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SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Inquiry into an Australian Republic

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SENATE
LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Members: Senator Bolkus (*Chair*), Senator Payne (*Deputy Chair*), Senators Greig, Kirk, Ludwig and Scullion

Participating members: Senators Abetz, Bishop, Brandis, Brown, Buckland, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Humphries, Knowles, Lees, Lightfoot, Mackay, Mason, McGauran, Murphy, Nettle, Sherry, Stott Despoja, Tchen, Tierney and Watson

Senators in attendance: Senators Bolkus, Buckland, Kirk, Payne and Stott Despoja

Terms of reference for the inquiry:

To inquire into and report on:

- (a) the most appropriate process for moving towards the establishment of an Australian republic with an Australian Head of State; and
- (b) alternative models for an Australian republic, with specific reference to:
 - (i) the functions and powers of the Head of State;
 - (ii) the method of selection and removal of the Head of State; and
 - (iii) the relationship of the Head of State with the executive, the parliament and the judiciary.

WITNESSES

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Committee met at 9.02 a.m.**CRAVEN, Professor Greg, (Private capacity)**

CHAIR—Welcome to the third hearing of the Senate Legal and Constitutional References Committee's inquiry into an Australian republic. The inquiry was referred to the committee by the Senate on 26 June 2003. It is being conducted in accordance with terms of reference determined by the Senate. The committee has received over 700 submissions for this inquiry. Our terms of reference include consideration of the most appropriate process for moving towards an Australian republic and alternative models for an Australian republic. Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses. Further copies are available from the secretariat. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers that all evidence be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to give evidence in camera.

I welcome our first witness, Professor Greg Craven. Do you have any comment to make on the capacity in which you appear?

Prof. Craven—I am Professor of Government and Constitutional Law at Curtin University of Technology.

CHAIR—You have lodged a submission with the committee which is numbered 167. Do you wish to make any amendments or alterations to it?

Prof. Craven—No.

CHAIR—Would you like to start off with an opening statement, after which we will ask questions.

Prof. Craven—I will try to be as brief as I can. As you will see from the submission, I have not tried to answer the detailed questions posited in the discussion paper. The reason is that I simply think at present those questions are perhaps more specific than we are at a point to answer. Our stage of the republican debate is relatively simple: we are trying to learn from the lessons of the defeat in 1999. If we get it right, there will be a republic; if we get it wrong, there will be a disaster. There are two basic questions we need to worry about now, neither of which has to do with models. I think models are a problem. It is often said everybody has at least one novel in them; it seems that every Australian has at least one model for a republic. The two questions are: what is the broad sort of republic that Australia should be, not the model, and what process should be adopted on the way to that? The two interact: particular processes produce particular models.

In terms of what sort of republic Australia should have, it depends very significantly, as I said in my submission, on whether you think the Constitution is basically sound or not. If you think it is basically sound, we should be trying to preserve it in a republican idiom. That means that direct election is not an option. Direct election is not an option because it is fundamentally inconsistent with the assumptions of the Australian Constitution in producing competing poles of

power. Realistically that means you are stuck with something like a parliamentary election along the 1999 model or perhaps a version of McGarvie. I would point out that apart from the question of republican desirability there is the issue of republican practicability in a referendum context and that runs the same way. Direct election cannot win a referendum because it will produce coalition between monarchists and conservative republicans.

In terms of process, the second issue, I note that many of the submissions before this committee and much of public discussion talk of engaging the Australian people in this issue. Of course that should be attempted. Of course one should approximate it and of course it will never happen. The Australian people are never going to be passionately interested in a republic. They are never going to see it as a first-order issue. They may well agree to what they regard as a good safe model but they are never going to enthuse over it.

I oppose the proposals in relation to plebiscites. I can contemplate the first plebiscite on whether Australia should have a republic for a number of reasons although I am nervous of it as a blank cheque. I utterly oppose the second plebiscite on a range of models. The reason for that is that a plebiscite on four or five models produces a shallow, divided, conflicted assessment of a republic. In that contest the model with the shallowest surface appeal will win, its problems, if any, hidden. That plebiscite model will therefore favour a model with shallow surface appeal with problems that will surface later. That model is a direct election. Direct election will win a plebiscite.

Professor Flint is wrong in saying that is not democratic but, if he cared to say it is a low-level order of democracy along the lines of a lynch mob, he would be right. Having got the preliminary vote in a plebiscite, direct election will then lose at referendum when its problems are exposed, as all things are at the court of referendum. The second plebiscite on that basis seems to be as meaningless. It falls into the category of the desperate search for the easy republic. The grim answer is: there is no easy republic. There is no simple way to get a republic in Australia. It is all going to be hard work and it will involve something like, perhaps, a first plebiscite on whether there is a republic followed by a boring parliamentary committee publicising boring models followed by a boring constitutional convention coming up with a hopefully boring safe and saleable solution.

In conclusion, it is dreadfully important that today we try to draw the right lessons from 1999 and not the false lesson. There was an understandable tendency after 1999 for republicans to jump to the opposite solution: 'We lost with parliamentary election, therefore direct election will work.' It will not work for the same reason. It will be divisive, with more problems. It will put a formidable array of opposition up against that particular model and it will lose again. The truth is, in 1999 a republic got 44 per cent of the vote with an opposed Prime Minister, with a partisan referendum—and we know that partisan referenda never work—with a question deliberately designed to produce a no result. If you change every one of those variables then I would suggest to you that you have a far greater chance of a republican victory than anything that could be proposed by reference to the sort of plebiscite-driven direct election answer that seems to be positive. That would conclude my opening remarks.

CHAIR—Listening to you this morning, could a reasonable person be excused for thinking that what we are saying is: run the same model as last time?

Prof. Craven—I think there are two answers to that. One is maybe. As I said, if you look at why referenda fail, referenda fail for very specific reasons, the most obvious of which is that you have a partisan referendum. If you ran the same model without a partisan referendum with a better question, with a supportive Prime Minister and a supportive Leader of the Opposition, you might win. You might come so close to winning that you would win on a third time.

Personally I would not run the same referendum exactly the same. It seems to me that improvements can be made to the last model. As I say, I am not really into models at this stage but to give you an example: the dismissal mechanism in the last model was always a problem. It was cobbled together too quickly. The reason it was cobbled together too quickly was that the ARM's original proposal for two-thirds collapsed at the beginning of the convention and the ARM spent the rest of the convention trying to come up with something. At the end, the default was the Prime Minister and the House of Representatives. You have to find something better than that. My own view, from halfway through the convention, was that we should have tacked on the McGarvie dismissal mechanism. McGarvie was always unattractive at the appointment level but, in dismissal, the idea of the Prime Minister having to move through a council of impartial people has some attractions.

CHAIR—The other lesson for me out of the last time round was that there is a very strong voice in the electorate, probably an overwhelming one and one that to my mind cannot be avoided—and that is that people want to be involved in a more meaningful way. I cannot help but think that, by what you are proposing today, we are going to hit the same roadblock, despite those qualifications you put. There is now a feeling in the electorate, for good or for bad, that you cannot trust politicians with the republic and they want a say in the selection. You don't agree with that?

Prof. Craven—I suspect tactically I should agree with you but I am not sure that I do. It is a question of what you mean when you say that people want to be involved. As a person who has wasted their life teaching constitutional law, I want to believe that the Australian people want to be involved in the Constitution, because that validates my life. I see no great evidence of that in an intense way. Of course they want to be involved in the sense that they want good outcomes. Of course they want to be consulted. The degree of intimacy of consultation, the degree to which because you talk endlessly at the Australian people you thereby have engaged them, is very dubious. I do not believe the Australian people are ever going to be passionately interested in an Australian republic as a referendum possibility. I have good grounds for saying that. In the history of this country there have been—what?—44 referenda, 45 if you count Federation.

CHAIR—Maybe I can just shorten your answer by qualifying what I meant to say. If there is to be a President elected then they want to be involved. It was not about the general area of constitutional reform.

Prof. Craven—The first point is important. I will conclude that. I do not think they necessarily want an intimate involvement in the process. Do they want to be involved in the election of the President? I think that support of direct election, while being genuine and real—people talk about it and they like it—can be grossly overstated. I think that most people support direct election. If you said to a person: 'We're now going to elect a person from this room to act as toilet monitor; how will we select them?' they would say, 'Let's elect them, because we are quite used to the idea of election.' I do not think it means that they have a settled position on it. I

do not think it means that if they go through a long debate about it they are incapable of changing their mind. It is just a surface position.

I vividly remember that during the referendum you would go around talking to groups of people in rooms like this. Usually you had about 100 people. Twenty would be monarchists, 10 would be in favour of the referendum model and 70 would be direct electionists. After 40 minutes or an hour of discussion, most of the direct electionists would have moved on to a parliamentary election model. Why? Because although direct election has surface appeal it has many core problems. I believe that the Australian people are bright enough to figure that out over time. It is not a question of taking their first hit and running with it. If you really want to talk about engagement it is a conversation.

Senator PAYNE—The questions that Senator Bolkus was asking about engagement and involvement are usually accompanied by a discussion of why plebiscites are a valuable tool in this process. In reading your submission, in some ways it seems to contradict a number of the other submissions we have received from some of your eminent colleagues in constitutional academia who advocate not just plebiscites but also a revamped referendum process to encourage discussion, debate and the involvement and engagement of the Australian people. I understand that you would like to think the Australian people want to be involved in the Australian Constitution for the purposes that you outlined, but is it your concern that the plebiscites will not even do that? Is that why you are opposed to them?

Prof. Craven—I think that one has to distinguish between the first and the second plebiscite. The first plebiscite has some arguments in favour of it, although I feel as though I am flirting with sin even contemplating that.

Senator PAYNE—It is a very tiny sin, so I would not worry too much.

Prof. Craven—Perhaps it is a venial sin. It would be a very attractive thing to have a plebiscite, a quasi referendum, on whether or not Australia should be a monarchy, with no possibility of monarchists hiding behind a third, non-existent, non-offered republic. I understand that and I am open to that. That said, it is difficult to say that you are in a favour of a ‘generic’ republic. In fact, I was one of the people at the convention who abstained on the question of whether Australia should become a republic, because I was not prepared to give a blank cheque. So I think there are questions.

The second plebiscite I regard as thoroughly disreputable. The second plebiscite actually has an intended outcome. The second plebiscite is not: ask the Australian people and oh, golly gosh, let’s see what they say. The second plebiscite is being asked in the confident and intended expectation that the answer will be direct election. It is meant to come up with that result and it will come up with that result. What it does is that it goes to the Australian people and says: Here are four models—when it is enormously difficult to keep you informed on one on a referendum, as we know, but let’s give you four simultaneously—one of which, the one we want, has enormous surface appeal. It is the one that probably in any pub will be the one that comes up. It has enormous difficulties inherent with it, but we are going to have three or four other models that will distract you and confuse you so that you will never focus on that one model, as you would in a referendum. Then we will ask you which one you like and, golly gosh, you will say you like this one: direct election. Why will you say you like direct election? Because it has all

the surface appeal in the world, and as long as we do not talk about it too deeply we will not know what problems it has. At that point, allegedly in an exercise of democracy, we will lock it in. There will be no more discussion about models in this country. It will go to a constitutional convention and direct election is the only thing we will talk about. Why will we do that? Because that is designed to lock in all of the conservative republicans who now, if they want a republic, will be forced to try to go along designing a version of direct election.

The only excuse for that sort of constitutional sleight of hand—and that is the nicest thing I can say about it—would be if it would actually work. But of course it will not work. Just because the Australian people have given an in principle pat on the head to a republican model at a plebiscite means nothing when it comes to a referendum, where it is opposed by everybody who has been locked out of the position, where we can seriously imagine a platform consisting of anybody from Malcolm Turnbull and Kerry Jones to Bob Carr and, God help us, Gough Whitlam arguing against the model. Then all the problems come out, and what happens then? Then we are in an interesting position. We will have trashed the Queen in the mid-1990s, trashed parliamentary election in the late 1990s and then we will trash direct election. Where exactly do we go from there? That is why I say that this Senate committee has an enormous opportunity, because I can see exactly where we are going. I have good friends in the ARM and I am in constant dialogue with the ARM. I understand why they are being impelled towards direct election. I feel the temptation myself after 1999, but it is the constitutional equivalent of the Somme.

Senator PAYNE—I am still resisting the temptation myself, Professor Craven. Firstly, does it make any difference, in your view, whether the plebiscites are held simultaneously?

Prof. Craven—Yes. It makes it much worse.

Senator PAYNE—Secondly, is it then your contention that the way to resolve the awareness, discussion, education, debate issue is through your proposition of a very large, comprehensive constitutional convention?

Prof. Craven—I will answer the two questions sequentially. I know George Winterton—I note that all constitutional lawyers in this country are now apparently called George, and I am happy to be George Craven—

Senator PAYNE—Yes, and Sir Gerard is changing his name!

Prof. Craven—on condition that I can take it away with me. The plebiscites held together makes it much worse because, firstly, it makes sure that every conservative republican must oppose the first plebiscite as well, because the first plebiscite will be inextricably attached to and involved with the second plebiscite, which any bright conservative republican will know will produce direct election. The second reason it makes it worse is that it is an attempt to harness what I would see as the relative pristine virtue of the proposition that Australia should become a republic and instantly attach that to a model that I would regard as pernicious. To personalise this: whereas if I were given the first referendum by itself I think I would succumb to temptation and fight for that one, given it together with a second I would certainly oppose both and I think I would be stuck.

Senator PAYNE—The first plebiscite, do you mean?

Prof. Craven—Yes. Without any question, I am quite certain that would apply. Can I interpolate another thing here: one of the biggest problems in the republican debate is that no-one ever believes anyone from another republican camp or, indeed, the monarchist camp when they say they are going to do something. One of the biggest problems at the convention was no-one believed the monarchists when they said, ‘We will do anything to kill this,’ and they did. No-one believed Phil Cleary when he said, ‘I would rather the Queen than a republic,’ and he did. No-one believed the McGarvieists when they said, ‘We won’t vote for this model,’ and they did not. And now the conservative republicans, or the few of them who are even prepared to come to this sort of exercise, are saying to you: ‘We will vote against direct election and stand with our arms around Kerry Jones. Horrific as that concept is, we will.’

CHAIR—You did not have the numbers last time. Why would we expect you to have a greater punch this time?

Prof. Craven—There are numbers and numbers. You do not have to have a majority if you have got mates. Last time Phil Cleary had mates. His biggest mate, I think, was called David Flint. I really do not want to have David Flint for a mate, but if my choice is between defending the Constitution and bringing in a version of direct election that will kill it, then David Flint and I will become, regrettably, very friendly.

CHAIR—I can see that.

Prof. Craven—On the question of education, I really do not see a form of education that is the quick, sexy, carpet-bombing program that is suggested.

Senator PAYNE—There is nothing sexy about constitutional education, from my memory either.

Prof. Craven—No, there is not. A lot of people seem to think that there is some relatively straightforward way that you can engage in an empathetic way on constitutional issues. I just do not think that is true. I say that not only as someone who has taught it for many years but as a person who, until June, is still a member of the Commonwealth Civics Education Group. I have been involved probably more than anyone else. That group of people has been involved in and knows what mass constitutional education is like—sometimes in this room—and it is very hard. The reason it is very hard is that people are not passionately interested in the details of constitutions. They want a good constitution, they want a good republic, but they do not see it in the same light as their children, their gardens or their kid’s football club. It is not a matter of ongoing engagement to them.

Senator STOTT DESPOJA—I will lead on from your last answer to Senator Payne. Throughout your submission you talk about direct elections specifically being inevitably doomed for not only constitutional reasons that you think are valid but also success, or lack of, in a referendum. Having outlined curious political configurations, why in your mind would the combination—to use your example—of Jones, Turnbull, Gough et cetera be any more powerful than what we saw last time with the Howard, Abbott, Cleary et cetera political allegiance? Why do you think the direct election model is so doomed in a political or electoral sense as opposed to

what we saw last time, which was a configuration of mates and allegiances that inevitably saw that referendum fail?

Prof. Craven—I suppose there are a couple of answers. One is if that alliance is as powerful as the Cleary, Jones, Flint alliance. The Cleary, Jones, Flint alliance killed the referendum. So if that alliance has exactly the same degree of power, this referendum will die on direct election. That may lead you to an astonishing position, which is that there is no Australian republic that can ever win. It is possible that every version is obnoxious enough to someone that it will lose. I do not necessarily think that is the case. I think the problem with the republican debate is that we tend to specialise it. We tend to say, ‘We’ve got the republican debate and it is different to every other debate, and it is different to every other referendum.’ I do not think that is right. We have had 44 referenda and we have Federation, and you can look at that and say, ‘What makes referenda win and what makes referenda lose?’

The simplest example of that is that the perfect way to lose a referendum is if one major party opposes it. No referendum in Australia’s history has ever won when it has been opposed by one major party. One then simply asks the question—and let us take the conservatives: ‘Will the conservatives ever support direct election?’ The conservatives will never support direct election because it is absolutely opposed to every one of their constitutional suppositions. The sting in the tail of that is that I am talking there about political conservatives, but added to those political conservatives are constitutional conservatives—who extend well into the Labor Party. The maths of it—and it is simple maths; I do not even think it is opinion—is that direct election cannot win. If by some miracle it did win, the sting in the tail is that it would be a disaster—just to complete the circle. But it cannot win.

Senator STOTT DESPOJA—You talk about the sting in the tail being a disaster, and in your paper you have outlined some constitutional and political reasons for this—specifically, that you are not confident that codification of powers is a sufficient check because you do not believe it would actually get to a point where there would be political agreement. But also, if I read you correctly, your thoughts are that it is a constitutional straightjacket to some degree. Could you elaborate on that? You do not believe that codification is either a sufficient check or would actually happen?

Prof. Craven—Codification, I think you are right, cannot work for two reasons. One is that it is constitutionally undesirable. There are all sorts of ways you can express that, but I think the best way to express it was Richard McGarvie’s version, which is that it is lawyers who love codification. It is a legal instinct to try to write absolutely everything down in black and white rules that we write and people obey. The problem with conventions is that many conventions are political, they are moral, they are ethical and they change. You would know better than I the way that parliaments operate, the way that people interact with each other and the way that rules and practices grow. It is extremely difficult to capture those things without paralysing them and, because they are fluid, it is extremely difficult to capture them in a way that people will agree. And that leads into the second difficulty.

The second difficulty is that as soon as you try to codify conventions, precisely because they are so fluid, you get massive fights about what exactly the convention is. I recall a brilliant effort—and Senator Bolkus might be old enough to remember this. In 1985, at the Constitutional Convention in Brisbane, there was a wonderful attempt to codify the conventions of the

Australian Constitution. As a very young constitutional law lecturer, I read the document with absolute admiration. I thought: ‘How could anyone disagree with this document?’ I then watched it collapse in civil war on the floor of Parliament House in Brisbane. It is very difficult. The simplest example is: how do you codify blocking of supply? The two simplest ways to codify blocking of supply are (a) Senate cannot block supply—outcome: conservative riot; and (b) codify it by saying that if supply is blocked for 30 days government must resign—programmed outcome: Labor riot.

CHAIR—Sir Gerard Brennan put to us that you do not have to codify the conventions but just specify when they can be used.

Prof. Craven—I have read Sir Gerard Brennan’s submission, and I think it is an interesting submission. As all lawyers know, when someone says that your submission is interesting you know they do not like it. It is a lawyer’s submission, with great respect. It is clever; it is interesting.

CHAIR—He has some expertise in constitutional law.

Prof. Craven—Yes, but he does not have any expertise in politics.

CHAIR—You could say that about the whole republican movement, if you want to be direct about it.

Prof. Craven—It is the sort of thing that would be the basis of a wonderful article in the *Australian Law Journal*, and I might say I was discussing it with the former chief justice’s son on Sunday. Let us go through it. You have this wonderful constitutional council, which basically is derived from the Irish constitution, which would have to be the bane of the existence of Australian republican models. Basically, the reserve powers are going to be debated by a constitutional council and in some way approved or subject to some sort of vet before they apply.

Without getting into yet another model—and, as I say, I think the last thing we need at this stage is another model—it strikes me as extraordinarily cumbersome and slow that suddenly the reserve powers are going to go to another body for debate—another body which is, no matter how you disguise it, effectively a constitutional court largely or significantly composed of people who, again, have virtually no experience in the practice of responsible government. In circumstances where the mere reference of the matter to the constitutional council should be enough to blow up most governments in the water, and in circumstances where—and this is where I come back to the fact that I think it is a legal solution, not a constitutional solution—it ignores the main problem with a directly elected President.

The main problem with a directly elected President is not that they are going to exercise this or that reserve power, that they are going to go and crunch the government in this or that particular way. It is the enormous moral power of the office as the only person who is the direct, sole and legitimate elected representative of the Australian people—and a directly elected President in that sense does not need to exercise the reserve powers. This is why the Irish constitution, the *Bunreacht na hEireann*, forbids the president from speaking publicly without the permission of the government—because the Irish understand very clearly that it is the moral

power of the president that makes it dangerous. And the constitutional council is not going to be mediating the exercise of the moral stature of the President.

Senator STOTT DESPOJA—I would advocate that education is the answer to just about everything in life. You have articulated today that after spending 40 minutes or an hour and a half with people you can talk them through various models. I know—we did that last time; all of us were involved in elements of that campaign. Is this not one way of informing, or at least allowing members of the community to make an informed choice at a referendum? Do you have any strategies for that, for how would we have education as a key component of this referendum or plebiscite process? Do you have strategies so we are not just dooming something to failure, regardless of what the model is, but actually giving Australians an opportunity to be informed of the process and then they can vote however they want to? Is education not a key component of everything that you have discussed today?

Prof. Craven—You would like to think that you could just do the 40-person meeting. Everyone used to say, ‘If only one could get 20 million people in a room, and talk to them.’ The truth is that the 40 people are self-selecting. By and large you are not going to get the classic person that you need to persuade. You have to juxtapose that 40-person or 100-person meeting with a different and much more chilling image which has stayed with me from the referendum. I remember being at a meeting in Sydney with the PR consultants who were running the referendum campaign so brilliantly. They said that the constant complaint was: ‘We haven’t been informed.’ So they would get focus groups and give them beer and pizza, and they would take them through the issue. It would always get to the point: ‘We haven’t been informed.’ At that point someone would spring out from behind an arras carrying beautiful little documentation and say: ‘We are now going to explain it really well to you. Do you want to hear?’ We kept being told that the answer was: ‘No. What we want is an answer.’

I am saying I do not think that an education program can carry the mass of Australian people in an intimately engaged process. I think you should have an education process. I think you should have a parliamentary committee travelling around. I think the message should be got out via the media. I have read George Williams’s submission. For the life of me, while I want to believe that those micro measures are going to work, I do not think they will make much difference. I think at the end of the day it is going to be a largely macro process, as well articulated and as well disseminated as possible. But the plebiscite does not help that process. The plebiscite kills it. The plebiscite simply terminates it at a particular point with a particular desired answer.

Senator KIRK—Thank you for your submission. Could you elaborate on your suggestions on page 14, paragraphs 49 through to 54, where you describe this constitutional convention that you advocate as the way forward.

Prof. Craven—History has shown the extent that we can successfully engage in macro constitutional debate—and I guess that is Federation and the republic. I think one has to be quite clear about this. For all of the stuff about Federation being a mass movement, it was not a mass movement of the type my friend George Williams described. It was led; it was a leadership engaging, but it was led—and any republic is going to have to be led. I think that a convention is the only logical way forward. There were a number of problems with the last one, and at all costs those problems must be avoided.

The first problem was that the last convention went in without models, except what was festering in the minds of the ARM, Richard McGarvie, Gallop and anybody else. There needs to be a series of fully articulated models preferably drafted when a convention sits. It seems to me that is the job for a parliamentary committee, a big parliamentary committee travelling around Australia with public meetings, receiving submissions and preferably going into schools, taking a year, if necessary, to do it. I see that as engagement and leadership. It would be producing four or five models. Then there would be an elected convention. I am very fond of conventions that are partly appointed because I was an appointed delegate. I think the appointed delegates actually did a rather good job at the convention, a sort of House of Lords type role, even a bench of bishops, but those days are over. The convention will have to be fully elected.

I would advise strongly that it has members who cannot vote and who are experts, because I think that makes everybody's life a lot easier, but I think it would have to be elected. It would then debate models for a long time—the founding fathers met in conventions for months; that is how long it takes to devise a constitution or a republic—and eventually it would come up with a model. When I say 'a model' I do not mean an idea like in 1998; I mean a draft like in 1898, a draft amendment to the Constitution. It would pass it and then it would adjourn. That model would then be taken out to the people for discussion again, possibly by the same parliamentary committee. It would then come back to the convention and the convention would debate it again and make amendments, as in 1898, and then the convention would pass a bill. That bill would go to the Commonwealth parliament. That is a process that is long, slow, boring and expensive, like most big things that are worth doing. There is no cut-price republic. That is how I would do it, with no plebiscites except perhaps—and I can feel hot breath down my neck even saying this—for the first plebiscite.

Senator KIRK—I can certainly see the merit in what you are proposing but, as you indicated, people are going to say, 'It's long, it's slow, it's boring and, in particular, it is very costly.' How do we meet that? Already members of the committee are being bombarded—or at least I am—with emails and told how expensive this process is. And, as the chair said, this is only our third public meeting.

Prof. Craven—The answer to that is very simple—and I think that view is a view that, with respect, is naive and, with less respect, foolish. Australia's greatest business asset is its Constitution. Why do you think this country is prosperous? Why do you think it has done so much better than countries like Argentina which were doing roughly comparably as well at the birth of our nation? Because we have a stable, democratic, excellent Constitution. Stable, democratic, excellent constitutions are worth their money and they are worth their money to keep stable, democratic and excellent. There is no better investment. I think that is the argument on the money.

In terms of the boring bit, I think you really have to make up your mind—and we all have to make up our minds—as to whether you seriously believe that the Australian people are going to become constitutional fetishists over the republic, whether they are really going to engage with this as their primary passion, as opposed to accepting a good outcome and being reasonably interested in it along the way. There is no evidence that that is the case, and the fact that George Williams, George Winterton and 'George' Craven all really like the Constitution is not very persuasive evidence of that fact.

CHAIR—Professor Craven, I could not help thinking while you were talking to us of a comparison between the founding fathers and what we have now. The founding fathers did have set positions but were able to work through and work out compromises—and the Constitution is riddled with compromises. I compare that to your saying just a few minutes ago that the last thing this debate needs is another model. Could it be that what this debate really does need is another model? I see that you are shaking your head.

Professor Craven—No, I was not. I was just going back to listen to you.

CHAIR—I put it to you that one thing the referendum has to achieve is support amongst a majority of states. One proposal that has come up is the concept of a collegial system where each state can elect delegates—and, if you are looking for compromise models, you look at the Senate—with each election being for six-year terms, as we do for the Senate. They would have the sole function of selecting a President after an open nomination process. That would have the capacity to pick up outlying states like this one and my state of South Australia and would reassure people who are concerned that they might be swamped by the bigger states' vote in a popular election or who are concerned about eastern seaboard domination—as we all are. Firstly, why aren't we open to looking at other models? Secondly, what problems do you see with that sort of approach?

Professor Craven—To begin with, I would like to make one small correction. This is not an outlying state. There are other states that lie outside this state, but that is a different point. When I say that the last thing we need is another model, I mean now. We are up to our necks in models. If what you are talking about is the need for compromise, I agree with you that we do need compromise. I say that as a person who started off as a pragmatic monarchist, was talked into the McGarvie model and was then talked into the convention model. I am constantly ridiculed by the Australian constitutional monarchists as Australia's own Maurice de Talleyrand—the man who cannot make up his mind. My credentials on compromise are unbeatable, I would have thought.

CHAIR—One small step could be a big one.

Professor Craven—But I have reached the final point.

CHAIR—Did you say that before though?

Professor Craven—Yes, I know. People say that. The reason is, and I think this is critically important to understand, that you can compromise between variants on a theme, you can compromise between the acceptable on a scale but you cannot compromise between the desirable and the absolutely repugnant. Any form of direct election is not a variant on the convention model, it is not a variant on McGarvie; it is, in my terms, in constitutional outer space. Why? Because my first loyalty in this is not to a republic, much as I massively desire that—and when I say 'massively', I mean massively—my first loyalty is to the Australian Constitution. In my view, for reasons which I am sure you are all bored to death with, direct election would kill the Australian Constitution stone dead. In saying that, I do not think that is just my view. I believe that to be the view of what I would call the conservative republicans. That means that once you get to that point, there is no compromise. There is nothing left to do but fight.

To take your specific example of a collegial system, of all the repugnant forms of direct election that is the one that is least repugnant to me in the sense that I merely spit at it. It is totally unacceptable, but on referendum night, when I lay awake for eight hours trying to devise a form of direct election that could work before giving up, that was the one that tempted me most. I think it is probably the one that tempts most people in that area because it is the least direct. Why do I reject it? Because at the end of day you are fooling yourself—or I am fooling myself. The reality is that, if you have a people directly elected then electing a head of state, that is a head of state who lives—as I think I say in my submission—a tram stop from direct election. They have a popular mandate in almost exactly the same way. They have the confidence of the people in almost exactly the same way. One would have to think that the great proof of this fact is that the most powerful, the most prestigious and the most dangerous elected head of state in the world is the American president, elected by a collegial system. So my flirtation with collegial models ends.

CHAIR—We have gotten your message. That concludes our questioning. Thank you for your time and for your advice.

[9.45 a.m.]

CHASE, Commander Stanley Charles (Retired), Chairman, Australian Monarchist League (Western Australia)

CHAIR—I welcome Commander Stan Chase of the Australian Monarchist League. You have not lodged a submission with us. Would you like to start with an opening statement?

Cmdr Chase—The previous witness is a hard act to follow.

CHAIR—He always is.

Cmdr Chase—My case basically is for the constitutional monarchy. I will begin with some background. Unfortunately, most people today have only a vague idea of the functions and the principles behind the constitutional monarchy. This is how those pushing for the republic wish to keep it. Through lack of knowledge, many people regard the Queen as merely a figurehead whose function is entirely ceremonial. This could not be further from the truth. She is the Crown. She is the standard-bearer for a tried and tested system that has stood the test of time and has never let us down. It is a system designed to protect our people from the abuses of bad and corrupt government in Australia.

The Governor-General fulfils this role without fear or failure because he is above politics and politicians. If they act against the people, the Governor-General can not only call them to account but also has the power to enforce his decision if necessary within the framework of the Constitution. Very few nations enjoy the balance of constitutional control and protection that we have in Australia. To consider changing is a potential recipe for disaster, as many new republics around the world bear witness.

In my considered opinion, I do not believe this committee is needed or justified. I do not believe a change is warranted. If it must be considered then the republic should only happen if it can be demonstrated beyond a doubt that it will perform much better than the existing system and much more economically. I believe the government should inform the people of the function of the Crown in our present system. At present all they get are highly emotive statements. I believe our history and heritage should be preserved and safeguarded. Our current system of government is an important part of that and should not be changed unless there are sound and proven reasons and it gives Australia a much improved and incorruptible government, considerable economic advantages, a safe and happy united population, and a high standard of living.

There are a number of questions that need to be answered by the constitutional committee, which include: why is it that the prime movers for the change are politicians and millionaire tycoons? Could it be lust for power by the former and a belief an elected political President can be more easily influenced by the latter than our current Governor-General? Are there not more important matters of state that require the attention of the Senate—for example, medical issues, hospital problems, crime, security, taxation? The people of Australia are really concerned about these and other matters. The republic looms very small.

Why do we consider it more important than the foregoing? Have you considered the diverse effects on people of your actions in resurrecting the subject of the republic so soon after it was rejected? Does not the very formation of this committee demonstrate extreme arrogance, in that it is launched on an assumption that a republic will happen and that we must try to identify the form of that republic? The logical start would be to ask whether we need a republic, followed by an honest examination of the pros and cons of a republic versus the constitutional monarchy we have now. What costs are involved in the change versus the cost, such as the cost of this committee, the cost of a proposed referendum, the cost of elections every three to four years? Can the people stomach yet another election? What about the cost of presidential functions and staff support or the cost of any changes to departments of the state arising from the change to the republic? What about extraneous costs arising from change and the cost of drafting a new constitution? Do you consider that an elected President, a politician, would receive the same respect that is reserved for the Queen and the Governor-General? Apart from a warm, fuzzy, motherhood reason, what improvements and advances does a republic offer the people of Australia?

We are indeed a lucky country. Can we be assured a republic headed by an elected President be as successful? I very much doubt it. In fact, it could be far less effective. Can it be proved otherwise? There are plenty of republican examples around the world that prove my point. At least we had a model, we still have a model. I am still seeking and still looking for whether the republicans are coming near to establishing or creating a model. The duty, therefore, resides with the committee to formulate answers to all relevant questions, which in no way reduces the enforceability of the Constitution, and to remove any ambiguities inherent by the present system. Failure to do this will be failing the nation. The Westminster system on which our system is based is an inherited system which has served us well since Federation. In closing, only last Friday one of our own married into the oldest established royal family in the world. How proud we are as a nation, and the whole world was glued to their television sets. How ironic that was.

CHAIR—I am intrigued by that last point, because a number of people have said to me since the Danish royal wedding that were the royal family that we have as popular as the Danes, then the republican movement would not have as much steam in Australia as it has at the moment. Do you disagree with that?

Cmdr Chase—I disagree with it up to a point on the basis that the Danes think totally differently compared to Great Britain and our monarchy.

CHAIR—But they have a very popular royal family, and that came across.

Cmdr Chase—That came across very evidently, and as part and parcel of it we are very proud now for an Australian to become a very important, integral part of that family.

CHAIR—Putting the Queen aside, you could not say that the current royal family we have is at the same level of popularity in this country.

Cmdr Chase—What I would have to do is put that in writing and submit that to you on a broader spectrum, because I do not think I can answer that in one or two words.

CHAIR—You mentioned driving forces for this inquiry. If you look at this committee, I think we have reported on 20 items in the last 14 months or so, so we have an agenda which covers lots of issues, and across the Senate all those issues you mentioned are being covered. One thing that drives this committee is a continual reflection in the most respectable polls in the country of majority support for a republic. Are you saying that the public will should be ignored in that respect or that they have got it wrong? Should we ignore five years of continual support for an Australian republic as reflected in the polls?

Cmdr Chase—As reflected in them, I would feel that the lack of success of the last referendum was the Republican Movement—they had their eye on the man and not the ball.

CHAIR—Who was ‘the man’ at the time?

Cmdr Chase—It is a figure of speech—one always keeps one’s eye on the ball and not the man. I think the model let them down. I do not think that they let the Australian public fully know what they were intending to do, and that is what I mean by not keeping their eye on the ball.

CHAIR—It is interesting you make that point, because you said earlier that the Queen was not merely a figurehead. That implies that she does have powers that she uses in respect to Australia.

Cmdr Chase—No. I might be excused for saying that. The Queen is not a figurehead. The Queen is the Queen of Australia. The Governor-General carries out her wishes and duties as necessary. So the Queen, as people feel, is not just there as a figurehead and for ceremonial occasions.

Senator PAYNE—Do you perceive there to be any difference between a residential monarchy, such as the one you have discussed yourself in Denmark—that is, where that country has its own royal family which lives in their own country—and the situation in which Australia finds itself, where we have no capacity to have any Australian involved in that head of state process?

Cmdr Chase—The head of state process commenced at Federation.

Senator PAYNE—I understand that. But do you think there is a difference between Denmark and Thailand and Japan and the situation in which Australia finds itself?

Cmdr Chase—Yes, I do.

Senator PAYNE—Do you appreciate then the concerns of the majority of Australians to whom Senator Bolkus referred, in at least the reliable polls, who would prefer to see an Australian as head of state?

Cmdr Chase—I can understand the concerns but I think you have a lot of work to do.

Senator PAYNE—Would you support a plebiscite asking the initial question as to whether Australians wish to have an Australian head of state?

Cmdr Chase—I would have to give that some consideration and put that to you at a further date.

Senator PAYNE—Would you do that?

Cmdr Chase—I could do that, certainly.

Senator PAYNE—If you are going to do that, would you go on to perhaps then contemplate whether you could envisage a second plebiscite and what questions that might ask as well?

Cmdr Chase—I would indeed do that as well.

Senator PAYNE—Thank you. I am happy to open it up to my colleagues—Senator Buckland.

Cmdr Chase—Be kind, Senator.

Senator BUCKLAND—I am kind to everyone, Commander. You intrigued me with the comments you made in your opening statement that the Governor-General as we have now is above politics. How do you come to that conclusion? He is appointed by the Prime Minister on political advice. How can he be above politics?

Cmdr Chase—He is the representative of the Queen of Australia. He is the representative of the Queen here in Australia.

Senator BUCKLAND—I understand that. But he is appointed by politicians. How can he be above that political station?

Cmdr Chase—All governor-generals are appointed by the presiding premier or Prime Minister at the time. That has been going on since Federation. But I still say that he has to be, as the Governor-General, impartial and he has to put all other things aside other than the fact that he is a representative of Her Majesty the Queen as the Queen of Australia.

Senator BUCKLAND—But his representation of the Queen, as you put it, can be—and has been in recent times—aborted by the Prime Minister of the day attending functions that, as Australians, we would expect a Governor-General to attend. So he is not above politics in that sense. He is controlled by his political masters, if you like.

Cmdr Chase—We have two things we can talk about: the role of the Crown or the division of power, which is the crack in the floor you just mentioned. Controlling correctly and harnessing the enormous powers which the Governor-General is supposed to have, which the Prime Minister does have, in order to carry out their function is without doubt the most difficult problem which mankind has ever had to face. The role of the Crown given in Australia for the Governor-General and state governments is as a politically neutral guardian of the Constitution—their role is politically neutral as a guardian. The Crown must ensure not only that it is politically neutral but also that it is seen to be neutral to act in accordance with the Constitution it protects. To date, this difficult role has been successful and has been accepted and respected by the people of Australia. Imagine the chaos that perhaps would have ensued if at the time of the Kerr-Whitlam affair Kerr had been a protege of the Liberal Party. He was not. He

was appointed by Whitlam and acted as a neutral within the Constitution. Can this be guaranteed with a politically elected president? There is the point I make: I do not think so.

Senator BUCKLAND—I am aware of history. The fact is that it is a political appointment. Therefore it is very difficult to see it can be above politics of the day. But that is something we may wish to talk about for hours.

Cmdr Chase—We could do. You and I could debate it for hours. Therefore I might further that.

Senator BUCKLAND—I do not think this committee would be too interested in that. Given that we may get a republic in Australia, do you feel that by getting a republic Australian society would change from the democratic society we are today? Do you think that would change?

Cmdr Chase—I do not think there would be a great deal of change if it were done correctly, if it were accepted by the Australian public and if it had the benefits that it has had since Federation and that it has now. I have got no objection to that whatsoever.

Senator BUCKLAND—So you would have no objection if the people were, at the end of the day, to determine that they would prefer a republic?

Cmdr Chase—If it is done in the correct manner and formed in the correct manner, if it is the wish of the people and if the people are aware of all the pros and cons of the difference between our present Constitution and that of a republic.

Senator STOTT DESPOJA—I thought that response to Senator Buckland was very reasonable; I thank you for it. Can I ask you, though, a specific constitutional question: do you think it is appropriate that the Queen should have the power to annul any law that the Australian parliament passes? Is that an appropriate power?

Cmdr Chase—I do not feel that, and I do not feel that the Queen herself would request that power. The Queen has sufficiently enough to do without asserting power over another nation. I do not think she would wish that.

Senator STOTT DESPOJA—In your opening submission you referred to your personal desire for economic evidence to demonstrate the benefits or otherwise of a republic. Also in your opening submission to us you criticise this committee and this process—and you are not the first person to do so. I put it to you, though, that in order to find out one way or another how people feel about this process, to have an informed debate about whether or not to have a republic and to look at and find that evidence to which you refer, be it empirical, economic or other evidence, is it not appropriate for Australians to have processes such as these—committees, debates, forums, whatever they may be? Is that not a worthy part of the democratic process, regardless of our views?

Cmdr Chase—I fully agree with you. It is a necessary and an integral part. As long as it is done and you can demonstrate a model and put a model before the people, it would, over time, benefit the Australian people. I fully agree with you; I have no objection to that at all. But, at this point in time, I do not see that you have a model. You did not have a model at the last

referendum, and you failed because you did not have a model. We have had a model for a long time. Maybe there is a change for this model. We can possibly come up with a more modern, devised model. In that case, I have no doubt at all that my national chairman and all of my supporters would have no objection to viewing a model which would work.

Senator KIRK—On that last point I wonder whether you have any ideas about a process that might be appropriate to consider various models. Have you considered that at all? The earlier speaker, Professor Craven, suggested a fully elected constitutional convention.

Cmdr Chase—I am not a professor and I am not an eloquent man in the political field; I am just a person representing the Constitution. I would like to express that to the committee, along with my other submissions to you in writing; I will give you full answers on that. Providing you lay out to me what you would like, I will put it to you to the best of my ability.

ACTING CHAIR (Senator Payne)—Thank you very much, Commander Chase. There are a number of questions, as you just said, that you are prepared to respond to.

Cmdr Chase—Yes, I will respond to any questions you like.

ACTING CHAIR—We will be in contact with you with the details of those. Thank you very much for attending today and for your assistance to the committee.

[10.08 a.m.]

HARTLEY, Dr Bruce Maxwell, (Private capacity)

ACTING CHAIR—Welcome. What is the capacity in which you are appearing today?

Dr Hartley—I am a physicist employed at Curtin University of Technology. The submission I made was made on my own behalf, but I should let you know that I am a member of the Australian Republican Movement and a member of the Western Australia executive branch of that movement.

ACTING CHAIR—You have lodged a submission with the committee which has been numbered 330. Do you wish to make any amendments or alterations to that submission?

Dr Hartley—No.

ACTING CHAIR—I invite you to make an opening statement, at the conclusion of which we will have questions from committee members.

Dr Hartley—Firstly, I want to thank the inquiry for inviting me to address my written submission. Edward Gibbon in the *Decline and fall of the Roman Empire* suggests that a monarchy is a form of government most apt to draw ridicule. In the same passage he goes on to say something like this—I have paraphrased it, and I deliver it as a question—shall we cheerfully acquiesce in any expedient which deprives the multitude of the ideal power of giving themselves a master? I agree with Gibbon on the point of the multitudes choosing their master being the ideal form of government. The problem is that it is extremely difficult within Australia to change the Constitution. A change of the Constitution to allow the direct election of a President would be extremely difficult, as Professor Craven pointed out earlier. The problem with Professor Craven's point—I am sorry he is not here, and I do not want to denigrate him—

Senator STOTT DESPOJA—He is in the audience, Dr Hartley. He is an attentive member of the audience, in fact.

Dr Hartley—We will probably have a talk about it later. His position reminds me somewhat of the person who was lost in Ireland and asked one of the yokels, 'How do I get to Dublin from here?' The yokel answered, 'If I were going to Dublin, I wouldn't start from here.' The point is that, if we are to go to the ideal, then we need to go somewhere else first. My submission proposes that a body be set up within government to protect the Australian Constitution and guide changes to it. This body would be a constitutional commission and would receive requests for changes to the Constitution from a number of sources, including the federal parliament, the High Court, state governments and the public.

In this role the commission would advise the public on the effects of proposed changes to the Australian Constitution. Such advice should be impartial and not influenced by political viewpoints. The commission would be assisted in its deliberations by a series of plebiscites and constitutional conventions. Key questions would need to be decided in order to guide the formal

changes, which would finally be put to a referendum. This process would be slow. It should be exhaustive because the people would need to understand all of the implications of the changes which were being proposed. But if the Australian public could see that there was a reliable source of information, have confidence in the process and see that there was a continuing means by which changes could be made, even complex changes such as becoming a republic may be possible.

I should say perhaps that at the last referendum I did not vote for a republic to be set up. I did not see that what was being proposed was an ideal, nor did I see that there was any continuing process which could possibly lead to that ideal. So if the public is confident of the process they do not need to become experts in every item of law of the Constitution. If they have confidence in the process and are satisfied that it is fair, then changes would be inevitable. Many changes to the Constitution are required—not only to bring us into a republican era—changes which are going to be difficult to institute, but which would nevertheless improve the governance of Australia. I ask the Senate to consider this form of process to allow us to move to a better Constitution. Thank you.

CHAIR—Just on that last point, you would have heard Professor Craven earlier source Australia's economic prosperity to the Constitution and the stability under that Constitution. Are you saying that the Constitution can be reformed and that presuming that prosperity is related, it can still be maintained? We were led to believe earlier that maybe we should not recommend too many changes to the Constitution for fear of losing that stability.

Dr Hartley—I think it would be very debatable as to whether the Constitution is the reason for Australia's prosperity. It might be said that it is because we have relatively few people living in a very large country with a lot of mineral wealth. If that Constitution allows that exploitation of the mineral wealth and the distribution of that, then maybe the Constitution is responsible for that. I am sorry—I have lost the thread of the second part of your question.

CHAIR—I think you probably answered it in that respect. The second part was: can you actually maintain stability and have an ongoing reform process?

Dr Hartley—I think my proposed means of changing the Constitution will be slow enough so that there is no revolutionary change.

CHAIR—Are you saying that a move towards a republic should come as part of a broader constitutional change process?

Dr Hartley—I believe so. I think that it is a failing of the Constitution that changing the Constitution is so difficult. Professor Craven quoted 44 attempts to change the Constitution. I think the number of successes has been fewer than 10. We have even failed to make what I would consider reasonable changes to the Constitution, such as making sure that all elections in Australia are democratic. This failed in about 1974.

CHAIR—It could probably be argued that if we were in a position now of being separate states and territories with a desire to federate we probably would not come to an agreement now.

Dr Hartley—That may well be.

CHAIR—That would be a reflection on who we are. I do not mean to be too intrusive here but was there something with the particular model that was before the electorate last time that turned you away from voting for it or were you not persuaded of the issue?

Dr Hartley—It was both the process, which I thought was extremely flawed, and the interference by political forces opposed to any change and the obfuscation of the arguments with a whole lot of extraneous detail which made it difficult for me to accept that the process was fair. I also did object to the way in which the President was to be chosen. It would be even more political, I believe, choosing from a joint sitting of the houses or from the politicians themselves than, indeed, being chosen simply by the Prime Minister with some consultation. So I was not happy with the model and I was not happy with the process.

CHAIR—Do you have a preferred method of selection or election?

Dr Hartley—My preferred method is by direct election. But I do agree with Professor Craven that it is very difficult to get to a change of the Constitution so large and so complex as to achieve that point from where we are. If we institute some reasonable process where the people are advised impartially of the matters for and against any change in the Constitution, then I think that would be valuable. With any constitutional amendment there is a case for and a case against, which is distributed to all households in Australia. Those cases for and against were highly politically coloured. There was not in my view an impartial, rational statement of what the implications of this change would be. If we were able to set up a body which gave that independent advice then the Australian people may be able to look at that advice, be satisfied that it is impartial, and make a considered decision on it. This body should be so unimpeachable that it would be very unwise for politicians to criticise the advice that came from that body.

Senator PAYNE—I am either confused or I think there are some contradictions in some of your observations. You just said that you did not like the model in 1999 partly because of its politicised nature and the way it was brought forward and because of the method of appointment, which involved politicians as well. But your proposition for the constitutional commission that you describe as being an independent constitutional commission would have it chosen half by the parliament—therefore, clearly political in nature—and half by the Governor-General who, in the current circumstances, has no broad reflection of authority. I am not sure how those two concepts sit together and, if you could explain that, I would be grateful.

Dr Hartley—I think that it sits just as well as judges of the High Court being chosen by our political masters. They are chosen on professional advice from legal professionals and, whilst some of them hold certain political views, they are not viewed as being a political institution. My hope would be that a constitutional commission would obtain the same kind of status as the judges of the High Court.

Senator PAYNE—So why couldn't we devise a system of parliamentary appointment—to use a very broad turn of phrase—of a President, with an appropriate nomination process and so on, that would equally satisfy your guidelines?

Dr Hartley—Because the constitutional commission would not choose the governor. All they would be able to do would be to prepare advice to make sure that the process of changing the Constitution, which I have set out in my submission, was properly done. They would call

conventions, conduct the elections for the conventions through the electoral office, then they would get the advice from the conventions on which key questions need to be answered in order to formulate the changes to the Constitution. They would not in that sense be able to act politically. They may have their own political opinions, but my submission also contains within it a check and balance, so that if those people on the constitutional commission act in a way that somebody believes is not in accordance with the decisions, an appeal could be made to the High Court and they would decide whether the process has been correct.

Senator PAYNE—Do I gather correctly from your submission, Dr Hartley, that you in fact envisage a fairly profound change in the power relationships in the Australian political system under the propositions that you put forward?

Dr Hartley—I think in the long term that may occur but the initial changes may be quite minor. But I think we do need a system of evolution of the Constitution which can lead it to something which is more ideal than we have now.

Senator PAYNE—Although one of your first propositions, which I regard as quite a major change, is to provide a President or a head of state with responsibility for foreign affairs and a capacity to direct a government in that regard. That would be a significant change from current arrangements.

Dr Hartley—It may be, but the Governor-General at the moment has very strong powers, should he wish to use them, to call out the Army, Navy and Air Force; he is the head of our armed forces. Whilst it appears that John Howard has sent our troops to Iraq, legally the Governor-General did that. Of course, going to war is really a very important part of foreign affairs, I do suggest.

Senator PAYNE—Yes, that had crossed our minds. Is it correct to see from your response to question 5 that you have no problem with a party political individual campaigning for the position of President in a fairly—

Dr Hartley—I have no problem with that at all and it would be my personal opinion that having a person as Governor-General who is politically knowledgeable is desirable. There have been instances—not perhaps in recent times in federal parliament—where elected politicians have done things which are clearly wrong and that are done maybe almost illegally. There was an instance in Queensland where Bjelke-Petersen government ministers, at least, received shares in an oil company that wanted to explore on the Barrier Reef. They voted in parliament that they had no pecuniary interest in this. That, I think, is something which a governor should be able to straighten out, and a person politically savvy in this would be able to do that. I think a Governor-General needs to be politically knowledgeable.

Senator STOTT DESPOJA—Following on from Senator Payne's point about the process of selection for your ICC: I know that the aim would be to ensure that the people appointed by the Governor-General were neutral and independent, but could it not be argued that they were representatives of the Queen by virtue of being appointed by her representative in Australia? What is there to guarantee they are neutral or independent representatives when they are appointed by the Governor-General, the Queen's representative? Could there be a problem of perception—and I am talking about perceptions, not necessarily in action or deed.

Dr Hartley—I do not believe there is. The Governor-General appoints all kinds of people officially, such as the heads of the armed forces. The Governor-General swears members of parliament into office. Does that mean they become representatives of the Queen? I do not think there is a direct connection; I do not think there is even a perceived connection.

Senator STOTT DESPOJA—We do swear allegiance to the Queen and her heirs and successors.

Dr Hartley—Yes. That would be a difficult thing for me to do.

Senator STOTT DESPOJA—Indeed; I won't go there! I would like to ask a similar question to Senator Payne's. You put on record your concerns about the model and the referendum of 1999. You would have heard in the remarks from Professor Craven this morning that one of the difficulties is not the debate about the model—and our differing constitutional views, whether pro-republic, anti-republic, or what have you—but the politics, the electoral reality of the numbers. It was of great interest to me to hear you say that you opposed that model—for your legitimate reasons. Having said that, I am interested in your response to question 9—you know what the question is about, and I think the wording is slightly interesting—about who should be eligible to put forward nominations for and be appointed as head of state. You acknowledged in your response that you prefer direct election but, if it were to be through a different model, your preference would be for a strong component of public participation. You said that should include petitions—tens of thousands to hundreds of thousands of signatures would be required for a nomination.

You were also asked about whether there should be barriers to that nomination—for example, political parties and politicians. As far as I can see, you do not advocate any discrimination or any criteria—good on you. How is that different from a model that would allow for public participation in the collection of names—short listing—which would go to a committee that is representative of the parliament and/or the community and then be decided on by the leaders of the major parties, hopefully with input from other political parties, and then debated or voted on in the parliament, presumably requiring a two-thirds vote. I understand that there are differences; they are not radical differences, but it swayed your vote enough. I wonder whether we will ever get enough people to agree, when those differences to me seem important but marginal.

Dr Hartley—I think I said before that if I had been sure that there was going to be an ongoing process from the appointment of an Australian head of state with the model that was given in the referendum that would lead us further along the path of constitutional reform, particularly as it concerned the head of state, then I would well have voted for the referendum at that stage. The process of nomination that I put in answer to the question here was predicated on the question itself, which asked: if there is going to be a nomination and somebody else is going to choose, what would be the manner of nomination? That is the way that I answered the question. To me it would need to be a very large number of people who would nominate a person for a selection process. Then it would be somewhat difficult for the selection process to overturn a nominee who had received several million votes or several million nominations, say, against someone who had only got 50,000, say. It is not my ideal but it was answered in accordance with the proposal of the question.

Senator STOTT DESPOJA—But therein lies my interest, because I am wondering how ideal a model has to be for a republican such as yourself to either vote for it or reject it. You probably know the one of the concerns I had with the model in 1999 was the dismissal powers. It offended me greatly that the Senate was not included in that process, but I voted yes. I did so because I do not expect to get an ideal. I do not believe it is going to be easy for us to determine a utopian version of a republican model. I understand there is an element of compromise and negotiation that will go into this and hence this process is a part of it. I want to know whether you will vote for things other than your ideal, because you are indicative of whether or not we are going to get a republic, whether republicans are going to vote for a republic.

Dr Hartley—I would vote for something which I did not believe was ideal provided I could see that there was ongoing debate and an ongoing process of change which may—not necessarily but may—lead to what I thought was ideal. In a sense saying it is my ideal is not really my position. My position is that the people of Australia will choose the way that they want to be governed rather than have those elected parliamentarians tell the people of Australia how they want to govern us.

Senator BUCKLAND—I am interested in your views on the constitutional commission, which is what attracted my interest in your submission. You talk about a commission comprising eight to 10 people and that commission going out and sounding out the community, taking the views of the community on a range of issues. Isn't that exactly what government should be doing now? Whether it is or not is probably a point of debate at this table. Isn't it really just reflecting what government is already doing and isn't it therefore just a commission to do something that doesn't really need to be done?

Dr Hartley—Whilst politicians work within the bounds of the Constitution, they are not necessarily experts on the Constitution and they are not even necessarily experts on the process of government. What I would view as being the ideal people on the constitutional commission would be people who had that kind of expertise so that they would identify what formal changes need to be made to the Constitution in order to accommodate the views of the people that were expressed within plebiscites and constitutional conventions. I do not necessarily see them travelling around, even as you people do, to gather that evidence, no more than the High Court judges go round and discuss with the people their views on the rulings of the High Court. They would be, if you like, grey eminences who would give the impartial advice.

Senator BUCKLAND—I can understand a limited role for a constitutional commission. My fear here is that there is duplication, there is cost, and I cannot see an ongoing role for such a commission once we have a system of republicanism in place. I really struggle with that concept. I might be wrong. I am very pro-republican myself, but I do struggle with that concept, that we really are just creating a new level of government.

Dr Hartley—If the Governor-General, or whatever he wants to be named, is elected, there is effectively—as Professor Craven pointed out—another level of government, and I view that level of government as being fairly important.

Senator BUCKLAND—Professor Craven had sufficient cowardice—probably like me—to have a very defined position. I have to say that his submission attracted me greatly. But he had

sufficient cowardice to say that he was very cautious in his views, and that was reflected here this morning in what he said.

Dr Hartley—Yes. The arguments that he used are very persuasive. But that is an argument about where we are now rather than where we should be, what is the ideal. I have not heard him express a view on whether any directly elected President is a suitable form of government to have anywhere. He says that we cannot get to there from where we are in Australia. I am suggesting a way that might lead to that. Whether or not it does will take time, but it would reflect the views of the Australian people, finally.

CHAIR—As there are no further questions, thank you very much, Dr Hartley.

[10.39 a.m.]

HOLMES a COURT, Mrs Janet Lee, (Private Capacity)

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear this morning?

Mrs Holmes a Court—I appear as an invitee, but I was an elected representative of the Australian Republican Movement at the Constitutional Convention.

CHAIR—I invite you to make an opening statement, after which we will proceed to questions.

Mrs Holmes a Court—Like Dr Hartley, I would like to thank you for the invitation. I have not put in a written submission. I very strongly support the idea of a Senate committee such as this. The cost is not great in relation to the cost of fuel being used in Iraq every five minutes, I guess, and like Professor Craven I see this is a very important issue. One of the reasons I have not put in a written submissions is that after the Constitutional Convention I put the idea of a republic out of my mind for a while. The convention was a most extraordinary experience, as those of you who were there will attest. It was one of those rare occasions in Australia where we had a conversation. Approximately 110 people of all persuasions, colours, creeds, socioeconomic groups were represented and for 10 days we had a conversation. From my point of view, that does not happen sufficiently in Australia. Contrast that with the referendum, which was divisive, difficult, dishonest and incredibly disappointing. The idea of a republic is something I have not applied my mind to for a little while. It is in my heart, it is in my brain and it is in my gut.

I am not anti-Queen. Professor Craven used the words: ‘We would have trashed the Queen in the nineties.’ I do not feel that the republican movement trashed the Queen. As an aside—it is not name-dropping—we used to own the bulk of the theatres in the West End of London and I have met the bulk of the royal family—the Queen, her offspring, her relatives and so on. I am a great admirer of most of her family. I think they do a pretty fantastic job, but they are not Australian. I want an Australian head of state. What is important to me is the Commonwealth, and for us to become a republic does not mean any break with the Commonwealth. It is extremely important, I believe, that we try in this world, which is falling apart around us, to keep our ties and associations with those with whom we have a long history of engagement as tight and as close as we can. I very much want Australia to be a republic so that we can have a head of state who lives here, who is one of us, who can set our agendas, who can raise the issues that need to be raised in ways in which, for instance, Sir William Deane did during his time.

I have always been, like Professor Craven, very anti direct election. I am concerned about three main matters. Firstly, the President will be a politician—and I can tell the story of why he will be a politician but I think you are all aware of that. The President will be a politician if we have direct election. Secondly, the President will have moral power. Something like 40,000 votes are registered for someone like Mr Howard when he becomes Prime Minister. A presidential candidate could receive six million votes. Regardless of what position and what codification of

powers we give, he or she will have the moral power from that point of view, which worries me. And, thirdly, we have what I call the ‘footballer’ problem.

I found during the Constitutional Convention, as did all of us who travelled the country for months speaking about the issue, that I could convince people very easily. It took about 40 seconds, as Professor Craven has said. You could have 100 people in a room or even 600 people in a room and I think it took only 25 seconds to convince them that direct election was not a good idea. I am very anti it, but there are two schools of thought, and it is my belief that within the republican movement we have to have a debate between the non-elected and the elected models—otherwise we will not get a republic. That is really all I wish to say as a preliminary statement. I would also like to add that I am more a grandmother of seven little Australians than I am a constitutional lawyer.

CHAIR—I think there will be more grandmothers voting than constitutional lawyers, so you might be in the majority. It has been put to us consistently that the public has had one go at it, it is not an important issue—can’t you find something else to do, basically—and that six years is too short since the previous referendum. What is your view about those sorts of sentiments?

Mrs Holmes a Court—I think it is a very important issue, and six years to me is quite a long time. All those seven Australian grandchildren—in fact, I have 10 grandchildren altogether—have been born in less than those six years. It seems like a lifetime. I think it is a very important issue for Australia. The very process of having a Senate committee, such as this one, travelling the country—and I am sad the room is not packed to the rafters—and being out and about on the road raising the issue with people and hearing people’s views will help us get there. If we do not have the debate, if we do not have the discussion, we will never get there. I want those little grandchildren of mine to have an Australian head of state and maybe have the possibility of one day being the head of state of Australia, which at the moment they have no chance of being.

CHAIR—One of the frustrating aspects of the evidence has been that the republican movement in many respects has not moved on from the previous referendum and that dialogue that you talk about—the internal debate—does not seem to be happening all that much. Have you given any thought as to how that can be pursued?

Mrs Holmes a Court—Not really. I could, but I think the first step to take is for us as republicans to say that perhaps we are not going to get a republic unless we come together and have the debate and think of more models. One of the reasons I am not a direct electionist is that I think the method of choosing the governors-general and the governors of Australia, which has been in the hands of politicians, has been highly successful. In the 103 years since Federation we really have not had very many duds. I would have liked to have thought that Sir William Deane was our head of state and not just a representative of our head of state. John Sanderson in Western Australia, our present governor, is an outstanding person who was chosen by politicians. Politicians have not done a bad job.

Senator KIRK—Thank you, Mrs Holmes a Court, for your submission. As a delegate to the last Constitutional Convention, I wonder if you have any views about the way that that was run, the time period, the manner of election of the individuals and the appointment of experts? If we were to have another constitutional convention, how might things be done differently?

Mrs Holmes a Court—I thought that it worked quite well. One of the things that will stick in my mind is that on one side of the house we had an Aboriginal person who was a monarchist talking about how wonderful it had been since the British, under the Queen, came Australia and on the other side of the house we had Lowitja O’Donoghue, an Aboriginal person, wanting a republic. We had Anglican priests and Catholic priests—even more amazing—advocating a monarchy, and a Catholic priest advocating a republic. We had a young Greek woman wanting to keep the monarchy and an old Greek woman wanting Australia to be a republic.

It seemed to me that that system came up with a wonderful cross-section of people. Where I agree a lot with what my friend Bruce Hartley has said, I certainly would not get the Governor-General to choose half the people for a constitutional convention. I actually think that the way it was done last time came up with a really good group. I do not think the problem was so much the convention; it was what happened after the convention, with the campaign which I saw as (a) on our side, mediocre and (b) on the other side, dishonest. So my problem was not so much with the convention and the methodologies; it was with what happened afterwards.

Senator KIRK—So you thought the process of the convention worked well enough, given the time period that we had?

Mrs Holmes a Court—Frankly, I did. It was an amazing moment in my life. Another thing I will always remember was the tremendous way in which Australian people did engage. I spent a bit of my time in the public areas speaking with the hundreds—in fact, thousands in the end—of people who flocked to Canberra. As it appeared to people—on television and radio—that the vote was going to be for a republic, I met streams of people who had been coming to Canberra with their children because they wanted their children—it is lump in the throat stuff—to be in Canberra when this happened. It was very significant. I heard of farmers who could not get their men back to work at lunchtime after they had engaged with the television to see what was happening. It does not surprise me that you are hearing that all the polls say that people do want a republic. I think it is very important that you are all here and that you are travelling around.

Senator PAYNE—The committee is very pleased to be in Perth and to have an opportunity to meet with supporters of constitutional discussion here in Western Australia. There is an argument in one of our submissions that Western Australia is different, that there are different views in the way the republic issue is perceived here and that there is also a concern about Eastern States domination of the process. What is your assessment of that?

Mrs Holmes a Court—Despite Professor Craven’s throwaway lines, there is an understanding in Western Australia that Sydney is the centre of the universe! If you, as I do, participate in the boards of arts companies, you will know that ‘you are only in Perth, Janet, so you can’t expect very much money for your orchestra’ and so on. I believe that we in Western Australia constantly feel that everything happens over there. In fact, on a radio debate the other night people were asked to name what style of clothing suited every city in Australia, being Darwin, Brisbane, Sydney, Adelaide and Melbourne.

Senator PAYNE—Do you go naked in Perth? Is that what that means?

Mrs Holmes a Court—No. It will be very important, if we are going to have a republic, for people in Western Australia to not feel that we will always have a governor, or whatever we

choose to call our elected head of state, who is automatically from Sydney or Melbourne. It will be very important to devise a system as to that. As I say, I am not a constitutional lawyer, but that is an issue that Western Australians feel strongly about. We all know the story of Federation, whereby Western Australia was so divided. Surprisingly, there are still a few people who are secessionist in this state.

Senator PAYNE—I think those are very important points. I have a question about the way forward and your view of plebiscites. You heard Professor Craven's views this morning. He is most articulate on the subject.

Mrs Holmes a Court—Yes, he is most articulate and I probably agree with everything he said, without being able to express it in that way. I think the first one would be okay; the second one is a real problem. It is best for me to say that I think Professor Craven's views are correct on that but I do not quite know what we do about that.

I like his idea of the convention and I like the idea, as he said, that it is going to take a long time. It is very difficult. Although, as I heard Bruce say, it is very hard to change the Australian Constitution, that in fact is probably a good thing. It is probably a good thing that it is difficult to make big changes. I know from my own life that I have had to make big changes quickly—and in that case you possibly do not make the right ones. For something as major as this, it is going to take time and debate. It is also going to take a long time to get me to change from being anti direct electionist to coming round to some other model, but I suspect that I will have to make some compromises—and maybe we all will.

Senator PAYNE—I am not seeking to persuade you to change your position.

Mrs Holmes a Court—I know.

Senator BUCKLAND—Just on the point of being left out because you are from Western Australia, on many occasions South Australia gets left out—

Senator STOTT DESPOJA—There are four of you here!

Mrs Holmes a Court—That is why we are here.

Senator BUCKLAND—of some of these vital issues of fashion and things like that. I think we should remind our friends from the east—in fact, there is only one member from the east—that innovation and wealth come from our two states as well.

You heard Dr Hartley's views on the commission and I think you heard my own. Do you have a view on whether there is a need for such a commission? If you would rather not answer, I am happy for that to happen, but you are someone I respect as knowing something about business and I thought you might have a view on that.

Mrs Holmes a Court—How do you see it would work?

Senator BUCKLAND—I do not see it working at all, quite frankly.

Mrs Holmes a Court—No. I think that is why I asked the question.

Senator BUCKLAND—Another issue that came up but was not pursued very much on the last occasion when there was an attempt to create a republic was trade. Again looking at your involvement in industry, do you see that our becoming a republic would have any effect at all on our international trade or our dealings with some of our overseas trading partners?

Mrs Holmes a Court—I do not really know whether there would be, but I do know that Her Majesty the Queen spends a lot of time visiting countries as a promoter of British products. I am pretty certain that Tony Blair has made sure that she does not have the royal yacht *Britannia* anymore, but when she did the *Britannia* was used as a trade promotion vehicle for British companies and so on—needless to say, not Australian companies, despite the fact that she was our head of state. I cannot see a huge benefit there, but I think that if someone like Michael Jeffery, our Governor-General, were to be the head of state with the status that goes with that, possibly he could promote trade and so on. I do not think that is a major issue. I think it is about how we feel about ourselves.

Senator BUCKLAND—Do you think overseas countries might view us in a different light?

Mrs Holmes a Court—I think possibly they will. There are many countries in the Commonwealth with their own heads of state. There are countries in the Commonwealth with a king, for heaven's sake, such as Malaysia, or with a sultan, such as Brunei. I think just that little element of 'these people have broken away; they have cut the apron-strings; they are a truly independent nation' may affect people slightly.

I once attended a dinner for the President of the Philippines. Our Prime Minister proposed a toast to the President of the Philippines and the President of the Philippines proposed a toast to the Queen of England. It was on everybody's lips that a few years ago, perhaps, our Prime Minister could have been proposing a toast to the Queen of Spain but did not because they had become a republic. There is just a little more self-respect and self-esteem in being our own nation.

Senator STOTT DESPOJA—You referred, in response to Senator Kirk's question, to the process difficulties between the Constitutional Convention—what happened then—and what happened in the campaign. I do not want to revisit that, but there was a period in between. Post ConCon, as you know, there was then the drafting of the model in a legislative form and a joint select committee which debated the bills and suggested and, in some cases, made amendments through parliament. Part of that was a debate over the wording or the title of the bill which became the wording of the referendum. Do you have any comments on that process? While I acknowledge and agree with both your statements about ConCon and then the deficiencies in the campaign, I am just wondering whether you have any views as to what should happen in the midway process and what happened between 1998 and 1999 that led to the referendum.

Mrs Holmes a Court—As I say, it is not something I have thought about too much over the last few years, but I guess if the step in between had been undertaken by a group other than the parliamentary group—by a group more based on those people who were at the Constitutional Convention—then the question would not have been phrased in the way it was, which seemed to me to be designed to make sure that it was not successful. I do support Professor Craven's idea

of major discussion and more people being involved in the formulation of both constitutional changes and a question, rather than saying, ‘Here’s a great group of people who for two weeks have worked together; now we’ll take what they’ve done and fiddle around with it so that it doesn’t work.’

Senator STOTT DESPOJA—I suspect that might be—and I do not mean to misrepresent him—where Dr Hartley was talking about the role of his ICC, that there would be a debate for people other than politicians. I have no comment on his model; I can just see that there were inadequacies in that middle part as well and I am curious as to your views. You have mentioned debate and the issue of an informed vote. You have talked about your own abilities, as did Professor Craven, to talk to people for a period of time and sway them. I am not talking about the need for people to be swayed in a particular direction; I just want people to be informed when they vote. Do you have any specific views or strategies as to how we can ensure that Australians have an informed vote, that there is that element of civics education or community education leading up to either a plebiscite or a referendum that is sufficient?

Mrs Holmes a Court—I am with you on education. I think it can be the solution to so many issues, but I think that we have to start our civics program yesterday in Australia. It is one thing that so many countries do so much better than we do. I do think the whole issue of the republic is a generational issue. I mention the flag—I think it is a generational issue, albeit a separate one. It is future generations of Australian kids who are going to say, ‘Hey, we want our own head of state,’ but if they have no knowledge of the Australian Constitution or how our system works we will still be having this debate in years to come. I think that programs that start in schools are essential.

But there are lots of places where people meet together. I am constantly being asked to talk to Rotary clubs, for instance. Hundreds of thousands of people around Australia belong to Rotary clubs. There are women’s groups and an infinite number of groups of people meeting together around Australia, and it is not a difficult thing, if you want to get on an invitation list, to do so. There are plenty of opportunities to speak to people, as we all found during the referendum time. I could have done a speech every night of my life had I wanted to.

Senator STOTT DESPOJA—I thought you were!

Mrs Holmes a Court—Yes, I think I did. You could start in schools and universities. Universities are realising that they have to educate people quite broadly on social issues and we could do it there. I think you could write a list of 100 groups you could start with. They are meeting anyway.

Senator BOLKUS—I would just like to revisit one or two points you made in respect of the two-step plebiscite. Some republicans have put to us the concern that if the first question was a simple yes or no to a head of state of a republic, with a second question raising models, then at the first stage that sort of question lends itself to a fear campaign based on not giving the republicans a blank cheque. Would that be a concern you would have in terms of that two-step approach?

Mrs Holmes a Court—I have not thought sufficiently about that—and maybe I should make a written submission—but I think that is the problem. That is the attitude that would be taken:

these republicans are quite scary people—don't give them an inch or they'll take a mile. I would rather think about that question, but I think it is a danger.

Senator BOLKUS—You alluded to maybe moving from a position of being anti direct election. You said you may have to. Why would you hold that view? Is it the experience of the last time around, or is it a resignation to the popular will? If you were to move, does that concept of a Senate based collegiate system for selection have any attraction to you?

Mrs Holmes a Court—When I say I may have to move, I mean I may have to move from being 100 per cent against it to some model where the Australian people do have some ability to have an input. They want an input. How do we do that? How do we ensure that people like John Sanderson or Sir William Deane are there for them to vote for? I suppose in saying that I might have to move I am saying that I recognise that the Australian people really want to have a say in this. What I want is for someone to invent a model so that the people they have to choose from are the people who would be chosen by the system that I favour anyway. Do you know what I mean?

Senator BOLKUS—Yes; you do not want a pop star or a half-back flanker.

Mrs Holmes a Court—No. And I particularly do not want them because they will have the moral high ground—or they will feel they have the moral power.

Senator BOLKUS—I suppose what you are saying is that we want a serious player rather than a so-called popular Australian idol.

Mrs Holmes a Court—I definitely want a serious player. I want someone who can apolitically raise the issues that need raising in this country—someone who is a deep thinker; someone with experience in life who understands what is important, what is not important and what moral values we want to espouse in this nation; someone who can raise the level of debate. It is quite possible to do that non-politically, as we know, and put us in a different ball game.

And we need someone who is here, who you can see and who has the ability to know what those issues are because they are moving around the place. All my respect for the Queen, but she cannot have a clue what is important to Australians today because she has not been here for I do not know how long. The present Governor-General, Major General Michael Jeffery, or Lieutenant General Sanderson are out and about talking to Australians all the time, seeing what is going on, what is happening, what is important and what is not important, and all those sorts of things.

CHAIR—Thank you very much for that evidence; that was important.

[11.10 a.m.]

THOMPSON, Ms Clare, (Private capacity)

CHAIR—Welcome. I invite you to make a short opening statement before we go to questions.

Ms Thompson—To give some context to my remarks, as a number of members of the committee would know, I was a Western Australian elected delegate, on behalf of the Australian Republican Movement, to the Constitutional Convention in 1998. So I appear here today without any pretence that I am anything other than a very clear and strong republican. My perspective on this issue is coloured not only by 10 or so years membership of the Republican Movement but also by the bitter and sad events of 9 November 1999. I endorse Mrs Holmes a Court's sadness on the failure of the referendum and her comments in relation to the Western Australian perspective on that. It was very much a loss in this state which I felt was occasioned by a lack of understanding at the top of the yes case that Western Australia had, in effect, one vote—and that one vote equalled the New South Wales vote—and that we had to win the hearts and minds of each of the states in order to win the campaign. I also want to put on record how important I thought the Constitutional Convention process was as an educative tool in Australia. I do not think we have ever done anything to talk about the serious issues of how we govern our country in the way we that did for those two weeks. Despite the ultimate result in November the following year, it really was a process that, in my view, was extremely worth while in at least starting the debate and starting interest in the issues of government.

The other thing that was particularly important for me in that process was the important contribution that the appointed delegates made to the convention. As those who attended it and those who were interested at the time would remember, there was quite a deal of hype and criticism about the fact that certain members of the convention had been appointed—that was somehow supposed to be undemocratic. Putting aside the politicians who were appointed delegates, I felt that a great number of the non-politician appointees contributed enormously and importantly to the process. Dame Roma Mitchell, Neville Bonner, Stella Axarlis and George Pell come to mind, and of course a number of the young appointees from around the country who participated, including Andrea Ang from Western Australia and Julie Bishop, who had a great deal to do with the nuts and bolts of the convention. I say that because I think it is important, in the context of the republic, to understand that being elected does not necessarily mean you know everything.

CHAIR—That does occur to us from time to time!

Ms Thompson—I was an elected delegate but I went there with a particular purpose, a particular interest and a particular agenda, as did, I think, all the elected delegates. But I really believe that the contribution of those appointed delegates was important. Take, for example, George Winterton: how could we have done what we did without George Winterton's contributions? These are people who are not really electable out in the public arena. Which political party would put any of the people I have mentioned on their tickets—except for Julie Bishop, of course! The reality is that these people made important contributions. It is a good model for the republic in the sense that we need to garner that breadth of experience and talent

when we are setting up a republic and, in fact, when we are appointing or electing—if that is what it has to be—our President.

CHAIR—Thank you. I will start off with one question which goes to our respective origins. I suppose it is Sydney versus the rest of the world, and we come from the rest of the world. One outcome we have not focused on in the proposed plebiscite process is a situation where a particular model may get a majority vote across the country but it would not get a majority vote in, say, SA, WA or Tassie. As a consequence you may be torn between two models. Have you thought about that? Have you thought about which model may be more likely to get supported in Western Australia? Directly elected is the so-called flavour but, given the situation where Sydney, and Melbourne if not Sydney, would have the numbers, the states with the largest populations would swamp the others.

Ms Thompson—If it were to be an elected President—and I might say that I remain extremely concerned about that prospect but, like Mrs Holmes a Court, I am convincible perhaps—it is a compromise that can be made for the achievement of the objective. Maybe you could build in some sort of safeguard in terms of the presidency so that if you are going to have an elected President then you have to have the majority of states as well as the majority of the people. It is a model we are familiar with in this country.

In terms of a plebiscite, history will show that that is what happened in the 1890s with Federation. New South Wales voted against it to start with. If Western Australia were to do that and to be the odd man out—politically that is unlikely; if we are going to carry the country we will carry the country—you would put it to the people again and say: ‘Come on. The rest of the country wants to do A and you want to do B. If the choice is between A and nothing, will you take A?’ You have to be prepared to go back a second time.

CHAIR—In that context you would need to have two plebiscites separated from each other.

Ms Thompson—Yes. If you have a runoff in the end—French elections do it; other countries do these sorts of things—that is not a bad thing. We are trying to create something that will be supported by the people for time immemorial. It is not a bad thing to invest a lot of time and effort into it.

CHAIR—Are you talking about a runoff of the models?

Ms Thompson—Yes.

Senator KIRK—Thank you for your submission. It has been suggested to us that direct election may be more likely to produce a woman as a head of state, given that we have not had a female head of state ever in this country.

Ms Thompson—Except the Queen, of course.

Senator KIRK—What are your views on that?

Ms Thompson—I do not agree with that. We might produce a female head of state by direct election who once starred on *Neighbours* or something of that nature but my view of the

President is that the person is senior and wise. A woman would be great but it is not a prerequisite obviously. To me, Fiona Stanley is someone who is completely unelectable but who would be a brilliant President. The reaction to her becoming Australian of the Year was a lot of the papers in the eastern states saying, 'Fiona who?' Yet she was so impressive. By the end of the year people were saying, 'Wow! Isn't she great!' That to me is why you would want to have an appointment, not an election. I cannot see any evidence to support the idea that an election would more likely throw up a woman. I know Jocelyne Scutt is of at that view but I do not think the evidence is really there to show that. The evidence in Australia is that an election is more likely to throw up a football player.

Senator KIRK—That brings me to my next point. Does it not depend on the method of direct election and whether or not there are, say, three candidates who are put to the Australian people for their choice?

Ms Thompson—I think there is a degree of that—that is, if you have a parliamentary or some other mechanism to identify the candidates and put forward candidates, that works. But the difficulty with that is that it looks a bit like a rubber stamp if there is only one candidate. If there is more than one candidate then you are asking people of the stature of Sir William Deane—hopefully—to put themselves into a position which they would not normally put themselves in. You are really asking them to go through a process to get a job like that of Governor-General; if such a job were offered to them, their first reaction would probably be, 'I can't do this.' Asking them to go through a process of public scrutiny and then potentially the humiliation of losing is really not appropriate. Maybe one way to get around that would be to have a parliamentary sanctioned candidate—so that would be the parliament's choice—and then anyone else who wanted to stand could.

Senator PAYNE—I expect that you might then guarantee they do not win!

Ms Thompson—Yes, there is that difficulty.

Senator PAYNE—To follow directly on from Senator Kirk: Professor Kim Rubenstein gave the committee evidence in Melbourne. You may know of Professor Rubenstein.

Ms Thompson—Yes.

Senator PAYNE—She has significant interest in the gender issue and in fact suggests that we alternate presidents based on gender. When asked, 'What if there weren't any good blokes?' she explored the issue. Do you think that is an appropriate response?

Ms Thompson—I am not someone who supports quotas or those sorts of things in any way. I do think that increasingly we are likely to find very good women. I could give you a list of half-a-dozen women from Western Australia who would do a superb job. People of the stature of Fiona Stanley, Justice Christine Wheeler and Justice Carmel McClure would be perfect for the job. I think alternating it is a little unnecessary. It would be: 'Wow! This time it's a girl's turn, so let's look around for a girl.' Then next time, it would be the boy's turn and we would say, 'Last time we had a white boy; this time we're going to have an Asian boy,' or something of that nature. It is just silly.

Senator PAYNE—The committee explored it for some period in Melbourne, but we were not quite sure where to take it from there. My next and final question is about a further constitutional convention. Professor Craven put to the committee this morning that he is very keen to see a very comprehensive further constitutional convention, which he would want to be fully elected. I am interested, in view of your observations about the value of some of the appointed delegates to the last Constitutional Convention, what your view is of that. I am also interested in your view of the time frame, because as Mrs Holmes a Court just alluded to—and I think you were in the room then—doing this over an extended period to get it right is not necessarily a bad thing. I think Professor Craven would support that observation as well.

Ms Thompson—I will start with the time frame issue. I am very much of the view that this is a long-term project rather than a three-to-five year project. If we become a republic—that is, when we become a republic—it is going to happen in the 10- to 15-year time frame, sad as that is for some of us. Part of that, though, is that it gives us an opportunity to really explore the way we as a nation want to look and the way we want to feel. In that context I think constitutional conventions are a good idea. Constitutional conventions which explore more than the relationship between head of state and government and look at a whole range of other issues might be an appropriate way to go, if for no other reason—and I am firmly of this view, as I have already expressed—than that the educative value to the community of those conventions is pretty significant. I was amazed at the interest during the last one.

I think I have made my views clear on the value of appointed delegates. It is interesting that Professor Craven, who was himself an appointed delegate, would take that view. I think you have to have a situation where you ensure that a lot of the expertise that a convention of that nature needs is available even if that means it gives the appearance—without giving that any credence—of not being democratic. I do not think democracy requires that everybody be elected to everything.

Senator PAYNE—So as not to be accused of verballing the good professor, I must say that he is also very supportive of experts being available in that process and making sure they are a fundamental part of that.

Senator STOTT DESPOJA—Firstly, I am lamenting the fact that we have not had an alternate process of male/female prime ministers for the last 30-odd that we have had, but anyway. You mention the educative element of that time frame and the constitutional convention process. While I understand that in politics some things often take a long time, 10 to 15 years has got me reeling here. Not because I want to circumvent the process of input or education—quite the opposite: I want to know how we can speed it up. I think one of the deficiencies of the last campaign, which is one that people would probably argue is a feature of any major democratic undertaking—be it a plebiscite, a referendum or even an election campaign—is that there is always an element of people wanting more information. People want to be more involved, so there is a participatory aspect as well as the informed aspect of the process. I have asked other witnesses and I am wondering whether you have any views as to specific strategies that can be employed to ensure that people are involved. I guess all of us are not just talking about the experts. There has been a lot of emphasis on experts as part of this hearing today, but I actually think the experts are quite well catered for in terms of their own opportunities for input. I am talking about everyone of voting age and below being able to have a stake in this process. How do we harness that? How do we ensure that people feel that next time they have what some

would argue they did not have last time—that is, more ownership of the process, more involvement and more information?

Ms Thompson—I think Mrs Holmes a Court’s point about school education is absolutely fundamental. Why I take the view that it is a 10- to 15-year process is that I think you have to start talking to children in grade 1 and grade 5 about civics. When those people are 18 and 25 they will have been brought up with an understanding of the structure of Australian government so they will understand the fallacy of the argument that the entire house will come falling down if we replace a British subject with an Australian one as our head of state. That is really the nuts and bolts of it; you have to start at that level. I think that is a process that is a foundation building block for change.

I also think that the plebiscite process will make a difference. Part of that plebiscite process has to be an opportunity for people to have a say vote-wise on a range of different models once people have said, ‘Yes, we like the idea of becoming a republic.’ So I do think it is a two-step plebiscite process. That is part of the education. You must win the hearts and minds of people. Frankly, my view is that the hearts and minds are there in many respects. I struggle to find anyone who is a monarchist. My dad voted no. I was talking to him on the phone the next morning and he said, ‘Clare, this is a real shame because now it is going to take so many more years and cost so much more money.’ I said to him, ‘Whose fault do you think that is?’ and hung up because I was so angry with him. He voted no because he did not like a couple of the high profile individuals involved in the republican campaign. It was a very stupid reason to vote no, in my view, but there you go—people voted no for a whole range of reasons. He is fundamentally a republican. He is a 72-year-old South Australian judge and he is a republican. There are lots of people like that out there who, if you asked whether they would like to become a republic rather than have a British head of state, say: ‘Yes, and then let’s deal with the other issue.’ So I think we need to get the rubber stamp, if you like; and that is part of the educative process.

Senator STOTT DESPOJA—That is a very good point. Research tells us that prior to this referendum 47 per cent—I think it was—of Australians knew that we had a Constitution and after the referendum itself there was an increased level of awareness of that fact. By the way, your father should understand that he has a right of reply through the Senate committee process.

At least two witnesses so far have made reference to the potentially generational nature of this process. Perhaps normally I would argue that, but I have great confidence in much of the civics education that is happening in schools. As a politician, I find the bane of my life now is speaking to school students. I think they are going to ask me simplistic political questions and instead they ask, ‘Senator, what do you think of section 44 of the Constitution?’ I think, ‘Crikey, what are these kids learning?’ But it is true that a lot of work is being done.

I guess my broader concern is not about this process that has to filter through, in an age sense, over the years; I am talking about people who have views—they may have the passion to which you refer that your father and others in the community have—but who said to us last time, ‘I just didn’t feel I had enough information,’ or conversely they believed some of the superficial aspects of the campaign. I am not suggesting that is restricted to the referendum campaign, because it happens in politics all the time. How do we address that broader level of what I think is a thirst

for information? I do not think it is people being stupid; I think it is people just saying, ‘Hang on, I want to make an informed choice; where do I get the information?’

Ms Thompson—Maybe we should talk to the script writers of *Neighbours*. It is hard, but I do think the rubber stamp idea is an important one in the sense that you win hearts and minds by being able to go back to the second plebiscite and say, ‘Well, Australia, 60 or 70 or 80 per cent of you voted in favour of changing the system, so how do we want to change it?’

There are two different levels of education program. One issue we need to explore with the first plebiscite—‘Do you want an Australian head of state?’; hopefully it would be that question or something nice like that—is the whole idea that the British system which we have inherited has changed fundamentally in the last 10 years. Most recently, in the last three years, it is nothing like what most Australians think it is. Britain now is almost a state within the European Union, in the way that Western Australia is a state within Australia. I do not think that is really understood in this country—the impact of the European Union and therefore the impact that is having on our constitutional relationship and our other relationships with Britain, particularly trade and things. They are the sorts of issues that need to be understood at what I call the first plebiscite stage.

CHAIR—Ms Thompson, as we have no further questions of you, we thank you very much and we thank all others who gave evidence this morning. We also thank those who have come along to this morning’s proceedings and shown an interest in them.

Committee adjourned at 11.34 a.m.