, the president, and the parliamentary system and the Prime Minister does, in my mind, have to be very clearly and concisely defined and codified. That is less of an issue in terms of whether the authority and legitimacy of the president are being drawn indirectly from the people and through the parliamentary process.

So I think on that point I am still concerned that the direct election model does not quite

get us there. Even if I were able to put that to one side, I think in terms of the second level of the test of pragmatism that without bipartisan support, in as much as I would like to embrace the idea of new politics and rules of the past no longer applying, it is my assessment that a proposal that goes forward in the long term, over 18 months or two years, without bipartisan political support simply will not get us there.

**Mrs KERRY JONES**—We have seen continually over nearly two weeks of debating why none of the models here before us today nearly match up to the safeguards of our current constitutional arrangements. They just do not measure up. I would particularly like to say, in addressing the McGarvie model—and I respect the enormous amount of work that has gone into that model—that it will be an elite council of men and perhaps one woman in grey suits, a very legal group, but I do not think with any mandate from the people but a very powerful group. The popularly elected model could and would give more power to a president than the Prime Minister and the parliament. We have all heard those arguments.

I particularly wanted to indicate our surprise at this new way of pretending, I believe, to involve the Australian people—the ordinary people, as Mr Turnbull said—in the model being proposed by the Australian Republican Movement. They said that they would like a nomination process through a council. Now I believe that that was the process actually adopted by the Prime Minister to get the appointed delegates here to this Convention. If my memory serves us right, Mr Turnbull himself was the most outspoken person against that model. He continually publicly condemned it in the press as undemocratic and did not like the decisions that were made as to the appointed delegates here at this Convention.

Now we suddenly find that this is a proposed model that is going to involve ordinary Australians. If Mr Turnbull does not like the appointments, presumably he will once again take his bat and ball and go home or perhaps if he does not like the people on the council he will do the same thing. It is just not

workable. It is not democratic. It was not in the Australian Republican Movement platform for which I believe they came with a mandate to this convention. I will conclude by saying that the more we hear from Poppy King and Michael Lavarch about this supposedly ‘bipartisan model’ the more it is sounding to us not only like a bypass model but also like a triple bypass model.

**Councillor BUNNELL**—I rise to support the direct election of the president model. As I have said on the floor of this Convention, the Clem Jones team conducted a broad and diverse public consultation process. The people supported overwhelmingly the direct election of the president model. The polls support this overwhelmingly. It has been spoken about on a daily basis at this Convention. The direct election model people have been bombarded with faxes, letters and calls supporting their stand.

Many delegates here, of course, were elected to this Convention to put forward this elect-a-president model. Australians want to elect their president. The direct election of our president confirms our democratic process. Under our model the president is codified—no reserve power, no more constitutional crisis of 1975. As Mary Kelly said earlier, the Turnbull model enshrines the 1975 situation and gives even greater powers to the president than the present Governor-General. I know my colleagues the monarchists would be horrified by that.

I believe, delegates, that the Turnbull model is the sell-out of the supremacy of parliament. The supporters of the direct election of the president are those who believe in the democratic process, who believe people must be fully included by the power of their vote—not some mickey mouse consultation process.

Just as a comment to Senator Stott Despoja, the Senate is not under threat by our model, but I know very clearly it has been under some. When Australians vote for their president they are empowered and included. I urge you not to support politicians choosing the president but to choose the direct election model option A where the people of Australia vote in a democratic process for their president.

**Mr WRAN**—I am a committed republican and, since I have worked for a republic for the last several years, I have had as my principal objective an Australian head of state on terms that preserve our system of representative government. Whatever model ensures the continuation of representative democracy in this country gets my vote. My vote will go to the bipartisan model, which has been presented here this morning.

As has often been said here, not only this morning but during the course of the Convention, we must not accept change for change itself. That has always been the catchcry of the supporters of the status quo. When Sir Isaac Isaacs, the first Australian Governor-General, was proposed for that office, there was absolute shock-horror throughout the country—and not only throughout this country but in the United Kingdom as well. And J.G. Latham—who later became Sir John Latham, the Chief Justice of the High Court—criticised the proposed appointment as strident and narrow jingoism and as showing a lack of enthusiasm for the British Empire.

I can only say that Mr McGarvie has revived enthusiasm for the British Empire. One of the younger delegates here described Mr McGarvie's rather mysterious Constitutional Council, made up of people between 65 and 79—and I am getting a bit long in the tooth myself but I think 79 is a bit over the top; you would have to send the wagon around to all the nursing homes to get a complement, but be that as it may—as the real AC, QC model, and then I had to reveal to him that I was an AC, QC myself. But that did not deter him. He said, 'I would disqualify you, too.' And he is probably right. But it is a very elitist, weak tea and cucumber sandwich set that is proposed by the McGarvie model, and I do not think it is really worthy of the consideration that some people seem to have been prepared to give it.

In relation to Mr Hayden's proposal, you will need 120,000 nominators to get a start, and I think, quite frankly, it is unbelievable that the former Governor-General could put that up. As for the direct election model, it has my sympathy. I must say, given different circumstances and an opportunity to depoliti-

cise the president which would result from that model, that it warrants real consideration. I am not against direct election; I am against the politicisation.

Finally, I would like to say this: we have had a bit of a feeding frenzy on polls. The fact is that, in the three weeks past, the polls have gone from 70 per cent to 56 per cent for direct election.

**CHAIRMAN**—Your time has expired, Mr Wran.

**Mr ANDREW**—My earliest memories of the political process are of being a young fellow on a country property in an electorate that was represented by the late Sir Alexander Downer, later to become immigration minister and High Commissioner to the UK. He was the son of Sir John Downer, who had participated in this process, and the father of our present foreign minister.

What I want to suggest to delegates in this gathering this morning is that I stand before you as a parliamentarian who recognises that Australians feel disenfranchised with the political process—every parliamentarian in this chamber knows that—but I maintain that they have no reason to feel disenfranchised, because the access that electors have to me and the access that electors have to every elected parliamentarian here is far more real than the access that electors enjoyed to Sir Alexander Downer 30 or so years ago. As a result of larger staff, as a result of faxes and telephones and as a result of intrusion of radio and television into our lives, Australians are more part of the political process than they were 30 years ago. Parliamentarians are more available and more accountable and much more conscious of the discipline of both the ballot box and the Mackerras pendulum.

I recognise the demand on all of us to be popular and the obligation we face to be responsible. What I want to suggest to you is that what Australia does not need now is more politicians. What Australia seeks from us in this Convention is a technique not for duplicating what we effectively have in the parliament through the House of Representatives and the Senate, but a technique for effectively finding an umpire who can independently assess and evaluate what the politi-

cal process is about and what the wishes of the Australian people are as the Constitution is applied to Australian life. I am, for that reason, totally opposed to a direct election model because it is inevitable that a direct election model would mean that the process would be further politicised. What people seek from this Convention is an assurance that the head of state will be an effective umpire of the procedures of the parliament and that the selection of that head of state will be impartial.

From my point of view, the technique that we have currently running for the most impartial selection of a head of state happens to be the McGarvie model. I accept the criticism of Mr Wran, suggesting that the McGarvie model, nominating people who are aged between 65 and 79, may be inappropriate, but I think the model with some modification is the most effective choice we have.

**Mr RANN**—I came to this Convention supporting four basic propositions: firstly, to support a republic where Australians were citizens not subjects; secondly, to support an Australian head of state; thirdly, to enshrine the sovereignty of the Australian people through the direct election of the head of state by the people of Australia; and, fourthly, to secure a commitment for ongoing constitutional change. I am part of a loose group which is not a political party or a formal grouping—lots of different views, lots of different models, but a basic concern that the people of Australia should not be locked out of the process.

After considerable consultation, we got down to one model—putting people at the start, putting parliament in the middle as a gatekeeper to ensure bipartisanship and non-partisanship and also ensuring that the people of Australia have their final say. We tried to address all of the concerns and criticisms raised against direct election to try to reach out to embrace compromise—big compromise.

For instance, there was the criticism that our model did not embrace the supremacy of the parliament. We knocked that on the head by putting the two-thirds majority of the parliament into our model. There was the

criticism that we did not have the supremacy of the Prime Minister. We knocked that on the head by ensuring the Prime Minister's right to dismissal.

Also there was criticism that our process would be party political. We ensured bipartisanship by putting in the two-thirds majority of parliament, which would ensure that we would get not politicians but the sorts of people, fine Australians, who have become governors and governors-general over time. Then there was the criticism that it would be too costly. We knocked that on the head by putting it at the time of the general election, at a time when politicians would be worrying about their jobs, not worrying about the jobs of a figurehead head of state.

My warning to this Convention is simply this: right around Australia there is a cry from the people of this nation, 'What about us? Where do we fit into this model?' Let me just say that in New Zealand a similar group of worthies, including the political leadership of that country, came out against MMP in terms of their constitutional change, and when it went to the people of New Zealand they voted for MMP simply because the politicians had endorsed otherwise. This Convention is only part of the process. We then have to win a referendum and win the people who want to elect their head of state. We are the people, particularly in the smaller states, who have to go out and sell the republic under whatever model is embraced. I am going to tell you this: the people of Australia will punish us and punish you if they feel that they are not part of this process. As for the McGarvie model, that is the one I dislike the most. I was very interested to hear some of the personal attacks made, but Mr McGarvie seemed more worried about the opinions of British tabloids than of the Australian people.

**CHAIRMAN**—I am going to call Ms Wendy Machin, followed Professor Mr Patrick O'Brien. Then I am going to close off the speakers list. I will then call on each of the four movers of the series of models to sum up. Given the time, I think we ought to allow three minutes for them instead of five. I know it is not long, but I have about 40

people who still wanted to speak, and to them I apologise.

A facsimile has been received from the Treasurer, Mr Peter Costello, which responds to the resolution of Mr Jeffrey Hourn, seconded by Mr Liam Bartlett, the other day. I have asked that it be circulated to all delegates.

**Ms MACHIN**—Very soon we are about to start voting on the preferred republican model for this debate, and republicans here are trying very hard to reconcile a couple of issues. There is much that we agree on, but the issues that we are trying to reconcile are the role of the Australian people in the process—direct election versus other alternatives—and the impact of each model on the Australian people. I think some of the delegates here have failed to fully assess that second point, the impact of some of the models should they be implemented. Of course there is a desire for public involvement, and that is perfectly natural. But I have to say not all Australians are insisting that they must have a direct election, contrary to the impression you get from people like Mr Cleary. We too have received a lot of mail on this issue and much of it is seeking a compromise. Much of it reflects the fluidity of the opinion polls that we have seen even just in the past two weeks, where support for direct election has collapsed dramatically, and who knows which way it might go next week. This is a decision that must be more than poll driven. Polls change all the time, and politicians have a responsibility, as Peter Sams said this morning, as do the delegates here, to demonstrate some leadership on this. Leadership sometimes involves making compromises, taking unpopular decisions because of some long-term impacts.

This takes me to the point that Peter Beattie made this morning about empowering people. One of the things that he and the direct election supporters need to explain, especially to the Australian people, is how they will be empowered, how we will have the new politics, simply by changing the method of appointing someone. How will the Australian people feel when they go through a long preselection campaign, a long drawn-out election campaign, to find that the person they

just voted for and elected has exactly the same powers as the guy has had since Federation, that there is no change? They are not empowered by the person themselves because the job description remains the same. I frankly think that that is a dupe. To suggest to the Australian people that we have achieved real change by the action of putting a piece of paper in a ballot box, without changing the role of the person we are voting for, is pulling the wool over their eyes.

I would just touch on the Australian Republican Movement nomination process, a process that is supported by many other people. This reflects the desire for public input. It is trying to load it in the front end of the process. Indeed, it does reflect a compromise—and that is what we are here for. It is a word that seems to apply only to the ARM, in some people's view.

I have been a bit surprised at the expectation by people like Mr Andrew that, before we leave here on Friday night, every 't' must be crossed and every 'i' must be dotted. Surely it is unrealistic to expect us as a convention, on the floor of this chamber, to try to fully draft a model down to that level of detail. I think what we can do is agree on a model, agree on the principles that we want to include in that model, and then entrust our parliamentarians to devise the legislation that gives effect to the will of this Convention.

I too have had the privilege—and I am happy to say 'the privilege'—of being a member of parliament. I know that in many cases, contrary to media impressions, oppositions and governments work very well together. There is often bipartisan agreement on issues and appointments, and it can work in this case.

**CHAIRMAN**—I am afraid your time has expired, Ms Machin. I call on Professor O'Brien.

**Professor PATRICK O'BRIEN**—One might ask, as did William Butler Yeats, 'What rough beast slouches towards Bethlehem to be born?' We have seen many rough beasts being presented here, including me.

The real question confronting this Convention and the people of Australia is: who will

wear the crown of sovereignty if it is to be taken from the monarch's head? The ACM says that the crown should remain on the monarch's head. The ARM says that the crown of sovereignty should descend upon the Prime Minister's head in parliament, thus increasing his absolute powers. We have just heard Wendy Machin say, 'Yes, the two parties in parliament get on tremendously well together'—thank you, Wendy. And the honourable and lovely Mr Dick McGarvie says that the crown of sovereignty should descend upon the head of a group of wise men.

We argue that the crown of sovereignty should descend upon the head of every Australian citizen; every Australian citizen a sovereign. At the present moment, the Prime Minister, who has just apparently done a terrible thing in relation to our troops about to go off to the gulf—

**DELEGATES**—Oh!

**CHAIRMAN**—I suggest that is out of line, Professor O'Brien.

**Professor PATRICK O'BRIEN**—I withdraw that—the Prime Minister nominates the head of state, and the sovereign authority appoints. We want that system retained with the sovereign people making the appointment. We say, 'Yes, the parliament can help in the nomination process, but the sovereign must appoint'—and that is the sovereign citizens.

In conclusion, and with one change to the last line, I will read these lines from G.K. Chesterton's poem *The Secret People*:

"And a new people takes the land, and still it is not we. They have given us into the hand of new unhappy lords, Lords without anger and honour, who dare not carry their swords.

They fight by shuffling papers; they have bright dead alien eyes;

They look at our labour and laughter as a tired man looks at flies.

And the load of their loveless pity is worse than the ancient wrongs,

Their doors are shut in the evening; and they know no songs.

We hear men speaking for us of new laws strong and sweet, Yet is there no man who speaketh as we speak in the street.

It may be we shall rise the last as Frenchmen rose the first,

Our Wrath come after Russia's wrath and our wrath be the worst.

It may be we are meant to mark with our riot and our rest

God's scorn for all men governing. It may be beer is best.

But we are the people of [Australia] and we have not spoken yet.

Smile at us, pay us, pass us. But do not quite forget."

**CHAIRMAN**—Regrettably, your time is up. To briefly summarise the three models, I call on Dr Gallop, Mr Hayden, Mr McGarvie, and then Mr Malcolm Turnbull. I urge you to contain your remarks within the three minutes allocated before we proceed to the voting.

**Dr GALLOP**—I will try to address the points that were made with specific reference to the model. George Winterton raised some issues. Some of those were what I would call of a technical nature and, to quote Malcolm, I think they could certainly go off to the drafting committee. It is true, however, that the nomination process was specifically kept open and we left it to the federal parliament to sort out those nominations rather than to build specific details into how they would do that.

It is also true that the House of Representatives election will be on the same day as the presidential election. Our group chose that because we believe that would be an important way, first of all, of dealing with the objection of cost and, secondly, making it absolutely clear that the election for the Prime Minister in the House of Representatives was determining who the government of the day was and the other election would be held in respect of who the head of state would be. By separating the two in fact you had the chance of creating rival power bases.

George Winterton's point in respect of including the word 'express' after 'constitutional contravention' is something that we could certainly have a look at down the track. In respect of Bill Hayden's criticisms of our model, they are somewhat difficult to come to terms with, Bill, because you are the most radical and the most conservative delegate and those two things at the same time, so it becomes a little bit difficult to respond. But

we do have a system of representative democracy in Australia, and we have tried to build that in our model of nomination with the ultimate power of choice and decision being left with the people.

I believe my colleague from Tasmania Jim Bacon dealt very adequately with your proposal for a petition. There have been only four petitions since 1980 with over 120,000 votes and each of those of course has been organised by major bodies, major political parties and organisations. Your model, Bill, will give power to very powerful people in our community who could determine the process.

Adam raised a question in relation to the High Court. We did discuss this matter and the possible implications for the freedom of expression decision. That is why we are saying to put into the Constitution itself a provision that parliament will be required to make laws to regulate the election. We believe that would get around any potential High Court challenge on that issue.

Finally, may I address one issue that has been raised by speakers from the Australian Republican Movement? Might I point out to all of those speakers that the model that they are accepting in this parliament today, which remains virtually silent on the question of reserve powers—indeed, this Convention has really endorsed a much stronger version of reserve powers than I would have expected a Constitutional Convention to do—and has no comment about what may happen in a supply crisis in Australia, is giving more power and more authority to a future head of state to do what happened in 1975 than either the current system that we have or the system that we have advocated in the direct presidential election group.

Delegates, with those comments, I urge you to give serious consideration to our model. It has been well thought out. It has been considered in the context of this Convention by responding to your arguments. I think the one thing that we have done that the other models have not done is give a direct say of the people in Australia as to who their future head of state will be.

**CHAIRMAN**—Dr Gallop, I have an amendment which has been distributed to

your model. It was moved by Ms Kelly and seconded by Catherine Moore and endorsed by 10 members of your group. It states:

In the "shortlisting" question, after the word "candidate", add: "at least one of whom shall be a woman and one a man"

**Dr GALLOP**—I accept that.

**CHAIRMAN**—The particular model when it is considered will have that amendment as part of it.

**Dr GALLOP**—What that will mean is that there must be at least one man and one woman amongst the three candidates who are running for president.

**Mr HAYDEN**—Geoffrey Gallop made the observation that I am both radical and conservative at the same time. There has often been some truth in that. For instance, in economic management, when I was Treasurer in the Whitlam Labor government I was both terribly conservative in macro-economic management and sought to be rather radical in micro-economic management in redistributed terms; that is, where it is safe and proper to be radical I am prepared to do so and when it is going to be dangerous then I will be conservative.

If I believe that the changes being proposed are going to be dangerous, then I will be conservative about them but if I can see a break for change, given the fact that the Prime Minister asked us to come up with something, then I will be radical. My radicalness extends to the model before you in my name. It stands against all others. It genuinely respects the role of people in a democracy. The criticism has been made of it that the number required to complete a petition—one per cent of the voting population—is altogether too high. I do not accept that, but if someone wanted to move an amendment one could look at it. I do not accept it because we are talking about a national election for a national leader. If a person cannot get 120,000 votes nationwide, they scarcely have the credentials with the public to be a national leader.

Political parties no doubt would engage in this but do not forget that as a ceremonial head of state with very limited reserve powers the person will be presenting themselves on

their background and performance, their acceptability in the community and the status which people give them. If that sort of person who stands out from the fray engaged in by the run-of-the mill politicians in the community cannot organise a number of notable points around the community campaigning for him or her to get 120,000 signatures, there is something terribly defective in their claim to be a candidate for the role of head of state.

The final point I wanted to make is simply that this resolution is going to sort out the sanctimonious republicans. We can all be sanctimonious. I do not do a bad job myself from time to time, when it is needed. There have been a lot of sanctimonious republicans running around demanding a direct election but finishing up with a model which restricts the opportunity of people to select their own candidates. 'They cannot be trusted,' the sanctimonious republicans say, 'People like us know better.' They want to set up a sort of filtering system which will get rid of the sorts of people Phil Cleary was talking about earlier. In my view that is quite wrong. That is a denial of a basic tenet of democracy we know it.

**Mr McGARVIE**—Those of us who support model C do so without pretending there is any radical change, without pretending that human nature will improve if it is adopted. I remind delegates that this debate started not because there was dissatisfaction with our present system of government but because a view was held by a number of people that we should become a republic. My interest in this originated only when the Republic Advisory Committee asked me as Governor of Victoria to look at the question which at that stage was the question of finding a model for a viable federal republic which would make minimal change and retain the effect of the existing conventions and system of government.

I looked at that. It seemed to me that Australia had provided the answer. The evolution had gone so far in the last 200 years that that small step which is involved was the only step to be taken. It is as Australian as the gum leaves. It comes from Australia. It carries with it all the strength of the

binding conventions, binding for practical reasons. Delegates who have a prime concern for our children and grandchildren and those after them will give very careful thought to it and I am sure they will give support to it.

**Mr TURNBULL**—I do not think Mr McGarvie or anybody else has a monopoly on concern for their children and grandchildren. We are all committed to the future of this country. We have all worked very diligently and with integrity to develop a model that can be considered by the Australian people in a referendum. We are all concerned for the future.

Let me talk briefly about the principle of the bipartisan appointment model. It confirms the existing parliamentary system we have in Australia without any amendment save that we remove the British monarch as our head of state; that we have an Australian citizen as our head of state; and, instead of that person being appointed by the Prime Minister in his or her sole discretion, that person is appointed by a bipartisan decision of both sides of politics. Bipartisanship is an important value, and it is one we believe ought to be encouraged by this Convention.

It has been said that those who do not support direct election do not trust the people to make a decision. We all trust the people to elect every member of every parliament in Australia. Those parliaments make our laws; those parliaments choose our heads of governments; those heads of governments nominate the ministers that manage the affairs of the Commonwealth, the states and the territories of Australia. Of course we trust the people, but we do not any of us suggest that every public office should be elected. Nobody has suggested that every judicial office or any judicial office should be elected. Why not? Because the obvious answer is that office should be held and conducted impartially.

Delegates, the office of president of Australia, just as the office of Governor-General of Australia is today, is one which involves an important role as constitutional umpire. An umpire must be, by definition, impartial and, ideally, would have the support of every section of the Australian community. We have offered a proposal, a set of principles, which



will ensure that person not only is impartial but has the support of both sides of politics.

I commend it to you, but I would urge you to bear in mind that it is a set of principles. It is something that we can refine this afternoon, but we should not pretend that we are writing the Constitution amendment bill. Our job is to define principles and to present them to parliament for parliament to incorporate in a Constitution amendment bill. We should focus on principles and not detail.

**CHAIRMAN**—I am advised that Mr Patrick McNamara is not present. As there is no proxy, no votes will be recorded against Mr McNamara. Before we proceed to the voting, I understand that Brigadier Garland wishes to raise a point of order.

**Brigadier GARLAND**—Mr Chairman, I rise to make a point of order on the voting system about to be commenced. On Tuesday of this week I asked why I was being denied my constitutional rights to vote on each model. I said the way the instructions on voting for models appeared to me was that in round one we are being presented with five or six or seven resolutions—in fact, it is now four—but that the delegates who are sitting on the floor get one vote in relation to all of the resolutions. Mr Turnbull replied, ‘But you have a vote on each one.’ I noted that if it meant a vote on each model I will excuse them; that is, the Resolutions Committee. As it reads now, they will have one vote to be directed in favour of one of these models. That to me means that we get one vote in respect of voting on all models or an abstention. I suggest an abstention is not a vote.

I was not sent here by some 79,000 voters to abstain from voting. As the chairman said in relation to my question, the intention is that every delegate will have a vote on each occasion. I notice that the system of voting provided in the green issued yesterday is that delegates may vote by putting a cross or a tick to indicate his or her choice, and there is a box for No Model/Abstention. There is no provision to vote against each model, and delegates are denied the right to vote no, rather than to abstain. To abstain is to forgo your vote. It is akin to voting informal at any election.

Sir, this is not a party preselection ballot. We are not at Botany or Bankstown voting and having somebody out the back on a motor cycle to run the results to another venue. I believe that all delegates have been misled by the decisions made by the Resolutions Committee. This denial of the delegates’ constitutional right to vote ‘no’ rather than to abstain is, I believe, unjust and throws doubt on any vote taken on these models. It does not declare a legitimacy on any result, and it could be thrown out because of that. I object most strongly to being misled.

As I noted on Tuesday, I could smell a gerrymander being put forward by the Resolutions Committee. It now is on the table to be exposed to the whole of Australia. Therefore, I move:

That at each and every round of voting, each delegate be required to cast his or her vote for or against each republican model or any other proposition put forward.

I have tabled that.

**CHAIRMAN**—Thank you, Brigadier Garland. I have received a copy of your motion. However, I would point out that, first, we are proceeding in accordance with the resolution adopted by this Convention on 10 February. The process of voting was outlined at that time. I would point out to you that, on the ballot paper that has been distributed, the identification is ‘no model’ which means you can vote against it or abstain. I would suggest that what you do if you wish to vote against each model is cross out the word ‘abstain’. Indeed, if you look at the ballot paper, you will see that ‘abstain’ is in small print and ‘no model’ is in capitals. You need only cross out ‘abstain’ if you wish to vote against each particular model. In those circumstances, I rule there is no point of order. I do not accept your motion. I propose to keep—

**Brigadier GARLAND**—I then request that my name be recorded as being against this system of voting, which is unconstitutional so far as the delegates are concerned.

**CHAIRMAN**—Your point of order will certainly be noted in the minutes and your point of view will certainly be there for any to read. Can we then proceed to the voting. I

am going to speak about the voting papers in a moment.

**Mr KILGARIFF**—Mr Chairman, I raise a point of order. Do you want to pursue the amendment I have moved to model D?

**CHAIRMAN**—I meant to proceed on it before Mr Turnbull concluded. We have a further amendment which has been moved by Mr Michael Kilgariff and seconded by Mr Liam Bartlett. I understand, Mr Turnbull, that it has been accepted by 10 members of your group. Is that correct?

**Mr TURNBULL**—The amendment is a proposal that the reference to nominations being published be deleted. That certainly has some support here. I would suggest that, assuming the bipartisan appointment model survives into the afternoon, all amendments will be dealt with then. I think that is the more appropriate time.

**CHAIRMAN**—Unless it is accepted by all the members of your group—

**Mr TURNBULL**—It is not accepted by all of them.

**CHAIRMAN**—In that case, we will deal with it if it survives this afternoon. The reason I put the other amendment in Dr Gallop's proposal is that I understand all the members supported it and it was not, therefore, for the convention to take a decision. It was for the group, and the model that we will consider will be the one as amended by the members of that particular support group for the model.

**Mr TURNBULL**—Mr Chairman, it certainly does have, I concede from the signatures, quite a bit of support. I think it is something that is better debated by the whole Convention this afternoon.

**CHAIRMAN**—In that circumstance, it will be debated this afternoon. I will not put it at this stage. The voting procedure, you will recall, was outlined by the resolution passed by this Convention the other day. I shall read it so every delegate is aware of what we do. It says this under the heading 'Round 1':

- Assume five models—

in this instance we have four models—

Chairman to advise each delegate that he or she has one vote to be directed in favour of one of these models (or abstention).

- Delegates to stand in their places, or otherwise prominently indicate their position, and have their votes recorded by tellers.

- Chairman to announce number of votes recorded for each model.

We then assume that whichever one has the lowest number is eliminated for the subsequent rounds.

The system will be as follows. The ballot papers are now going to be distributed. On the ballot paper itself is printed the name of the delegate, a descriptive title for each model plus the 'no model', as I mentioned in answer to Brigadier Garland, or 'abstain'. If you wish to vote against the model you cross out the 'abstain' and your name will be recorded as a 'no model' vote against. If, on the other hand, you wish to abstain you cross out 'no model' and your name will be recorded as an abstention. There is a box beside each title and in those boxes you may place either a tick or a cross. If you put either a tick or a cross that will be taken as a vote in favour of that model. You need vote only in one box.

Could I have a little quiet, please. I do not know whether everybody understands the system; I do not think some members do. You will have four boxes, plus that vote for no model or abstention. You vote only once and you put either a tick or a cross in one of those squares. If you are voting against you cross out 'abstain'; if you are abstaining you cross out 'no model'.

There is a space for each delegate to sign. The purpose of that is to ensure that the person who has received a ballot paper is the person who has voted. Your name will then be recorded. What we will be doing at this stage is telling you the numbers, but your names and how you voted will be accumulated and put in *Hansard* in just the same way as when we have a division in the House. The reason we are doing it this way and not dividing is that the facilities here do not allow for an easy division, nor do we have the capacity to have tellers who, in a reasonable time, might be able to come to a result. But your names will be recorded. As I say, you

have a name on the ballot paper and you will sign.

When you have completed your ballot paper you then tear off that ballot paper from your list and hand it in when I call you. I will allow a little time for you to vote. What I intend to do is to then call for those in favour of model A. When I call for those in favour of model A, you will indicate or stand and your paper will be handed in—so everybody will see on television which model you are supporting!

We will then proceed to model B. If you are supporting model B, you will stand and again, having torn off your paper, you will hand in your bit of paper, and so on with C, D, against and abstention so that we can have the separate identification of the way in which you are voting.

Could I have a little more quiet, please. I know some of you know how to vote early and often but some are not quite so experienced.

Each delegate will receive the same number of ballot papers as there are ballots, including one ballot paper with the status quo as a model, which is of course the one that we will deal with in the second last round. Three special ballot papers will be distributed in case special ballots are needed. If not, we will not worry about those until we get to them.

In each round when voting you will rise in the way I have explained. The ballot papers will be collected by officers of the Convention secretariat and placed in those boxes that are identified on the table. The count will be taken in front of us. When all votes are lodged the ballot papers will be stored in the envelopes labelled 'round 1', 'round 2', et cetera. They will be collected and identified in separate envelopes so we will know that they can all be recorded simultaneously for *Hansard*.

In the event of two models coming equal last there will be a special ballot. I think it is important that delegates understand this. In the event of two models coming equal last there will be a special ballot in which only those models will be voted upon, except in the second last round. So if two of the pro-

posed models receive the lowest number of votes but equally, there will be another vote. In the event of any special ballot resulting in a tie, further special ballots will be taken as necessary. Any ballot cast for a model not in contention, including the status quo, will not be counted. I will explain that in the second vote.

Are there any questions on the voting procedure before we proceed to our first vote? If there are no questions, has everybody received a ballot paper? If anybody has not, will they please signify? If everybody has received a ballot paper, we will proceed towards the first ballot. You have your ballot paper in front of you. You have your name on the top. You should sign your ballot paper and vote once on the ballot paper for that of the alternatives which you support. I ask you now so to do. If delegates are ready, can I ask those delegates who support Model A to rise in their places or otherwise indicate so that their ballot papers can be collected.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—I then ask those in favour of Model B to rise or otherwise indicate that they have so voted.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Will those in favour of Model C please rise in their places or otherwise indicate.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Those in favour of Model D please rise in their places.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Those who voted against all models, please rise in their places or otherwise indicate.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Are there any abstentions? If there are no abstentions, we shall wait until the ballot papers are counted. The count having been completed, I announce the result of the ballot: Model A received 27 votes; Model B, 4 votes; Model C, 30 votes; Model D, 59 votes; and those against, 31 votes. There were no abstentions.

**Mrs GALLUS**—Can you repeat that?

**CHAIRMAN**—Yes, I intend to—Model A, 27 votes; Model B, four votes; Model C, 30 votes; Model D, 59 votes; and those against, 31 votes. There were no abstentions. On that basis, I declare the next round will be between Model A, Model C and Model D. Model B will be eliminated.

Round 1:

Delegates in support of Model A: 27

Bacon, Jim  
 Beattie, Peter  
 Bunnell, Ann  
 Carnell, Kate  
 (proxy—Webb, Linda)  
 Costello, Tim  
 Curtis, David  
 Devine, Miranda  
 Gallop, Geoffrey  
 Gallus, Chris  
 Gunter, Andrew  
 Haber, Ed  
 Hewitt, Glenda  
 Jones, Clem  
 Kelly, Mary  
 Lockett, Eric  
 Mack, Ted  
 Milne, Christine  
 Moore, Catherine  
 Muir, David  
 O'Brien, Patrick  
 O'Shane, Pat  
 Rann, Michael  
 Rayner, Moira  
 Schubert, Misha  
 Stone, Shane  
 Stott Despoja, Natasha  
 Tully, Paul

Round 1:

Delegates in support of Model B: 4

Bullmore, Eric  
 Cleary, Phil  
 Hayden, Bill  
 Johnston, Adam

Round 1:

Delegates in support of Model C: 30

Anderson, John  
 Andrew, Neil  
 Andrews, Kevin  
 Bartlett, Liam  
 Beanland, Denver  
 Bell, Dannalee  
 Bishop, Julie  
 Blainey, Geoffrey  
 Borbidge, Rob  
 (proxy—FitzGerald, Tony)  
 Boswell, Ron  
 Castle, Michael  
 Costello, Peter  
 Court, Richard  
 Cowan, Hendy  
 Craven, Greg  
 Ferguson, Alan  
 Fischer, Tim  
 Howard, John  
 (proxy—Minchin, Nick)  
 Imlach, Mary  
 Knight, Annette  
 McGarvie, Richard  
 McGauchie, Donald  
 Moloney, Joan  
 Myers, Benjamin  
 Newman, Jocelyn  
 Parbo, Arvi  
 Rocher, Allan  
 Sloan, Judith  
 Williams, Daryl  
 Zwar, Heidi

Round 1:

Delegates in support of Model D: 59

Andrews, Kirsten  
 Ang, Andrea  
 Atkinson, Sallyanne  
 Axarlis, Stella  
 Beazley, Kim  
 Bolkus, Nick  
 Brumby, John  
 Carr, Bob  
 Cassidy, Frank  
 Cocchiaro, Tony  
 Collins, Peter

Delahunty, Mary  
 Djerrkura, Gatjil  
 Edwards, Graham  
 Elliot, Mike  
 Evans, Gareth  
 Faulkner, John  
 Fox, Lindsay  
 George, Jennie  
 Green, Julian  
 Grogan, Peter  
 Handshin, Mia  
 Hawke, Hazel  
 Hill, Robert  
 Hollingworth, Peter  
 Holmes a Court, Janet  
 Kennett, Jeff  
 (proxy—Dean, Robert)  
 Kilgariff, Michael  
 King, Poppy  
 Kirk, Linda  
 Lavarch, Michael  
 Li, Jason Yat-Sen  
 Lundy, Kate  
 Lynch, Helen  
 Machin, Wendy  
 McGuire, Eddie  
 Mitchell, Roma  
 Moller, Carl  
 O'Brien, Moira  
 O'Donoghue, Lois  
 Olsen, John  
 Pell, George  
 Peris-Kneebone, Nova  
 Rundle, Tony  
 Russo, Sarina  
 Sams, Peter  
 Scott, Marguerite  
 Shaw, Jeff  
 Sowada, Karin  
 Tannock, Peter  
 Teague, Baden  
 Thomas, Trang  
 Thompson, Clare  
 Turnbull, Malcolm  
 Vizard, Steve  
 West, Sue

Winterton, George  
 Witheford, Anne  
 Wran, Neville

## Round 1:

Delegates voting 'no model': 31

Bjelke-Petersen, Florence  
 Bonner, Neville  
 Bonython, Kym  
 Bradley, Thomas  
 Chipp, Don  
 Ferguson, Christine  
 Fleming, John  
 Garland, Alf  
 Gifford, Kenneth  
 Hepworth, John  
 Hourn, Geoff  
 James, William (Digger)  
 Jones, Kerry  
 Killen, Jim  
 Kramer, Leonie  
 Leeser, Julian  
 Manetta, Victoria  
 Mitchell, David  
 Mye, George  
 O'Farrell, Edward  
 Panopoulos, Sophie  
 Ramsay, Jim  
 Rodgers, Marylyn  
 Ruxton, Bruce  
 Sheil, Glen  
 Smith, David  
 Sutherland, Doug  
 Waddy, Lloyd  
 Webster, Alasdair  
 Wilcox, Vernon  
 Withers, Reg

**CHAIRMAN**—I ask that the ballot papers for Round 1 be now put in envelopes so we ensure there is no duplication of votes.

We will proceed to Round 2. The procedure will be the same but, before you vote, I ask all delegates to cross out Model B. We now once again must vote. You have one vote. You can vote for Model A, Model C or Model D or you can vote against by voting 'No Model' and crossing out 'Abstain' or you

can abstain by crossing out 'No Model'. I ask all delegates to record their vote and to sign their ballot paper.

*Delegates recorded their vote.*

**CHAIRMAN**—I ask those delegates who voted for Model A to rise in their places or otherwise indicate.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Is there any delegate who has voted for model A whose vote has not been recorded? There are a number of delegates whose votes have not yet been taken. I ask those delegates who voted in favour of Model C to please rise or otherwise indicate and have their ballot papers collected.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Has anybody who voted for Model C not had their ballot paper collected? I ask those delegates who voted for Model D to please rise in their places or otherwise indicate.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Is there any person who voted for Model D whose vote has not been collected? I ask those who voted Against to please rise in their places or otherwise indicate.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Is there any delegate who has voted Against whose vote has not been counted? Are there any abstentions? There being none, I ask the tellers to proceed with the count. The count having been taken, the tallies are: Model A, 30 votes; Model B is eliminated, is not counted and is not there; Model C, 31 votes; Model D, 58 votes; and 32 votes Against. That adds up to 151 again, so the count is right. I declare on that basis that Model A is now eliminated. I repeat: Model A received 30 votes; Model C, 31 votes; Model D, 58 votes; those Against, 32 votes.

That gives us the 151 delegates who are voting.

Round 2:

Delegates in support of Model A: 30

Bacon, Jim  
Beattie, Peter

Bullmore, Eric  
Bunnell, Ann  
Carnell, Kate  
(proxy Webb, Linda)  
Cleary, Phil  
Costello, Tim  
Curtis, David  
Devine, Miranda  
Gallop, Geoffrey  
Gallus, Chris  
Gunter, Andrew  
Haber, Ed  
Handshin, Mia  
Hewitt, Glenda  
Jones, Clem  
Kelly, Mary  
Lockett, Eric  
Mack, Ted  
Milne, Christine  
Moore, Catherine  
Muir, David  
O'Brien, Patrick  
O'Shane, Pat  
Rann, Michael  
Rayner, Moira  
Schubert, Misha  
Stone, Shane  
Stott Despoja, Natasha  
Tully, Paul

Round 2:

Delegates in support of Model C: 31

Anderson, John  
Andrew, Neil  
Andrews, Kevin  
Bartlett, Liam  
Beanland, Denver  
Bell, Dannalee  
Bishop, Julie  
Blainey, Geoffrey  
Borbidge, Rob  
(proxy—FitzGerald, Tony)  
Boswell, Ron  
Castle, Michael  
Costello, Peter  
Court, Richard

Cowan, Hendy  
 Craven, Greg  
 Ferguson, Alan  
 Fischer, Tim  
 Howard, John  
   (proxy—Minchin, Nick)  
 Imlach, Mary  
 Johnston, Adam  
 Knight, Annette  
 McGarvie, Richard  
 McGauchie, Donald  
 Moloney, Joan  
 Myers, Benjamin  
 Newman, Jocelyn  
 Parbo, Arvi  
 Rocher, Allan  
 Sloan, Judith  
 Williams, Daryl  
 Zwar, Heidi

## Round 2:

Delegates in support of Model D: 58

Andrews, Kirsten  
 Ang, Andrea  
 Atkinson, Sallyanne  
 Axarlis, Stella  
 Beazley, Kim  
 Bolkus, Nick  
 Brumby, John  
 Carr, Bob  
 Cassidy, Frank  
 Cocchiaro, Tony  
 Collins, Peter  
 Delahunty, Mary  
 Djerrkura, Gatjil  
 Edwards, Graham  
 Elliot, Mike  
 Evans, Gareth  
 Faulkner, John  
 Fox, Lindsay  
 George, Jennie  
 Green, Julian  
 Grogan, Peter  
 Hawke, Hazel  
 Hill, Robert  
 Hollingworth, Peter

Holmes a Court, Janet  
 Kennett, Jeff  
   (proxy—Dean, Robert)  
 Kilgariff, Michael  
 King, Poppy  
 Kirk, Linda  
 Lavarch, Michael  
 Li, Jason Yat-Sen  
 Lundy, Kate  
 Lynch, Helen  
 Machin, Wendy  
 McGuire, Eddie  
 Mitchell, Roma  
 Moller, Carl  
 O'Brien, Moira  
 O'Donoghue, Lois  
 Olsen, John  
 Pell, George  
 Peris-Kneebone, Nova  
 Rundle, Tony  
 Russo, Sarina  
 Sams, Peter  
 Scott, Marguerite  
 Shaw, Jeff  
 Sowada, Karin  
 Tannock, Peter  
 Teague, Baden  
 Thomas, Trang  
 Thompson, Clare  
 Turnbull, Malcolm  
 Vizard, Steve  
 West, Sue  
 Winterton, George  
 Witheford, Anne  
 Wran, Neville

## Round 2:

Delegates voting 'no model': 32

Bjelke-Petersen, Florence  
 Bonner, Neville  
 Bonython, Kym  
 Bradley, Thomas  
 Chipp, Don  
 Ferguson, Christine  
 Fleming, John  
 Garland, Alf

Gifford, Kenneth  
 Hayden, Bill  
 Hepworth, John  
 Hourn, Geoff  
 James, William (Digger)  
 Jones, Kerry  
 Killen, Jim  
 Kramer, Leonie  
 Leeser, Julian  
 Manetta, Victoria  
 Mitchell, David  
 Mye, George  
 O'Farrell, Edward  
 Panopoulos, Sophie  
 Ramsay, Jim  
 Rodgers, Marylyn  
 Ruxton, Bruce  
 Sheil, Glen  
 Smith, David  
 Sutherland, Doug  
 Waddy, Lloyd  
 Webster, Alasdair  
 Wilcox, Vernon  
 Withers, Reg

**CHAIRMAN**—We will now proceed to the process that was identified as Round 4A, which is with the changed models now reduced to two. The question is:

Out of the remaining two models, and the status quo, which do you prefer?

**Mr LOCKETT**—I move:

That the motion not now be put.

**CHAIRMAN**—There is a procedural motion. I had better have a seconder in the circumstances. Is there is a seconder to that procedural motion? There being no seconder, I will record that you have moved a motion and that the motion received no support. We will now proceed to Round 4A.

**Professor PATRICK O'BRIEN**—I had my hand up, but out of curiosity to know what it is.

**CHAIRMAN**—I am sorry; There was a bit of movement over there and I was not too sure where it was. I am not going to allow you to speak on the procedural motion; I believe we can put it. Those in favour of the

procedural motion that the motion be not put, raise your hand. The total is three. Those against the procedural motion, raise your hand. I declare that motion lost.

We now go to Round 4A. Each delegate again has one vote to be exercised in favour of either Model C or Model D, or the Status Quo. To ensure that everybody is aware of the alternatives, the vote now is between that model proposed by Mr Richard McGarvie, which is Model C, and that model proposed by Mr Malcolm Turnbull, which is Model D; and the third option is no change. Are there any questions?

**Councillor TULLY**—I seek a point of clarification on that last option. Where it says, 'No Model (Abstain),' is it in order to cross out the words, 'No Model' and just have the word 'Abstain' if that is the way I wish to vote?

**CHAIRMAN**—It certainly is; you may vote either way. I was going to tell delegates that they should now delete the first two models. On your ballot paper, you will cross out Model A and Model B. You now have three options plus the No Model or abstain. The 'No Model' should be crossed out and 'Abstention' so that you will now vote for three alternatives plus an abstention. The paper will now read, therefore, Model C, Model D, Status Quo or Abstention. Are there any questions?

**Mr CLEARY**—I just want to make it clear that there are four possibilities: PM/Constitutional, Model D, Status Quo or No Model. No Model is a deliberate choice. The way you are interpreting it is as if it is a nothing; it does not exist; it is in the ether. But it actually is there.

**CHAIRMAN**—If you wish to retain the No Model and vote that way, we will so count them.

**Mr CLEARY**—No. I am saying you have an option there. No Model is a direct choice by a candidate at this conference.

**CHAIRMAN**—I accept that. That means that you may either vote No Model or abstention. If you wish to vote No Model, you will cross out abstention; if you wish to abstain, you will cross out 'No Model'. So there will



be, as Mr Cleary suggested, an option between Model C, Model D, Status Quo, No Model or Abstention.

**Mr WADDY**—For the information of those watching these proceedings, will you explain from the chair what is meant by ‘status quo’? It may not be clear to those watching. I am fully aware of what it means, but a lot of people in Australia do not actually speak Latin.

**CHAIRMAN**—I shall explain that in a moment. Are there any further questions on that voting procedure? No, then I shall answer Mr Waddy’s query. The ‘Status Quo’ means the state as it is: an Australian monarchy, with the Queen of Australia as our head of state and the Governor-General with those powers designated within the Australian Constitution. The options now are: Model C, the McGarvie model; Model D, the option proposed by Mr Malcolm Turnbull; the continuation of the Australian monarchy; No Model; or Abstain. If you wish to abstain, cross out ‘No Model’, if you wish to vote for No Model, you cross out ‘Abstain’. You can vote once for any one of those options. Those in favour of Model C, please rise in your places or otherwise indicate.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Those in favour of Model D, please rise in your places or otherwise indicate.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Those who voted for the Status Quo—the continuation of the Australian monarchy—please rise in your places or otherwise indicate.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Those who voted for No Model, please rise in your places and have your ballot papers collected.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Are there any who vote Abstain?

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Is there anybody who has not had their ballot paper collected? We will proceed to the count.

As delegates will recall, we have eliminated options A and B. In Round 4A for Model C there were 22 votes; Model D, there were 70 votes; Status Quo, there were 43 votes; No Model, there were—this cannot be right. I counted at least three abstentions. It was certainly more than one and I have only one abstention here. Therefore, there must be an error in the voting and I suggest they recount the votes.

**Mrs GALLUS**—I might have confused the vote. On my ballot I wrote ‘Abstain’, but I actually voted for No Model.

**CHAIRMAN**—The point is that I noted more than one person rising. Therefore, the vote that I have is inaccurate and I require a recount.

**Mr GARETH EVANS**—It is between No Model and Abstain; how can you tell the difference?

**CHAIRMAN**—As long as we get the total right, Gareth. At the moment the total is incorrect.

**Mr GIFFORD**—While they are recounting, I made a mistake. I ticked the wrong one.

**Mr GROGAN**—Did you vote for the republic?

**Mr GIFFORD**—I certainly did not vote for the republic.

**CHAIRMAN**—Mr Gifford has the floor.

**Mr GIFFORD**—I would like, if possible, to change the ballot paper.

**CHAIRMAN**—At this stage, I do not believe that is possible. We are not going to have another vote under this 4A procedure. If it were 4B, that would be different. We note that there is an error. We need a total count that is the same as the number of votes cast. I now have a total which says 22 votes for Model C; 70 votes for Model D; 43 votes for Status Quo; 12 votes for No Model; and 4 abstentions. That is 151 votes, so that tally is correct.

Round 3:

Delegates in support of Model C: 22

Andrew, Neil

Andrews, Kevin

Bartlett, Liam

Bell, Dannalee  
 Bishop, Julie  
 Costello, Peter  
 Court, Richard  
 Cowan, Hendy  
 Craven, Greg  
 Ferguson, Alan  
 Imlach, Mary  
 Johnston, Adam  
 Knight, Annette  
 McGarvie, Richard  
 McGauchie, Donald  
 Myers, Benjamin  
 Newman, Jocelyn  
 Parbo, Arvi  
 Rocher, Allan  
 Sloan, Judith  
 Williams, Daryl  
 Zwar, Heidi

## Round 3:

## Delegates in support of Model D: 70

Andrews, Kirsten  
 Ang, Andrea  
 Atkinson, Sallyanne  
 Axarlis, Stella  
 Bacon, Jim  
 Beattie, Peter  
 Beazley, Kim  
 Bolkus, Nick  
 Brumby, John  
 Carnell, Kate  
 (proxy—Webb, Linda)  
 Carr, Bob  
 Cassidy, Frank  
 Cocchiaro, Tony  
 Collins, Peter  
 Costello, Tim  
 Delahunty, Mary  
 Djerrkura, Gatjil  
 Edwards, Graham  
 Elliot, Mike  
 Evans, Gareth  
 Faulkner, John  
 Fox, Lindsay  
 Gallop, Geoffrey  
 George, Jennie

Green, Julian  
 Grogan, Peter  
 Handshin, Mia  
 Hawke, Hazel  
 Hewitt, Glenda  
 Hill, Robert  
 Hollingworth, Peter  
 Holmes a Court, Janet  
 Kennett, Jeff  
 (proxy—Dean, Robert)  
 Kilgariff, Michael  
 King, Poppy  
 Kirk, Linda  
 Lavarch, Michael  
 Li, Jason Yat-Sen  
 Lundy, Kate  
 Lynch, Helen  
 Machin, Wendy  
 McGuire, Eddie  
 Milne, Christine  
 Moller, Carl  
 O'Brien, Moira  
 O'Donoghue, Lois  
 Olsen, John  
 Pell, George  
 Peris-Kneebone, Nova  
 Rann, Michael  
 Rayner, Moira  
 Rundle, Tony  
 Russo, Sarina  
 Sams, Peter  
 Schubert, Misha  
 Scott, Marguerite  
 Shaw, Jeff  
 Sowada, Karin  
 Stone, Shane  
 Stott Despoja, Natasha  
 Tannock, Peter  
 Teague, Baden  
 Thomas, Trang  
 Thompson, Clare  
 Turnbull, Malcolm  
 Vizard, Steve  
 West, Sue  
 Winterton, George  
 Witheford, Anne

Wran, Neville

Round 3:

Delegates for the status quo: 43

Anderson, John  
 Beanland, Denver  
 Bjelke-Petersen, Florence  
 Blainey, Geoffrey  
 Bonner, Neville  
 Bonython, Kym  
 Borbidge, Rob  
 (proxy—FitzGerald, Tony)  
 Boswell, Ron  
 Bradley, Thomas  
 Bullmore, Eric  
 Castle, Michael  
 Chipp, Don  
 Ferguson, Christine  
 Fischer, Tim  
 Fleming, John  
 Garland, Alf  
 Hayden, Bill  
 Hepworth, John  
 Hourn, Geoff  
 Howard, John  
 (proxy—Minchin, Nick)  
 James, William (Digger)  
 Jones, Kerry  
 Killen, Jim  
 Kramer, Leonie  
 Leeser, Julian  
 Manetta, Victoria  
 Mitchell, David  
 Mitchell, Roma  
 Moloney, Joan  
 Mye, George  
 O'Brien, Patrick  
 O'Farrell, Edward  
 Panopoulos, Sophie  
 Ramsay, Jim  
 Rodgers, Marylyn  
 Ruxton, Bruce  
 Sheil, Glen  
 Smith, David  
 Sutherland, Doug  
 Waddy, Lloyd

Webster, Alasdair

Wilcox, Vernon

Withers, Reg

Round 3:

Delegates voting 'no model': 12

Bunnell, Ann  
 Cleary, Phil  
 Curtis, David  
 Devine, Miranda  
 Gallus, Christine  
 Gifford, Kenneth  
 Gunter, Andrew  
 Haber, Ed  
 Jones, Clem  
 Mack, Ted  
 Muir, David  
 O'Shane, Pat

Round 3:

Delegates who abstained: 4

Kelly, Mary  
 Lockett, Eric  
 Moore, Catherine  
 Tully, Paul

**CHAIRMAN**—Before we proceed to the next stage, those ballot papers need to be put in envelopes and properly set aside.

On this occasion, the vote is between Model C, Model D, No Model and Abstain. Has any delegate not got a ballot paper?

**Councillor TULLY**—On point of order, Mr Chairman. In relation to the document that I have—and I hope it is the latest version—it says under Round 4B, 'Each delegate to have one vote to be directed to Y or Z.' I would have assumed that, at that stage, we have the two preferred models and that that is the completion of the count at this stage because there are only two actual models at this stage. I interpreted that to mean that, at this point, we would then adjourn. The others are not models. Clearly there are two preferred models.

**CHAIRMAN**—The resolution that was passed by this Convention requires that we now have another round of votes, this time without the Status Quo option. It is that round of votes to which we are now proceeding.

The resolution passed by this Convention requires that there be one further round of voting, that is, the round we are now proceeding to.

This round requires that delegates vote between the two residual models, but they have the additional option, if they wish, to vote against any model or to abstain. So there are in fact four options: you can vote for either of the two models, that is, the McGarvie Model or the Malcolm Turnbull Model; you can vote for the No Model, which means that you vote against any model; or you abstain, which means that you cross out No Model, leaving Abstain. Are there any questions about that form of voting? Has every delegate got a ballot paper? If every delegate has a voting paper, I ask you again to sign and to indicate either Model C, Model D, No Model or Abstain, crossing out No Model or Abstain, according to the way you vote.

Those delegates who support Model C, please rise in your places or otherwise indicate.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Is there any delegate who has voted for Model C and whose ballot paper has not been collected? Those delegates in favour of Model D, please rise or otherwise indicate. Please resume your seat when you have voted.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Is there any delegate who voted for the bipartisan appointment model and whose ballot paper has not been collected? Those who vote for the No Model, please rise in their places or otherwise indicate.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Is there any delegate who voted for the No Model and whose ballot paper has not been collected? Those delegates who vote for Abstain, please rise in their places or otherwise indicate.

*Delegates submitted their ballot papers.*

**CHAIRMAN**—Is there any delegate who voted for Abstain and whose ballot paper has not been collected? I ask that the vote pro-

ceed. The count having been taken, I announce the results: Model C has received 32 votes; Model D has received 73 votes.

**Mr WADDY**—You haven't got a majority.

**Councillor TULLY**—No majority.

**CHAIRMAN**—The No Model has received 43 votes and there are 3 abstentions. Let me go through the count again. There are 32 votes for Model C; the bipartisan Model has 73 votes; the No Model has 43 votes; and there are three abstentions. That gives the right tally, so we are right. I declare that Model D, the bipartisan model, is the preferred model.

Round 4:

Delegates in support of Model C: 32

Anderson, John  
 Andrew, Neil  
 Andrews, Kevin  
 Bartlett, Liam  
 Beanland, Denver  
 Bell, Dannalee  
 Bishop, Julie  
 Blainey, Geoffrey  
 Borbidge, Rob  
     (proxy—FitzGerald, Tony)  
 Boswell, Ron  
 Castle, Michael  
 Costello, Peter  
 Court, Richard  
 Cowan, Hendy  
 Craven, Greg  
 Ferguson, Alan  
 Fischer, Tim  
 Howard, John  
     (proxy—Minchin, Nick)  
 Imlach, Mary  
 Johnston, Adam  
 Knight, Annette  
 McGarvie, Richard  
 McGauchie, Donald  
 Moloney, Joan  
 Mye, George  
 Myers, Benjamin  
 Newman, Jocelyn  
 Parbo, Arvi

Rocher, Allan  
 Sloan, Judith  
 Williams, Daryl  
 Zwar, Heidi

Round 4:

Delegates in support of Model D: 73

Andrews, Kirsten  
 Ang, Andrea  
 Atkinson, Sallyanne  
 Axarlis, Stella  
 Bacon, Jim  
 Beattie, Peter  
 Beazley, Kim  
 Bolkus, Nick  
 Brumby, John  
 Carnell, Kate  
 (proxy—Webb, Linda)  
 Carr, Bob  
 Cassidy, Frank  
 Cocchiaro, Tony  
 Collins, Peter  
 Costello, Tim  
 Delahunty, Mary  
 Djerrkura, Gatjil  
 Edwards, Graham  
 Elliot, Mike  
 Evans, Gareth  
 Faulkner, John  
 Fox, Lindsay  
 Gallop, Geoffrey  
 Gallus, Chris  
 George, Jennie  
 Green, Julian  
 Grogan, Peter  
 Handshin, Mia  
 Hawke, Hazel  
 Hewitt, Glenda  
 Hill, Robert  
 Hollingworth, Peter  
 Holmes a Court, Janet  
 Kennett, Jeff  
 (proxy—Dean, Robert)  
 Kilgariff, Michael  
 King, Poppy  
 Kirk, Linda  
 Lavarch, Michael

Li, Jason Yat-Sen  
 Lockett, Eric  
 Lundy, Kate  
 Lynch, Helen  
 Machin, Wendy  
 McGuire, Eddie  
 Milne, Christine  
 Mitchell, Roma  
 Moller, Carl  
 O'Brien, Moira  
 O'Donoghue, Lois  
 Olsen, John  
 Pell, George  
 Peris-Kneebone, Nova  
 Rann, Michael  
 Rayner, Moira  
 Rundle, Tony  
 Russo, Sarina  
 Sams, Peter  
 Schubert, Misha  
 Scott, Marguerite  
 Shaw, Jeff  
 Sowada, Karin  
 Stone, Shane  
 Stott Despoja, Natasha  
 Tannock, Peter  
 Teague, Baden  
 Thomas, Trang  
 Thompson, Clare  
 Turnbull, Malcolm  
 Vizard, Steve  
 West, Sue  
 Winterton, George  
 Witheford, Anne  
 Wran, Neville

Round 4:

Delegates voting 'no model': 43

Bjelke-Petersen, Florence  
 Bonner, Neville  
 Bonython, Kym  
 Bradley, Thomas  
 Bullmore, Eric  
 Bunnell, Ann  
 Chipp, Don  
 Cleary, Phil  
 Curtis, David

Devine, Miranda  
 Ferguson, Christine  
 Fleming, John  
 Garland, Alf  
 Gifford, Kenneth  
 Gunter, Andrew  
 Haber, Ed  
 Hayden, Bill  
 Hepworth, John  
 Hourn, Geoff  
 James, William (Digger)  
 Jones, Clem  
 Jones, Kerry  
 Killen, Jim  
 Kramer, Leonie  
 Leeser, Julian  
 Mack, Ted  
 Manetta, Victoria  
 Mitchell, David  
 Muir, David  
 O'Brien, Patrick  
 O'Farrell, Edward  
 O'Shane, Pat  
 Panopoulos, Sophie  
 Ramsay, Jim  
 Rodgers, Marylyn  
 Ruxton, Bruce  
 Sheil, Glen  
 Smith, David  
 Sutherland, Doug  
 Waddy, Lloyd  
 Webster, Alasdair  
 Wilcox, Vernon  
 Withers, Reg

Round 4:

Delegates who abstained: 3

Kelly, Mary  
 Moore, Catherine  
 Tully, Paul

**CHAIRMAN**—When we resume at 2 o'clock we will proceed to consider amendments to, or other discussion on Model D.

**Councillor TULLY**—Mr Chairman, I raise a point of order. I cannot see how you can say it is the preferred model when it does not have an absolute majority of delegates here at

this Convention. Clearly it is not the preferred model. The mathematics at the school I went to clearly show it is not the preferred model. It does not have the absolute support of a majority of delegates. This is a fraud on the people of Australia.

**CHAIRMAN**—Councillor Tully, your point of order is not valid. The proceedings do not make that the final vote. We now proceed, as you will recall, to an analysis of that model this afternoon. Amendments will be taken to that model. The bipartisan model will then be tested at a later time to determine which is the finally preferred model.

**Professor PATRICK O'BRIEN**—Mr Chairman, I raise a point of order. I have exactly the same point as Councillor Tully. No-one has a majority. It is not a preferred option. It was announced on the very first day that 77 would be a majority; no-one got a majority. I believe that this Convention should now be closed because the Chairman is out of order and no-one got a majority. That is what Mr Howard said and that is what your instructions said.

**Councillor TULLY**—I move the motion that this Convention now close.

**CHAIRMAN**—I am sorry; You do not have the call, Councillor Tully. Dr O'Shane has the call.

**Dr O'SHANE**—Chair, I am only asking for some clarification. You announced—when Senator Evans has finished speaking to you, Chair, I will continue.

**CHAIRMAN**—I think it might be helpful to everybody, as Mr Evans has just pointed out—

**Dr O'SHANE**—Chair, I am sorry—

**CHAIRMAN**—Yes, sorry, Dr O'Shane.

**Dr O'SHANE**—Just a moment ago you stated that we would continue the voting after 2 o'clock. As I am reading the *Notice Paper* for today, the session times are in fact from 9 o'clock to 1 o'clock—and we have gone beyond 1 o'clock—and the afternoon session, session 2, is from 2.15 to 5 p.m. Would you please clarify that.

**CHAIRMAN**—Today's *Notice Paper* says 2 p.m. to 5 p.m. And as has been the practice

in the parliament for years, when you are voting, you proceed until the voting is concluded before you adjourn. It is that practice that I pursued. When I said the 'preferred model', if you look at the exact text of the revolution—resolution—

**DELEGATES**—Ha, Ha!

**CHAIRMAN**—Some say 'Long live the revolution', but I really meant resolution. You will notice that it is only a preferred model on an indicative basis.

**Mr GARETH EVANS**—Preliminary indicative basis.

**CHAIRMAN**—Preliminary indicative basis. It is not the final preferred model; it is on a preliminary indicative basis. It is on that basis that we will refer it to our deliberations this afternoon. Before we have a suspension for lunch, I should advise that, during the luncheon break in the House of Representatives courtyard in front of the Backbenches cafe, to ease the tension, as the Deputy Prime Minister has suggested, there will be a whip cracking demonstration by Mick's Whips from the Northern Territory as part of a promotion of Internet Electronic Commerce Exports. I am told by Mr Fischer it is the new Silk Road. The hearing is suspended until 2 p.m.

**Proceedings suspended from 1.26 p.m. to 2.00 p.m.**

**CHAIRMAN**—Thank you, Delegates. I apologise for the relatively short time you had to have lunch, but I thought it was better, considering the time available, that we try to give as much time as possible to consideration of the bipartisan appointment of the president model, which is the model that has emerged from this morning's proceedings for our further consideration this afternoon.

As you would know, at this stage there is a different procedure to that of this morning's proceedings in terms of amendments, in that any 10 delegates can notify and proceed with an amendment. In this instance, the 10 delegates do not have to be 10 of those who supported a particular model. There is at least one amendment of which I have received notice.

I propose that any amendments to the bipartisan appointment model will need to be supported by 10 people. To identify the 10 people, I propose to ask if there are 10 people who support it and to ask them to stand so that we will be aware of who they are. I will then ask anybody who wishes to move that amendment to do so. I propose that speakers this afternoon be allowed five minutes to speak on each occasion. As far as possible, I will try to allow a spread of contributions so that we do not have only the one point of view. The proceedings will allow, hopefully, for not only the presentation but also the voting on the preferred model—or preliminary preferred, indicative preferred, preliminary indicative preferred model—that emerged from this morning's voting.

Because there were quite a number of people who did not speak this morning, we should start by allowing any delegate who so wishes to speak from the floor, and any delegate who wishes to move an amendment can do so. I have the first amendment but the delegate is not present. Therefore, I cannot call him to proceed.

**Sir DAVID SMITH**—Chairman, are you continuing with the speakers list that you had this morning or do you wish to start a new one?

**CHAIRMAN**—I had intended to start a new list because we have now moved to a different stage of the proceedings, but I intend, probably after an hour of general debate, to start going through the bipartisan model, clause by clause. I think that that will allow a better consideration, but if people wish to talk in general on the bipartisan appointment of the president model, they may do so.

I have notice of a number of amendments. I gather that they have just been circulated. I have just been told that amendment No. 2 needs to be varied as it is not Senator Hill who has seconded amendment No. 2 but Dr Robert Dean. So you should amend amendment No. 2 to identify that fact.

If there are any other amendments when we get to that stage, I ask delegates to put them in writing and there is a proper amendment sheet that has been distributed. Remember

that you have to have the support of 10 delegates, but any 10 will do.

**Mr TIM FISCHER**—Given what you have just said—and a number of delegates have since come into the chamber—I gather there will be no votes before 3.15 p.m. You will proceed to the amendments at or about 3.15 p.m. and, from that stage on, there may be the possibility of votes, culminating in a period of voting around 5 o'clock?

**CHAIRMAN**—I think we could well have voting at any time after the general debate. I propose to allow a general discussion, because there were so many who had not spoken this morning and therefore it seemed fair that I allow some presentation. I call Sir David Smith on that basis. The time of voting will be sometime after 3. Those delegates who are not presently in the chamber should be alert that there will be voting any time from 3 o'clock on, when the amendments themselves will be put.

**Sir DAVID SMITH**—Malcolm Turnbull has trumpeted the great virtue of his hybrid model. What was it? Political bipartisanship. Note the words: political bipartisanship. I first came to this wonderful Old Parliament House 40 years ago as a ministerial private secretary. For the rest of my working life I was associated in one way or another, both inside and outside this building, with the occupants of this building and its successor up on the hill. In all that time, I never saw very much political bipartisanship; some but not much.

Of our nine Australian Governors-General, five came from politics: Sir Isaac Isaacs, albeit via the High Court, Sir William McKell, Lord Casey, Sir Paul Hasluck and Mr Hayden. Every one of those appointments was criticised and bitterly opposed by their political opponents at the time of their announcement. Every one of these great and distinguished Australians retired with the plaudits of their former political enemies for the way in which they had carried out their public duties. There was plenty of bipartisanship when they retired but none when they were appointed.

Not one of them would have held the office under this Turnbull model. We do not want this country's head of state to be a wishy-

washy compromise. We want and we need men and women of distinction and principle in that high office. The Turnbull model diminishes the nation by offering us a hybrid head of state under a hybrid Constitution. The republic is not inevitable, and my colleagues and I now welcome the opportunity to fight the referendum against all or any of your miserable compromise models.

**Ms THOMPSON**—I want to address a point that was raised this morning in debate by a number of speakers, and that was the question of safety. The current system is safe, and that is a point that I entirely agree with. The current system is safe but, when we look at the history of the world, is safety what we want always? Would the wheel have been invented if we were safe? Is the jet engine safe? Was Federation safe? Was the expansion of the VFL into the AFL safe? Was Captain Cook's voyage of discovery safe? The point is that safety binds us in a strait-jacket from which we close our eyes to the world and do not look at where we can go. Safety is not what we are about; we are about building on that fabulous safe system and building something better. We are about a safe vision.

The bipartisan model which is before you today is that safe vision. It is safe because it keeps control of the powers of the president by defining them as the powers of the current Governor-General. It is safe because our elected members of parliament are those who have to make that final and most important decision, and it is safe because it ensures that there is cross-party, cross-factional support from the states and territories and from the community. And it is visionary because of the nomination process, because of consultation and because of dismissal. I say safety is important, but let's not put safety before vision. Let's put vision and safety hand in hand and walk into the new millennium together.

**CHAIRMAN**—Before I call Father Fleming, who will be the next speaker to be followed by Graham Edwards, an invitation has been received that I should read to you. It is from the members of the Aboriginal



embassy across the road in front of this building. It states:

This is an invitation to delegates of the Constitutional Convention, the white and Aboriginal peoples on the land from the elders in council at the Aboriginal tent embassy to sit in a circle and discuss the business of land law and rights with them.

I read that for the information of delegates.

**Father JOHN FLEMING**—It has all come down to this—the ARM model revisited. Is it in fact worth it after five or more years of discussion for us to come to a meeting like this to find not a model—and I am using that word very advisedly—but at best a shambles, at best an idea barely sketched out for us to consider? All we really have is an idea, an emotional commitment on the part of some that, for reasons they think best, we ought to be a republic. When it comes down to the reality and the detail, what we have been given is at best a sketch and a poor one at that.

Mr Beazley said, ‘Don’t worry about it. All we really want you to do is buy a pig in a poke. Just take it on trust.’ He says the only unchangeable thing is becoming a republic and it is unthinkable that we would go back to the monarchy—tell that to the people of Fiji—but he says we can frig around with the rest. So we will have Australian republic mark 1, mark 2, mark 3, mark 4 and mark 5. I do not believe Australian people want the degree of insecurity.

Clare Thompson does not seem to think that security in the body politic is higher than vision. Of course it is. You only have to ask people who live in very insecure circumstances what they most crave. Ask people in areas of employment whose jobs are insecure how they feel about it. Ask those people who live in the insecurity of unemployment how they feel about it. Security is a fundamental fact of our human nature that we crave. We are being asked to simply accept division in politics as a virtue, but division in politics is death and safety does not come before the grand visions of the visionaries.

We are not into flights of fancy of millennial madness here; we are being asked to consider a document which contains in it

a proposal. When you look at that proposal or sketch we find a means of nomination which at best will probably conjure up an Australian of the year type of person. Look at it: short on detail and with some vague idea of a Community Constitutional Committee, but we are not told how it will be established—and this for the top job in the country.

Really, if after all these years this is the best model that is on offer, God help us all, because it is not a model. It is the sketch of a model. It is the barest of bones. It is imprecise. It promises insecurity. It promises division and all we are promised is that we can fix it up later. I do not want to go into such a situation and I believe most Australians would shudder at the thought of Mr Beazley’s proposal that we go in for a republic mark 1, 2, 3, 25 or 35.

I appeal to all delegates here—even to the ARM if they are minded to rethink the matter—to repudiate this shabby model, to repudiate this recipe for national insecurity, to repudiate a document which is not thought out but which has been cobbled together in a mishmash of deals by a variety of people. It is hardly worth the paper it is written on. It ought not be thought of as a model that we could in good conscience endorse and say to the Australian people, ‘That’s the way to go’, because it ain’t the way to go.

**Mr EDWARDS**—Mr Chairman, ever since I have been involved in this debate about a republic we have had our opponents saying to us, ‘You don’t know what you are on about; you don’t know where you are—show us a model.’ Every time we put forward a model and an apt description of what we were trying to achieve, they have found another means of changing their argument.

We have come up with a model today, and it is a model that has so far been supported by some 70 delegates from this Convention. I think that there is still some work to do, and I am sure most people would agree, but I am totally confident that, by tomorrow afternoon, we will have the model that we can take to the people of Australia and in all good conscience sell to them.

I am just a bit disappointed that, following the vote this morning—and despite the fact

that we now have some 70 people from the delegation supporting this bipartisan model—we will still have to put up with the process of misinformation and objection which has become so much a part of the monarchists' way of trying to hang on to the past. Of course they do not tell you that the current system, which does not involve any person from Australia, is far from perfect.

Every time I have spoken here over the course of the last couple of weeks I have said that the principle I firmly and dearly hang on to is that we should have an Australian as our head of state. But I do not want an Australian as our head of state at any price, and I am not going to put my name to something that I do not believe can and will work.

The other thing that I have noticed since I have been here for the past two weeks is that people—particularly those who have been involved in the process of federal parliament, either through being a member or, like Sir David Smith, as a servant—have come here and denigrated that process, despite having been involved in it for many years.

I have only been a member of a state parliament but I know through that experience that the majority of decisions that are arrived at are arrived at by consensus. They are arrived at by people generally of some intelligence and goodwill who can sit down and debate things and come up with the right decisions. We have been doing that for the last 100 years: that is why we have one of the best systems in the world. The best system that we have got is a product of our parliamentary system.

I am not going to support for one moment a proposition that will see us become a republic that in any way impinges on or detracts from our system of parliamentary democracy. What is contained in this model, which I believe will become the basis for the argument that we will put before the people, is not going to do that. This model addresses the principle that we should have in Australia an Australian as our head of state.

If those people here who have voted for no model think that they are going to be able to come up for the rest of this Convention and put forward mindless obstruction and

misinformation and not address that very important principle, then I think that they have underestimated not just the clear-thinking and committed people at this Convention but the rest of Australia.

**Mr COLLINS**—Mr Chairman and delegates, a couple of hours ago the Convention rejected the Americanisation of the Australian Constitution—and I think wisely so. Had the Convention embraced a direct election model it would have meant a fundamental transformation of our political system—something that, if the Australian people want it to happen, could indeed happen, but it will not happen and it could never have happened in this particular Constitutional Convention.

In other words, in this two-week Convention, we have been asked to address one central issue. The issue is whether or not we should have our own Australian head of state. If you want a reminder as to just why we should have our own head of state, go down and have a look at the British High Commission, three minutes walk from here. You will see the Union Jack flying over the High Commission. You will also see a flag with stars on it, but they are not the stars of the Southern Cross, they are the stars of the European Union.

The United Kingdom is a part of Europe. Their monarch, their Queen, their head of state, is part of a European democracy and monarchy. What we have to address here is the relevance of that proposition to us on the doorstep of a new century. If we come out of this Convention without making the decision to have our own head of state, we will be regarded as timid beyond belief.

Our forefathers, the founding fathers of our Constitution, tackled questions much tougher than the questions we are confronting here this afternoon. If, at the end of this century, we cannot confront this question and find an answer for it, then we have failed as a convention and we have failed as an Australian people. That is the sort of timidity that would have meant that the First Fleet would never have left Portsmouth Harbour—and no doubt some delegates think that would have been a good idea. It would have meant that Smithy would have stuck to paper aeroplanes. I

believe that we can make a decision this afternoon which will benefit all Australians.

The time has come to back the bipartisan plan. I am sick of the demonising of Malcolm Turnbull that has gone on in this Convention. Malcolm Turnbull is a committed republican and he should be recognised for that, but so too are many delegates of very diverse political backgrounds and no political background at all at this Convention. I appeal to my federal Liberal colleagues who have, during this Convention, shown themselves to be republicans who, when confronting the question, have shown that they are committed to change. The challenge is to come up with a constructive and workable change that will be more consultative for the Australian people. That is the bipartisan model.

There is this consultative mechanism for the first time. Instead of closing it down, as the McGarvie option proposes, and locking it up for an elite to consider those who might be heads of state in Australia, the bipartisan model opens up the process for the first time. The sorts of bodies that will make submissions and the sorts of individuals who will make submissions are reflected very well in the composition of this Constitutional Convention.

I appeal to all republicans to seize the moment. The Australian people will not forgive republicans who white-ant this process, who delay the day, who do not seize the moment. We must grab this opportunity and we must put forward a simple, modest but completely timely change as we enter the new century. If we do not, then we have cost the Australian people a lot of money and we have tried their patience beyond belief. It is not beyond the capacity of this Convention to reach a conclusion this afternoon which will receive the support of the broad majority of Australians in the majority of states. I commend the bipartisan model to the Convention.

**Senator LUNDY**—I support the bipartisan model put forward and supported by many, including the ARM, and I do so with the confidence of knowing that a significant element of that model has been long in the public forum of debate about the move to a republic. I am confident that that significant

element of that model is what people are anticipating will form part of the question that ultimately goes forward to them in a referendum. I believe that the direct election model reflects a more recent entry into this debate and it is one born of quite genuine frustration, although that frustration, I would argue, is ill-guided in this forum. I would also argue that it does represent some opportunism.

I ask you: what is democracy? Is democracy the system itself, or is democracy knowing and understanding how to participate effectively within that system? I argue that it is the latter. Therefore, in comparing the notion of direct election and the claims of enhanced democracy with the model that we will be discussing more fully in this afternoon's session, I would argue there is far more opportunity to know and understand what democracy is all about in the model that has now received that preliminary indicative support.

The strength of the model lies in the feature of the open nomination process. That process will allow the broadest aspects of public participation. In terms of the role that can play with the civic education of Australians, the opportunity is one of openness. It is one that everybody can have an opportunity to participate in without it being tainted by a system that, I believe, would come with a direct election, where manipulation and those perhaps with the funds or indeed the political connections would prevail.

The political credibility of the Australian parliaments is not reliant upon yet another opportunity to vote. It lies within the policies and the conduct of our parties and our parliamentarians. It is only the bipartisan appointment model that can genuinely bring a circumstance and experience of civic education that will enhance and bring democracy by active participation by more Australians. No other model will do that.

So I leave you with this. Please think about what democracy is. It is not just being there to vote. It is about knowing and understanding how to use your vote and what it means to actually participate and understand.

**DEPUTY CHAIRMAN**—Before I call Marylyn Rodgers, the Chairman and I have

decided to exercise our brutal powers and cut you down to three dazzling minutes. It has been pointed out that a speech does not have to be eternal to be immortal. There are 10 people who want to speak before 3 o'clock, and that is when we start looking at the amendments. There are 10 on the list and we can just get through them in that time if you go to three minutes and perhaps just a fraction over.

**Ms RODGERS**—Mr Deputy Chairman, you will know I am a woman of few words. At last we have the grand vision for our future—the one that will give us a voice. ‘More participation,’ the previous speaker said. This vision is meant to give the people of Australia a voice, but let me tell you what it is, people of Australia. Parliament—the politicians—shall establish the Community Constitutional Committee for the Prime Minister, a politician, seconded by the Leader of the Opposition, another politician. They will then present this one nomination to a joint sitting—again, of politicians—who will make a decision without debate. I ask you: is that a democracy where the people have a say?

The Prime Minister has powers of instant dismissal which will require ratification in 30 days. What is going to happen in those 30 days if the committee that has been set up does not ratify the Prime Minister's decision? Where will the Australian people be left? Australians need a system that will give them confidence in those who govern them. If, for instance, that happened and the decision was not ratified, there would be a vote of no confidence in the Prime Minister. We would then have a dismissed president—as we are going to call him—and a Prime Minister trying to govern but given a vote of no confidence. If this got up at referendum, all I can say is: may God help us all!

**DEPUTY CHAIRMAN**—Thank you very much. Mrs Rodgers has proven herself to be a woman of her word.

**The Most Reverend PETER HOLLINGWORTH**—Deputy Chairman, members and delegates, I want to make an explanation first of all. My position in this is a complicated one; it is a bit like being between a rock and

a hard place. But there is one thing I continue to be convinced about, and that is that it is our primary task here to come forward with the best possible two choices that we can put before the Australian people at a referendum.

We can argue until the cows come home but, at the end of the day, our democratic system determines that it is the people who will decide whether there shall be change or not. The people will decide on the basis of whether they can understand the present system and the option put before them for change. I believe the task this afternoon and any amendments that come forward will help to clarify the nature of the bipartisan model, as it is called.

I want to reiterate what Mr Turnbull said when he moved the motion. The nomination procedure is in draft form. I agreed to sign in support of it on the clear understanding that a great deal of work needed to be done. This is broad, it is trying to canvass a whole range of options, but it has to be pinned down and I am confident that there will be some amendments which will help to do that. Secondly, I draw your attention to the last two lines in the nomination procedure. It says:

The process for community consultation and evaluation of nominations is likely to evolve with experience and is best dealt with by ordinary legislation or parliamentary resolution.

Frankly, I think we have to get down to tacks and say what we mean by that. I would agree with the monarchists that that is critically important. But, like so many of these things, it is in the detail; it is in people's understanding of how things work.

The biggest problem that I still have with the model whose name I supported with my signature is to do with the political process. I am confident—there are plenty of examples of this—that when Australians have been invited to contribute the names of suitable persons, they have done so and have provided a rich and useful list.

The Prime Minister is the one who has to take that nomination. It is highly desirable that he or she does so with the support of the Leader of the Opposition. This is the crunch point, and I really want to hear from our political leaders about this: do you believe

that you can be relied upon to do this thing with proper decorum and in a way that will not impugn or besmirch the name of one of our greater citizens who will be the nominee?

I am all for having that kind of thing happen; I am all for the opposition of the day being part of it. That is one of the critical questions. If we can solve that problem, then I think there is a real model which is participatory, which maintains the primary responsibility with the Prime Minister and, finally, which ratifies this critically important appointment by a joint sitting of the houses of parliament.

**Mr BULLMORE**—It has been interesting if nothing else over the last couple of weeks. We have had snake oil and mirrors, but the best is yet to come. Holy magicians, Batman Turnbull is going to pull a president out of his hat. I do not think the Australian people are going to support it at a referendum. I think we are going to look really stupid when it is put and it is rejected out of hand. That is exactly what I see happening.

The people want some substance. They want to have an input. They want to have their say. That is why the Hayden model was probably the best. That has failed so now we are going to see all the amendments come up. But the people of Australia are not going to follow like sheep. They are going to have to have more substance there. They are not just going to follow like ‘come on Barbie, let’s go party’. They are going to need more than that to follow along at a referendum and vote yes. I suggest the amendments had better have some substance.

**Professor WINTERTON**—I strongly support this model in principle. It gives us the sort of head of state we have been used to: the acting head of state or de facto head of state with an independence and authority to act as constitutional guardian and national unifying force. I have five problems, though, with the removal mechanism and my purpose in speaking now is to see whether there is anyone else who agrees and who might be willing to second a motion to amend.

First of all, it looks bad for the Prime Minister to be sacking the president. It detracts from the president’s authority. The

president would be appointed by the authority of the people and should be removed by the authority of the people. In my opinion, removal should be by the House of Representatives. It should not be a mere ratification.

Secondly, we could have here a game of constitutional chicken, as I mentioned yesterday, with the president and the Prime Minister each racing to sack each other and all the problems we had in 1975 with lack of notice.

Thirdly, what if the president sacked the Prime Minister before the process began? Then you would not have the Prime Minister being able to move the motion of removal of the president, and the process would break down.

Fourthly, I do not like the element of a vote of no confidence. The House of Representatives should independently assess the merits. It should not be treated as a vote of no confidence or confidence in the Prime Minister.

Lastly, I think the idea of the head of state being basically removed, whether or not the House agrees, is bizarre. The natural justice point was mentioned by Senator Stott Despoja and that is absolutely right. I suggest we substitute the word ‘suspension’ rather than ‘removal’.

If anyone agrees with some of those proposals I would be grateful if you would see me and perhaps we can draft an amendment. Thank you.

**DEPUTY CHAIRMAN**—We are zipping through pretty well so there is probably time for one more later on. I will read out the list again because it is more useful if you are there at the jump seat so that you can follow straight on. It is Garland, Bradley, Craven, Waddy, Hewitt, Delahunty and James.

**Brigadier GARLAND**—Australians as a group of people are quite conservative; not politically conservative but socially conservative. Except for a few in our society, the majority are not generally radical. In countries where the radical tradition is present and strong the public are quite likely, from time to time, to put their faith in those who would wish to rewrite the rules of society and change all of their systems and symbols. The French did this at the time of the French

Revolution, which was followed by a reign of terror and, subsequently, by national chaos. In recent times—that is, since 1901—France, a republic, has had five constitutions. Is France any better off for these multiple changes? Do we want to follow down the path of denigration, such as France?

This morning we were told that a compromise was in the air. I would ask Clem Jones, Ted Mack, Pat O'Shane, Paul Tully and Paddy O'Brien: do you see any compromise in the Turnbull camel? I would suggest not. We have a system, a set of conventions, symbols and traditions of which we can be proud. Do we wish to trade in these virtues for uncertainty, and particularly for uncertainty that cannot be predicted with any degree of certainty. Do we want to see multiple changes over the next 100 years in our Constitution? If we do, we will be failing our duty and failing those of our future generations to come. We cannot support the Turnbull camel proposals.

**Mr BRADLEY**—We stand, or sit, or lean at this moment in the Convention at a particularly important moment. We have seen at lunch time today the Keating-Turnbull model with the triple bypass barely making it near the line. It has been put into suspended animation for the rest of the day in the hope that the supporters of that ailing model can garner a little more support to get it across the line.

I think the extent to which there has been compromise here by the Australian Republican Movement might be measured in one of two ways. Firstly, it might be measured to the extent to which Mr Turnbull and his colleagues are prepared to refund the \$600,000 Mr Keating gave them to develop the model through the Republican Advisory Committee. Maybe they do not think it would be fair to refund the whole of that fee but the extent to which they are prepared to refund some of it may indicate to us the extent that there has been any compromise on it.

The thing that I find so profoundly interesting about the extent of compromise is that the gloss that has been put on the Keating-Turnbull model is in the selection process of candidates to go forward before the deals are

struck between the Prime Minister and the opposition leader. This selection process or community consultation process when I looked at it again over lunch time seemed remarkably familiar. It is very similar to the process employed by the current government to select the appointed delegates to this body and it is a process that was subject to the most extravagant criticism by Mr Turnbull and Mr Beazley when the proposal was put forward.

They thought at that time that to select members of the Australian community to sit in this body and deliberate on this matter was totally unacceptable. They wanted a totally elected body. But to select the person who is to be their president, they it is entirely appropriate to put in place a consultation mechanism governed by the government of the day. This extraordinary turnaround by Mr Turnbull and Mr Beazley indicates to me one important thing: they do not regard the consultation process that they have tacked on to this model as of any significance. They do not regard it as an attachment which makes any fundamental difference to the model they propose. Either that or their protestations about the appointment of delegates to this body were just so much hot air.

**Mr WRAN**—Mr Deputy Chairman, I have a point of order. The last speaker referred to the \$600,000 that Mr Keating subscribed for the development. I would like to point out that some of these gentlemen, quite frankly—

**DEPUTY CHAIRMAN**—Is this a point of order?

**Mr WRAN**—Yes.

**DEPUTY CHAIRMAN**—Then tell me the point of order.

**Mr WRAN**—I want a withdrawal of a salacious remark because there has been not once cent provided to the Australian Republican Movement or any member of it by Mr Keating or anyone else.

**DEPUTY CHAIRMAN**—That is not a point of order. I must say that I have been looking for salacious remarks and I have not picked up any here. Your point has been noted and it will be in the record, but I rule

that it is not a point of order, as I am sure Professor Craven would agree.

**Professor CRAVEN**—How could I disagree? May I say that, unlike some of the preceding speakers, I find nothing funny nor any occasion for glee in the position that this Convention finds itself deadlocked. On the contrary, I find this a most painful position and one that can only be discharged by the use of conscience rather than jibes. I have said consistently in this Convention that it will be a disaster if we cannot come to a resolution. I have said consistently that we face another five years of destabilising constitutionalism with consequences too awful even to be contemplated. If we do not change, we decline. I also have I think consistently in this Convention encouraged compromise and both of those things I have done obliged me to seek a solution.

I have said that McGarvie was the best model, and it was. It is with horror that I look at the voting in this Convention and realise that in all probability it would indeed have passed, had it been picked up. But I can tell you that I will never now—after the performance of the Australian constitutional monarchists—vote for the status quo. Not only because their monarchy is dead and festering on the soil of Australia but because they have recklessly endangered the safety of this Federation by refusing to adopt a responsible course.

**Mr BRADLEY**—That is outrageous.

**Professor CRAVEN**—Yes, you were outrageous. That does not lead me to plump holus-bolus for the ARM model. But I will say this: the ARM model has problems but if those problems are solved I will vote for it. Frankly, I hope you do not because I will be relieved from my painful obligation of voting for a republic which I have never desired to do. But if you can solve the difficulties with the committee—if you can make it less complex and less contentious; if you can make it less specific; if you can address some of the problems with the bipartisan element of the bipartisan model; and if you can make yourself less self-indulgent on questions of conventions, which you do not need to be—then I will in the interests of compromise

agree. As I say, that is a cup I do not hope to drain but, in the exercise of conscience which I believe to be a relevant factor in this Convention, I am prepared to go that far.

**Mr WADDY**—I look to other delegates, who have seen us behave with complete and utter honour and integrity since we came here, to defend us from that scurrilous, outrageous and ridiculous attack. More than half the people of Australia in the polls published yesterday say they do not want change or do not want change except on certain conditions. The thought that we of the Australian constitutional monarchy have to design a republican constitution so that Professor Craven does not let his depression get the better of him strikes me as extremely sad.

Throughout all this discussion, the Constitution has worked extraordinarily well. Her Majesty the Queen of Australia has done what she has always done. The Governor-General has functioned as he has always functioned, and the country has functioned well. There is no crisis. Our friends have a crisis of symbolism, and that is what we have addressed for eight days.

I rise to say that this afternoon's debate should be constructive and to do that with honour again I think I ought to point out the things that I hope my learned friends and people of good will in this Convention ought to address this afternoon. As to the nomination procedure, I believe it to be a mirage. There is no reason why any nomination cannot be sent to the Prime Minister at the moment. It guarantees nothing. Those who are seeking some form of democratic input have it now and that particular procedure, in my view, guarantees nothing.

As the appointments procedure, it would be an election like we have never had, and the House of Representatives would never accept it. A Prime Minister would say, 'There is a debate. I will nominate the candidate. You will say nothing; you will now vote.' We have never had that in 1,000 years of our inherited history. It would also deliver the mother of all mandates: the President would be given the complete and utter unanimity of all the representatives of the people, and I would like to see how that is going to be

dealt with. When you add that to the term, one lower house would elect the president with the Senate and that would then take it into another term. So the parliament of the day would not necessarily be the same as the one previously elected.

As to the dismissal procedure, it is in my view extraordinary that a prime minister at any moment can sack the Governor-General in the way suggested. But not only that, the thought that the Prime Minister would then go back to the House he controlled and say, 'Righto, guys, support me,' adds absolutely nothing. It ignores the Senate and, as any dispute is likely to be in the Senate than in the lower house, why ever would the people of Australia support the lower house over something like this? This is a constitutional amendment in a most extraordinary way destroying the power of the Senate.

As to the definition of the powers, reserve powers incorporated by reference is another mirage. Firstly, if you do write them down, they will become justiciable, that is, be able to be taken to court, which would be a disaster. If you do not write them down, you leave your president with the mother of all mandates, absolutely untrammelled. Incorporation by reference is, I think, the very worst of all suggestions because the conventions of a constitutional monarchy will not apply in a republic, no matter what you do with them. The conventions in a republic will be those developed under the republic. As Mr McGarvie said, they will have their own penalties and, unless those penalties are effective, who knows what. Finally, your president will not be the representative of a neutral monarch who stands above politics; your president will have his own conscience and his own duty—you try sending a euthanasia bill to Yarralumla.

**Ms HEWITT**—I will be brief. I am unaligned and, until today, I have been uncommitted. Some of us agonised over our vote because we were not locked in and we simply wanted to put the best option to the Australian people so that they could make their choice. My mandate in coming here was: 'I Care about Australia's Future'—and I do. Whatever we decided was always going to be

a compromise because, with 152 people sitting in here with 152 good ideas, we had to compromise.

None of the models is perfect, as far as I am concerned, but neither is the current system. The bipartisan model is the most acceptable model. It is not perfect. It is not 100 per cent what I wanted. I would prefer to see more people involvement and a direct election. However, I believe that we are going to put through a motion to try to get more people involvement. But it does have the criteria that the people who voted for me asked me to put forward, that is, it does have an Australian head of state. I am sorry, I do not like the word 'president', but I bow to the greater good on that one. It has people involvement, and that is really important to me because, at the end of the day, the only involvement I can have is as a person from the suburbs. And, while it keeps politicians involved, it does have people in the driving seat. I think we can work to make it better. Fellow Australians, if we do not take the great leap into the future together and work together to make it better, why are we here?

**Ms DELAHUNTY**—Delegates, today we have faced, and do face, the moment of truth. It is the end of posturing and positioning. Now the vote continues. For many delegates who have listened with a sense of fairness and with an open mind and for many delegates who have argued with passion and conviction, the vote this morning was very painful. Let me urge those who do perhaps feel a little bruised by the voting not to stay out of the processes of this Convention. To those delegates who have found shelter under the McGarvie republican model, I urge you: leave the Claytons republic behind and look at the real republican option under two-thirds majority. To those republicans who passionately argued for and wanted so desperately a direct election and perhaps feel bruised and certainly disappointed by this morning's vote, I urge you not to stay out of this Convention. To our friends in the monarchists group—who I must say voted with great integrity this morning, and I thank them for that—who feel they can embrace the winds of change, I ask you this afternoon to look at the bipartisan model.



**Mr RUXTON**—Never!

**Ms DELAHUNTY**—Bruce, you are embalmed with your own snake oil, aren't you? Sorry. Why do I urge you to look at the bipartisan model? Lois O'Donoghue, who seconded the motion this morning, said she has carefully considered this model and it offers the best prospect for indigenous Australians and for the widest range of Australians to be part of the process and to be considered for president. I would add, it offers women of Australia the greatest opportunity to be part of the process and to be considered for president of Australia.

I believe this model will engage and, with the bipartisan support it has attracted, will win the support of Australians at a referendum. I remind you, delegates: this Convention is only one corner of the canvas. We must take a republican model to the people of Australia that they feel comfortable about voting yes for. This model, the two-thirds unity ticket model, has been described, I think affectionately, as a camel. We have heard the virtues of a camel are speed and stamina and that camels can always be relied upon to be there at the end. Some people find it rather difficult to climb aboard a camel. Let me assure you delegates, our camel is kneeling. We are waiting to welcome you all comfortably aboard for a ride into history.

**Major General JAMES**—I would like, firstly, to say to Professor Craven, if he is here, that I did not come along to develop a republic; I came along to listen to the argument. That is what I have been doing and that is what I intend to continue to do. At this moment in time I am not persuaded, despite his outburst, that the model has been developed. But that does not mean it will not be developed sometime, some day, perhaps never.

Mary Delahunty asked us to watch and look and be part of the discussion groups. I can assure you the Australians for a Constitutional Monarchy people will continue to do that. We are looking at all the models and examining them and trying to come up with comments to show whether or not they are suitable. I am very concerned when I hear phrases such as Clare Thompson's saying, 'Let's not worry

about being safe. Let's give it a go.' I am very concerned about someone saying—and it has been said several times—'Seize the moment.' It is not an Australian Football League grand final in Melbourne where they are three points down at three-quarter time. This is something very different.

The whole question of a constitution is extremely serious. We in Australia and people of my age—I am still old enough to get into your group, Richard; I am not yet 79 and could have good going for a few years—are concerned that our country is cared for. To use those phrases that are thrown around selling Coca-Cola simply does not wash with me.

Let me talk about the direct presidential election and the concept which I can understand—the view that every one should have a chance to vote for the president. I suggest to you that it may be possible, it may indeed be fact, that the reason people are voting that way in the various polls—which, incidentally are always incorrect—the 52 per cent or whatever who are talking about a direct election, is that they want to have a say in an election, if there is to be one, of a new president. But more importantly, I suggest they are really saying, like kids who put graffiti on the wall, that they do not understand and, if there is any change to go on, they want to have a say. It is not anything to do with actual decisions. They want to be able to say no to something that they do not like.

The last thing I want to mention in the Turnbull republican camel model, as it is called, is the community committee that is going to appoint the new president. I am very concerned that this committee would be so big that it would take so long to produce an answer. We cannot be stuck, I believe, in a situation where we have weeks, even months perhaps, before this problem of appointing a new president could be resolved.

**Mr RANN**—This is difficult for me but something that I think is important to do. I came to this Convention essentially with five objectives. Those objectives were: to achieve a republic; to secure an Australian head of state; to support the sovereignty of people through direct election; to protect the position

of the states and the balance of the federation; and to seek agreement for ongoing constitutional reform including future consideration of direct election should that fail at this convention.

I believe that it is vitally important that this Convention does not descend on its last day into gridlock. Gridlock would simply give the conservative forces the excuse to put ongoing constitutional reform into the too hard basket. We cannot afford to allow the momentum for the republic to stall because that would only give succour to the monarchists and those who oppose any constitutional change. Gridlock would simply give John Howard the excuse to say that we are not going to embrace any change for the future. It is certainly quite clear that, from the first day, the direct election model would not attract a majority vote at this Convention even though it has the support of the vast majority of Australians.

It is important that all of us know because all of us understand the procedures with which we are elected. This Convention in my view was set up to fail, but does have the chance to succeed. Therefore, I want, as someone who has supported the direct election model, to urge all supporters of an Australian republic and an Australian head of state to get behind a single clear republican vote tomorrow. In doing so, I want to say that it is important that this Convention does not embrace a winner take all approach, but also does not embrace those who have a loser take nothing approach. I do not intend to be a spoiler; I believe it is vitally important that this Convention makes history rather than ensure that the delegates become simply footnotes to failure in history. I strongly urge a commitment to ongoing reform and a commitment to one single republican united vote tomorrow.

**Ms WITHEFORD**—The people of the ACT elected me to this Convention as their No. 1 delegate to work towards achieving a legally and politically workable republican model that could be put back to the people at a referendum. During the campaign, and in the lead-up to this Convention, there were three clear messages that emerged from the people of the ACT and, I believe, the Austral-

ian community in general. There were three messages they sent with respect to the republican model that they wanted to come out of this Convention.

Firstly, there was the belief that a republic of Australia should retain the current separation of roles between the head of government and the head of state. The president or new head of state should retain the same powers and the same role as the Governor-General. Secondly, there was a belief that the new office of head of state should be above party politics, that it should be a source for unity not division, that the occupants should be widely respected and politically neutral, and that he or she should not be, nor be seen to be, subject to domination by any political party. Thirdly, there was the belief that the Australian people should have a say in selecting their head of state, that they should participate in and have a sense of ownership over the process of selection.

Fellow delegates, the bipartisan appointment model meets these three concerns. The president will have the same role and powers as the current Governor-General. This model maintains the unique checks and balances that have evolved in our political system. The bipartisanship inherent in this model ensures that our head of state will be above party politics. He or she will not be a politician. Thirdly, this model provides for an extensive and open public nomination process. The time has come to deliver the goods to the Australian people. I believe that this model will win at a referendum. It is legally and politically workable. I urge all delegates to come together and vote for this model.

**CHAIRMAN**—We are now at a stage in the proceedings where I think we should move on to consider the bipartisan appointment of the president model in its various categories. We will be looking at each of the sections of the model. When amendments are moved, we will have some debate on those amendments. I intend to proceed to a vote on each of the amendments by a show of hands, and we will be taking the vote later this afternoon on the basis of individuals voting in a recorded fashion.

If we do it in this way, I hope we will be able to get through the various amendments that have been received and deal with them in a reasonably consistent fashion and one that allows reasonable examination of each of the particular sections. Therefore, we will not be ringing the bells, for the benefit of the those delegates who are watching the proceedings on television, until immediately before that final vote.

So that there will be full attendance, the bells will be rung for three minutes before we get to the final vote on the process at the end of today, in accordance with the procedures that were set down in the resolutions of the Resolutions Group. You will note that that final resolution is that, 'if Australia is to become a republic, this Convention recommends that the model adopted be'—in this instance—'the bipartisan appointment as amended'—if it is amended.

At this stage we will go through each of the individual components of the bipartisan appointment model. A number of amendments have been received. As I do not have all of them, I intend to call Ms Bishop as the mover of Amendment 2 on the sheet that I have. These may not necessarily be in the correct order because I do not have them all at this stage. I have asked for them all to be distributed. I intend to allow speakers three minutes, because we can then accommodate more speakers in the time available. If there is a need to extend that, we will consider it at the time.

#### A. Nomination Procedure

**CHAIRMAN**—I call Ms Bishop to move the amendment in her name with respect to the nomination procedure. It is required that there should be 10 delegates in support of that amendment. I have been handed a list of 10 delegates who support this amendment, so the amendment is valid. I call on Ms Bishop to move it.

**Ms BISHOP**—I move:

- 1) Delete Section A and insert in its place:

#### A. Nomination Procedure

The objective of the nomination process is to ensure that the Australian people are consulted as thoroughly as possible. The process of consultation shall involve the whole community, including:

- \* State and territory governments
- \* local government
- \* community organisations, and
- \* individual members of the public

all of whom should be encouraged to provide nominations.

This process for community consultation and evaluation of nominations is likely to evolve with experience and is best dealt with by ordinary legislation or parliamentary resolution.

2) Amend Section B in the following manner:

- \* by deleting the phrase: "Having taken into account the report of the Community Consultation Committee."

- \* by deleting the phrase: "which shall be done without debate."

3) Amend Section D in the following manner:

- \* by deleting the phrase "incorporated by reference"; and

- \* by inserting the phrase "and the conventions relating to their exercise should continue to exist."

I believe it is incumbent on delegates who believe in the referendum process to assist in crafting a model for change to be put to the Australian people at a referendum. They will decide whether Australia should become a republic and the proposed change needs to be spelled out so that there is a legitimate opportunity for them to determine this question.

There are aspects of each of the models that have received detailed consideration over the past nine days, and the proposed amendments seek to draw together the sentiments or principles underlying them. In short, I propose to delete Section A and insert another, which is set out on the sheet, whereby the nomination procedure would remain. The wider community will be invited to provide nominations. Of course, this can happen now, but it formalises the practice whereby the community is invited to put forward nominations.

There is one change in the list which reads 'State and territory governments' rather than 'parliaments'. Further, the nominations ought not be published. We should respect those who nominated and maintain confidentiality wherever possible. So the provision about the publication of the names is deleted.

As for the proposed community consultative committee, it is too prescriptive. To attempt to set up a detailed administration, prescribe

its composition, but give no guidance on its task other than to report to the Prime Minister on the nominations received, seems to be an inappropriate exercise at this stage. So the nominations would go to the Prime Minister, who would, of course, consult. I seek to delete the reference to the committee, but to retain the words, which appear in the original: 'This process for community consultation and evaluation of nominations is likely to evolve with experience and is best dealt with by ordinary legislation or parliamentary resolution.'

That enables us to see how the nomination process will work. I amend section B so that, after receiving nominations and consulting, as the Prime Minister does now, the Prime Minister presents the single nomination, seconded by the Leader of the Opposition and approved by a joint sitting of both houses. So the first line is taken out. I delete the words at the end of section B, 'which shall be done without debate'. As attractive as it sounds, I find it contradictory to seek to stifle debate in the houses of parliament as a matter of principle.

The dismissal procedure in paragraph C remains as it is. Again, it is the Prime Minister who dismisses the president. The president cannot be restored to office, but the Prime Minister's action is presented to the House of Representatives. Finally, under 'powers', I seek to delete the words 'incorporated by reference' and insert the phrase 'and the conventions relating to their exercise should continue to exist'.

**CHAIRMAN**—Your time has expired. I know how difficult it is.

**Ms BISHOP**—I have finished.

**Dr DEAN**—I second the amendment. Firstly, as a proxy can I say that, while a different view of the role of proxy is justifiable, I have taken the view that as a proxy I would not voice the views of the delegate when that delegate intends to express them himself—and, in particular, I would only express my views to the extent that they coincide with his. My speaking now is entirely in line with those parameters. It has been a frustrating role, but it has given me a

unique opportunity to watch and evaluate objectively.

What is disturbing me is that, as a consequence of the bold tactics of the direct election lobby who put the blowtorch of current opinion polls in our collective bellies, the best thought out and clearest model which retains the best of the Westminster system and then improves it—which was signed by Neville Wran, Wendy Machin and Malcolm Turnbull on 10 February and which included the same nomination process as that of Archbishop Hollingworth's model—has been lost. This latest compromise has sown the seeds of politicisation and picked up the worst faults of the direct election model.

I will revisit some of what I believe are the most obvious problems with the direct election model. Given the nature of politics in Australia, it is inevitable that the direct election would be partly political. Consequently, rather than produce a non-political, neutral and unifying head of state which we now enjoy, it would do the exact opposite. Rather than reduce political intrigue, it would in fact add another layer to the existing system.

Those most suited to the job of neutral, apolitical, constitutional umpire of the standing of Sir Ninian Stephen and Sir Zelman Cowen would not participate. In short, you would drastically change the basic features of the Westminster system by losing two qualities of an Australian head of state you most seek in a system which combines the ceremonial and constitutional umpire roles—namely, that they are, firstly, bipartisan and unifying and, secondly, objectively chosen through a non-political process.

Now let us look at the effects of adding to the ARM model the nomination process which resulted in it being called the bipartisan model. Firstly, you can be assured that the Constitutional Committee will have Labor or Liberal sympathisers with cries, from minor parties and others, of rigging. Secondly, those who nominate or appear on a short list had better be ready for the glare of publicity, particularly if they are not chosen, and we would therefore lose people like Sir Ninian and Sir Zelman. Thirdly, there will be dis-

agreement by commentators on the evaluation in light of the published criteria. Natural justice will have to be afforded, so welcome in the lawyers.

Fourth, groups not included in the council will challenge their exclusion. Fifth, the process of choosing the council—involving age, race and gender issues—will become issues of disagreement and consequently a source of disunity. Sixth, one or more of those on the short list will not be chosen and their organisations or lobby groups will cry foul.

**CHAIRMAN**—I am afraid your time has expired, Dr Dean. I should make it clear that we are going to deal with only A—that part of Julie Bishop's amendment which relates to the nomination procedure—because it becomes extraordinarily difficult if we start dealing with each of the other parts of the original proposal. I will have to call on you to speak again when we get to the appointment and election procedure. The trouble is that, if we do it otherwise, it becomes very hard for us to look at each of the amendments. So we are dealing with that part of the amendment proposed by Ms Bishop which relates to the nomination procedure. That part regarding section B and section D we will deal with when we come to that stage of the proceedings. Is there a speaker against this amendment before I call on the Premier of Western Australia?

**Ms HEWITT**—What this amendment seeks to do is to take away the very thing that makes it so appealing to people like me, and that is the people themselves. What the people I represent do not want is to have a politician selecting their head of state, which effectively is what this particular amendment does. The Community Constitutional Committee puts people back into the selection process. Take this away, put this amendment in and you wipe all that out. I would not vote for this model if that particular amendment went in.

**Mr COURT**—I came to this Convention prepared to have an open mind in relation to these issues. I have supported the McGarvie model today. Now that we are looking at this particular model that has got through to this stage, I support the amendments that have

been put forward by Julie Bishop. I appreciate we are only discussing that part in section A. The reason I support her proposals here is that really I believe what has been put in this model is a sop. This sort of community consultation in this way sounds good. I just think in real terms, in practical terms, it would be pretty much a waste of time because there would be so much difficulty in having this so-called Community Constitutional Committee operate.

Like a number of people in this room, I have had to make a recommendation to a cabinet in relation to a Governor. In coming up with that recommendation, I went through a great deal of consultation myself. I work on the principle that if a Premier or a Prime Minister gets it wrong and puts up a person that is not going to do a good job and does not have broad community support, it is the person making the recommendation that is going to have to pay the political price.

In relation to nominations being published, I am also of the view that in any nomination process where people are asked whether they will take on a position, if it had to be done publicly, many of the most suitable candidates simply would not accept nomination. I know that an amendment has been put forward to take that particular section out. I support the package of amendments that was put forward by Julie Bishop. In relation to the amendment to A, I believe that it sounds good, looks good on paper. But in practice a Prime Minister is still going to have to make a decision and will have to take responsibility for that decision.

**CHAIRMAN**—Is there a speaker against the amendment?

**Mr TURNBULL**—Mr Chairman, I raise a point of order. There is another amendment moved by Mr Tannock and Senator Hill which has the support of most of the movers of the bipartisan model which deals with this nomination procedure section. It may be worth while having that moved and discussed prior to putting either Julie Bishop's amendment or Mr Tannock's amendment to the vote.

**CHAIRMAN**—It is my intention to call on Mr Tannock to foreshadow his amendment so

that we have an idea of the nature of the difference. Mr Tannock, will you foreshadow your amendment, please?

**Professor TANNOCK**—The amendment moved by me and seconded by Senator Hill, you will see from the signatures, is supported by a fairly wide range of people here, including those who sponsored the original resolution to which Mr Turnbull referred. The purpose of our amendment, which we will be putting if Julie Bishop's amendment fails, is to try to achieve consensus among those people, particularly those who supported the McGarvie model this morning. We are looking for a form of words which is less prescriptive, simpler and yet—

**Mr CLEARY**—I raise a point of order. Have these amendments actually been accepted by the ARM, because there is no movement on the left of me here?

**CHAIRMAN**—They have all received the requisite 10-delegate endorsement before they are proposed. I have been advised in each instance that they are valid for consideration under the rules of debate we have accepted. Professor Tannock is outlining the difference between his amendment and Ms Bishop's amendment on that basis.

**Professor TANNOCK**—The same principles operate in the amended version as in the original one, namely, an openness of process and an involvement of a range of people from across the Australian community, including people from both sexes, from the indigenous community and from across the geography of Australia, having regard to the federalist principle. We do accept the need for confidentiality and sensitivity with regard to the publication of names. We also recognise the fact that there will be—if this amendment is carried through—greater focus on the Prime Minister being the recipient of the advice of the committee and the Prime Minister, following consultations with the Leader of the Opposition, having final responsibility for making the recommendation to parliament.

We would also point out that in moving this amendment, as Malcolm Turnbull pointed out in his presentation this morning, the detail of much of this will be dependent upon parliament when the constitutional amendment

legislation goes before it. What we need to do this afternoon is to satisfy ourselves that the principles that are in the original legislation—the principles of consultation, inclusiveness and involvement of the community—are respected, but that we come up with a form of words that will be more reassuring and perhaps more satisfying to the great bulk of this Convention.

**CHAIRMAN**—As I explained to Mr Cleary and let me explain again, for each of those amendments that are being discussed I have the names of 10 delegates who support them and the amendments are therefore valid for consideration. Do I have a speaker against? We have one amendment before us. Professor Tannock has foreshadowed another. I need a speaker against.

**Professor PATRICK O'BRIEN**—I speak against the amendment for the reasons that I have put forward on numerous occasions. If somebody is seeking the highest office in the land which has one of the greatest responsibilities of representing the nation, that person should be above any form of suspicion about anything. Therefore, open inspection is necessary. I think it is an insult to the Australian people to say that an eminent person, such as Ninian Stephen or whoever it is, would not apply for the office. That is fine, but it is intolerable that you have a secret process.

Secondly, this is typical of what has been going on with the people on my left. To get a certain body of votes they move for a more open nomination process. They have achieved that goal, but now they totally backflip to the previous position, so there are no principles involved in this. It is simply the principle of backflip to buy off votes. Also, it is morally wrong not to insist that the moral character or any other aspect of the life of a person who seeks the highest office in the land and must represent me and every other citizen is not checked out. That is the price one has to pay if one wants to enter the public eye. I think it is appalling that these people could back-track, and I think it demonstrates further to the Australian people the opportunism and cynicism that will bring this whole process to a halt.

**CHAIRMAN**—I need a speaker in favour of Ms Julie Bishop's proposal.

**Mr BARTLETT**—With great respect to Professor O'Brien, to me this is all about principle. If we take Paddy's argument to the nth degree, we may as well go the whole hog and put the nomination forms in *TV Week* for the head of state. This seeks to actually include the people at the very first process, at the grassroots process. It seeks merely to extract a committee. I think the people of Australia need another committee like the proverbial hole in the head.

If some of these shenanigans, goings-on and general discussions we have seen this week with various groups, subgroups, working groups and the like are anything to go by, I would hate to think that the person who was representing me in the highest office in the land had to put up with the same sort of debacle at various times when the political pressure or the heat became too much; that certain members of that committee would ensure that the person we got did not have the integrity that that office demands. That is what this is all about—integrity.

I support Delegate Bishop in her attempt to maintain the integrity, but keep the process open and accountable to the people. If you look at those first four categories, there is ample provision for the people in various forms under various organisations or, indeed, the people themselves to have input. I would urge you to think very carefully about including another committee in a process so important as the head of state.

**CHAIRMAN**—Thank you very much. I understand Senator Robert Hill is supporting the foreshadowed amendment. I therefore call him as a person opposed to the amendment now before us.

**Senator HILL**—Thank you, Mr Chairman. Firstly, that is correct: I prefer the Tannock alternative to the Bishop alternative, but I have to say that I think that the model that you have before you does need to be improved in relation to the nomination procedure. The more that one looks at it, the more the deficiencies are evident. I think there is a widespread view that the nomination should not be published, that that is inappropriate.

Secondly, it is really a little demeaning to have the committee develop a short list that would require ruling prospective candidates, and probably very suitable candidates, out to get it down to a short list. That does not seem to me to be an appropriate role for this committee.

Thirdly, the reference to representatives of peak organisations might be more appropriately found in an industrial relations manual rather than in the charter of a committee of this type. Certainly, there should be community representation but 'peak organisations' raises all sorts of issues as to appropriateness.

I think that the nomination procedure which incorporates the consultation model should be improved. I put to you that the Tannock amendment does that in a way that is much more elegant and much more appropriate. It provides that there will be a committee—that is where the distinction is between Tannock and Bishop. Tannock retains a committee, but it provides that the role of the committee will be simply to report to the Prime Minister; not to delete nominations but to give its advice to the Prime Minister, which the Prime Minister might take into account. It is to be of a workable size. It is to incorporate both parliamentary and non-parliamentary, and in the non-parliamentary efforts are to be made to ensure that there is a reasonable balance reflecting federalism, gender and—I think it is going to be suggested—cultural diversity, rather than racial diversity.

The Bishop model deletes the committee, and that is the issue: is the committee itself is so unworkable? I suggest that a committee can be workable. It might not achieve everything that some would like to see it achieve, nevertheless, it is a vehicle through which there can be an extra community contribution to this process. I think that that would be quite a healthy initiative within Australia's constitutional structures and, as has been expressed in the foreshadowed Tannock amendment, I put it to you that it is very workable and would provide for a very significant and worthwhile improvement. Therefore, I prefer the Tannock amendment. If that gets on and the Bishop one is defeated, I will support that.

**CHAIRMAN**—Are you in favour of the Bishop amendment, Mr Turnbull?

**Mr TURNBULL**—I am against Bishop and in favour of Tannock.

**CHAIRMAN**—Right. Is there a speaker in favour of the Bishop amendment?

**Mr PETER COSTELLO**—I would like to speak in favour of the Bishop amendment and in favour of Richard Court's argument. I think the objective of all this is to ensure that there is community consultation, and there could be no better community consultation than an open period of nominations. Conceivably, you could have 18 million nominations. That would be extreme community participation.

What concerns me about a committee, however, is that once you establish a committee two things follow. One is that it makes it very hard for people serving in sensitive positions to allow their names to go forward. Let us take a High Court judge. A High Court judge's name goes forward. There is a committee that looks at it. It gets into the public domain. There will be various interest groups on that committee. It will be known that the government, which is a litigant in front of the High Court, is considering this judge's position. That judge is under discussion. It may well be said that a conflict of interest is seen to arise. It would be difficult for a person in that position to allow their name to go forward.

Secondly, in relation to the committee, it will inevitably become known who the committee has recommended. The proponents of a committee system may say, 'The Prime Minister will come to a different nomination,' but it will inevitably be known and it will add a controversy. It will especially add a controversy where you are trying to get a two-thirds majority in the parliament and the Leader of the Opposition may be well entitled to say, 'Why should I back any nominee that didn't enjoy the support of the committee?' What I see that doing is adding to controversy rather than getting the bipartisanship that is the aim of this particular model.

As I understand it, it is not proposed that this amendment form part of the Constitution itself but rather that it be the subject of

legislation and discussion. I do not think we ought to pin down at this stage what is an unnecessary flourish in relation to this model and, what is more, one which could lead to unintended consequences. If you think back over the Governor-Generals that have been appointed in Australia since we have had Australians appointed to the position, this model would knock out all the ex-politicians under the two-thirds rule and with a committee would probably knock out any active or serving High Court judge from being in a position to allow their nomination to go forward. I do not think that it is necessary to do that nor do I think it will lead to better outcomes. I think Julie Bishop's idea is eminently sensible.

**CHAIRMAN**—I call Mr Malcolm Turnbull.

**Mr PETER COSTELLO**—How about a conscience vote, Malcolm? You could announce it today and give effect to it tomorrow.

**Mr TURNBULL**—Mr Costello has called for an ARM conscience vote, but there is an assumption there.

**Mr PETER COSTELLO**—Yes, it presupposes that you have a conscience!

**Mr TURNBULL**—Yes, that is right. Mr Chairman, I speak against Julie Bishop's motion because I am in favour of Peter Tannock's motion. Let me make a couple of points. There are plenty of committees in this country that act with complete discretion and confidence. You only have to look at the body that considers Australian honours. It acts with complete confidence and discretion. I have never heard of a leak coming out of that organisation. If there is concern about confidentiality, and I foreshadow this to see if there is any interest in this, you could add a sentence which says:

The committee should not disclose any nomination other than with the consent of the nominee.

So you impose confidentiality on that. The other point that Mr Costello raised about judges could equally apply to anyone in a job. He could be a chief executive of a large company or the vice-chancellor of a university. You may not necessarily want to have it



known that you are looking at another position, but that problem arises all the time. Hence, as long as the committee is small, as long as it is workable and as long as its members act with discretion, then there should be no concern.

The alternative is to have this matter dealt with by several members of the Public Service. I am sure they would perform that job very creditably, but why do we assume they would act with any less discretion than members of a committee so constituted? I would say with great respect to Mr Costello and even greater respect to Ms Bishop, greater only because she is a lady of course, that the fundamental point is that I believe we are only making a recommendation to parliament. This is not going into the Constitution. This is simply a recommendation. We are setting out principles. I think they are worthy of parliament to take note of. No doubt they will be implemented in different ways at different times, but I believe that to delete reference to this altogether leaves a gap in the consultation process that should not be left in this model.

**Mr COWAN**—I have found in my experience that the moment anyone prefaces a remark with the term ‘with the greatest of respect’, it generally demonstrates that they have none at all—certainly for the argument, if not for the person. There are two differences between the amendment before the Convention and the foreshadowed amendment. The first is that, in reference to the first group that might make a nomination, we say, ‘the state and territory governments’, not ‘parliaments’. I think you would understand the reason for that—in that there has been some general consensus, even through discussion, that there has to be a degree of confidentiality in respect of the nominations. In this particular sense, I suppose you could take a different point of view and say, ‘We’ll have a very public process for the parliaments in the nomination but, if you want to retain confidentiality, you can go to one of the other groups.’ That is a nonsense. You need to have some consistency.

Of course, the most critical of the two issues is the one in respect of the process of

whether you do or do not have a committee. To all intents and purposes, by having consultation processes, you force the hand of the Prime Minister so he has to establish a committee and I think most people would accept that. I ask the delegates to give support to the amendment that is currently before the Convention.

**CHAIRMAN**—The Clerk has drawn my attention to the fact that Senator Natasha Stott Despoja also has a foreshadowed amendment. While the two that we are considering require the deletion of A, there is a variation and I think it might be wise for delegates to understand that other alternative before they are actually called to vote on that amendment. In those circumstances, I intend to ask Senator Stott Despoja to identify the purpose of her further amendment. We will not be dealing with it; it is just to foreshadow it. Before I do, Jennie George wants to raise a matter.

**Ms GEORGE**—I just seek your guidance, Mr Chairman. I had previously an amendment circulated in the name of Kilgariff that referred to the nominations and suggested the deletion of all nominations. I think it would be advisable for Mr Kilgariff to advance the arguments in support of his amendment while we are considering—

**CHAIRMAN**—I think it is wise for each of these proposed amendments to have some argument before us before we actually vote on this one. That is what I am doing at the moment

**Ms GEORGE**—This will come at some stage?

**CHAIRMAN**—That will come directly. I will ask Senator Stott Despoja to foreshadow her amendment and then I intend to call on Mr Kilgariff to do his. Then we will have the proposed amendments at least in mind, but we will only be considering this one. I call Senator Stott Despoja to foreshadow her amendment, of which you have notice in your bundles.

**Senator STOTT DESPOJA**—In fact, I have two amendments which essentially serve the same purpose. One is to the original bipartisan document. As I mentioned in my comments this morning, it is merely an

addition to the nomination process. So when the committee provides a short-list of candidates for consideration to the Prime Minister and the Leader of the Opposition, I have simply inserted, 'and Leaders of parties with party status'—that is currently more than five members in the federal parliament.

Given that Professor Tannock seeks to amend this particular section, I have also put forward an amendment that serves the same purpose. When he says that the committee should be inclusive of parliament and community representatives, I have simply put in brackets 'including representatives of all parties with party status in the Commonwealth Parliament'. So the intent is to ensure that there is cross-party representation in the consideration of those nominations.

**CHAIRMAN**—Before I call on Mr Kilgariff to explain his foreshadowed amendment, I understand there was a further amendment of which notice has been received from Delegate Mary Kelly. I just inform Ms Kelly that she will need to have 10 delegates in support of her amendment before it can be considered. Mr Kilgariff, will you foreshadow the purpose of your amendment before we go back to vote on the one before us?

**Mr KILGARIFF**—My amendment really would only come into effect if the amendment by Julie Bishop and Senator Hill was subsequently lost. The purpose of my amendment is this: quite a few people that we would like to see as President, and maybe even some in this place, probably would not like to put their name forward if the list was to be published because in effect they would actually be putting themselves up for a public election.

**CHAIRMAN**—We are now considering the amendment proposed by Ms Julie Bishop, seconded by Dr Robert Dean, and with the requisite number of delegates. To it there are a number of other foreshadowed amendments to which we will return in due course. The question we now need to consider is that amendment proposed by Ms Julie Bishop. As indicated before, we will take this count on a show of hands. If it is defeated, we will then consider Professor Tannock's amendment.

Can I have tellers in place so we can take a count on a show of hands.

**Mr CLEARY**—On a point of clarification: I am not trying to be overly technical but it is a bit hard to grasp what the nature of the amendment is when you try to go from the paper to the screen. It is important to point out that it is to make nominations private. That is a key part of that amendment.

**CHAIRMAN**—I accept the point; it is too late to deny it. I put the question to the Convention. Those in favour of the amendment proposed by delegate Ms Julie Bishop, please raise their hands. Those against, please raise their hands. Are there any abstainers who wish their names and votes to be recorded? No. Ayes 35, against 74. I therefore declare the Julie Bishop proposal lost. I call on Professor Tannock to formally move his amendment.

**Professor TANNOCK**—I move:  
Delete Section A and insert in its place:

#### **A. Nomination Procedure**

The objective of the nomination process is to ensure that the Australian people are consulted as thoroughly as possible. This process of consultation shall involve the whole community, including State and Territory parliaments, local government, community organisations and individual members of the public, all of whom should be invited to provide nominations.

Parliament shall establish a committee which will have responsibility for considering the nominations for the position of President. The committee shall report to the Prime Minister.

While recognising the need for the committee to be of a workable size, its composition should have a balance between parliamentary and community membership and take into account so far as practicable considerations of federalism, gender and cultural diversity.

This process for community consultation and evaluation of nominations is likely to evolve with experience and is best dealt with by ordinary legislation or parliamentary resolution.

I do not think there is any need for me to speak at length again. This amendment is designed to simplify the wording, to retain the principles of community involvement and inclusiveness and to place greater emphasis on the committee reporting to the Prime Minister, with the Prime Minister having the

final decision as to whether or not he accepts a recommendation of the committee and taking the matter forward.

There is one addition to the amendment that I have moved that I would like to make, and that is an addition to cover confidentiality. We would like to emphasise that the work of this committee should be strictly confidential, so we are moving away from the idea of publication of the names of people who are nominated. We would like to add a sentence that says:

The committee should not disclose any nomination other than with the consent of the nominee.

Senator Hill has indicated he is happy with that addition.

**CHAIRMAN**—Would you just read those words slowly so everybody can take them down?

**Professor TANNOCK**—The addition is: ‘The committee should not disclose any nomination other than with the consent of the nominee.’ We are of the view that we are really talking about principles here. The detail, the appropriate wording, will be tidied up by parliament when the legislation comes before it in due course.

**CHAIRMAN**—I understand Dr Cocchiaro has a further proposal. Could you please tell us what it is, Dr Cocchiaro? This is with respect to this amendment and it has the requisite 10 signatures.

**Dr COCCHIARO**—I would just like to suggest that we add ‘cultural diversity’ rather than ‘racial diversity’. I believe most of the signatories have agreed to this—I could not see whom a couple were, but I do not think there will be any problem from the signatories.

**CHAIRMAN**—Professor Tannock, are you acceptable to putting ‘cultural’ instead of ‘racial’?

**Professor TANNOCK**—Yes? I am prepared to accept it. But I want to make it clear for the record that it is important that people both from the indigenous community of Australia and from those other ethnic groups be considered for inclusion in this process.

**CHAIRMAN**—Senator Hill, do you accept that?

**Senator HILL**—Yes.

**CHAIRMAN**—In the circumstances we will accept that as a valid amendment, unless there is any dissent. Is there any dissent to that group including, instead of the word ‘racial’, ‘cultural’ in the terms identified by Professor Tannock? If there is no dissent, are there any speakers against that amendment?

**Ms HEWITT**—Once again, I draw your attention to the original which says: ‘Parliament shall establish a Community Constitutional Committee’. Mr Tannock has suggested that parliament shall establish a committee. I am afraid that, once again, we are eliminating the community involvement, and in the present form I would not support that recommendation.

**CHAIRMAN**—Thank you, Ms Hewitt. Are you for or against it, Senator Stott Despoja.

**Senator STOTT DESPOJA**—I just have a procedural question, Mr Chairman. I was wondering whether you wanted me to amend that amendment now, whether I should move the amendment to include a number of words at this point, or whether I should wait until you have dealt with this amendment and treat my amendment as contingent upon it.

**CHAIRMAN**—I think it would be better to deal with this amendment. We have a number of others, and I am afraid some of them are a bit in conflict with what we are deciding now. Therefore, Senator Stott Despoja, I think we had better put this amendment before you move yours; I then have another one from Mr Clem Jones, which relates to the whole and it is not necessary to give it at this stage. On the basis, therefore, that we have two other amendments which have been foreshadowed—one by Senator Stott Despoja and the other by Mr Kilgariff—are there any speakers on the amendment?

**Mr MUIR**—Delegates, I would just like to make the point that the debate here in relation to the nomination procedure this afternoon has revealed a transparency in this part of the so-called model. The problem is that this was seen to be a sop to the public of Australia to apparently involve them in the process of

consultation. We now have amendments endeavouring to take the community out of all this, and we also have amendments in relation to endeavouring to take out the transparency of the procedure. There are two issues here—one is the community is being taken out again and the other is transparency is becoming opaque.

**CHAIRMAN**—Ms Schubert, are you for or against?

**Ms SCHUBERT**—Against.

**CHAIRMAN**—We have had two speakers against. Do we have a speaker for?

**Mr WRAN**—In response to the last speaker, it is worthwhile looking at the actual amendment. In the second paragraph it said that the committee should have a 'balance between parliamentary . . . and community membership'. The last paragraph begins, 'This process for community consultation'. It is the clearest possible involvement of the community and provides a community process.

**Ms SCHUBERT**—I think there are a couple of key changes here that delegates should be very clear about in voting for this amendment. The first change is a change to do with the provision of nominations publicly. It is agreed that there is a separate amendment to deal with that, so it is not important in the context of this amendment. The second change is about this committee which, as Glenda Hewitt has acknowledged, has now had its status and its name changed, which is a substantial difference in emphasis about the composition of it.

This committee under this amendment will now report directly to the Prime Minister. While some people will see that as a mechanism for greater accountability, what it does is actually denies the equal responsibility of the Leader of the Opposition. We have heard a lot in this chamber in the last week and a half about the importance of bipartisanship, about cross-party support, about this is the only way to ensure that this person is truly impartial. If you believe that, then live by it.

The other key change is a watering-down of the language about composition of the committee. If you read the original form, it says: The Committee shall:

. . . in its composition, reflect the diversity of the Australian people having regard to gender, race, age and geographical considerations;

Let us contrast this with the amendment foreshadowed by Professor Tannock. We have watered-down the language, so now we say:

. . . take into account so far as practicable considerations of federalism, gender and cultural diversity.

The age criteria has disappeared altogether, perhaps moving this much further towards a McGarvie model than perhaps might initially have been conceived.

I think it is really important that we recognise that the model we were presented with this morning tried to balance the considerations of a range of community based delegates. What it said was effectively that there have been a large number of very valid contributions made in the debate over this past week and a half, claiming a role for the community, an involvement for the community that is genuine, and also recognising that the limitations of our parliaments are in their composition, with respect to broader community diversity. I think it is really important that we not be fooled into thinking that this is just a series of minor word changes. It is substantially different and I urge delegates to vote against it.

**Mr RUXTON**—I move:

That the motion be put.

Motion carried.

**CHAIRMAN**—I will put the motion. You should have mind that there is a further amendment foreshadowed by Senator Stott Despoja and a further amendment foreshadowed by Mr Kilgariff both of which to a greater or lesser degree affect this proposal as it goes forward. The question is that the amendment moved by Professor Peter Tannock, which is to delete section A and insert in its place the nomination procedure of which you have all been given a copy and which is on the board, be agreed to. Those in favour please raise your hands. Those against. There are 74 in favour and 24 against.

Amendment carried.

**Senator STOTT DESPOJA**—Given that the Tannock amendment was successful, I

now seek to include some extra words. I move:

After the words: "balance between parliamentary"  
Add: "(including representatives of those parties with party status in the Federal Parliament)."

My amendment seeks to add to the nomination process, where the short list of nominations is given to the Prime Minister and the Leader of the Opposition for consideration, simply by including the leaders of political parties with party status in the federal parliament.

**CHAIRMAN**—Are there any speakers? The amendment has been appropriately endorsed by 10 people, has it?

**Senator STOTT DESPOJA**—Yes.

**CHAIRMAN**—Just so that everybody can have that firmly in their minds, would you mind repeating that so that everybody knows just where to put it in.

**Senator STOTT DESPOJA**—I have actually submitted this to you so that is why I thought it would have been distributed. I have actually moved two amendments so this is not the initial one. After the word 'parliamentary', which is handwritten in the Tannock amendment, I propose to include 'representatives of those parties with party status in the Federal Parliament'. Currently, parties that have party status have five members in the federal parliament. Obviously this is to include broader representation, and specifically those parties other than the two old parties.

**CHAIRMAN**—Thank you, I have now received a copy. I did not have one before.

**Mr RUXTON**—The reason why I speak against the motion is that we are getting more and more politicised as we go along. The Prime Minister and the Leader of the Opposition are enough; we do not want any more in the act, for goodness sake—not from the parliament.

**Mrs MILNE**—I speak in favour of the motion. The next century will see multiparty politics right across Australia and in the federal parliament. The more people who are consulted in this process will ensure that the person who is selected is not politicised, because to get three party leaders to agree you

would almost certainly get someone who was not affiliated with any one of them and had never been so. I speak strongly in favour of it, because it will ensure that you get the right person who is not heavily politicised.

**CHAIRMAN**—Do you mean in the federal parliament or in all parliaments?

**Mrs MILNE**—All parliaments.

**Mr ROCHER**—I know Senator Stott Despoja did not have the narrow interests of the Australian Democrats only in mind because she would be aware that the Leader of the National Party would also be entitled to be consulted. And so he should be, if we are to go down that track.

The arrangement in the federal parliament whereby the status of so-called minor parties is recognised is for administrative purposes. It has evolved under successive governments to facilitate special administrative arrangements, such as office location and staffing.

Despite the meritorious political achievements of the Australian Democrats—and it is only partly relevant to what I have to say—they have yet to win a seat in the House of Representatives. Against that, there are five members of the House of Representatives who were elected without party affiliation, two of whom have since formed their own, different, parties. Therefore, recognition by the parliament of minor parties for administrative reasons is hardly ground for special treatment. Here we have the entrenchment of the party system taking another form. I think that some in this room would object to that.

There are five other minor parties represented in the present parliament, three of which are in the Senate and two which are in the House of Representatives. Against that, there are three independent members in the parliament—and one to come, I understand, if you can believe recent reports. This is a moving feast. I say to you and I say to the delegates, in all honesty, once you start going down this track you should be fair about it and perhaps include representatives from the other groups. But the preferred position I have is that this motion be defeated. Surely it is enough for the leaders of the main, recognised, parties to be involved in the way that is proposed.

**Ms THOMPSON**—I speak in favour of this motion. It surprises me somewhat that an independent member of the parliament would want to cut out a process by which greater representation was going to be given. I speak in favour of this motion because I think it is important that at all levels of the process consultation take place. Whilst I am firmly a member of one of the main parties, I do believe that, in the parliament, the members of the other parties have been democratically elected. They have a right to have a voice in the parliament, and that right should be recognised. Until the electorate no longer votes for the Democrats, the Greens and the Nationals, then we should consider their interests and their opinions as much as we consider anyone else's.

**The Most Reverend PETER HOLLINGWORTH**—In speaking against this, I am not speaking against the place, role and importance of minority parties—far from it. I am talking particularly, though, about who it is who may have to serve under the president. It will be either the Prime Minister of the day or the Leader of the Opposition. That, to me, is absolutely critical because both parties need to be comfortable with the nomination. Many of the frictions that may subsequently occur may occur when there is a change of government. It is for that reason that I would therefore, regretfully, have to speak against Senator Stott Despoja's motion.

**CHAIRMAN**—Mr Johnston, are you for or against?

**Mr JOHNSTON**—I am against the amendment, Mr Chairman. What we are facing here is really the mother of all hybrids. Now we are bringing in more parties. While it might on the surface be democratic, the point also needs to be made that there is only so much you can do within the parliament before you have an executive that can no longer govern. Now we have the head of state issue not only being consulted with the Leader of the Opposition which might work but now we want to bring in all the minor parties.

How is the Prime Minister, who does not control the Senate usually, going to get agreement on an amendment? I can think of any number of reasons or any number of

agendas that minor parties might have in the back of their minds to push a certain candidate forward who may not first off have the support of the Prime Minister and may not have general community support because they may be associated with specific issues. I think we should look more closely at the original motion and leave it the way it is because, if we go down this path, we are never going to be able to agree on anything.

**CHAIRMAN**—The question is that the amendment moved by Senator Stott Despoja be agreed to.

Motion carried.

**CHAIRMAN**—Mr Kilgariff, do you wish to move your amendment?

**Mr KILGARIFF**—Given that the Tannock amendment got up, I think that my amendment has become inconsequential.

Amendment withdrawn.

**CHAIRMAN**—The nomination procedure has been amended. Are there any further amendments to A within the bipartisan appointment model?

**Ms THOMPSON**—I think there is an amendment from Mary Kelly and Ann Bunell.

**CHAIRMAN**—Do you have an amendment, Delegate Mary Kelly?

**Ms MARY KELLY**—Yes, I do. It may appear not to have 10 signatures, but I believe that is in your keeping at the moment.

**CHAIRMAN**—As long as you have the 10 signatures. It is not in my keeping but as long as the motion is there with 10 signatures.

**Ms MARY KELLY**—I have a copy just in case. I move:

After existing two dot points, add new dot point: "Be mindful of community diversity in the compilation of the short-list."

I must say I am referring to the original shape of the paragraph but I think it still fits within the Tannock version. My amendment reads that the committee 'be mindful of community diversity in the compilation of the short-list'. To be honest, this is a lot wetter than I would have liked to move but, because one does not know the size of the short-list, it is very difficult to move something firmer about things like gender balance and so on. One

also cannot mention all sorts of different balances because you then reach an assumption that the short-list will be very large.

On that basis, because the committee itself is structured in a mindful way about diversity, this amendment asks that committee to be mindful when it is making the short-list about what that diversity means. In other words, its real meaning is that you cannot put up all men or all women and so on. Although it is very general, that is necessitated by the general nature in which I am trying to insert it. It is really a thing about the spirit of it.

**CHAIRMAN**—Can we vote on that or would anyone like to speak against it?

**Professor WINTERTON**—I am in support of the principle behind this, and I am sure the committee would be mindful of these things but, with all due respect, too much political correctness is going to kill the republic before it is even conceived.

**CHAIRMAN**—The question is that the amendment be agreed to.

Motion carried.

**CHAIRMAN**—I have a proxy advising that our colleague Mr Neville Bonner is not well and, in light of his obvious frailty, I think we should accept this recommendation for a proxy. He has nominated Professor David Flint as a proxy from 4.00 p.m. this afternoon.

## **B. Appointment or Election Procedure**

**Ms BISHOP**—I move:

2) Amend Section B in the following manner:

\* by deleting the phrase: "Having taken into account the report of the Community Consultation Committee."

\* by deleting the phrase: "which shall be done without debate."

In view of the fact that the Tannock amendment got up, the amendment at the first dot point in (2), which deletes the phrase 'having taken into account the report of the Community Constitutional Committee' will no longer go ahead because there is a committee. That amendment was based on the deletion of the committee.

**CHAIRMAN**—Yes. In light of that, I think we should withdraw it.

**Ms BISHOP**—Mr Chairman, I do persist with the amendment deleting the phrase 'which shall be done without debate', at the end of that paragraph.

**CHAIRMAN**—Ms Bishop has amended her amendment. That part of it relating to 'having taken into account the report of the community constitutional committee', is deleted, but the second part remains. Are there any speakers against the amendment?

**Mr TURNBULL**—Mr Chairman, there is quite an inconsistency between the attitudes taken by Julie Bishop in respect of the community committee and in respect of this amendment deleting the phrase 'which shall be done without debate'. The reason for the phrase 'which shall be done without debate', which is standard procedure anywhere in the world where presidents are appointed by parliament, is so that there is not the sort of personal criticism or attack that has been cited as a reason for not having the committee.

I would have thought that if you were against the committee, you would be delighted at the phrase 'which shall be done without debate'. At the moment, thanks to the Tannock amendment, we have a committee that will be of workable size, that will be representative, that will act confidentially and discreetly, and will not publish any nominations without the consent of the nominee. So, unless there is a breach of security, there should be complete confidence there. This ensures that there are no attacks under parliamentary privilege on a candidate for the office of head of state in the course of debate. For that reason, I oppose this amendment.

**CHAIRMAN**—Thank you, Mr Turnbull. I have two foreshadowed amendments, and I think it would be wise to produce them so that people can see them. Councillor Tully, do you have the 10 signatures that you require to endorse your amendment?

**Councillor TULLY**—The signatures appear on the document. The foreshadowed amendment is that paragraph B be deleted in its entirety and that the following words be inserted in its stead: 'The president shall be elected directly by the people of Australia, except where a joint sitting of both houses of the Commonwealth parliament elects the

president by a majority of at least three-quarters.'

**CHAIRMAN**—There is another foreshadowed amendment. I call on Mr Clem Jones to foreshadow it so that people know what it is.

**Dr CLEM JONES**—My amendment is that, in light of the fact that the bipartisan model did not receive 50 per cent of the vote and the ARM clearly expressed and published undertaking to take notice of the wishes of the people in preparing the final model, including particularly if provision for the election of the president, is not fulfilled, the model should include that provision.' Actually, 'ARM' should go in there in relation to the published undertakings and so on.

**CHAIRMAN**—Are there any speakers in favour of amendment 2?

**Mr FITZGERALD**—I support Ms Bishop's amendment to delete the words 'which shall be done without debate'. It is quite technical. If the Prime Minister moves, he can only stand in his place and say, 'I move that Mary Bloggs or Joe Bloggs be the next president' and then that would be seconded. I think it only fitting that he makes a speech outlining what Mary Bloggs or Joe Bloggs has in their favour and why he is in favour and why he is nominating them. Also, in seconding it, the Leader of the Opposition should be able to make a speech, so that is technically a debate.

I think it is right that anyone else should be able to speak. I do not think that normally people would want to tear a character apart, but really it is imposing on parliament to say that nobody can speak. If you say that, then why get parliament to do it—just let two of them do a secret deal somewhere, but don't humiliate parliament by saying that you cannot make a speech in parliament.

**Ms MACHIN**—Taking up the last point that was made, having been in these sorts of situations, I think we ought to remember that there is quite a bit of dignity in these sorts of parliamentary procedures. As I understand it, the normal process would be the sifting, and then the final recommendation would go forward to parliament. It would probably be moved by the Prime Minister and seconded

by someone else, possibly the Leader of the Opposition in the spirit of bipartisanship. That would be the end of the debate.

The motion would be put, the House would presumably agree to it because we would like to think that this spirit of bipartisanship would mean that the issue was resolved before it went into the House so we did not have an untidy, unpleasant debate on the floor of the chamber. That is the way it works in the real world. I think that is the way we ought to expect it to work, and realise that from time to time politicians and leaders get it right.

**CHAIRMAN**—Mr Cowan, would you like to speak for the motion?

**Mr COWAN**—I speak in support of the motion. I again remind Mr Turnbull of how contradictory he can be at times. He has spoken very much in favour of this bipartisan model on the basis that it would require the support of the two major parties in the parliament. In other words, he has argued very strongly that any nomination would have the support of the majority of the parliament. To then argue the case that we do not want this to be debated in the parliament is quite contradictory.

There would be no doubt at all that this would provide an extra caution for the Prime Minister and the Leader of the Opposition to ensure that the person whom they selected for the president would, in fact, have not bipartisan support but the support of the parliament. There is no doubt at all, parliament being such a public process, that it should be debated. Any nomination by the parliament for the position of Speaker or President—as you know yourself, Mr Chairman—is debated, and this particular matter should be debated too.

**CHAIRMAN**—Are you for or against, Professor O'Brien?

**Professor PATRICK O'BRIEN**—I wanted to speak for the motion. Someone was talking to me as you were conducting that previous discourse. I am supporting what Hendy Cowan had to say.

**CHAIRMAN**—I want somebody who is against the motion to speak.

**Mr BRUMBY**—Mr Chairman, I want to speak against the amendment and, in doing



so, I want to foreshadow a further amendment to the original text which would be to add the words 'which should be done without debate, except for the motions moved by the Prime Minister and Leader of the Opposition'. I think it is appropriate that in a speech which nominates the president of Australia there should be an opportunity for comment by the Prime Minister and for that motion to be seconded by the Leader of the Opposition.

I think of precedents around, and probably the best precedent which is around is actually the nomination by state parliaments of a senator to fill a casual vacancy. We have had two of those situations which have arisen in Victoria. On both occasions the nomination which has gone forward through the Victorian parliament has been a nomination moved by the Premier of that state and seconded by the Leader of the Opposition. I believe it would be appropriate in these circumstances. We are nominating a president. I am sure that the Prime Minister of the day would want to put some remarks on the record in the *Hansard* to acclaim the virtues of the nomination and for that nomination to be endorsed again on the record by the Leader of the Opposition.

I agree entirely with the point that Malcolm Turnbull made before. You would not want an open debate in the parliament about those matters. It does not happen anywhere else in the world. You would not want the opportunity for dissident members of parliament to perhaps attack the reputation of the nominee. It is therefore appropriate that the Prime Minister and the Leader of the Opposition should be able to make that speech and put that on the record. I foreshadow that amendment.

**CHAIRMAN**—In order that we can process it then, Ms Julie Bishop, do you accept that proposal or not?

**Ms BISHOP**—No, I do not.

**Mr HAYDEN**—Mr Chairman, I am strongly supporting this recommendation for these sorts of reasons. Firstly, parliament is an open public forum for discussion and testing the issues of the democratic process. We should be striving not to limit the opportunities for that sort of process to take place but to enlarge them.

Secondly, on a more substantial practical ground if the debate or discussion is muzzled. What about a situation where there is an independent in the parliament regarded as something of an eccentric because of the way he raises certain issues and is excluded from the processes and is asserting something about the nominee to come before parliament, which the rest of us should know? It sometimes happens that some of these people who are independents and who are behaving in an eccentric fashion, in fact, are ahead of their time and are responsible for a substantial change in attitudes in the community and dramatic ones.

I think Mr Hatton in New South Wales is a classic case with his allegations about the police. What if an independent like that is muzzled? The late Kevin Hooper, who was my campaign director for some time and a state parliamentarian in Queensland, was raising issues about corruption in the Queensland police force long before Fitzgerald and long before the media were prepared to embrace concern on those issues.

I can recall the *Courier-Mail* or the *Sunday Mail*—it was one of them—publishing an editorial saying that Hooper had gone too far with the things he was raising in the parliament and that people should be careful of him. He was my campaign director. I was even starting to have doubts myself. But everything he said was proved correct and the media were a long time behind the late Kevin Hooper in exploring these issues. You cannot muzzle these people. They have to be given a chance to express their concerns and those concerns can be tested. They may be wrong but more than occasionally they are right, and that is why it is important to protect parliament as an open public forum for discussion.

**CHAIRMAN**—Thank you. Mr Evans, are you for or against this?

**Mr GARETH EVANS**—Mr Chairman, I am for the amendment but not for the reason that is advanced by its mover nor certainly that advanced by Bill Hayden. I do not believe it is appropriate, given the nature and the dignity of the office we are talking about, for the strengths and weaknesses of character of the candidate in question to be exhaustive-

ly canvassed on the floor of the parliament. I do think it would be appropriate to have short speeches referring to the nature of the occasion and the significance of it and the nature of the appointment of the person in the way that has been suggested by John Brumby, but at the end of the day really these are matters that have to be left to parliament itself. If we try to legislate now for a form of parliamentary debate which says you can only have two speakers but no more than that, I think we will perhaps get ourselves into a bit of a parody of the situation. I suggest that we leave out those words and leave it to the parliament to decide what is the appropriate procedure and format to deal with this kind of event.

The clear intention that I hope would be conveyed is that we do not want an exhaustive character analysis of candidates for high office of the kind that is par for the course in the United States. That was the intention of the movers of the motion in the original terms. But since it is capable of being misunderstood and since it is, in any event, essentially a matter that is going to be resolved by the Commonwealth parliament and not by us, I suggest that we accept the amendment and leave it for the good sense of the parliament to prevail.

**Mr RUXTON**—I do not want to sound professional, but I move:

That the motion be put.

Motion carried.

**CHAIRMAN**—I put the question that the amendment moved by Ms Julie Bishop, bearing in mind the foreshadowed amendment by Mr Brumby, which deletes the phrase 'which shall be done without debate' be agreed to. In other words, we delete the phrase 'which shall be done without debate'. Those in favour of the motion, being the motion moved by Ms Bishop, please raise your hand. Those against? Those in favour were 75; those against, eight. I declare the motion carried.

Amendment carried.

**CHAIRMAN**—We have a foreshadowed amendment by Mr John Brumby. Now that the words are deleted, I do not think it is

relevant, so that amendment goes. We then have the foreshadowed amendment by Councillor Tully, which is a fairly radical one. I suggest that we might put your amendment next.

**Councillor TULLY**—Chairman and delegates, this proposal is to break a deadlock between the direct election and—

**Mr HAYDEN**—Mr Chairman, I rise on a point of order. I am sorry, Councillor Tully, but I just want this clarified and we should know before we go into this discussion. You talk about provision for the election of a president by the people and that that provision should be included as a result of your amendment. But what sort of provision are you talking about? That should be in the body of this amendment. Are you talking, as I was talking this morning, of a nationwide entitlement to vote, a nationwide entitlement for people to select themselves? Or are you talking about the more restrictive filtering model for selecting candidates?

**CHAIRMAN**—I will ask Councillor Tully to expose the detail, and your time starts now.

**Mr HAYDEN**—The point is it should be in the amendment; we don't want any confusion later.

**CHAIRMAN**—I will ask Councillor Tully to move his amendment and he can pick up Mr Hayden's concern at the same time.

**Councillor TULLY**—I move:

Omit paragraph B and substitute the following paragraph:

"The President shall be elected directly by the people of Australia except where a joint sitting of both Houses of the Commonwealth Parliament elects the President by a majority of at least three-quarters

I indicate that this is a proposal to break the deadlock between the direct election method and the parliamentary appointment methods. Since Federation in 1901, there have been 42 elections and on only four occasions has any government commanded a combined two-thirds majority in the House of Representatives and the Senate. I should point out that no government has ever on any occasion had a three-quarters majority.

Apart from the philosophical differences, the parliamentary appointment method of selecting a president has one fundamental flaw which has not been addressed: there is no provision for resolving a deadlock if the two-thirds majority of the joint sitting fails to agree on the appointment of a president. In that situation, you could have the House of Representatives sitting for three years and the senior governor in Australia could be the acting president for that entire time. This proposal, which marries in one way the two competing concepts, would ensure that there will be a result.

The proposal has the following key elements. It expresses the supremacy of the people in the presidential election process. It provides for election by the parliament if there is a three-quarters overwhelming parliamentary support for a presidential nominee. The parliament in effect in that situation would act as an electoral college. More importantly, it does provide a mechanism for breaking any parliamentary deadlock. This is not provided for in the current ARM model. It gives the direct election delegates a real option of supporting an amended bipartisan appointment model, instead of abstaining or voting for the status quo at the final crucial voting stages.

Given that a significant number of direct election delegates will eventually be forced to abstain or support the status quo, it will provide a mechanism for other direct election delegates to support a genuine compromise model, making it much more likely that there will be a positive outcome to this Constitutional Convention. It will significantly reduce the likelihood of many direct election republicans campaigning against a subsequent referendum.

My fear is that this Convention is inching towards a mickey mouse republic, where the politicians and not the people of Australia select the president. There are real republican supporters around Australia who will be campaigning at a referendum against an unamended ARM proposal. True republicans will not cop a situation where the power is vested in the politicians in Canberra. I might predict as well that there will be a plethora of

Senate candidates around Australia who will be campaigning on a direct presidential election model, which puts into serious question any situation if John Howard—

**Mr TURNBULL**—Will you be resigning?

**Councillor TULLY**—No, I am a member of the Labor Party. I will not be resigning for that purpose, but plenty of others will be nominating, Malcolm. I make the point that, with a 7.6 or so per cent quota for the Senate on a double dissolution—and I see my friend Phil Cleary laughing about that; he may well be the one in Victoria—there is a real prospect that direct presidential election candidates will hold the balance of power in the Senate. I am calling on all fair-minded delegates to support this amendment. I would say, particularly to the people on my left who voted with honour today for the status quo, that this is an amendment which is a genuine compromise between both sides to ensure we can get a positive outcome to this Convention.

**CHAIRMAN**—Do you wish to specifically respond to Mr Hayden's question before you resume your seat?

**Councillor TULLY**—The intention of the amendment is that there would be a direct presidential—

**Mr HAYDEN**—The amendment I have is quite different from that one there. I understand the point that Councillor Tully is making now.

**Ms MOORE**—I actually second the amendment. Can I speak to the motion, please?

**CHAIRMAN**—Let me see if there is anybody against it, because we have 10 seconders in this rather unusual circumstance. Is there a speaker against that amendment?

**Mr FITZGERALD**—I think this is a ridiculous amendment. I do not like speaking against my colleague who comes from the same area as I do. However, I have to on this occasion, Paul. This Convention has certainly supported the proposition for the vote to go to the Australian people on a certain republican model and it is nowhere near this one here. The resolution as standing at present requires the Leader of the Opposition to second the motion. If you have the Prime

Minister who presumably has half the lower house and the Leader of the Opposition who presumably has a fair percentage of the other locked in behind him, I think we are just playing around with tactics. Real politics would be played then once this became an option.

**Ms MOORE**—I would like to preface my comments by saying that I am actually from a party whose policy at present is not for direct election, so I am not doing this to try to get a directly elected president in the back door.

There have been a number of comments during the Convention about hybrids, some of them disparaging. I think hybrids at this stage is what it is all about if we are to reach a compromise. It would be arrogant in the extreme to assume that in a process like this only pure models have any validity because pure models exclude input and do not allow consultation.

This morning I abstained from voting for the bipartisan model for two reasons. One of those reasons is that I am strongly opposed to the heavy-handed tactics that have been used during this Convention. The other reason is that I believe that this model in its present form, especially now that we have had the Tannock amendment earlier, does not go far enough to involve the community. I do not hold with Malcolm Turnbull's view that the people have elected the parliament and therefore the parliament represents the people. The fact is that our parliament does not represent the people and never will until we see proportional representation in both houses and, perhaps as a result of the introduction of PR, until we see parliament made up of at least 50 per cent women.

I have argued from the start that I believe this process to be flawed, that it is not up to us to arrive at one model, particularly as there is so much diversity here, in 10 days. But if this turns out to be the only option open to us then I want to be part of the process to make sure that we achieve the best outcome. I should also mention that the beauty of the 75 per cent requirement is that it would ensure that parliament would need to be truly committed to cooperating and the likelihood of its

appointing a politician would be greatly reduced.

If it is accepted I believe this will make the model palatable not only to more people in this chamber who were very sold on the idea of direct election but also to people in the community who will ultimately have to vote for it at referendum. I therefore second the motion and commend it for your consideration.

**Mr HAYDEN**—I oppose this for just plain practical reasons. This recommendation is if the parliament by a three-quarter majority cannot confirm the sole nomination by the Prime Minister as president then the public elect the president. But what is the slate that candidates are going to use? Is it only the one name on which there is a deadlock in the parliament or is there some other procedure? If there is only the one name, it scarcely seems to me to be a meaningful election at all. It would be terrible if the public decided they had had jack of all this procedure and they would not vote for the person either or is there some other sort of formula in mind?

Unless I misunderstood arrangements, but I am looking here at Mr Turnbull's proposal—and I might say that he has put a great deal of energy into it; and I am one of those who happen to think we probably would not be in here at this time if it had not been for the diligent and unflagging efforts of Mr Turnbull to move this country towards a republic. I oppose what he is trying to do but I respect the energy and integrity with which he has done it.

**DELEGATES**—Hear, hear!

**Mr HAYDEN**—I am pleased others agree with that. Perhaps Councillor Tully could straighten that out for me?

**CHAIRMAN**—Are you for, Mr Gunter?

**Mr GUNTER**—I speak in favour of this amendment, Mr Chairman, in part because the need for a three-quarter majority is quite evident from having a look at the table of parliamentary representation in the joint sitting since Federation. Delegates may remember that Mike Elliott and I earlier in the Convention attempted to move an amendment to entrench proportional representation for

Senate elections as has applied since 1949 so that a two-thirds majority would be a bipartisan majority.

However, if you go back to the pre-1949 situation, two-thirds majorities were achieved by one side of politics alone on at least six occasions in those elections, yet a three-quarter majority was not. For example, at the high watermark of Labor's representation in 1946, there was a clear 68 per cent majority and no bipartisanship would have occurred under those circumstances. I do not think that even under this model it would be appropriate for the president to be appointed by parliament. You already know my reservations about parliamentary appointment in any case.

As to Mr Hayden's comment about the slate of candidates for presidential election in the event of no appointment of the president by parliament, those are matters that can be fleshed out in due course and should be done in perhaps the way that Mr Hayden indicated in his model, if he were so desirous.

**Mr WRAN**—I must say that I am quite shocked that Councillor Tully, who has argued the case for direct election with such passion hitherto, has seen fit to move this amendment which is a real Clayton's effort in relation to a direct election. The whole purpose of having an election by the parliament, as has been stated over and over again in this chamber in the last eight or nine days, is to get bipartisan support. The prospect of a name going forward in the federal parliament where both houses are sitting and of that name being rejected is very remote indeed.

All this amendment does is give the public the impression that they are going to have a chance to participate in a direct vote whereas in fact they have absolutely next to no chance under this procedure of ever engaging in a direct election at all. So I think this is a phoney effort merely to get a headline. It has nothing to do with the merit, and it does not serve Councillor Tully's standing well at all.

**Councillor TULLY**—I will make this point of order and I will make it seriously. Until today, there has been no genuine endeavour to get the two groups together. This does provide a genuine compromise between the two groups.

**Mr WRAN**—The other thing I would like to say is this: Councillor Tully in his remarks pointed out that, if this amendment was not adopted, his group—whatever that is—will abstain or vote for the monarchy. You have your conscience and I have mine. We will not succumb to any threat about how you will vote because I am confident that the majority of delegates here will vote for an Australian as their head of state.

**CHAIRMAN**—The question is that the amendment moved by Councillor Tully be agreed to.

Amendment lost.

**Dr CLEM JONES**—As this will probably be my last contribution to the debate in this chamber, I would like to take a moment to congratulate delegates on the high quality of debate and some magnificent addresses. They have made me feel very humble indeed. Also, Mr Chairman, may I take the opportunity of expressing my appreciation to you and to the Deputy Chairman. I believe you have a difficult task and you have done it extremely well.

**DELEGATES**—Hear, hear!

**Dr CLEM JONES**—I move:

In the light of the fact that the bi-partisan model did not receive 50 per cent of the vote and their clearly expressed and published undertaking to take notice of the wish of the people in preparing their final model, including particularly provision for the election of a President by the people, was not fulfilled, the model should include that provision.

Let me refer for a moment to the fact that the direct election model group went a long way in endeavouring to achieve compromise in the republican camps, but one thing we could not be compromised on was our integrity. Our promise to those who elected us, and that made by others, was clear and unequivocal. We could not forsake our promise but—and this is the second reason why I moved this motion—others gave the same undertaking, namely that they would support direct election if it were seen to be the wish of the people. This undertaking has, in the last eight days in this chamber, been totally denied by them.

They talked about compromise, but compromised only on things they did not promise, and totally failed to fulfil the promise they

did make. I remind delegates that during the campaign that promise was made loud and clear. In public forums and through the media the ARM, while supporting presidential nomination by parliament, said if the people showed the wish to have the president elected by the people, as they have done over the last two weeks, their wish would be given regard.

I recall a television debate in which Sir James Killen, Sallyanne Atkinson and I participated. Sallyanne is a very eloquent speaker and she eloquently emphasised that the ARM would give a clear undertaking that they will look at, consider and act in accordance with the wishes of the people. Sallyanne is a highly respected person in Queensland and every person who saw that debate would have completely believed that they were going to get a president elected by the people. It was quite clear that, if that is what the people showed they wanted, that is what they would get. They showed what they wanted, but they have not got it. I believe that the result in Queensland was based on the fact that the voters believed that that was what was going to happen. They were listening to high-profile people and respecting them as such.

The other thing is that it has been said that there was no proper model put before this chamber and, in fact, that what we have today is only a list of proposals. I want to make it quite clear to this chamber—probably delegates have forgotten—that before the Convention commenced we submitted, in accordance with the requirements of the secretariat, a full and total model which dealt with every clause that was needed to express the sort of republic that we believe we need. It is all in there, every bit of it.

Unfortunately, with the way things went and our desire to cooperate with our fellow republicans, we did not put this on the table for voting. I would like, if I may, to table it again. It was slightly amended during the debate and now has been re-amended to go back to our original principles with a few amendments, which in fact came from this chamber.

**CHAIRMAN**—We will incorporate that into the proceedings of the Convention.

**Dr CLEM JONES**—Finally, no matter what has happened in this chamber and no matter what people say, we must all stay with the principles with which we live. We will not, I will not, and my colleagues from Queensland will not support any moves wherever for a republic which is a pseudo-republic and a president who is a puppet president.

**Ms HEWITT**—On a point of clarification, I do not understand this. It says:

In the light of the fact that the bi-partisan model did not receive 50 per cent of the vote and their clearly expressed and published undertaking . . .

Who does he mean by 'their'? The ARM?

**CHAIRMAN**—I think he means the participants to the bipartisan model. It is the people who propose the bipartisan model. He might have meant the ARM. Mr Jones, you meant the ARM, didn't you?

**Dr CLEM JONES**—Yes.

**CHAIRMAN**—Mr Beattie, are you for or against the motion.

**Mr BEATTIE**—I am for the motion.

**CHAIRMAN**—Is there a speaker against the motion?

**Mr SUTHERLAND**—I formally oppose it.

**Mr BEATTIE**—I know, as every delegate in this room knows, that this motion that Clem has moved is not going to succeed, but I want to use this opportunity to say a couple of things. Clem is 80 years-of-age. He has come here with a commitment and a determination to put a model before this Convention.

His team, the Clem Jones team, ran in Queensland. It won the majority support of those people who supported a republic. He went out and ran on a direct election team. He had the courage and decency to go out and consult and listen to people. He came here with the determination to put up his model and he has done just that. Everyone in this room should have the courtesy to respect the courage with which he has done that. Clem, I for one say, 'Well done!'

**CHAIRMAN**—I am sure the whole Convention endorses those comments. It is a remarkable effort by somebody of the age of about 40, let alone somebody at your age,

Clem. Congratulations! The question is that the amendment be agreed to.

Motion lost.

**CHAIRMAN**—I put the question that item B, as amended, be agreed to.

**Mr CLEARY**—Can you clarify what is being put?

**CHAIRMAN**—The amendment moved by Mr Clem Jones having been defeated, we are now considering item B, Appointment or Election Procedure, on the bipartisan appointment model. It was amended. Therefore, I put the question that item B, as amended, be agreed to.

Motion carried.

### C. Dismissal Procedure

**Professor WINTERTON**—I move:

Delete clause C and substitute:

(a) The President may be dismissed by an absolute majority of the House of Representatives on the ground of behaviour inconsistent with the office. This shall not be justiciable.

(b) Provision should be made for the House to be convened to enable the House to consider the issue and not dissolved or prorogued to prevent it.

(c) The Prime Minister may suspend the President for 14 days to enable the House to consider the issue within that time. The Acting President provisions shall apply during the period of suspension.

I endorse entirely the spirit of the original resolution. I see this amendment as simply smoothing out some of the rough edges. The basic proposal in the original motion was that the ultimate removal of the president should be by the House of Representatives but that there should be an initial period whereby the Prime Minister could basically suspend the president pending endorsement by the House. But this had two strange consequences: first, even if the House disagreed with the Prime Minister, the president was nevertheless basically sacked and was allowed simply to be reappointed; and, secondly, that the vote of the House would count as a vote of confidence, which would mean that the individual members of the House would vote according to party discipline.

This amendment has three elements to it. The first one simply provides that removal of

the president should be by an absolute majority of the House of Representatives. But it also states, pursuant to the idea of the dignity of the President, that it should be ‘on the ground of behaviour inconsistent with the office’ and, in order to keep these issues out of the courts, it provides expressly that this issue is non-justiciable. So the first provision is basically removal by the House of Representatives. The second provision is that the House remain in existence or to be called together to deal with the issue. The third provision takes up the spirit of the original motion, but I see it as smoothing the rough edges by providing for a shorter period—14 days—of suspension to enable the House to consider the issue and the interim presidency provisions apply in the meantime.

Perhaps I could say one or two things. One of the disadvantages of the original motion is that it is incompatible with the dignity of the president to be sacked by the Prime Minister. The president is appointed by the people indirectly—we have emphasised that—through the two-thirds vote and should be removed with the authority of the people, through indirect vote, through the House of Representatives. The original motion can lead to what I called earlier, and others have called too, a game of constitutional chicken whereby the president and the Prime Minister race to dismiss each other.

If you look at the original motion, you can envisage a situation whereby the Prime Minister is summoned into the president’s office; the president summons Sir David Smith, or his equivalent, and says, ‘Now make sure we don’t have any paper or pencil because the Prime Minister can immediately give written notice that I am out of office. Keep pencil and paper out of reach.’ It certainly discourages what we should be encouraging. We should be encouraging presidents to give the Prime Minister notice. One of the principal criticisms of Sir John Kerr was that he did not give Prime Minister Whitlam adequate notice. This sort of proposal where there is immediate dismissal is a severe disincentive to giving the Prime Minister adequate notice. I have basically dealt with the principal issues.

**Sir DAVID SMITH**—Could Professor Winterton tell us whether this presidential sin-bin would be in the grounds of Yarralumla or out in Dunrossil Drive? Fourteen days suspension for a head of state! Talk about dignity!

**CHAIRMAN**—We will take that on board.

**Mr GARETH EVANS**—I speak against the amendment and in favour of the original dismissal procedure in paragraph C. For all practical purposes now the Prime Minister can, effectively, instantly dismiss the head of state's representative, the Governor-General. The process involves reference to the Queen but, basically, it is on the advice of the Prime Minister. The sanction against misuse of that power at the moment is essentially political. It has never been done in our history, but if it were to be done cavalierly or without good cause or able to be publicly and politically articulated, the political response would be pretty swift and savage from the Australian community.

What our particular proposal in paragraph C on dismissal procedure does, in fact, is just bring that political consequence more rapidly to fruition, in the sense that the Prime Minister, having made the decision to sack the Governor-General for whatever reason, immediately has to in effect face the House of Representatives and survive what is in effect a motion of confidence in the House of Representatives. If the Prime Minister of the day has acted without the support of his own party or in a way that is so manifestly unconscionable that he cannot win the support of the House of Representatives, he will suffer a very swift political fate indeed. If there is a party vote sustaining him in this situation, which is nonetheless perceived by the wider population as indefensible behaviour, the retribution may be a little longer delayed, politically, but it nonetheless will be sure. I think, under those circumstances, there is absolute clarity in the way that the particular proposal is put to you at the moment. The no-confidence dimension of it simply is a way of expressing the political dimension of it and the political sanction that is meant to work if the dismissal power is cavalierly applied.

The present paragraph C has the virtue of great simplicity and directness. The dismissal

is accomplished by the Prime Minister directly, without any uncertainty associated with suspension periods and swearing in and the possibility of ambiguity or uncertainty as to what is going on during that suspension period and who actually has the power. The dismissal is complete and clear.

The motion of George Winterton would introduce some new concepts which would generate a whole new area of uncertainty. What is involved in 'misbehaviour'? Misbehaviour assessed by whom? It is not to be justiciable so it is to be a matter simply for the judgment of the Prime Minister of the day. But what do we mean by misbehaviour? Is it personal misbehaviour, constitutional misbehaviour, political misbehaviour or what? The point about keeping it clean and simple is to say—and this is really the point that Dick McGarvie was originally making—it is a democratic sanction that continues to exist in a system of the kind that we are introducing by the government of the day. So, there is uncertainty about that. There would be uncertainty about the timing issue were you to introduce the suspension provision and not enable the dismissal to be accomplished immediately. I think for those reasons and others as well, but it is getting late and I will not bore you with them, the proposal as we originally put it to you—quick, clean, succinct, easily understandable, politically very effective, constitutionally quite precise, legally precise, in its implications—is the way to go. I urge you to reject the amendment.

**Senator STOTT DESPOJA**—I reiterate the concerns that I expressed this morning, not only about a process that essentially relies on the whim, if you like, of the Prime Minister—albeit with ratification by the House of Representatives—but also that the proposal, as it stands now with the dismissal provisions, involves a denial of natural justice. That is, if the Prime Minister sacks or makes the head of state stand aside, and can do so through written notice, then awaits ratification by the House of Representatives and that ratification is not forthcoming, the president, that head of state, is still not restored to office. They are then eligible for re-appointment, but I do believe that in this



process you are denying natural justice in the case of the president.

**Senator HILL**—Very briefly, Mr Chairman, I strongly oppose this amendment. What it does, in effect, is reduce the power of the Prime Minister vis-a-vis the head of state as to what exists at present. One message that has very clearly come through this Convention is the desire for ongoing stability within the structure of our constitutional system. A key part of that is to maintain the power of the elected Prime Minister, albeit the indirectly elected Prime Minister, as opposed to the head of state. I think that if we come out of this Convention having reduced that power, as opposed to the head of state, that will not be something that will be applauded by the Australian people. I therefore urge that this motion be defeated.

**Professor WINTERTON**—I have three points. As Gareth knows, the parliament would be the body to judge misbehaviour. Even though it is vague, it would have to be parliament because it is non-justiciable. But it is certainly better than his proposal where there is absolutely no ground at all.

Secondly, the great weakness of the original motion here, as of the McGarvie model, is that people simply are unwilling to contemplate presidential misbehaviour in respect of the exercise of a reserve power. If the president goes mad, exercises reserve powers wrongly and sacks the Prime Minister, there is absolutely no recourse on this model or on the McGarvie model, because the new Prime Minister will not move a motion of dismissal in the House. You have to leave it in the parliament. You cannot tie it to the Prime Minister because the president could have changed the Prime Minister. It is simply a fundamental point that both the McGarvie model and this proposal do not address.

Finally, I am not personally mad on the suspension idea. That was put in to embrace the spirit of the original motion. I saw this motion as basically, in the spirit of it, trying to smooth out the rough edges.

**CHAIRMAN**—The question is that the amendment be agreed to.

Motion lost.

**Professor PATRICK O'BRIEN**—I raised this matter with Mr Jones. It may not require a procedural motion as such but I seek your advice. On round 2 of our voting this morning, the direct election model got 30 votes and the McGarvie model got 31. Let me explain quickly the situation. I did a count and thought that the DPEG got up, but at lunchtime there were three very experienced members of the press gallery who also did a head count and thought that the DPEG got up. I understand that some people might stand up and vote differently—

**CHAIRMAN**—Let me explain to you. Perhaps it might shortcut your intervention. There should be going around about now a full tally of who voted on each of those propositions and you will be able to make the count yourself. Everybody's vote is identified in *Hansard* and it is to be distributed as soon as it is available. I thought it would have been distributed by this.

**Professor PATRICK O'BRIEN**—It would suffice if people just checked it. It was not a whinge, it was simply that three very experienced hands in the press gallery suggested that I should do it.

**CHAIRMAN**—The Deputy Chairman advises that he had asked for a recount. As a result, I will ask him to respond.

**DEPUTY CHAIRMAN**—The same point was made by another delegate as well as Professor O'Brien. I asked Mr Bill Blick to have another examination of the votes to do a recount, and that recount confirmed the original count precisely. Of course, it all tallied up because we got the 151 votes at the end. I am satisfied about that and that when the tally sheet comes out with the names associated with it it will confirm it.

**CHAIRMAN**—The tally sheets are to be distributed as soon as they are available. They will be available not only to all delegates, but to the media and the public as well.

I put item C—the dismissal procedure in the bipartisan appointment of the president model. Those in favour of the dismissal procedure, item C in the bipartisan appointment as expressed in the procedure before us, please raise your hands. Those against, please

raise your hands. The ayes are 80, the noes 13.

Motion carried.

#### **D. Definition of Powers**

**CHAIRMAN**—We now move to item D. I have received an amendment.

**Mr TURNBULL**—I move:

The powers of the President shall be the same as those currently exercised by the Governor-General. The non-reserve powers, those exercised in accordance with ministerial advice, should be spelled out so far as practicable. As to the reserve powers, the constitutional conventions relating to their exercise should be incorporated by reference. The Convention refers the Parliament to the partial codification model (other than Clause 4) at pp 102-105 of the Republic Advisory Committee Report.

This language is intended to convey exactly the intent of the language in the model before. It is a little longer, but hopefully clearer. The intention is that the powers of the president shall be the same as those currently exercised by the Governor-General. I think we all agree with that. The non-reserve powers, which are those powers which are exercised in accordance with ministerial advice—and that is by far the bulk of the head of state's powers—should be spelled out as far as practicable.

As to the reserve powers, the conventions relating to their exercise should be incorporated by reference. Without insisting that parliament take note of it, we have referred parliament to the partial codification model, other than clause 4. I have discussed this with the Attorney-General and Gareth Evans, who is a seconder of the motion. There is a general feeling among those men who are more learned in the law than I that this will give parliament sufficiently clear instructions to do its work and effect the intention of the Convention. I recommend the amendment to you.

**CHAIRMAN**—Thank you, Mr Turnbull. We have another amendment which I will ask Ms Julie Bishop to give notice of at this stage.

**Ms BISHOP**—As to Mr Turnbull's proposed amendment, I foreshadow support for the amendment in principle, but would still wish to amend it to incorporate the amendment that I proposed.

**CHAIRMAN**—Would you foreshadow your amendment so that the delegates will be aware of its intent.

**Ms BISHOP**—Item D currently reads:

The powers of the President shall be the same as those currently exercised by the Governor-General. The non-reserve powers of the President should be codified, and the reserve powers incorporated by reference.'

I seek to delete the words 'incorporated by reference'—I would seek to make the same amendment in Mr Turnbull's amendment—and include 'and the conventions relating to their exercise should continue to exist'. So it would read, 'the reserve powers and the conventions relating to their exercise should continue to exist.'

**CHAIRMAN**—Thank you. First of all, I want a speaker against Mr Turnbull's amendment.

**Mr WILLIAMS**—I want to make clear my position in relation to this, in view of the comment Mr Turnbull made. He said I was comfortable with the language. I am comfortable with the language in so far as it expresses his wishes. I do not support it as a matter of principle.

**Mr HOWARD**—That is a very big difference.

**CHAIRMAN**—Julie Bishop is foreshadowing an amendment. We are now dealing with Mr Turnbull's amendment. When we have put Mr Turnbull's amendment, we will deal with Ms Bishop's amendment. I need a speaker in favour of Mr Turnbull's amendment.

**Mr HOWARD**—I seek some guidance from Mr Turnbull and Mr Evans. I wonder whether you could let the Convention know whether there are any precedents for what is proposed here, that is, to incorporate by reference when converting from a constitutional monarchy to a republican system of government. It is my understanding that the only precedent that has been cited in the literature on this is South Africa in 1961. I would not have thought that that was a precedent that many people would necessarily want to clothe themselves with. But I think it would be extraordinarily helpful for the Convention, and I mean this very seriously.

There are some people who genuinely entertain the notion that you can holus-bolus transfer powers which draw their authority from the prerogatives of the Crown and just transplant them and assume that they will continue growing in the way that they had in that environment in a republican environment, leaving aside the argument as to whether you are for or against a republic. There are a lot of people who have a concern that, once the character of the powers is fundamentally altered, then they cease to operate in the way that they operated under a monarchical system of government.

I am not arguing the toss on the threshold issue but I think it is extraordinarily important and is something that has tended to be glossed over in the whole of this debate. Secondly, I would have to say that I share the concern that I think was implicit in Daryl Williams's intervention about spelling out the non-reserve powers. I tend to agree with what Daryl said on that. I think it is important, before the Convention takes a vote on this—and my disposition at the moment would certainly be to vote against this amendment—for those who are proposing this to further enlighten the Convention on that issue that I have raised about the incorporation by reference of the reserve powers which owe their origin to a royal prerogative into a republican constitution. It is one of the intriguing issues that so far have been skated over in this whole debate.

**Mr GARETH EVANS**—So far as incorporation by reference is concerned, the only two precedents of which I am aware, without having researched this separately, are those referred to in the Republic Advisory Committee report, one of which is South Africa in 1961. I think it was a little bit of a cheap shot to be knocking that since you were pretty supportive of the South African Constitution, as I seem to recall, over most of that period.

**CHAIRMAN**—That is a bit irrelevant.

**Mr GARETH EVANS**—The other one is Ceylon as it then was—now Sri Lanka—in 1946. The formula adopted in South Africa was simply this:

The constitutional conventions which existed immediately prior to the commencement of this Act shall not be affected by the provision of this Act.

That is an incorporation by reference, albeit of a very brisk kind. It is acknowledging that conventions apply. It is not purporting to spell them out, it is not purporting to describe or define them, but it is incorporating by referring to them.

Again, in Ceylon, as it then was back in the 1940s, the new Constitution said that the powers of the Governor-General:

... were to be exercised as nearly as may be in accordance with the Constitutional Conventions applicable to the exercise of similar powers in the United Kingdom by His Majesty.

Again, an incorporation by reference. Page 94 of the RAC Report—and Malcolm Turnbull actually referred to this during the course of an earlier debate—does set out a slightly more lengthy paragraph which describes what an incorporation by reference might in fact look like now. Let me read it to you:

The head of state shall exercise his or her powers and perform his or her functions in accordance with the Constitutional Conventions which related to the exercise of the powers and performance of the functions of the Governor-General, but nothing in this section shall have the effect of converting Constitutional Conventions into rules of law or of preventing the further development of these conventions.

It will be understood that that is an extremely minimalist statement. It does no more than acknowledge the continuing existence of those conventions, which Julie Bishop wants us to do in her proposed language. It not only acknowledges them; it says they do continue to have force. It does not get us into the argument—which would be an impossibly difficult one to resolve in this context or, I suspect, probably in parliament—of trying to define what those conventions are. So what we are doing when we are talking about the reserve powers—

**Mr HOWARD**—That is fairly relevant, though.

**Mr GARETH EVANS**—Okay, but what we are simply doing is saying, 'We want some of this stuff to be spelt out a bit more clearly than it is at the moment,' where you do not even have the name 'Prime Minister'

in the Constitution. So in relation to those powers which everybody accepts are exercisable on advice, to the extent that it can be done so far as practicable—and we are not saying it should be a total effort—they should be spelt out. The notion that the Prime Minister of the day should enjoy the confidence of the House of Representatives and things like that should be spelt out.

As for the reserve powers—that residual category of things about which there is a great deal of argument as to whether they exist at all and, if they do exist, the way in which they should be exercised—we are not getting into that debate. We should simply say that such conventions as are applicable to them continue to apply, and we refer to them in this way. That is what it all means and I would have thought it was pretty uncontroversial.

**CHAIRMAN**—I need a speaker against.

**Mr WILCOX**—I am against. I am glad that this matter has been raised and raised, indeed, by the Prime Minister, because this amendment says:

The powers of the President shall be the same as those currently exercised by the Governor-General.

It then says:

The non-reserve powers, those exercised in accordance with ministerial advice, should be spelled out so far as practicable—

Now, there is the problem, because it goes on to say:

... as to the reserve powers, the constitutional conventions relating to their exercise should be incorporated by reference.

That point has been made and it is something I particularly want to draw attention to, and it is something that Mr Turnbull may be able to help us with. Section 5 of the Constitution says:

The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.

That in my view is a reserve power. I just think that, once you start fiddling with reserve powers and non-reserve powers and you want to codify them, you can be in all sorts of

strife. I would like to hear the proponents of this amendment tell us how that fits in.

**CHAIRMAN**—Thank you, Mr Wilcox. Is there a speaker for Mr Turnbull's amendment?

**Mr LAVARCH**—Maybe also to allay ever so slightly the fears of the Prime Minister, I could recount that the legal opinion of the Commonwealth Attorney-General's Department certainly was, during the exercise of looking at this question, that it was indeed quite possible to have a constitutional provision which would refer by way of reference the existing conventions. Confirmation of that is contained in the appendix to the Republican Advisory Committee's report in the opinion of the acting Solicitor-General at that time, Mr Dennis Rose QC, and that certainly was the legal advice of the Commonwealth at that time.

To take up the point which Mr Wilcox was raising, the point of the codification which is to be found at pages 102 and 105 of the RAC report, the so-called partial codification, is to explain the circumstances where a power such as Mr Wilcox referred to, contained at section 5 of the Constitution, is in fact where the president or the head of state would be acting on the advice of the Prime Minister. There is no attempt to take away that section and what have you. I suppose the contentious part is in what circumstances the parliament should be dissolved outside of the advice of the Prime Minister. That comes within the domain of the reserve powers, and this is a matter on which there are differing views as to what are the circumstances where the head of state is open not to act on advice of his or her ministers. That is governed at the moment by a series of conventions; hence the reference to the existing conventions being referred to the Constitution.

To summarise, there are both examples in practical terms of countries that have gone down this path and the advice of the Commonwealth that it was quite open for to us do this in this context. It seems to me that this is an appropriate way to proceed: a partial codification of those powers which are certainly not controversial and leaving those reserve powers where there is controversy as

to their extent to be governed by the existing conventions.

**CHAIRMAN**—Are you for or against, Mr Muir?

**Mr MUIR**—Against, Mr Chairman. I just want to make the point in relation to this that the ARM have made the point that powers are absolutely crucial in relation to any model for a republic. We have before us five and a half lines which deal with the issue of powers. They are vague; they say that non-reserve powers should be spelt out so far as practicable. I find it disappointing that we are here on the second last day of our Convention and we still do not have a proper model for the republic.

**CHAIRMAN**—Are you for or against, Sir James?

**Sir JAMES KILLEN**—Notionally for. There are two authorities that clear the position. The first is that of Harold Lasky, who in one of his great works made this observation:

The mere fact that we do not know the limits of the reserve powers, that they remain to be invoked in one side or the other in the twilight zone of crisis, is sufficient to evidence the difficulty of the situation.

We never know where the twilight zone of crisis will be. The other is the opinion offered by a man who sat in this House for a number of years; that is Evatt, who said this in *The King and his Dominion Governors*:

Surely it is wrong to assume that the Governor-General is a mere tool in the hands of the dominant political party.

I am sure that the honourable former Attorney-General, Gareth Evans, reflecting on that, will agree that a lot of his labours during the course of the last nine days have been in vain, because that is precisely what he has been trying to do: make sure that the Governor-General is a tool in the hands of the dominant political party.

**CHAIRMAN**—I am not sure I can accept that as being within the normal definition of somebody in favour of the motion. The names of those who have voted on all those earlier questions are being distributed, Professor O'Brien. I call Senator Hill.

**Senator HILL**—I take the opportunity to speak against the motion and also raise a point—that is, if I was to have an indication there might be 10 supporters, I might foreshadow an amendment that would delete all words after 'Governor-General'. That would mean that this Convention would confirm the powers as they currently exist and, down the course, would leave it for the government and the parliament to determine the extent to which they should be codified or otherwise.

In doing so, the parliament would obviously take into account the views of this Convention that seem to be somewhat widespread on the issue. That way, those who want to argue for codification, like Mr Evans, will have another opportunity to do it another day. But it would not be in any way something that is put to the parliament as a determination of this Convention and thus would retain, I think, a desirable flexibility.

**CHAIRMAN**—If you foreshadow that amendment, it will be accepted as long as we have 10 delegates in its favour. Can I see whether there are 10 delegates who support it?

**Mr WILLIAMS**—On a point of order: it seems to me that exactly the same result can be achieved in two different ways. I will mention only one because it is the simpler way—that is, take a vote on the first sentence and then take a vote on the rest.

**CHAIRMAN**—Thank you. That would be a way to do it. I will accept that as a basis of procedure. Mr Bruce Ruxton, are you for or against?

**Mr RUXTON**—I am against the motion.

**CHAIRMAN**—I need somebody in favour of the motion.

**Mr MOLLER**—The Prime Minister asked for examples of countries or constitutions where the incorporation by reference model has been adopted. In addition to Ceylon and South Africa, it has been adopted in section 49 of the Irish Constitution. Also, intriguingly enough, although not in relation to prerogatives, it has been adopted in the Australian Constitution where section 49 thereof incorporated in respect of the powers, privileges and immunities exercised by the houses of the

Commonwealth parliament that they were to be the same as those exercised by the Commons House of Parliament at Westminster.

That provision, section 49, remained in force until 1987 when the Commonwealth, pursuant to the provision in section 49 that it could otherwise provide, enacted the Parliamentary Privileges Act. It might be a good thing for his education if the Prime Minister actually listened when somebody answered a question he asked, but that is all I have to say.

**Mr BRADLEY**—Point of order: for the benefit of members of the Convention, I have in front of me article 49 of the Irish Constitution. It does no such thing.

**CHAIRMAN**—That is not a point of order, Mr Bradley.

**Mr RUXTON**—I do not care if it is the Constitution from Ireland, Ceylon or South Africa; I am looking at our own Constitution—section 5. As far as Vernon Wilcox and I are concerned, we were put here to safeguard the ordinary people in this country. If they are going to start codifying section 5 of the Constitution, the ordinary people in Australia are going to lose their safety valve.

We want to know—and I brought it up this morning when I spoke—whether section 5 is going to be incorporated in the powers of the new president, but no-one said anything. No-one said anything at all. I would like to know the answers of Mr Turnbull and the others because what we have been hearing this afternoon is snake oil again. That is what I say.

**CHAIRMAN**—I thought I would call Mr Turnbull and we would wind up the debate. I know there are several others who wish to speak.

**Mr TURNBULL**—Let us have a bit of a reality check here. If you take the view that it is absolutely impossible to completely codify the reserve powers or, on the other hand, absolutely impossible to continue the conventions relating to the powers of the Governor-General into the office of a new head of state, the only conclusion is that, because of this remarkable intellectual or mechanical deficiency Australians with

respect to their Constitution, we can never lose the British monarchy.

**Mr RUXTON INTERJECTING**—

**Mr TURNBULL**—I do not think one single one of us—with the possible exception of you, Bruce Ruxton—would believe that. However, in an endeavour to bring a bit of harmony, when parliament and the Attorney-General's Department come to consider this issue, they will undoubtedly take into account incorporation by reference, because, at the end of the day, if you want the constitutional conventions to continue in the Constitution, out of an abundance of caution any sensible lawyer is going to recommend—as the Solicitor-General did to the Republic Advisory Committee report—why not say that? Why not write it down? I really do not believe that this government or any government is going to put nothing in the Constitution about the powers of the head of state and just leave it all to trust.

I am perfectly happy that the government and the parliament will produce a very competent job here, because the last thing they are going to want to have is an embarrassing mess in implementing this exercise. So what I would suggest we do is recast this clause and say:

The powers of the President shall be the same as those currently exercised by the Governor-General.

That is the point of principle, and I understand we all agree on that. The amendment continues:

To that end, the Convention recommends the parliament consider:

- \* the non-reserve powers, those exercised in accordance with ministerial advice, being spelled out so far as practicable
- \* the constitutional conventions relating to the reserve powers being incorporated by reference.

I would not even insist that they refer to the Republic Advisory Committee report, because no earnest republican could spend a day without having that valuable volume by his side.

**Professor WINTERTON**—I have a point of clarification in response to the Prime Minister and a question for the Prime Minister. Firstly, he asked about other count-

ries. As far as I know, there are no other countries that provided that expressly, but it has worked in many countries like India, Trinidad and Tobago and some where the conventions have continued to apply.

Secondly, I want to ask the Prime Minister this serious question. The concern he raised, with all respect, is absolutely right. As he and others have pointed out, the current conventions are conventions of the monarchy. When you cut the link with the Crown, the question is: how do they continue? What perplexes me is that the paragraph Gareth Evans read out and so on would address this. If you do not have such a provision, how would you envisage one would make the link? I was perplexed. You raise the question: how do the conventions continue? If you are having doubts about a provision that says expressly they should continue, what else could one do?

**Mr HOWARD**—I thank Professor Winterton for that question. I raised it very genuinely, not in an argumentative fashion. I think it is an issue that is not entirely free from doubt and, with great respect to the Republic Advisory Committee, it is something that raises the question of the extent to which you do try to spell things out in any amendment.

Having listened to this debate, I am more than ever convinced that what Daryl Williams suggested is the prudent and also the practical and the non-controversial way of dealing with it. We express the principle, and that is what people want. I accept that, if you are going to have this model, then the general guidance to the government is to have the powers the same as the Governor-General. What you do after that is obviously something on which exhaustive tactical advice and so forth would be obtained.

That is all I want. When we get to drafting the legislation that will be incorporated in the referendum proposal to be put to the Australian people in accordance with the undertaking I gave at the beginning of the Convention, I do not want a situation to arise where we are told, 'Well, look you have to put in this business to do with the non-reserve powers and so forth,' if, in fact, we come to a genuine bona fide legal view that there is a slight-

ly different way of doing it. It is just to give us a certain degree of room, and I think it is prudent in these circumstances. I do not think it violates the principle. That is the only purpose I had in raising it. Frankly, I think the commonsense thing to do is to forget the Turnbull-Gareth amendment and also to forget the suggestion and just adopt the first sentence.

**CHAIRMAN**—I propose to put the first sentence of Mr Malcolm Turnbull's original proposal, which remains there in a separate fashion. That is the sentence to which the Prime Minister has just referred.

Motion carried.

**CHAIRMAN**—The question now is the second part of that amendment, which has now been modified by Mr Turnbull, be agreed to. It reads:

To that end, the convention recommends that the parliament consider:

- \* the non-reserve powers, those exercised in accordance with ministerial advice, being spelled out so far as practicable.
- \* the Constitutional conventions relating to the reserve powers being incorporated by reference.

Amendment carried.

**CHAIRMAN**—To that I understand you now have an amendment that is applicable, Ms Bishop.

**Ms BISHOP**—I think the last part of the amendment would read now:

- \* the reserve powers and the conventions relating to their exercise should continue to exist.

In other words, that the parliament consider a statement to that effect rather than the words 'being incorporated by reference'.

**CHAIRMAN**—Are there any speakers against that amendment? There being no speakers against, any speakers for?

**Mr GARETH EVANS**—I do not know whether there is some agony about the expression 'incorporated by reference', but it means exactly the same thing. A statement by the parliament incorporated in the Constitution by way of incorporation by reference is a statement that those powers continue to exist. Moreover, you can also make it clear, as I read out, that they not only exist frozen in time but you can spell out very clearly in an

incorporation by reference statement that they would further develop over the course of time—nothing would inhibit their further development. So everything, Julie, you are trying to achieve is, in fact, achieved by that explicit provision that is there. I cannot, frankly, see the point of continuing to rage against it, unless you have some linguistic hang-up about those three words.

**CHAIRMAN**—Thank you, Mr Evans. I would propose to put the amendment that the last three words ‘incorporated by reference’ be changed to read: ‘and the conventions relating to their exercise should continue to exist.’ Ms Bishop, we have not got the words right yet, have we?

**Ms BISHOP**—It now says:

\* the reserve powers and the conventions relating to their exercise should continue to exist.

**CHAIRMAN**—I want to make sure we get it right so everyone knows what they are doing. What we are doing is we are deleting the words ‘incorporated by reference’—

**Mr GARETH EVANS**—The problem is one of clarity. If that is the point you are making, would it accommodate you to say that they ‘continue to exist and that this may be made clear by their incorporation by reference in the Constitution’?

**Ms BISHOP**—No. I just want ‘a statement that the reserve powers and the conventions relating to their exercise continue to exist’.

**CHAIRMAN**—Could you please read that final sentence so that we know exactly what you mean.

**Mr TURNBULL**—Mr Chairman, I raise a point of order. I have never seen such an argument about semantics. The statement that Ms Bishop has up there—

**Mr WADDY**—That is not a point of order.

**Mr TURNBULL**—No, wait a minute. The point of order is that she should first move that that second dot point be deleted because what is being put in its place means exactly the same thing. This is the most pointless exercise I have yet seen in this convention, but if she wants to delete it—

**DELEGATES**—Oh, come on!

**Mr TURNBULL**—No, no, no. I ask the federal Attorney-General, Mr Williams, when he goes to implement the continuation of the powers of the Governor-General in this new office, does he expect to consider ‘incorporation by reference’ or has he already cast it from his mind? If he will consider it, that is all that we are saying.

**CHAIRMAN**—The situation is that we have an amendment moved by Julie Bishop. We have heard the views expressed by others. Ms Bishop, you wish to proceed with your amendment, as I understand it. I think you should finally clarify what the amendment is before it is put.

**Ms BISHOP**—I wish to proceed with this amendment because I believe that the issue of powers is a very important one. At this point, I am trying to address the issue that the Prime Minister raised whereby there is a question as to whether the unwritten rules that have grown up around the exercise of reserve powers within a constitutional monarchy continue to exist. It is a simple statement. My amendment reads:

To that end, the convention recommends that the parliament consider:

\* a statement that the reserve powers and the conventions relating to their exercise continue to exist.

**CHAIRMAN**—Thank you very much, Ms Bishop. Mr Evans, you have some problems with it still. Would you like to explain to us just what they are?

**Mr GARETH EVANS**—The problem is one of unintelligibility unless you add the words ‘a statement that’, which it appears you have now done.

**CHAIRMAN**—Ms Bishop suggested that the words ‘a statement that’ be included. We now have an amendment before the convention which has been moved by Ms Bishop which is an amendment to Mr Turnbull’s—

**Mr TURNBULL**—We’ll accept it, Mr Chairman.

**Mr GARETH EVANS**—He has accepted it. It is the same thing so we have accepted it.

**CHAIRMAN**—I am afraid that is not the way the convention works at the moment. I



want to make sure that everybody accepts it. The proposal is:

- \* a statement that the reserve powers and the conventions relating to their exercise continue to exist.

Is this right, Mr Turnbull? Do you accept that?

**Mr TURNBULL**—Yes.

**CHAIRMAN**—You accept that. We therefore are in a position where the proposition put by Mr Turnbull is now the new clause D. I have no further amendments. The question is that D, as amended, be agreed to. Those in favour please raise your hands. Those against please raise your hands. Ayes—88, against—four. I declare D, as amended, carried.

Motion carried.

**CHAIRMAN**—I have meanwhile received a proxy from Ms Hazel Hawke, which I tender, requesting Mr Thomas Kenneally attend as her proxy.

#### **E. Qualifications for Office**

**CHAIRMAN**—I have no amendments to E—Qualifications for Office. Is there any discussion of E? There being no discussion, I put the question that E be agreed to.

Motion carried.

#### **F. Term of Office**

**CHAIRMAN**—Term of Office—five years.

**Mr RUXTON**—I was going to move the adjournment so we can go to your dinner tonight.

**CHAIRMAN**—Sorry, I do not accept the motion.

**Mr RUXTON**—Have you cancelled your dinner?

**CHAIRMAN**—I put the question that F be agreed to.

Motion carried.

**CHAIRMAN**—We now proceed to the substantive motion. I requested that the bells be rung, in accordance with the procedures that I announced earlier. That should ensure that all delegates are included in the proceedings. The question is that, if Australia is to become a republic, this Convention recommends that the model adopted be the model that we have just ratified, in accordance with

the successive motions that have been passed by the Convention. In order that this voting may take place, ballot papers are to be distributed.

**Ms MARY KELLY**—I have a procedural request that the debate be adjourned until tomorrow. I do this in order for us to have the final words before we vote. This is not a trick; it will make no material difference. I did not follow what happened to D, despite concentrating. We are now voting on something that relies on our handwritten notes to understand the complete model. That is why I request it.

**Ms HEWITT**—I second that motion.

**CHAIRMAN**—I point out that the Convention has already adopted a procedure, which we have been following. So that all delegates are aware of where we are before I put the procedural motion, the final motion was that we consider that model, having been ratified in each of its individual components by the Convention, as the model that would be adopted.

I think the procedural amendment should go up first. I put the procedural amendment. We will vote by a show of hands. Those in favour of the procedural amendment that this Convention adjourn and that that motion be put first thing tomorrow morning, please raise your hands. Those against.

Motion lost.

**CHAIRMAN**—We will now proceed to the vote. The vote is on whether that bipartisan model, which we have agreed to by consideration of each of the successive resolutions that have been put—that is A, B, C, D, E and F—and with the successive amendments that have been passed by this Convention, is the model that Australia should adopt if it becomes a republic. Four delegates are not present. If Mr Tom Kenneally is here, he has an entitlement to Ms Hazel Hawke's ballot paper. Delegates Steve Vizard, John Anderson and Pat McNamara are not here. Please proceed.

**Mr TURNBULL**—I move:

That if Australia is to become a republic, this Convention recommends that the model adopted be the bipartisan appointment of the President model.

**Mr WRAN**—I second the motion.

**CHAIRMAN**—Is anybody doubtful about the question?

**Mr RAMSAY**—On a point of order: would it be in order to advise the Convention, before the vote is taken, of any delegates who are voting by proxy?

**CHAIRMAN**—I understand that there are two, apart from those who were recognised earlier today—being the leaders of government or leaders of the opposition. The proxy for Mr Neville Bonner is Professor David Flint and the proxy for Mrs Hazel Hawke is Mr Tom Keneally, both of whose proxies have been awarded on compassionate grounds.

**Senator FAULKNER**—I raise a point of order. I had raised earlier with the secretariat the importance of the voting instructions being contained on the ballot papers that delegates received. This has not occurred on this occasion. I think it is important that you do clarify that for the benefit of delegates.

**CHAIRMAN**—I am about to do that, Senator Faulkner. You have three options on the ballot paper. The options are that you either approve, disapprove or abstain. You can tick or cross. You vote once, in one of the three squares. If you tick 'In favour', then it means you support the motion. If you tick or cross 'Against', it means you vote against it. If you abstain, you of course tick in that third box. Is there any further questioning about the procedure?

If there is no further question about the procedure, I ask you to complete the box in front of you. When you have done so, I will ask those in favour to stand and to hand in their ballot papers. I will then ask those who vote against to stand and they will hand in their ballot papers. Finally, those who abstain are to do likewise. So, will you please fill in your paper and sign it, and then I will proceed to ask that they be handed in. The signature is necessary to be sure who you are. If you are a proxy, will you sign your name as proxy for whomever you are representing.

I ask those then who are in favour of the resolution and are ready to hand in the ballot paper to please stand, and I ask the tellers to

collect their ballot papers. Please sit down when you have handed in your ballot paper. Is there any other delegate who is voting in favour of that resolution, that is, that if Australia is to become a republic, et cetera, we adopt the model? Is there any ballot paper not collected? If there is no ballot paper not collected, can I have the tellers, please? Will those voting against the resolution, please rise in their places and hand in the ballot papers. As soon as you hand in your ballot paper, please sit down. Has anybody who voted against the resolution, not had their ballot paper collected?

*Mr Vizard having entered the chamber—*

**CHAIRMAN**—Mr Vizard does not have a ballot paper; but Mr Vizard now has one. Mr Vizard has not voted, and I have not ruled that he can vote. I am afraid, Mr Vizard, that you cannot vote. I suggest you resume your place. We are now calling on those who are abstaining. Will those who are abstaining please hand in their ballot papers. Mr Vizard, you were not here at the time, so I am afraid you cannot vote. The bells rang, the bells stopped and part of the procedure is over, so I am afraid we cannot—

**Mr VIZARD**—The bells didn't stop.

**Dr CLEM JONES**—The bells are still ringing.

**Ms THOMPSON**—Let him have a vote.

**CHAIRMAN**—I am afraid that in parliament it does not work that way.

**Mr HAYDEN**—I think it would be terribly unfair, and would be regarded as such, if Mr Vizard's vote was excluded on what I regard as mishapence. I would move a procedural motion when this count is finished that I would like a recount, and that would allow him to cast his vote.

**CHAIRMAN**—In the circumstances, I think that where there are 152 delegates and there are a few absent, I do not think it is unreasonable to allow Mr Vizard to vote. On that basis, I will allow him to do so. Mr Vizard, before you cast your vote, I am afraid that everybody else had to show and tell, so you have to declare your hand as to in which category you are going to vote. Mr Vizard, I will go through the procedures. Those in

favour of the resolution—are you in favour of the resolution?

**Mr VIZARD**—I am.

**CHAIRMAN**—Thank you, you may hand in your ballot paper in those circumstances. Mr Waddy, I allowed Mr Hayden to speak in the circumstances; do you really need to speak at this stage or can we finish the count?

**Mr WADDY**—I do, Mr Chairman. I rise to support Mr Hayden.

**CHAIRMAN**—There are two unused envelopes. That means there are 75 votes for the motion, there are 71 against and there are four abstentions. Therefore, I declare the motion carried that for Australia to become a republic the Convention recommends that the model adopted be the bipartisan appointment of the president model.

Delegates (75) who voted "yes":

Andrews, Kirsten  
 Ang, Andrea  
 Atkinson, Sallyanne  
 Axarlis, Stella  
 Bacon, Jim  
 Beattie, Peter  
 Beazley, Kim  
 Bell, Dannalee  
 Bishop, Julie  
 Bolkus, Nick  
 Brumby, John  
 Carr, Bob  
 Cassidy, Frank  
 Cocchiaro, Tony  
 Collins, Peter  
 Costello, Tim  
 Delahunty, Mary  
 Djerrkura, Gatjil  
 Edwards, Graham  
 Elliot, Mike  
 Evans, Gareth  
 Faulkner, John  
 Fox, Lindsay  
 Gallop, Geoffrey  
 Gallus, Chris  
 George, Jennie  
 Green, Julian

Grogan, Peter  
 Handshin, Mia  
 Hawke, Hazel  
 (proxy—Keneally, Tom)  
 Hill, Robert  
 Hollingworth, Peter  
 Holmes a Court, Janet  
 Kennett, Jeff  
 (proxy—Dean, Robert L)  
 Kilgariff, Michael  
 King, Poppy  
 Kirk, Linda  
 Knight, Annette  
 Lavarch, Michael  
 Li, Jason Yat-Sen  
 Lundy, Kate  
 Lynch, Helen  
 Machin, Wendy  
 McGuire, Eddie  
 Milne, Christine  
 Mitchell, Roma  
 Moller, Carl  
 Moore, Catherine  
 O'Brien, Moira  
 O'Donoghue, Lois  
 Olsen, John  
 Parbo, Arvi  
 Pell, George  
 Peris-Kneebone, Nova  
 Rann, Michael  
 Rayner, Moira  
 Rundle, Tony  
 Russo, Sarina  
 Sams, Peter  
 Schubert, Misha  
 Scott, Marguerite  
 Shaw, Jeff  
 Sowada, Karin  
 Stone, Shane  
 (proxy—Burke, Denis)  
 Stott Despoja, Natasha  
 Tannock, Peter  
 Teague, Baden  
 Thomas, Trang  
 Thompson, Clare  
 Turnbull, Malcolm

Vizard, Steve  
 West, Sue  
 Winterton, George  
 Witheford, Anne  
 Wran, Neville

## Delegates (71) who voted "no":

Andrew, Neil  
 Andrews, Kevin  
 Bartlett, Liam  
 Beanland, Denver  
 Bjelke-Petersen, Florence  
 Blainey, Geoffrey  
 Bonner, Neville  
 (proxy—Flint, David)  
 Bonython, Kym  
 Borbidge, Rob  
 (proxy—FitzGerald, Tony)  
 Boswell, Ron  
 Bradley, Thomas  
 Bullmore, Eric  
 Bunnell, Ann  
 Castle, Michael  
 Chipp, Don  
 Cleary, Phil  
 Costello, Peter  
 Court, Richard  
 Cowan, Hendy  
 Curtis, David  
 Devine, Miranda  
 Ferguson, Alan  
 Ferguson, Christine  
 Fischer, Tim  
 Fleming, John  
 Garland, Alf  
 Gifford, Kenneth  
 Gunter, Andrew  
 Haber, Ed  
 Hayden, Bill  
 Hepworth, John  
 Hewitt, Glenda  
 Hourn, Geoff  
 Howard, John  
 Imlach, Mary  
 James, William (Digger)  
 Johnston, Adam

Jones, Clem  
 Jones, Kerry  
 Kelly, Mary  
 Killen, Jim  
 Kramer, Leonie  
 Leeser, Julian  
 Mack, Ted  
 Manetta, Victoria  
 McGarvie, Richard  
 McGauchie, Donald  
 Mitchell, David  
 Moloney, Joan  
 Muir, David  
 Myers, Benjamin  
 Newman, Jocelyn  
 O'Brien, Patrick  
 O'Farrell, Edward  
 O'Shane, Pat  
 Panopoulos, Sophie  
 Ramsay, Jim  
 Rocher, Allan  
 Rodgers, Marylyn  
 Ruxton, Bruce  
 Sheil, Glen  
 Sloan, Judith  
 Smith, David  
 Sutherland, Doug  
 Tully, Paul  
 Waddy, Lloyd  
 Webster, Alasdair  
 Wilcox, Vernon  
 Williams, Daryl  
 Withers, Reg  
 Zwar, Heidi

## Delegates (4) who abstained from voting:

Carnell, Kate  
 (proxy—Webb, Linda)  
 Craven, Greg  
 Lockett, Eric  
 Mye, George  
 Motion carried.

**Councillor TULLY**—I believe I have a point of order. I move a dissent from your ruling. The result is 75 to 71.

**CHAIRMAN**—Could I ask you which ruling?

**Councillor TULLY**—The ruling declaring the motion carried. Clearly, there is not a majority of those voting in favour of that particular motion. There are 75 in favour and there is a total of 75 who did not vote in favour. It cannot be declared carried. This has to be the biggest rort I have ever seen in Australia.

**CHAIRMAN**—I am sorry, Councillor Tully, the vote is declared carried on the basis of the votes that I have read out. I am not declaring it has an absolute majority. I am declaring that it has a majority. It will need to pass all other proceedings tomorrow before it becomes the official model accepted to go to a referendum. On that basis, I declare it carried.

**Mr RUXTON**—Mr Chairman, I have a point of order. I do hope that when you say prayers tomorrow morning you say, 'God save Australia,' three times.

**CHAIRMAN**—Before I proceed, I have several notices here. Firstly, there will be a short meeting of the Resolutions Group in committee room 1 as soon as these proceedings are adjourned. Secondly, several delegates have apparently distributed their papers in order to get the signatories of other delegates and I have been requested to ask that if any delegates have those books, would they mind handing them to the secretariat. Thirdly, I understand it is Mr Jim Ramsay's birthday; we wish him a very happy birthday. I declare the Convention adjourned.

**Convention adjourned at 6.10 p.m.**