The Senate

# Legal and Constitutional References Committee

## The road to a republic

August 2004

ISBN 0 642 71441 X

This document was printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra

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# TERMS OF REFERENCE

(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.

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# ABBREVIATIONS

| | |
|---|---|
| ACM | Australians for Constitutional Monarchy |
| AIDC | Australians for an Informed Discussion on our Constitution |
| AML | Australian Monarchist League |
| ARM | Australian Republican Movement |
| ATSIC | Aboriginal and Torres Strait Islander Commission |
| MP | Member of Parliament |
| PM | Prime Minister |
| RAC | Republic Advisory Committee |
| RAC Report | *An Australian Republic: the options*, AGPS, Canberra, 1993. |
| US | United States of America |

# CHAPTER 1

# INTRODUCTION

## Background

1.1 This inquiry into an Australian republic was undertaken as the result of a decision by the Senate. The vote in the Senate to refer the matters set out in the terms of reference occurred on 26 June 2003, and was uncontested.

## Conduct of the inquiry

1.2 The Legal and Constitutional References Committee advertised the inquiry in *The Australian* newspaper on 17 December 2003, 28 January 2004, 11 February 2004 and 25 February 2004. In December 2003 the Committee released a discussion paper to facilitate discussion and to focus debate. The Committee wrote to around 80 organisations and individuals, and submissions were invited by 31 March 2004. Details of the inquiry, and associated documents were placed on the Committee's website.

1.3 The Committee received over 700 submissions from various individuals and organisations and these are listed at Appendix 1.

1.4 Public hearings were held in Parramatta, Melbourne, Perth, Adelaide, Hobart, Brisbane and Canberra. A list of witnesses who appeared at the hearings is at Appendix 2 and copies of the Hansard transcript are available through the Internet at http://aph.gov.au/hansard.

## Scope of the report

1.5 Chapter 2 provides a background to the inquiry, discussing the history of recent moves towards a republic, and also arguments put to the Committee regarding the desirability or otherwise of Australia becoming a republic.

1.6 Reflecting the terms of reference for the inquiry, the remainder of the report is largely divided into two parts. Chapters 3 and 4 address term of reference (a), regarding the most appropriate process for moving towards an Australian republic. Chapter 3 covers themes raised in submissions and evidence, including the importance of engagement with the process by Australians, and the need for an extensive education program. Chapter 4 looks at the different components that may comprise a future process, including plebiscites, conventions, parliamentary committees and a referendum.

1.7 Chapters 5, 6 and 7 address term of reference (b), regarding alternative models for an Australian republic. Chapter 5 addresses the possible functions and powers of a republican head of state and related issues such as the title of the head of state. Chapter 6 discusses possible methods for selection and removal of the head of state.

Chapter 7 examines some of the key features of various alternative models for an Australian republic.

1.8 Chapter 8 gives the Committee's conclusions.

## Acknowledgement

1.9 The Committee thanks those organisations and individuals who made submissions and gave evidence at public hearings. The Committee also thanks Scott Bennett from the Parliamentary Library for his assistance in the preparation of the Committee's discussion paper.

## Note on references

1.10 References in this report are to individual submissions as received by the Committee, not to a bound volume. References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

# CHAPTER 2

# BACKGROUND

2.1 This chapter discusses:

- previous moves towards an Australian republic; and
- arguments for and against a republic as expressed in submissions and evidence.

## Brief outline of previous moves towards an Australian republic

2.2 In 1993 then Prime Minister Paul Keating established the Republican Advisory Committee to produce an options paper on issues relating to the possible transition to a republic. The Committee produced its report in 1993, and argued that a "a republic is achievable without threatening Australia's cherished democratic institutions."[1]

2.3 Following a change in government in 1996, Prime Minister John Howard formally confirmed his government's intention to proceed with a constitutional convention. A convention was held over 10 days in February 1998 at Old Parliament House. Half of the 152 delegates were elected (through a non-compulsory postal vote) and half were appointed by Federal and state governments. Convention delegates were tasked with considering the following questions:

- whether or not Australia should become a republic;
- which model for a republic might be put to the Australian electorate to consider against the current system of government; and
- in what timeframe and under what circumstances might any change be considered.[2]

2.4 At the Convention, a republic gained majority support (89 votes to 52 with 11 abstentions), but the issue of what model for a republic should be put to the people at a referendum produced deep divisions among republicans.[3] Four republican models were debated: two involving direct election of the head of state; one involving

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1 McAllister, Ian, "Elections Without Cues: The 1999 Australian Republic Referendum", *Australian Journal of Political Science*, Vol. 36, No. 2, pp.247-269.

2 Joint Select Committee on the Republic Referendum, *Advisory Report on: Constitution Alteration(Establishment of a Republic) 1999, Presidential Nominations Committee Bill 1999,* August 1999, p. 5.

3 McAllister, Ian, "Elections Without Cues", p. 250.

appointment by the Prime Minister; and one involving appointment by a two-thirds majority of Parliament. More information regarding these models is included in Chapter 7 of this report.

2.5 The model involving appointment of the head of state by a two-thirds majority of the Parliament was the model eventually successful at the Convention, and was the model put to referendum the following year. The Convention also made recommendations about a preamble to the Constitution, and a proposed preamble was also put to referendum.

2.6 The wording of the referendum questions was the prerogative of the Federal Government. The question on the republic put to electors at the 1999 referendum was whether they approved of:

> A proposed law: To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament.[4]

2.7 The referendum was held on 6 November 1999, after a national advertising campaign and the distribution of 12.9 million Yes/No case pamphlets. The question on a republic was defeated. It was not carried in a single state and attracted 45 per cent of the total national vote. The preamble referendum question was also defeated, with a Yes vote of only 39 per cent.

2.8 A conference was held in December 2001 to discuss practical proposals for a future process for moving towards a republic. This Corowa Conference considered 19 proposals, and recommended one. Proposed processes are considered in Chapter 4 of this report.

2.9 Also in 2001, a private senator's bill was introduced by Senator Natasha Stott Despoja (Republic (Consultation of the People) Bill 2001), which provided for electors to be consulted, at the same time as a general election for the House of Representatives, on whether Australia should become a republic and on whether they should vote again, if applicable, to choose from different republic models.

## A republic: Yes or No? Views expressed in submissions and evidence

2.10 Submissions to the inquiry expressed a range of views regarding the issue of a republic. This section of the report briefly gives a flavour of some of those views.

### *In support of a republic*

2.11 Arguments raised in support of a republic mirrored similar arguments put forward in the 1998/99 debate. Many submissions in favour of change argued that it

was important for Australia's status as an independent country that we do not retain the British monarch as head of state. Mr John Bowdler expressed the view that:

> This historic arrangement [of our Governor-General being the British monarch's representative in Australia] does not make sense against our status nowadays as a successful and proud country, well regarded across the world as a substantial middle power, particularly in the Asia-Pacific region. Our people are resourceful, well educated, and have a reputation for tolerance and support of others. We have a robust market economy, an effective public sector, a strong judicial system and a media free of government control. We have no reason whatsoever to abdicate part of the responsibility for our national governance to someone in another country.[5]

2.12 Mr George Said supported this view, arguing that:

> An Australian Republic is 'us growing up'. It is about nationhood. It is about accepting us all as full citizens in an independent nation and not migrants to the remnant of a defunct British Empire. It is about equality of its citizens regardless of their roots. It is about going beyond the deeds of one ethnic group over the aborigines. It is the next step past the white Australia policy, the stolen generation, the assimilation policies and the monocultural attitudes of Pauline Hanson and her followers.[6]

2.13 In answer to the "if it ain't broke don't fix it" argument put forward by many opposing change, the Australian Republican Movement (ARM) submitted that "the system *is* broke", and that:

> Continuing with a distant monarch in our highest office is not an optimal situation for Australia. ... Now is the time to begin moving towards a new referendum to replace a remote, outdated institution with an Australian Head of State.

2.14 A submission from Mr Nick Earls argued that it was an anachronism that Australia's head of state was required to be Christian (specifically Protestant), male preferred, and a descendent of a particular European royal family.[7] Mr John Pyke supported this view, and argued in support of an Australian, democratically selected head of state:

> … it is totally un-Australian to have any hereditary element in our system of government. … The idea that our head of state, or even the person who appoints our *de facto* head of state, should hold that office by birth is just as absurd, in a modern democracy, as a hereditary upper house. It is high time

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5 *Submission 459*, p. 3.

6 *Submission 92*, p. 1.

7 *Submission 417*, p. 2.

> that we had an Australian head of state, chosen not for life but for a fixed term, by a democratic process.[8]

2.15 Former Chief Justice of the High Court Sir Gerard Brennan pointed out that if there were some change to the existing laws of Great Britain in relation to the monarchy, or if the British monarchy were to be abolished, Australia would be left with no way of appointing a head of state.[9]

2.16 Some submissions argued that remaining a constitutional monarchy was inconsistent with the need to recognise Indigenous status and rights. The Aboriginal and Torres Strait Islander Commission submitted that:

> The establishment of a republic provides the opportunity to redefine the relationship between non-Indigenous and Indigenous Australians, and formally acknowledge their status and rights.[10]

2.17 Dr Mark McKenna expressed the view that the sovereignty of the crown must be removed, as it was a direct link to the dispossession of Indigenous people:

> [The sovereignty of the crown] speaks directly to the historical experience of Aboriginal people since colonisation began in Australia in 1788. The gradual dispossession of Aboriginal Australia occurred under the imprimatur of the crown. Aboriginal land became crown land. Aboriginal sovereignty was usurped by the sovereignty of the crown, at least in the eyes of the invaders. To this day, 'crown land' continues to describe all land in Australia that is not held in freehold title, a constant reminder of the way in which the land was won and claimed, without due recompense to the original owners.[11]

2.18 Several submissions pointed to opinion polls that indicated majority support for Australia becoming a republic. Recent Newspoll polls indicate that 51 per cent of those surveyed are either partly or strongly in favour of Australia becoming a republic.[12] Another Newspoll survey asked for respondent's preferences for either an Australian to be Australia's head of state, or the Queen to remain Australia's head of state. The result of that poll was that 64 per cent favoured an Australian head of state.[13]

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8 *Submission 512*, p. 2.

9 *Committee Hansard,* 13 April 2004, p. 19.

10 *Submission 112*, p. 3.

11 *Submission 201*, p. 4.

12 Newspoll survey results in the years 1999 to 2003, www.newspoll.com.au/cgi-bin/display_poll_data.pl , accessed 7/07/2004.

13 http://www.newspoll.com.au/cgi-bin/display_poll_data.pl accessed 28/07/2004

### *Against a republic*

2.19 Like arguments in support of a republic, arguments put forward against Australia becoming a republic also parallelled views put forward in the 1998/99 debate. Some submissions argued that there was no need to change the Australian Constitution, as it worked well and ensured a democratic and stable society, which was the envy of many. Mr Brian Bowtell submitted that:

> I do not want a Republic. Our present system has given us (the people of Australia) stable government for 100 yrs. If it ain't broke why fix it?[14]

2.20 The submission of Mr George Reynolds echoed this view, stating that:

> The proponents of this inquiry have paid no regard to the workability of the status quo, and the fact that most people are happy with it and the stability that it offers to the lucky country.[15]

2.21 Submissions of a similar viewpoint added that it would be inappropriate to change Australia's current system to a republic when the record of republics in the world was not one of stability.[16]

2.22 Major-General Digger James argued that many migrants came to Australia for its freedoms and way of life, and that many Australians had fought and died in wars to protect that way of life.[17]

2.23 National Convenor for Australians for Constitutional Monarchy (ACM) Professor David Flint argued that the retention of the Crown in our system of government ensures that there is leadership above politics.[18] Professor Flint told the Committee:

> Once you move to a republic you run into the danger of the [head of state] having a mandate or behaving politically. … Some of the best Governors-General of this country … have been former politicians and fulfilled their positions superbly, because they have accepted that they must abide by the rules which apply to the Crown. It is very hard to replicate the Crown in the Westminster system.[19]

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14 *Submission 285*, p. 1.

15 *Submission 423*, p. 1.

16 For example Major-General Digger James, *Committee Hansard* 29 June 2004, p. 1; AB & GM Francis, *Submission* 371, p. 1.

17 *Committee Hansard* 29 June 2004, p. 1.

18 *Committee Hansard,* 13 April 2004, p. 75.

19 *Ibid*.

2.24 Some submissions also argued that Australia already has an Australian head of state, that is, the Governor-General. This issue is addressed in Chapter 5 of this report.

2.25 A large number of submissions questioned the holding of the inquiry itself, arguing that an Australian republic was rejected at the referendum held in 1999, and that it was inappropriate to expend resources on the issue again. Mr Stewart Hespe, of the Australian Monarchist League (AML) contended that the inquiry was biased[20], and was a waste of taxpayer's money, telling the Committee:

> This matter was decisively decided by the people of Australia in a referendum in a constitutional way and we still have this sort of activity going on.
>
> …
>
> We are very concerned about the use—or misuse—of public moneys … This is money that could have been well spent on much more important issues. [such as] on public transport, hospitals, schools…[21]

2.26 Proposals to conduct plebiscites that would gauge public opinion regarding the republic issue were also questioned in many submissions. This issue is discussed in Chapter 4 of this report.

20 *Submission 42*, p. 1.

21 *Committee Hansard,* 13 April 2004, pp. 1 & 2.

# CHAPTER 3

# THE PROCESS: THEMES ARISING IN EVIDENCE

## Introduction

3.1 As part of the terms of reference for the inquiry, the Committee was required to look at the most appropriate process for moving towards the establishment of an Australian republic with an Australian head of state. The next two chapters address this term of reference.

3.2 As discussed in the previous chapter, the process undertaken in 1998 and 1999 involved a deliberative constitutional convention of appointed and elected delegates, followed by a referendum to amend the Constitution. Various proposals for a future process have since been put forward, including processes that would involve not only conventions and referendums, but also plebiscites to gauge public opinion.

3.3 The following chapter will discuss the different components of a possible future process. This chapter discusses themes that have arisen in submissions and evidence in relation to a future process, most notably:

- the importance of Australians engaging in and feeling ownership of any future process;
- the need for an information campaign to ensure Australians are fully educated in the options that may be put to them; and
- the timeframe for any future process.

## The importance of engagement

3.4 A recurring theme in submissions and evidence to the Committee was that it was important for Australians to engage in and to feel ownership of any future process in the move towards an Australian republic. This section of the report discusses that evidence.

3.5 Several submissions argued that there were important lessons to be learnt from the experience of the 1998/99 convention/referendum process. Arguing that people felt alienated from the process, Mr Bill Peach told the Committee that Australians felt distanced from a debate being conducted by people they didn't understand.[1]

3.6 Professor George Winterton commented that it was important to avoid the experience of 1999:

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1 *Committee Hansard,* 13 April 2004, p. 49.

> In 1999 many electors resented the fact that they were given no choice of models but only, as they saw it, a take it or leave it referendum decision.[2]

3.7 The ARM put forward that it was vitally important that Australians have ownership of their republic.[3] Ms Allison Henry, National Director of ARM, told the Committee that Australians want their voices to be heard[4] and that:

> … the move to an Australian republic should be driven and owned by the Australian people. The republic should suit the temperament and traditions of our democratic, egalitarian culture. The Australian people should be consulted every step of the way in the making of it.[5]

3.8 Professor George Williams emphasised the importance of engagement of Australians:

> To my mind a republic is important, but almost as important—and in some ways more important—is the capacity for Australians to engage in changing their own constitution in a way that makes them feel empowered and that their vote actually matters, as opposed to them having a say at the end in rejecting something. If we can actually amend this process in a way that gives people a sense that they really are involved, it is their constitution and it is their system of government, that may be at least as significant an outcome as actually getting a republic in the end.[6]

3.9 Dr Mark McKenna pointed out that full engagement of the people was an important part of the democratic process:

> Without legitimacy, which can only come through a fully open and democratic process, any republic model will struggle to gain the approval of a majority of voters and states in a national referendum. Opponents of any model are more likely to accept the final outcome if they feel they have been given a chance to put their view. A fully democratic process is the only means of fostering the spirit of compromise that may well be necessary if the republic is to be realised in our lifetime.[7]

3.10 It was a general theme of evidence received that a process that included components such as plebiscites and/or a fully-elected convention is desirable if

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2 *Committee Hansard,* 13 April 2004, p. 61.

3 Mr Richard Fidler, *Committee Hansard,* 13 April 2004, p. 28.

4 *Committee Hansard,* 13 April 2004, p. 27.

5 Ibid

6 Ibid, 13 April 2004, p. 43.

7 *Submission 201*, p. 1.

Australians are to become engaged. Mr Rod Kendall argued that the plebiscite process has tremendous value in re-engaging the public, and told the Committee:

> … the plebiscite process has the ability to give the people a say in the process and make their opinion valued, instead of people just being faced with a referendum where all the decisions have been made beforehand. [8]

3.11 Plebiscites are discussed further in Chapter 4.

3.12 The Committee also heard evidence that all Australians should be engaged and consulted in the process. Dr Mark McKenna recommended that Indigenous Australians should be involved in a process for moving towards a republic, and should be fully consulted and engaged in that process.[9]

3.13 The Committee heard evidence that the issue of a republic was not a high priority for many Australians. Professor Greg Craven was pessimistic about the success of any attempt to engage Australians in the issue of a republic. He told the Committee:

> [Australians] 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.[10]

3.14 Mr Eric Lockett agreed, saying:

> I would say that in relation to this particular issue you have an uphill battle, because it is not an issue with the public. … there is a small minority that believe the issue has already been resolved. There is another minority that never will accept that it is resolved until it is resolved the other way. But the majority would more likely say, 'What's on TV tonight?'[11]

3.15 Dr Barry Gardner described the lack of interest in the republic debate of 1998/99, and agreed that getting people interested in the issue now was a problem. He told the Committee:

> It is hard to get people interested in things. There is a kind of soulless cosmopolitanism, centred around electronic media and brand names, which seems to have descended over the whole world. You can offer information but people do not necessarily want to take it up.[12]

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8 *Committee Hansard,* 29 June 2004, p. 20.

9 Ibid, pp. 42-43.

10 *Committee Hansard,* 18 May 2004, p. 6.

11 *Committee Hansard,* 20 May 2004, p. 5.

12 Ibid, p. 24.

3.16 Mr Jack Hammond commented that there needs to be some catalyst that excites people's interest, and that the external catalyst which was likely to achieve this would be the death or abdication of the Queen.[13]

3.17 Mr David Morris, Convenor of ARM in Tasmania disputed the contention that people are not interested in the issue of an Australian republic. He told the Committee:

> In my strollings around Tasmania talking to people in the community consultations that we run as the Australian Republican Movement, and when I bump into people in shops, offices and all over the place, almost on a daily basis people remind of how passionate they are as well about this issue. So I think it is an issue that is alive and well; it is just not 'the' issue on the front pages of the newspapers at the moment.[14]

3.18 The Committee notes that the inquiry attracted over 700 submissions, a noteworthy level of interest in the issue.

## The need for education

3.19 It was recognised in many submissions that any process that sought input from Australians would need to be accompanied by an extensive information and education program.

3.20 Mr Rod Kendall emphasised the importance of an information campaign, and argued that those who were poorly-informed would not have the confidence to consider change. He told the Committee:

> One of the accusations made by opponents of the republic in 1999 was that the republic was just something that the elites wanted. Such accusations are effective when people have poor knowledge of the system as it works now. When they do not understand how the current structure functions it makes it difficult to evaluate the changes being sought. Scare campaigns do not need much information to be effective, whereas campaigns arguing for change must provide adequate information for people to be confident to vote for the change.[15]

3.21 Professor George Williams echoed this sentiment, submitting that:

> I think we need to overcome the fact that perhaps the most successful argument in recent referendums has been the argument: 'Don't know? Vote

13 *Committee Hansard,* 29 July 2004, p. 6.

14 *Committee Hansard,* 20 May 2004, p. 26.

15 *Committee Hansard,* 29 June 2004, p. 18.

> "no"'. Until we can overcome that argument, it seems unlikely that many referendums will be passed.[16]

3.22 It was also submitted that the cost of holding a ballot demands that an extensive information program be conducted beforehand. Mr Rod Kendall told the Committee:

> I think it is a waste of time spending all the money on holding the actual ballot, which is expensive, if the information campaign does not run beforehand. If the people make a decision, either for or against a republic, based on information which they have, then whatever the cost it is justified. But if you run a ballot, with all the expense that entails, and the information is not there for them to make the best judgment they can, either way, then I think we are doing a disservice and really wasting money.[17]

3.23 Professor David Flint, representing ACM, argued that there was a need for more education about how Australia's current system of government worked:

> There is not enough civics education in this country. People do not know enough about their Constitution. We think that would be a first step before we make such a substantial constitutional change at great potential cost without necessarily achieving what is intended to be achieved.[18]

3.24 Mrs Janet Holmes a Court supported civics programs in schools to improve the level of knowledge about Australia's system of government. She told the Committee:

> 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.[19]

3.25 Mr David Morris, Convenor of ARM in Tasmania, put forward that it was necessary to first have a discussion about national identity and values, before an education program about the constitutional issues.[20] He told the Committee:

> If we start it the other way around we do lose people. It is pretty boring if you are a school student, or an adult anywhere in the Australian community, to be engaged in a discussion about constitutional change. Unless you are a lawyer or, with all due respect, a member of parliament, it is just too dry for

16 *Committee Hansard,* 13 April 2004, p. 41.

17 *Committee Hansard,* 29 June 2004, p. 22.

18 *Committee Hansard,* 13 April 2004, p. 74.

19 *Committee Hansard,* 18 May 2004, p. 31.

20 *Committee Hansard*, 20 May 2004, p. 30.

> most people. The way to approach it is to have this discussion about our national identity that does get people passionate.[21]

3.26 The means of conducting an education program was the subject of some discussion at Committee hearings. Some questioned the effectiveness of detailed written material in educating the public. Mr Bob Holderness-Roddam, an adult educator, told the Committee:

> About 50 per cent of Australians are not used to using print based material to obtain information. Almost 50 per cent have some literacy related challenges in their lives in some way, whether they be new Australians or whatever.[22]

3.27 Professor George Williams questioned the effectiveness of the printed material distributed ahead of the 1999 republic referendum:

> Last time, it was a 71-page booklet, and it was difficult to find any Australian who actually read that booklet from beginning to end. I remember taking a poll of one of my classes—160 students—and I came across one student who had actually read the booklet from beginning to end.
>
> [The yes/no case booklet] is the key educative process in the current machinery, and from my experience it has demonstrably failed in educating Australians, not only because it comes at the very end of the process, when it is almost too late for people to learn about these issues, but because it is such a partisan document with little or no opportunity for separating out the key underlying constitutional material that people understand. It is unable to do its job of educating Australians satisfactorily.[23]

3.28 Professor Williams argued for the preparation of basic, factual information in the lead-up to referenda, and suggested reforming the legislation governing the conduct of referendums *(Referendum (Machinery Provisions) Act 1984* (Cth)) to allow for a more effective process that "would clearly separate the basic information required by Australians to cast their vote, from the partisan arguments of the Yes and No cases".[24] Professor George Winterton concurred, telling the Committee:

> I think it is regrettable that the 'yes' and 'no' cases are produced by the proponents rather than by some sort of independent body.[25]

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21 Ibid

22 Ibid, p. 13.

23 *Committee Hansard,* 13 April 2004, p. 41.

24 *Submission 152*, p. 3.

25 *Committee Hansard,* 13 April 2004, p. 65.

3.29 The importance of using other media including television and radio was supported in other submissions.[26] Mr Bob Holderness Roddam told the Committee:

> I think we have to look at how most people get their information these days—from television. If you are going to start putting stuff on television, you start to talk big money and budgets. However, this is probably the single most important decision that Australia is going to make this century, and perhaps it has got to be prepared to finance the information out there. You need a decent series of short—maybe five-minute—television discussion starters … and maybe on radio as well …[27]

3.30 Mr Rod Kendall described how TV advertising had been used in the 1977 plebiscite on a national anthem,[28] and emphasised the importance of TV and radio as an information source for those who have not recently been in the formal education system. He told the Committee:

> You need to reach a huge number of people who have left the education system some time ago perhaps, so the only way to do that in this day and age is through television and radio advertising.[29]

3.31 The use of the Internet and forms of web-based education was raised as a possibility,[30] however it was also pointed out that not everyone has access to the Internet.[31]

3.32 Professor George Williams emphasised the importance of targeting education and engagement at the local level, not just at a national level. He put forward the example of the community consultation process undertaken by the Australian Capital Territory (ACT) Government when it was formulating its new Bill of Rights. Professor Williams submitted that much could be learnt from the ACT approach:

> The ACT Government did not pre-empt debate with its own preferred model, but engaged in a lengthy period of consultation that allowed for community engagement and education. This involved an appointed Committee that held town meetings and many consultations with

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26 For example, Mr John Pyke, *Committee Hansard,* 29 June 2004, p. 14.

27 *Committee Hansard,* 20 May 2004, p. 13-14.

28 *Committee Hansard,* 29 June 2004, p. 19.

29 Ibid, p. 22.

30 For example Professor George Williams, *Committee Hansard,* 13 April 2004, p. 41.

31 Mr Bob Holderness-Roddam, *Committee Hansard,* 20 May 2004, p. 14.

> community and expert groups. The Committee also sought submissions from the public and commissioned a deliberative poll of ACT residents.[32]

3.33 Professor Williams argued that local government "offers a perfect vehicle for trying to involve people in this [consultation] process … and is the logical body to try and work through it."[33] Professor Williams told the Committee:

> I would think about empowering local bodies with the information and skills needed to hold events whereby their communities can be educated and express views that could potentially be forwarded on to national bodies. They may be views on options, models or other matters. It is not a matter of polarising those groups but providing local entry points for debate. I think there ought to be targets for a forum for however many thousands of Australians ought to be able to attend such a forum.[34]

3.34 Mr Rod Kendall supported the use of local forums and meetings, but argued that it can only be one tactic. He noted the poor turnout of people to the local constitutional conventions conducted by the Constitutional Centenary Foundation in 1997 and 1998, and also to the local forums held as part of the consultation into the ACT Bill of Rights, and told the Committee:

> … [local meetings] are cases of people having to go to the information. What is needed is information going to the people. This really means radio and television advertising. That is the only way to reach large numbers of people.[35]

3.35 The appropriateness of using local government as a forum for disseminating information and conducting community consultation was questioned. Mr Andrew Cole, a local government councillor in South Australia, told the Committee:

> I think that is going to be a difficult thing if local government is … seen running and supporting community forums or open forums, [and] that it is not seen by the community as an appropriate role for local government to be involved in. It is seen as a federal government/state government area as far as a body that moves those programs through. I think you would find the comments from ratepayers will be: why is local government involved when it is really not their area of operations and what are we paying our rates for?[36]

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32 *Submission 152*, p. 3.

33 *Committee Hansard,* 13 April 2004, p. 43.

34 Ibid, p. 42.

35 *Committee Hansard,* 29 June 2004, p. 19.

36 *Committee Hansard* 19 May 2004, p. 16.

3.36 Other evidence to the Committee, however, suggested that the appropriateness of local government as a forum for community deliberation may vary from council to council, and may be suitable in some, but not other, councils.[37]

3.37 Another option for community education about republic models suggested to the Committee was the use of small, localised study circles. Mr Bob Holderness-Roddam, an adult educator, explained the benefits of bringing together people in small discussion groups facilitated by trained adult educators. Those people could then go out and participate in discussion in the community at an informal level. Mr Holderness-Roddam told the Committee:

> The results of these learning circles will hopefully be that you have a cadre of reasonably well-informed people who understand the issues and the basics of the six [ARM] models, then they can go out into the community and participate in discussions at an informal level, whether it be in pubs, clubs, workplaces or wherever people meet up.[38]

3.38 Mr Holderness-Roddam emphasised the importance of focussing on deliberation and discussion, rather than debate, which was intrinsically adversarial:

> Having participated in debates at school, university and in Rostrum on occasions, I am disillusioned with the term 'debate'. Debate tends to polarise—generally there are a few leaders in the process and the rest of the people are sitting on the sidelines cheering, booing, hissing or whatever, as the feeling takes them. Deliberation seeks to tease out the options and to find common ground—and that is really what this process has to be about.[39]

3.39 Mr Holderness-Roddam recommended that the Adult Learning Australia organisation be funded to develop a study circles resources kit based on different models for a republic. Adult Learning Australia could provide the facilitators for the study circles.[40] He agreed however that it may be difficult to get people to come along to study circles, asking:

> … how do you sex up what is basically a rather boring topic for a lot of people?[41]

3.40 The Aboriginal and Torres Strait Islander Commission submitted that the process for moving towards an Australian republic must be open, accessible, and

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37 Mr Bob-Holderness-Roddam, *Committee Hansard,* 20 May 2004, p. 17.

38 *Committee Hansard*, 19 May 2004, p. 12.

39 *Committee Hansard,* 20 May 2004, p. 11.

40 Ibid

41 Ibid, p. 13.

clearly explained to Indigenous people.[42] Dr Mark McKenna suggested that to reach Indigenous Australians it may be appropriate to employ existing networks of the Indigenous bureaucracy, and to appoint certain Indigenous people with high profiles as communication facilitators.[43]

3.41 The ARM argued that it was important to use not just one but several methods to reach Australians in any education program. Professor John Warhurst, Chair of ARM, told the Committee:

> The real challenge, I think, is to get to the 99 per cent of the community for whom life goes on and this will be not the main event in their lives but will be one on which they want to be trusted to take a decision. They want enough information but not too much, and they want it in a form that suits their particular needs. For some generations and some people that might mean extensive use of the Internet. For others it might mean extensive use of local communities. For others it might mean extensive use of the print media or television and radio. Using a combination of all of these things, we hope to reach as many people as possible.[44]

3.42 The ARM also argued that an education program would be most effective when conducted in the context of plebiscites. ARM Chair Professor John Warhurst told the Committee:

> I think discussion and education in the abstract is going to be more difficult than the discussion and education which will take place around particular questions being put to the Australian community. Putting these questions to the Australian community and surrounding them with some education which will enable people to better appreciate the intricacies of these questions is an ideal democratic method to proceed with.[45]

3.43 Professor Warhurst also put forward that the education process may take time. He told the Committee:

> The experience with constitutional education in 1999 showed that trying to explain the present situation, the changes that you propose and the impact of those changes is something that is best done again and again, and often by trained educators or people who have experience in interacting with the community. It is certainly not something that is done in 10 minutes; it is

42 *Submission 112*, p. 2.

43 *Committee Hansard,* 29 July 2004, p. 44.

44 *Committee Hansard,* 13 April 2004, p. 34.

45 Ibid, p. 32.

> something that is done often in a couple of hours, working with a small group, as we do with our own groups on a regular basis.[46]

3.44 The ARM emphasised its role as a facilitator in the republic debate, but argued that in the future it may be another organisation or the Parliament that takes a leading role. Ms Allison Henry told the Committee:

> Since the 1999 referendum, the Australian Republican Movement has recognised that we may not necessarily have a continuous leading role in this debate. At various times we have suggested it may be better for the ARM to step back from parts of the process and leave it to other organisations or the parliament itself to take up the lead in that time.
>
> ... At the moment … our role is to try and put these arguments before the Australian people and act as a facilitator, but in the future it may not necessarily be such a leading role.[47]

3.45 Professor George Williams argued that any education campaign should be a government-sponsored process, and that the ARM and other groups with a particular viewpoint were not appropriate to perform such a function. He told the Committee:

> I do not think bodies like the ARM or the ACM can possibly do that function. They need the opportunity to engage in a government or parliament sponsored process. They are simply not the right bodies to be engaging in the sort of debate where people can put views from both sides. They need to be participants in that debate; they ought not to be the originators of it or the ones who carry it. It is impossible for them to do so, and that is why ultimately you have to have a government sponsored process that still builds in the parties fairly and appropriately.[48]

## Timeframe

3.46 The time period that a republic process may take was also raised. Mr Andrew Newman-Martin saw the process happening in relation to the electoral cycle:

> Ideally, the entire process including the referendum should fit comfortably within one term of a government. This will avoid potential problems from changes in government with consequent changes in policy (for example, a situation in which under a Labor government a models plebiscite records a win for direct election, but a subsequent Coalition government refuses to hold the referendum because of its opposition to direct election).[49]

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46 Ibid, p. 35.

47 Ibid, p. 36.

48 Ibid, p. 44.

49 *Submission* 107, p. 31.

3.47 Professor George Williams suggested a three to five-year process involving community participation, plebiscites and a convention. He argued:

> ... it is difficult to do it with a much shorter process. Otherwise, we would be simply seen as rushing into another referendum once the momentum has built up. It must be done differently from last time; otherwise, why would Australians vote any differently?[50]

3.48 A measured approach to the community education process was also suggested. Mr Bob Holderness-Roddam put that it should take 18 months to two years, and told the Committee:

> Hasten slowly—if we rush things, we will lose it again. We have to give people time. It also takes a while to rev people up to get this back onto the agenda.[51]

3.49 Some suggested that a multi-question plebiscite should be held as soon as possible, in conjunction with the next Federal election.[52] Mr Bill Peach was not of this view, arguing that a (multi-question) plebiscite should not be held until 12 months after an announcement of a plebiscite, to allow for full community discussion.[53] Mr Peach pointed out that the process in the 1890s leading towards Federation had taken time:

> Federation took 11 years to achieve after the first constitutional convention, and that painful process included a failed first referendum. If we can achieve

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50 *Committee Hansard,* 13 April 2004, p. 44.

51 *Committee Hansard,* 20 May 2004, p. 12.

52 For example, Mr Peter Murphy, A Just Republic, *Committee Hansard,* 13 April 2004, p. 80. At the time of writing an election was due within months, by April 2005.

53 *Committee Hansard,* 13 April 2004, p. 51.

> a republic with an Australian head of state by 2009, we will exactly match the record of the founders of the Federation. [54]

3.50 Others saw an even longer process. Ms Clare Thompson, a delegate at the 1998 Convention, told the Committee:

> 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.[55]

54 Ibid, p. 46.

55 *Committee Hansard,* 18 May 2004, p. 36.

# CHAPTER 4

# THE PROCESS: COMPONENTS AND PROPOSALS

4.1 This chapter addresses the different components of a possible future process for moving towards an Australian republic, and discusses evidence received regarding:

- plebiscites;
- constitutional conventions;
- parliamentary committees;
- referendums; and
- other proposals.

4.2 As mentioned in Chapter 2, the issue of a suitable process for moving towards an Australian republic was discussed at the two-day Corowa Conference in December 2001. A number of proposals were put forward, and the Conference formally adopted a process involving a parliamentary committee, a multi-question plebiscite, an elected constitutional convention and a referendum. This proposal is discussed in the latter part of this chapter.

## Plebiscites

4.3 A plebiscite is defined by the Shorter Oxford Dictionary as:

> A direct vote of the whole of the electors of a state to decide a question of public importance.[1]

4.4 The Australian Electoral Commission notes that plebiscites are also known as advisory referendums, and that they are not binding on government, unlike the result of a Constitutional referendum.[2] Plebiscites have been held on occasion in Australia, on questions such as military service in 1916 and 1917, and in 1974, when "Advance Australia Fair" was chosen by voters as the official national song.[3]

4.5 The discussion surrounding plebiscites in the current republic debate has tended to centre on the possibility of asking two particular questions. The first question is

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1 Shorter Oxford Dictionary, Oxford University Press, London, 1967.

2 Australian Electoral Commission fact sheet "Advisory Referendums (also called plebiscites)", at www.aec.gov.au/_content/when/referendums/advisory.htm accessed 6/07/2004

3 Constitutional Centre of Western Australia website, www.ccentre.wa.gov.au/html/referednum/exh_ref2.php accessed 6/07/2004.

essentially: "Do you want a republic? Yes or No?" This question is often referred to as the threshold question.

4.6 The second question mooted asks Australians: "What sort of republic do you want?", and is usually proposed as a multi-choice question, with three or four republic models offered as options.

4.7 Other plebiscite questions have been proposed, including a question that seeks the preferred title for an Australian head of state.

4.8 This section looks at:

- The value of plebiscites;
- A threshold plebiscite question?
- A second plebiscite question with a choice of models?
- Other plebiscite questions?
- Separate or concurrent plebiscite questions?
- Timing of plebiscites: in conjunction with elections or not?
- Plebiscites: compulsory or voluntary voting?
- Plebiscites: method of counting votes?

### *The value of plebiscites*

4.9 The Committee received evidence arguing the merits of holding plebiscites. Professor George Williams argued that plebiscites give the people an opportunity to express their point of view. He told the Committee:

> A plebiscite is a glorified opinion poll; it does not have any constitutional significance whatsoever but it does have significance in that it provides a focal point for people to express their view. I think there are too few opportunities for the Australian people to express their view on basic questions. It is a matter of respecting their entitlement to get involved in the process at an earlier stage than the final vote.[4]

4.10 Professor Williams also argued that Australians do want to vote on crucial questions, and that they would want that opportunity before a referendum.[5] He told the Committee:

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4 *Committee Hansard,* 13 April 2004, p. 42.

5 Ibid, p. 42.

> One of the reasons I support a plebiscite is that you do need on occasion national focal points for debating these issues, and you need focal points earlier in the debate than the referendum itself. It is too late at that point. A plebiscite allows the different sides to debate the issue.[6]

4.11 The ARM submitted that plebiscites are "enormously valuable,"[7] and Dr Klaus Woldring of Republic Now! pointed to the educative value of plebiscites, saying that:

> I believe that a process of plebiscites will have a great educational function. It will create debate about detailed issues of the Constitution and the political system.[8]

4.12 Some contributing to the inquiry questioned the appropriateness of incorporating plebiscites into a process for moving towards an Australian republic. Professor David Flint representing ACM told the Committee that:

> … there should not be a government-paid legislated plebiscite to vote on whether to change the Constitution except by a referendum.[9]

and that:

> A plebiscite would be like a very expensive opinion poll except that it would be given official sanction.[10]

4.13 ACM argued that the holding of plebiscites was irresponsible, submitting that:

> … the republican proposal to use a cascading series of plebiscites includes the grossly irresponsible invitation to the people to cast a vote of no confidence in one of the world's most successful constitutions, without having in place, and with no guarantee of finding an alternative. This is a recipe, if ever there were one, for a long period of constitutional, financial and other instability.[11]

4.14 AML argued that plebiscites have no legal meaning and are not governed by any legal process.[12] Mr Stewart Hespe of AML was wary of the use to which plebiscites could be put, telling the Committee:

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6 Ibid, p. 42.

7 Professor John Warhurst, *Committee Hansard,* 13 April 2004, p. 31

8 *Committee Hansard,* 29 June 2004, p. 78.

9 *Committee Hansard,* 13 April 2004, p. 70.

10 Ibid, p. 71.

11 *Submission 455*, p. 4.

12 *Submission 42*, p. 4.

> [Plebiscites] can … be manipulated by the people that are using them to create the sort of answer that they want.[13]

### *A threshold plebiscite question?*

4.15 Many submissions argued in favour of a threshold question to gauge support for Australia becoming a republic. The ARM argued that it was important to test the proposition that majority support already existed, before taking any further steps towards a republic. Professor John Warhurst told the Committee:

> The contention has been made that there are opinion polls that suggest majority support for a republic does exist and has existed for a long time. I think it is time to test that proposition. We need to test that proposition before we can justify the expense, effort and energy of proceeding any further. In that sense, that first initial threshold plebiscite is certainly justifiable to test whether we need to expend all that effort and time in proceeding any further.[14]

4.16 Professor George Winterton supported this view, stating:

> Since the Australian electors rejected an Australian republic in the November 1999 referendum, it would be appropriate to seek their approval through a plebiscite before expending substantial further resources on this question.[15]

4.17 Mr Rod Kendall argued that a threshold question was important in the future definition of the nation:

> [A threshold question] enables the Australian people to clearly indicate the direction in which they want their nation to go. It can draw a line in the sand between our monarchical past and a republican future.[16]

4.18 Professor Winterton commented that the authority of a threshold plebiscite result of only a small majority Yes vote (for example 51 per cent) could be questioned.[17]

4.19 The wording of the threshold question was regarded by many as being crucial. Mr Andrew Newman-Martin argued that simply asking whether Australia should "become a republic" was too abstract,[18] and Mr Bill Peach argued that to ask "Do we

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13 *Committee Hansard,* 13 April 2004, p. 5.

14 Ibid, p. 31.

15 *Submission 319*, p. 7.

16 *Committee Hansard,* 29 June 2004, p. 18.

17 *Committee Hansard,* 13 April 2004, p. 64.

18 *Submission 107*, p. 34.

want a republic?" was not appropriate, given the "vague and sometimes negative impressions the word 'republic' conveys".[19]

4.20 Several submissions suggested a wording of the threshold question that would make clear that the proposed change involved separating from the British monarchy. Suggested wording included:

> "Should Australia become a republic in which the Queen and the Governor-General are replaced by an Australian Head of State?"[20]

and:

> "Do you agree that Australia should become a republic with an Australian as head of state to replace Queen Elizabeth and her representative in Australia, the Governor-General."[21]

and:

> 'Which do you favour: (1) an Australian to be our head of state; or (2) the Queen to remain our head of state.'[22]

and:

> *Tick one*
> "Should Australia become a republic with an Australian head of state?
> OR
> "Should we remain as a monarchy with the Queen as our head of state?[23]

4.21 Dr Mark McKenna argued that the term "Australian head of state" should not be used, because it would allow anti-republicans "to muddy the waters by running the predictable lie that the Governor General is already an Australian Head of State."[24] He instead suggested using the term "republican head of state" and the question:

> Should Australia become a republic with a republican Head of State or should it remain a constitutional monarchy?[25]

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19 *Committee Hansard,* 13 April 2004, p. 47.

20 Mr Andrew Newman-Martin, *Submission 107*, p. 34.

21 Mr Rod Kendall, *Submission 456*, p. 2.

22 Mr Bill Peach, *Committee Hansard,* 13 April 2004, p. 47.

23 *Submission 471*, p. 32.

24 *Submission 201*, p. 2.

25 Ibid.

4.22 Dr Barry Gardner favoured a wording of the threshold question that would make it clear that Australians would be consulted before any further step was taken:

> I would like to see the question posed in stage one somehow allude to the second process— something along the lines of: do you favour Australia becoming a republic through the use of a model approved by a majority of the Australian people?[26]

4.23 Dr Gardner was addressing the concern raised by several submissions that a stand-alone threshold plebiscite question would fuel accusations that voters were being asked to sign a "blank cheque", without knowing what kind of republic would eventuate. This issue is addressed in a later section of this chapter.

### *A second plebiscite question with a choice of models?*

4.24 A second plebiscite question gauging support for different republic models was seen by many as an important element of Australians "owning" the process. Mr Richard Fidler of ARM told the Committee:

> I think a second plebiscite is important, particularly to enfranchise people and give them a sense of ownership of what kind of republic they want. We suspect that people want a much greater say in the kind of republic they want. Much of the feedback we received during our process of consultation was that the Australian people felt that they were not asked enough questions—that they were not consulted closely enough about the kind of republic they wanted last time—so we feel any further process should go ahead and do that.[27]

4.25 The Australian Council of Trade Unions (ACTU) supported a plebiscite giving voters several options for selection of a head of state:

> In light of the defeat of the referendum proposal [in 1999], it is clear that the method of selection of an Australian head of state is an important issue about which the Australian people should be given a decision-making role. For this reason, the ACTU supports a process which includes at least one plebiscite putting forward a number of models for selection, including direct election.[28]

4.26 The question of which models would be included in a models plebiscite and of who would decide which models would be included is one on which the Committee received little evidence. Previous proposals for a models plebiscite have suggested the inclusion of four alternatives for the selection of head of state: prime ministerial

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26 *Committee Hansard,* 20 May 2004, p. 19.

27 *Committee Hansard,* 13 April 2004, p. 31.

28 *Submission 720*, p. 1.

appointment, parliamentary appointment, appointment by an electoral college, and direct election by the people. These and other proposed republic models are the subject of Chapter 7 of this report.

4.27 Some submissions raised the possibility that a models plebiscite may not result in a clear outcome. Ms Barbara Murphy submitted that:

> Although the option of a second plebiscite has democratic appeal it presents real problems. There may be no clear outcome, with support divided between two or more models, or, the model with most public support may be one with limited support from the major political parties.[29]

4.28 The ARM acknowledged this difficulty, and that a subsequent convention may need to examine options.[30] Similarly, Professor Winterton suggested that if two models had a similar level of support it would be appropriate to leave the final choice between them to an elected convention.[31]

4.29 Professor Greg Craven expressed his strong opposition to a plebiscite question on a range of models, preferring instead a convention to determine a model. He argued that a models plebiscite would lead to endorsement of a direct-election model, which would inevitably be defeated at a referendum. He told the Committee:

> 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.[32]

### *Other plebiscite questions?*

4.30 The process adopted by the Corowa Conference in 2001 and preferred by the ARM and includes a plebiscite question asking Australians the preferred title for an Australian head of state. Dr Mark McKenna argued against the inclusion of this question. He submitted that:

> The indicative plebiscite should not include a question on the title of the Head of State. This will only distract the electorate, taking valuable time and

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29 *Submission 308*, p. 1.

30 *Submission 471*, p. 41.

31 *Submission 319*, p. 8.

32 *Committee Hansard,* 18 May 2004, p. 2.

> public space away from … far more important questions ... The title of the Head of State can be decided by a convention. It is a peripheral issue.[33]

4.31 Mr Andrew Newman-Martin argued that the name given to a new head of state is not a trivial issue, but agreed that a question on this issue should not be included in a plebiscite, and instead should be resolved by a convention. He submitted that:

> At a plebiscite, most people will care little about the name of the Head of State of a possible future republic that may or may not ever come into existence. … It is much better to resolve this point authoritatively by a Parliamentary Joint Committee or a Constitutional Convention before the referendum.[34]

4.32 Dr Mark McKenna argued that a plebiscite question that addressed the recognition of Australia's Indigenous people in a preamble should be included. Dr McKenna argued that Australia cannot move towards a republic without acknowledging prior occupation of the land by Aboriginal people, and their status and rights, and suggested the following plebiscite question:

> In the spirit of reconciliation, should the preamble in a new republican Constitution acknowledge Aboriginal and Torres Strait Islander peoples, Australia's indigenous peoples, as the original occupants and custodians of our land?[35]

### *Separate or concurrent plebiscite questions?*

4.33 Much of the evidence received by the Committee favoured holding a threshold plebiscite and a models plebiscite at the same time. The higher cost of holding separate polls was one reason put forward for concurrent plebiscites. Professor George Williams told the Committee:

> … unless you go for a process that involves postal voting or some other process, which may well be realistic for this, you would be looking at roughly $125 million to hold a national vote. That is what the republic referendum cost. The cost of doing that three times seems like an awful lot of money to be using for a process like this.[36]

4.34 Apart from the cost-savings, a significant reason put forward for holding concurrent threshold and models plebiscites was to address the "blank cheque" argument that a Yes vote to the threshold question would be done without any say in

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33 *Submission 201*, pp. 2-3.

34 *Submission 107*, p. 28.

35 *Submission 201*, p. 2.

36 *Committee Hansard,* 13 April 2004, p. 43.

what kind of republic would eventuate. Mr Bill Peach stressed the advantage of the transparency of holding concurrent plebiscites:

> … it puts all the cards on the table. It does not just promise further changes down the track; it spells them out and it spells out that all the important choices are there.[37]

4.35 Former Senator Michael Beahan agreed, saying:

> … to simply have the one question would be a bit of an insult. There is a lack of trust in the public about the way we handled the last referendum, and I think they would say to themselves, 'We've been asked to vote yes or no, but we don't know what we're really voting for.'[38]

4.36 Professor George Winterton also argued it was important to put the threshold question in the context of specific republic models. He told the Committee:

> It is somewhat artificial to state whether one prefers a republic in abstract, since the true response must be that it all depends on what sort of republic is being referred to. As was seen in 1999, many direct-election republicans preferred the status quo to the 1999 model. Voting simultaneously on a particular republican model sets the context for, and gives specificity to, the initial general question.
>
> Some electors may fear that the Government will treat an affirmative answer to the initial question as a "blank cheque" and decline to consult the electors further. The electors must, of course, vote in a referendum before any constitutional alteration is made, but some electors may not realize this.[39]

4.37 Dr Mark McKenna submitted that not only would a stand-alone threshold question plebiscite be subject to "blank cheque" accusations, but opponents of a republic would be likely to argue that people were being denied their voice. He submitted:

> [Monarchists] will also argue that republicans are seeking to deny (yet again) the right of the people to 'have their say' on the issue of the republic model. Despite the fears of the political class concerning popular election, the electorate cannot be denied the opportunity to indicate their preference. Asking this question will also help to inform the body ultimately charged with drafting the necessary constitutional changes.[40]

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37 Ibid, p. 47.

38 *Committee Hansard,* 14 April 2004, p. 4.

39 *Submission 319*, p. 7.

40 *Submission 201*, p. 2.

4.38 It was submitted, however, that even holding concurrent threshold and models plebiscites would still not counter the blank cheque argument, because opponents of change would be able to make accusations that a constitutional convention subsequent to the plebiscites would have carte blanche to create the details of a republic.[41] To address this issue, a suggestion was made that a parliamentary joint committee could draw up fully worked-out models beforehand.[42]

4.39 Some submissions, whilst acknowledging the blank cheque argument against separately-held plebiscites, nevertheless contended that a stand-alone first plebiscite was preferable. Mr Rod Kendall favoured a separate threshold question, arguing that the threshold question and the models question should each occupy their own field of discussion. A majority Yes vote on a threshold question could then be followed by a debate and vote on the models question, on the foundation that that was the way Australians wanted to go forward.[43]

4.40 Mr Kendall also argued that a stand alone threshold plebiscite would enable an information campaign to focus on how the current system works and on what changing to a republic means, and a later information campaign associated with a models plebiscite could be conducted with details of models.[44] Mr Kendall was also concerned at the scenario of concurrent plebiscites where a majority No vote was recorded for a threshold question, and at the same time a model was chosen in the second question, when a republic had been rejected.[45]

4.41 As already mentioned, it was argued that the blank cheque argument of a stand-alone plebiscite could be addressed by wording the threshold question in such a way as to make it clear that Australians would be consulted in any further steps, with the question: Do you favour Australia becoming a republic through the use of a model approved by a majority of the Australian people?[46]

4.42 Mr Kendall submitted along similar lines, arguing that the blank cheque argument could be easily countered by laying out every step from the beginning, possibly in legislation. He submitted that:

> … by arguing that the threshold question is but the first step along the road to a republic, that the next step will be the debate on the type of republic, that the people will decide at every step and that the final step, the

41 Mr Andrew Newman-Martin, *Submission 107*, p. 26.

42 Ibid, p. 27.

43 *Committee Hansard,* 29 June 2004, p. 18.

44 Ibid, p. 19.

45 Ibid, p. 18.

46 Dr Barry Gardner, *Committee Hansard,* 20 May 2004, p. 19.

> referendum, is the only one that can bring the republic into being. There could also be legislative guarantees of the steps (other plebiscites, conventions, referendum) that would follow an affirmative vote on the threshold question.)[47]

4.43 The option of legislative guarantees of future voting opportunities, with dates specified, was also put forward by the ARM.[48]

4.44 Professor Greg Craven opposed the idea of concurrent plebiscites, because it would force conservative republicans (like himself) to vote No to both questions, since he believed success for direct-election in the models question would follow on from a Yes result to the threshold question, and conservative republicans would not want to risk that result. He told the Committee:

> The plebiscites held together 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.[49]

4.45 Professor Craven also put forward that holding concurrent plebiscites 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.[50]

### *Timing of plebiscites: in conjunction with elections or not?*

4.46 Whilst some suggested holding plebiscites in conjunction with a Federal election,[51] others favoured a separation of republic plebiscites from the political atmosphere of an election. Mr John Flower submitted that a plebiscite should not be held in the adversarial atmosphere of a general election, and argued:

> Moving to republican status and extensively amending the Constitution for that purpose are important enough for the cost of consulting the people separately from an election to be judged as immaterial.[52]

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47 *Submission 456*, p. 2.

48 Mr Richard Fidler, *Committee Hansard*, 13 April 2004, p. 33. Stephen Souter, *Submission* 526, pp. 109-110 also advocated legislative guarantees.

49 *Committee Hansard,* 18 May 2004, p. 5.

50 Ibid, p. 5.

51 For example Mr Peter Murphy, A Just Republic, *Committee Hansard,* 13 April 2004, p. 80.

52 *Submission 447*, p. 1.

4.47 Mr Andrew Newman-Martin was of a similar view, arguing that:

> … neither plebiscite should be held on the same day as a Federal election to avoid entanglement with party-political disputation and the other election issues of the day.[53]

4.48 The Committee notes however the observation made in some submissions that that holding plebiscites at the same time as a Federal election would be less costly.[54]

***Plebiscites: compulsory or voluntary voting?***

4.49 Evidence received by the Committee suggested a preference for compulsory voting in any plebiscites.[55] Professor George Williams argued in favour of compulsory voting, commenting that it would give the plebiscites legitimacy. He told the Committee:

> I personally would like a plebiscite to be compulsory because I support compulsory voting. It is important to give it democratic legitimacy in the same way that our other democratic processes build that in.[56]

4.50 Dr Walter Phillips thought that compulsory voting would indicate that the issue was being taken seriously, and told the Committee:

> I would … submit that if the plebiscite is to return a reliable result, it should be conducted on the same basis as our elections and referendums with compulsory and preferential voting. Optional voting, as was the case in the 1997 convention election, would suggest that the matter of the republic is not being taken seriously and it might lead to a poor turnout of voters as it did then.[57]

4.51 Dr Phillips submitted that the outcome of a non-compulsory-vote plebiscite with a poor turn-out would likely be challenged by opponents of a republic, and that a plebiscite result should be beyond dispute.[58]

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53 *Submission 107*, p. 33.

54 For example, Mr Bill Peach, *Submission 37*, p. 12; Mr Richard Fidler, *Committee Hansard*, 13 April 2004, p. 33.

55 For example, Mr Bill Peach, *Committee Hansard,* 13 April 2004, p. 48; Professor George Winterton, *Submission 319*, p. 8; Dr Barry Gardner, *Committee Hansard,* 20 May 2004, p. 21.; Mr Andrew Newman-Martin, *Submission 107*, p. 33; Mr Richard Fidler, *Committee Hansard*, 13 April 2004, p. 34.

56 *Committee Hansard* 13 April 2004, p. 42.

57 *Committee Hansard,* 14 April 2004, p. 9.

58 *Submission 219*, p. 1.

4.52 Mr Andrew Newman-Martin argued that although compulsory voting would be appropriate for a threshold question plebiscite, a models plebiscite may require a different approach. He submitted that:

> At the second plebiscite, there might be a case for voluntary voting so that those who are opposed to any kind of republic do not have to vote … (however) having compulsory voting in the second plebiscite is probably the best because it will preclude having an outcome at the plebiscite that is different from what would be obtained at a referendum.[59]

4.53 The Committee notes that to require compulsory voting in any plebiscite would necessitate legislation being passed by Parliament. The Committee also notes that there may be an argument that if voting in any plebiscite was made compulsory then it may be logical to time plebiscites to accompany general elections, when voters are compulsorily attending in any case.

### *Plebiscites: method of voting?*

4.54 The Committee did not receive a great deal of evidence on the question of the method of voting in a plebiscite. Mr Andrew Newman-Martin argued that a threshold plebiscite should only require a simple national majority to succeed and should not also require a states majority, because the plebiscite will not change the Constitution.[60]

4.55 In a plebiscite asking voters to choose between three or four models, Professor George Winterton argued in favour of preferential voting over a "first past the post" ballot:

> There is an argument here for first-past-the-post, viz. that the model put to referendum should be the one enjoying the strongest support, not that to which the electors object least. However, since the electors are used to preferential voting and would be suspicious of any departure from it, that method should probably be adopted. The method of voting should be "optional preferential" (in other words, electors can express up to four preferences but need not express more than one to cast a valid vote).[61]

## A constitutional convention?

4.56 In the course of its inquiry the Committee received submissions and evidence regarding the inclusion of a constitutional convention as part of the process in a move towards a republic, either in conjunction with plebiscites, or as a stand-alone mechanism for deliberation.

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59 *Submission 107*, p. 33.

60 Ibid, p. 34.

61 *Submission 319*, p. 8.

4.57 Several submissions emphasised the democratic value of conventions. The ARM submitted that:

> A Convention can act as a kind of clearing house for the contending visions of our republic. It adds another layer of democratic consultation.[62]

4.58 Dr Mark McKenna agreed, submitting that conventions have profound historical traditions in Australia, and are "the best means by which the people can be fully consulted."[63] He argued that a (fully-elected) convention was crucial to the legitimacy of the process,[64] and would:

> … deny anyone the opportunity of saying that the people have been kept at arms length from the decision-making process.[65]

4.59 Ms Clare Thompson, who was a delegate at the 1998 Convention, submitted that "the educative value to the community of conventions was significant."[66]

4.60 The 1998 Constitutional Convention considered amongst other things different models for a republic, and at its conclusion voted for a preferred model. A similar role for a convention in a future process for moving towards a republic was mooted by some. Professor Greg Craven argued in favour of a convention over a models plebiscite as a method for choosing which model should go to a referendum. He submitted that:

> Unlike [a models plebiscite], a Convention would genuinely consider all options in an atmosphere of debate: would continuously expose the strengths and weaknesses of each option; and would not anoint any option as the preferred model until that process was over, at which point as strong a model as possible would be put to the Australian people.[67]

4.61 Professor Craven expressed the view that a future election should be fully-elected, to enjoy credibility,[68] and that it could be supported by expert advisors, either

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62 *Submission 471*, p. 41.

63 *Submission 201*, p. 3.

64 *Committee Hansard,* 29 July 2004, p. 43.

65 *Submission 201*, p. 3.

66 *Committee Hansard,* 18 May 2004, p. 36.

67 *Submission 167*, p. 14.

68 Ibid

as officers or as non-voting members with speaking rights.[69] He also advocated that a convention should have detailed models before it:

> … fully elaborated models should be prepared as the basis for the Convention's discussions. This might be the task of a parliamentary committee, after a suitable inquiry. The 1998 Convention suffered seriously from the fact that, until its last few days, there was no real proposal to ground its debates.[70]

4.62 Some disadvantages of a "decide-which-model" function for a future convention were pointed out. Mr Andrew Newman-Martin argued that the outcome of such a convention may again, as in 1998, be the adoption of a parliamentary appointment model, which would once again fail at a referendum.[71]

4.63 The role for a convention more frequently discussed in this inquiry has been to work out the details of the model that has already been indicated as the preferred model in a preceding plebiscite, and to draft a constitutional amendment. This is the role for the convention proposed in the Corowa proposal, and in ARM's preferred process.

4.64 The timeframe for a convention was an issue raised in evidence. The ARM acknowledged criticisms that the 1998 convention, which ran for two weeks, had been too rushed.[72] Several submitters argued that any constitutional convention should be an unhurried affair, and that adequate time should be given for full consideration of the issues. Professor Greg Craven submitted that the short time period allowed for the 1998 convention was "ludicrous", and that:

> Any future Convention should sit for as long as necessary to produce a fully detailed proposal; should approve an actual draft; and should re-convene after that draft has been given a long exposure to the electorate, for the purpose of considering and making amendments.[73]

4.65 Mr Peter Murphy, of A Just Republic, told the Committee that a convention should:

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69 Ibid; Mr Dominic Pelligrino, *Submission* 461, p. 6 was of a similar view.

70 *Submission 167*, p. 14.

71 *Submission 107*, p. 35.

72 *Submission 471*, p. 41.

73 *Submission 167*, p. 14. Other submissions supported a convention being given sufficient time, for example Dr Mark McKenna, *Submission 201*, p. 3.

> … have perhaps one year at least to do its work, because the Constitution is not really amenable to a find and replace process on a computer.[74]

4.66 Practical difficulties arising from an extended convention process were pointed out, however, including the logistics of organising such a convention, and the ability of delegates to take an extended period of time away from work and family to attend a convention in another city.[75] It was suggested that convention process may require holding staggered meetings over time, with the convention adjourning and reconvening as required.[76]

4.67 It was also argued that a convention should not be held in Canberra, and not in Old Parliament House. Mr Andrew Newman-Martin put forward:

> It is important that people not feel we are simply going over old ground again. The Convention should probably be held in Sydney or Melbourne, if possible outside the inner-city area.[77]

4.68 Professor George Williams endorsed a fully-elected convention, supporting the argument that "those who make the decisions on the floor of the convention ought to be chosen by the people themselves."[78] He was also in favour of constitutional experts being available to advise the Committee:

> I would also build in advisory capacity—perhaps non-voting capacity—for experts and others who ought to be there.[79]

4.69 A submission from Women for a Republic advocated that 50 per cent of delegates to a convention should be women.[80] Representation by Indigenous Australians was also put forward as an aim.[81]

4.70 The Committee received little evidence on the question of compulsory/voluntary voting for convention delegates, but notes that the ARM put forward that this question

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74 *Committee Hansard,* 13 April 2004, p. 80.

75 Mr Andrew Newman-Martin, *Submission 107*, p. 37.

76 Mr Dominic Pellegrino, *Submission 461*, p. 6; Dr Mark McKenna, *Committee Hansard*, 29 July 2004, p. 43.

77 Mr Andrew Newman-Martin, *Submission 107*, pp. 36-37.

78 *Committee Hansard,* 13 April 2004, p. 44. Other submissions supported a fully elected convention, for example, Dr Mark McKenna, *Committee Hansard,* 29 July 2004, p. 43.

79 *Committee Hansard* 13 April 2004, p. 44. Other submissions supported the inclusion of an advisory body of experts, including the ARM, *Committee Hansard,* 13 April 2004, p. 28.

80 *Submission 476*, p.12.

81 Ibid; Dr Mark McKenna, *Committee Hansard,* 29 July 2004, p. 44.

could be left to the government of the day.[82] The Committee notes that compulsory voting would require legislative approval.

4.71 Mr John Pyke questioned the wisdom of holding a convention at all, favouring instead that the task of refining the details of the preferred model emerging from a multi-choice models plebiscite be given to a body of constitutional experts. He argued that even after a plebiscite there would be disagreement as to the basic direction ahead, and that a convention could include delegates who were opposed to the preferred process (which he thought would be direct election). Mr Pyke submitted that:

> There will be no room for recalcitrant monarchists or parliamentary-selection republicans in the drafting process – at a convention that represented all points of view there would be a temptation for them to keep raising issues that had really been disposed of by the plebiscite. [83]

4.72 Mr Pyke submitted that it is the referendum that will be the important democratic component:

> It is the final approval by referendum that is the vital democratic feature – drafting by an elected [convention] is a nice democratic "extra" when it will produce a workable document, but it is not essential to democratic legitimacy.[84]

4.73 Another reservation about having a constitutional convention as part of the process arose in evidence, seemingly related to the experience of the 1998 convention. Mr Bob Holderness-Roddam questioned whether conventions would give Australians a sense of ownership of the process, telling the Committee:

> We have to forget the big-ticket items of big national conferences and conventions. The vast majority of people feel disempowered and have no sense of ownership. They see big people up there making decisions and having the discussions for them and they are left, again, feeling disenfranchised and disempowered.[85]

## A parliamentary committee

4.74 The inclusion of a multi-party, joint parliamentary committee at some stage of the process was an option raised, and different proposals suggested different roles for parliamentary committees.

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82 *Committee Hansard,* 13 April 2004, p. 34.

83 *Submission 512*, p. 9.

84 Ibid, p. 9.

85 *Committee Hansard,* 20 May 2004, p. 11.

4.75 Tasking a parliamentary committee to determine which republic models should be included in a multi-choice models plebiscite is one possibility. The proposed process adopted by the Corowa Conference in 2001 begins with a multi-party parliamentary committee tasked with preparing a plebiscite, outlining the core features of models, and preparing neutral information for a plebiscite.[86] Similarly, ARM's preferred process proposes a parliamentary committee to prepare an extensive information campaign prior to the plebiscite process.[87]

4.76 Another suggestion mooted was that a parliamentary committee should create carefully worked-out draft models before any plebiscite process begins, thus undermining any "blank cheque" accusations.[88] In this proposal, a convention to work out the details of the "winning" model in a multi-choice plebiscite would not be necessary, since the parliamentary committee would already have done this work. An optional second parliamentary committee prior to the referendum to determine the final details of the model and the proposed new Constitution is also a component of this proposal.[89]

4.77 In the process preferred by Professor Greg Craven, a parliamentary committee would have the role of drafting fully articulated versions of several republic models to be subsequently considered by a convention, which would then decide on a preferred model.[90]

4.78 In the process preferred by Mr Jack Hammond, parliamentary committees of the eight parliaments in each state/territory would consider republic models, followed by consideration of those committees' outcomes by a Federal parliamentary committee. This Federal Committee would investigate and report on the various models that emerged from consideration by the state/territory committees. Subsequent to the report of the Federal committee, a national plebiscite would be held to determine the preferred model, for each state/territory, and for the Commonwealth.[91] The Council of Australian Governments (COAG) would coordinate and oversee this process.

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86 *Report of the Peoples Conference Corowa 2001*, Centenary of Federation Victoria, Melbourne, 2002, p. 25.

87 *Submission 471*, p. 42.

88 Mr Andrew Newman-Martin, *Submission* 107, pp. 34-35.

89 Ibid

90 *Committee Hansard,* 18 May 2004, p. 10. Professor Craven's preferred process was one of the three processes discussed on the final day of the Corowa Conference held in 2001.

91 Mr Jack Hammond, *Committee Hansard,* 29 July 2004, p. 2; also Mr Jack Hammond, *Submission 719*. This proposed process was one of the three processes discussed on the final day of the Corowa Conference held in 2001.

## Section 128 referendum

4.79 A referendum under section 128 of the Constitution will be the final step in any process in a move towards an Australian republic, since this is the only manner in which constitutional alteration can be achieved.

4.80 The conduct of referendums is governed by the *Referendum (Machinery Provisions) Act 1984*, which requires proposals for constitutional change to be posed as Yes or No questions. Submissions from representatives of Real Republic Ltd argued that this Act could be amended to allow for multi-choice referendums, which would enable a process involving solely a referendum.[92] The alternative models to be included in such a referendum could be constructed at a constitutional convention supported by constitutional legal advice.[93]

4.81 The Committee recognises arguments that there are cost-saving reasons for holding a referendum in conjunction with a Federal election. However Mr Andrew Newman-Martin argued that a referendum should not be held in conjunction with an election, submitting that:

> … presenting a future republic referendum on the same day an election would allow opponents to turn it into a party-political brawl and (depending on who is in government) claim it is purely a Labor Party proposal without any bi-partisan support. The republic issue would also become lost among the general issues of the election, an unacceptable situation given the importance of the republic to the future of Australia.[94]

## Other proposals

4.82 Professor George Williams offered the suggestion that an incremental approach to change may be possible, without rushing into a referendum and constitutional change. He put forward that as an interim measure it would be possible to change some existing procedures to incorporate greater popular involvement in the selection of the Governor-General. Professor Williams suggested that Australians could become involved in making nominations for the post, explaining that:

> Names should be sought from across the community as part of a public debate on the sort of person we would like to see in the job. These nominations should then be vetted and reduced to a shortlist of three to five names by a committee composed of politicians, community leaders and perhaps chaired by a former Governor-General. The Prime Minister, in consultation with other political leaders, should then choose one of these names.

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92 Mr David Muir, *Submission 451*; Dr Clem Jones, *Submission 492*.

93 *Submission 451*, p. 2.

94 *Submission 107*, p. 38.

> This process would build upon the current system and leave the final decision with the Prime Minister. Though this proposal does not necessarily resemble the republican model that may ultimately be chosen, it does provide Australians with a voice in the selection of their Governor-General for the first time. [95]

4.83 As another interim measure, Professor Williams suggested that it would be possible to spell out in writing, or codify, the powers of the Governor-General, in advance of any formal change to the Constitution. [96] He argued that " addressing this issue at this early stage might make the eventual transition to a republic more straightforward."[97]

4.84 Professor Williams suggested that rather than focus on constitutional change (with the potential for a failed referendum) it may be useful to take an incremental perspective. He told the Committee:

> … incrementalism has been an effective strategy in other areas and could be effective here and indeed a pure focus only on constitutional change is somewhat misleading, in looking at a republic, and is certainly damaging in terms of the odds of getting a 'once up or nothing' referendum past the people.[98]

4.85 The Committee received a proposal for the creation of a Constitutional Commission, with status similar to the High Court of Australia, to guide constitutional change. Dr Bruce Hartley suggested that an eight to ten-person independent commission could be formed from leading constitutional lawyers, independent academics with expertise in law, and some appointed members of the public with an interest in the operations of government.[99] It would seek input from the public, through plebiscites and conventions, and give impartial advice.[100]

4.86 Dr Hartley argued that such a commission would take constitutional debate out of the political arena, of which people are suspicious.[101] However the Committee

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95 *Submission 152*, p. 2.

96 Ibid; Dr Bede Harris also noted this possibility, see *Committee Hansard,* 29 July 2004, p. 33.

97 *Submission 152*, p. 2.

98 *Committee Hansard,* 13 April 2004, p. 40.

99 *Submission 330*, p. 2.

100 *Committee Hansard,* 18 May 2004, p. 19.

101 *Submission 330*, pp. 1-2.

notes that the method of appointment proposed is by Parliament and by the Governor-General,[102] and that this may be an inherently political method of appointment.

4.87 Another suggestion made was that after an initial threshold plebiscite, the Australian people should be asked to vote in a series of separate plebiscites, on different aspects of a future republic, such as method of appointment of a head of state, powers of a head of state and so on.[103] Voters would be informed up-front of a "masterplan" for this series of votes. It was put forward that such an approach would convince voters that they would have an effective say in a future republic.[104]

4.88 Mr Michael Pepperday argued that the models under discussion in recent years were elite products, and that there should be a "Republic Model Search" (funded by research grants) to go beyond the more prominent models in order to discover other models, followed by an internet discussion, followed by a conference.[105]

## The Corowa Conference adopted model

4.89 The process for moving towards an Australian republic adopted by the 2001 Corowa Conference, and the very similar ARM preferred process, were considered by the Committee.

4.90 Some submissions questioned the feasibility of the proposed Corowa process. As previously mentioned, Professor Greg Craven argued against the inclusion of a multi-choice models plebiscite in a process, because he believed it would inevitably lead to a failed referendum on a republic.

4.91 He contended that a direct election model would emerge as the preferred model from a choice-of-models plebiscite, because it had shallow surface appeal. The flaws of a direct election model would then not emerge until after the plebiscite, at the stage when the model would be refined and drafted. The direct election proposal would fail at a referendum, because its flaws by this stage would have been exposed, and also because it would be opposed by a coalition of monarchists and conservative republicans.[106] Professor Craven painted a negative picture, submitting that:

> The net conclusion must be that if the adoption of a direct election model guarantees referendum defeat, then the adoption of the plebiscite process guarantees the defeat of a direct election model by the greatest possible

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102 *Submission 330*, p. 2.

103 Mr Kevin Browne, *Submission 279*, pp. 12-13. Other submissions making similar suggestions include Mr Eric Lockett, *Submission 354*, Mr Stephen Souter, *Submission* 526, p. 106.

104 *Submission 279*, pp. 12-13.

105 *Submission 621*, p. 1.

106 *Submission 167*, pp. 9-13.

> margin. It would represent a disaster for the republican cause that would prevent the achievement of an Australian republic into the remotely foreseeable future.[107]

4.92 Mr Andrew-Newman-Martin had a similar view:

> It does not assist a successful outcome if we have an elaborate obstacle course of committees, plebiscites and Conventions if the voters still do not get to see the actual details until the referendum.
>
> The detailed republic model put to a referendum might still wilt under the pressure and fail the only test that really matters.[108]

4.93 Mr Newman-Martin agreed that the process may divide republicans, but suggested that the process could be improved if a parliamentary committee drew up fully worked-out models before any plebiscite process.[109]

4.94 Mr Michael Pepperday argued that a referendum offering a direct election model would be strongly opposed, and the No case put very forcefully. He submitted that:

> Most elites are dead set against popular election and probably most media would also oppose it. It would be a "scare-mongers'" feeding frenzy. The referendum may well fail. Is any PM ever going to go out on such a limb?[110]

4.95 Mr Pepperday also put forward that it would be inappropriate "to promote a contentious republic model that has only the prospect of a narrow referendum win,"[111] and that a narrow win would be divisive. He submitted that:

> A narrow win would mean we would become a republic by celebrating the defeat of nearly half the citizenry. [and the losers] would suspect media and political manipulation and at least some would refuse to accept it. Of course, federally they would have to wear it but we could expect – particularly if one or two states did not vote in favour, or perhaps if some political incident occurred to cast a shadow over the performance of the new republic – that there would be ongoing resistance and election campaigning with a view to showing up the new system's faults and to retaining the

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107 *Submission 167*, p. 13.

108 *Submission 107*, p. 27.

109 Ibid.

110 Mr Michael Pepperday, *Submission 621*, p. 5.

111 Ibid, p. 3.

monarchy for the states. We would eventually get over it but it sounds like a poor beginning to our new republic.[112]

112 Ibid

# CHAPTER 5

# FUNCTIONS AND POWERS OF HEAD OF STATE

5.1 The next three chapters address term of reference (b), regarding alternative models for an Australian republic. Chapter 5 addresses the possible functions and powers of a republican head of state and related issues. Chapter 6 discusses possible methods for selection and removal of the head of state. Chapter 7 examines some of the key features of various alternative models for an Australian republic.

## Introduction

5.2 This chapter will examine the possible functions and powers of the head of state in an Australian republic (term of reference (b)(ii)). In this context, the Committee considered a number of issues including:

- who is our current head of state?
- what should a republican head of state be called?
- do we need a separate head of state?
- what role should a republican head of state play?
- what powers should a republican head of state have?
- should those powers and associated conventions be codified?
- should those powers be justiciable? And should the head of state be able to obtain independent advice? If so, from whom?
- the relationship between powers and the selection method; and
- the relationship of the head of state with the executive, the parliament and the judiciary.

5.3 While some of these issues are independent of any particular republican model, the answers to some of these questions may vary depending on the actual republican model supported, and particularly the method of selection of the head of state. However, it is useful to consider these issues separately prior to examining some specific republic models.

5.4 It is noted that, as outlined in previous chapters, many submissions suggested that, in the event of further progress towards an Australian republic, the details of the powers of the head of state and related issues should be decided as part of that process.

## Who is our current head of state?

5.5 A focus in the debate over Australia becoming a republic has been on replacing the Queen as head of state of Australia with an Australian head of state.

5.6 A number of submissions argued that Australia already has an Australian head of state: the Governor-General.[1] For example, Major-General 'Digger' James argued that:

> … when convenient, Australians and everybody seem happy to say that the occupant of Yarralumla [the Governor-General] … is our head of state ... If that is not convenient, those who do not like the present system say: "The head of state is not an Australian. We don't want a foreign head of state such as the Queen." The truth is that the Queen is not our head of state. She is the sovereign of the British Commonwealth, which includes Australia.[2]

5.7 Similarly, the submission from Sir David Smith specifically focussed on the argument that the Queen is the Sovereign and the Governor-General is the head of state.[3] Sir David Smith pointed to "a considerable body of constitutional and legal evidence that suggests that we already have an Australian head of state in the Governor-General".[4] According to Sir David Smith, the Queen's role under our Constitution is to approve the appointment of the Governor-General on the advice of the Prime Minister.[5] He then argued that the Governor-General has "two separate and distinct roles"[6] – that of the Queen's representative and a separate and independent role in the exercise of constitutional powers and functions.[7] Sir David Smith argued that the Governor-General is in "no sense a delegate of the Queen, but the holder of an independent office".[8] He also suggested that:

> It has never been explained how a President [of a republic] carrying out the duties, powers and functions of the Governor-General would be a head of state, but that a Governor-General carrying out the very same duties, powers and functions is not a head of state.[9]

5.8 Sir David concluded that:

> We have the Queen of Australia as our Sovereign. We have the Governor-General of Australia as our Head of State. We are a sovereign and

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1 See, for example, Sir David Smith, *Submissions 20 and 20A*; Sean O'Leary, *Submission 19*; Australians for an Informed Discussion on our Constitution (AIDC), *Submission 82*, pp. 4-6; Australian Monarchist League, *Submission 42*, p. 4; Festival of Light, *Submission 540*, pp. 3-4; Mr FS Hespe, *Submission 206*, p. 2; Australians for Constitutional Monarchy, *Submission 455*, p. 4; Professor David Flint, Australians for Constitutional Monarchy, *Committee Hansard*, 13 April 2004, p. 68.

2 *Committee Hansard*, 29 June 2004, p. 3.

3 *Submissions 20 and 20A*; and also *Committee Hansard*, 29 July 2004, p. 9.

4 *Submission 20A*, p. 1.

5 *Committee Hansard*, 29 July 2004, p. 13.

6 Ibid, p. 12.

7 Ibid, p. 9.

8 Ibid.

9 *Submission 20A*, p. 18.

> independent nation. If we can all agree on these three simple propositions … then we just may have the basis for a sensible debate about constitutional change …[10]

5.9 During the Committee's hearing in Canberra, Dr Bede Harris submitted that to argue that we already have an Australian head of state in the form of the Governor-General is, constitutionally, "nonsense".[11] At the Committee's request, Dr Bede Harris directly responded to Sir David Smith's submission. Dr Harris pointed out that:

> The term "Head of State" is not used in the Constitution. It is a political term which means whatever the user wants it to mean. … The fact that numerous constitutional scholars, judges, journalists and politicians have used the term … does not vest the term with any constitutional significance.[12]

5.10 Dr Harris also explained that:

> … the reason why a President would be a Head of State whereas the Governor-General is not, is simply because the office of President would incorporate the role of both monarch and Governor-General.[13]

5.11 Many other submissions similarly stated that the Queen is our head of state, not the Governor-General.[14] For example, Professor George Williams submitted:

> The Constitution makes it clear that the Queen lies at the apex of government. She is expressly vested with executive power by section 61. Where the Governor General is granted power, he exercises those responsibilities as her representative … Section 2 of the Constitution states that: "A Governor General appointed by the Queen shall be Her Majesty's representative in the Commonwealth." If the Governor General were our head of state, it would leave Australia in the anomalous position of having a head of state who is the representative of a foreign power.[15]

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10 Ibid, p. 26.

11 *Committee Hansard*, 29 July 2004, p. 33.

12 *Submission 93B*, p. 1.

13 Ibid, p. 2.

14 Dr Geoff Gallop, Premier of Western Australia, *Submission 73*, p. 1; Mr Bill Peach, *Submission 37*, pp. 4-5; Mr Andrew Cole, *Submission 41*, pp. 91-93; Mr Andrew Newman-Martin, *Submission 107*, pp.7-9; Mr David O'Brien, *Submission 126*, pp. 34; Mr Glenn Patmore, *Submission 534*, p.1; The Hon Michael Beahan, *Submission 334*, p. 3; Professor George Williams, *Submission 152*, p. 1; Mr Terry Fewtrell, *Submission 340*, p. 2; Associate Professor Kim Rubenstein, *Submission 484*, p. 1; Dr Bede Harris, *Submission 93*, p. 3 and *Committee Hansard*, 29 July 2004, p. 33; Sir Gerard Brennan, *Committee Hansard*, 13 April 2004, p. 19; Mr John Pyke, *Submission 512*, pp. 1-2; Dr Mark McKenna, *Committee Hansard*, 29 July 2004, p. 39; Mr Jon Stanhope MLA, ACT Chief Minister, *Submission 730*, p. 1.

15 *Submission 152*, p. 1; see also Dr Bede Harris, *Submission 93B*, p. 2.

5.12 Sir Anthony Mason, former Chief Justice of the High Court, has also described the statement that the Governor-General is our constitutional head of state as "incorrect" and turning "a blind eye to the express provisions of the Constitution".[16] After reviewing sections 2, 59, 58, 61 and 68 of the Constitution, Sir Anthony Mason concluded that:

> … it is "nonsense" to describe the Governor-General as "our constitutional head of State". The Constitution makes the Queen our constitutional head of State and specifically provides that the Governor-General is "the Queen's representative".[17]

5.13 Several submissions received by the Committee suggested that this debate is not particularly productive.[18] Some submissions argued that the real issue is whether or not the Queen should be removed from the Constitution, our system of government and national symbols.[19] Dr Bede Harris pointed out that "proponents of a republic object to the fact that the monarch of the United Kingdom is our sovereign and is the source of executive power".[20] Dr Mark McKenna explained further:

> … if we think more deeply about what a republic means and we dwell for a moment on the fact that the declaration of a republic does require the removal of the sovereignty of the Crown, one fact becomes clear. The instalment of an Australian head of state is a consequence of becoming a republic. It is not its rationale. A republican constitution is where the Australian people become explicitly the sovereign power. Under a republic it is not our head of state who is the sovereign, but the Australian people.[21]

5.14 Nevertheless, as mentioned earlier in this report, and as pointed out by several submissions, the debate may have implications for the wording or framing of any plebiscite question on a republic.[22] For example, Mr Eric Lockett stated:

> … it would be foolish in the extreme for those who favour us becoming a republic to couch their objectives in terms of having an Australian head of

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16 The Hon. Sir Anthony Mason, "The Republic and Australian constitutional development": paper presented to *The Republic: what next*? seminar, Australian National University, 11 May 1998, p. 2.

17 Ibid, p. 3.

18 Mr Brendan Egan, *Submission 511*, p. 1; Mr Eric Lockett, *Submission 354*, p. 2; Women for an Australian Republic, *Submission 476*, p. 16; Mr Chris Creswell, *Submission 515*, pp. 1-2; Mr Bill Peach, *Submission 37*, p. 5.

19 Mr Mike O'Shaugnessy, *Submission 329*, p. 3; Mr Eric Lockett, *Committee Hansard*, 20 May 2004, p. 6; Women for an Australian Republic, *Submission 476*, p. 16; Mr John Pyke, *Submission 512*, pp. 1-2.

20 Dr Bede Harris, *Submission 93B*, p. 2.

21 *Committee Hansard*, 29 July 2004, p. 39.

22 For example, see Dr Mark McKenna, *Submission 201*, p. 2 and *Committee Hansard*, 29 July 2004, p. 44; Mr Andrew Newman-Martin, *Submission 107*, p. 9; Mr Eric Lockett, *Committee Hansard*, 20 May 2004, p. 6; Women for an Australian Republic, *Submission 476*, p. 16.

> state. That would just muddy the waters with arguments about whether or not the Governor-General is our head of state.[23]

5.15 Similarly, Dr Mark McKenna argued that the phrase "Australian head of state" should not appear in any possible plebiscite question on a republic:

> … this idea that the Governor-General is an Australian head of state is a complete furphy. However, in the context of a referendum it is crucial to avoid, politically and strategically, giving people the opportunity to make that case ...[24]

5.16 On the other hand, Mr Bill Peach argued that the debate should not prevent a plebiscite question being put in words along the lines of: "Should we have an Australian head of state?".[25]

## Title of head of state

5.17 The Committee's discussion paper asked for views on the possible titles for a republican head of state.[26] In relation to this issue, the ARM remarked:

> This is a cosmetic, rather than a substantive issue. But some people feel strongly about it nonetheless.[27]

5.18 Evidence received by the Committee appeared divided between three options for the title of head of state – "President", "Governor-General" and "Head of State". Many submissions supported the title of "President", pointing out that the title "President" is used in many other republics.[28] It was also argued that "the role of the head of state will change, the way it is perceived by the Australian people will change and so must the title".[29]

5.19 Others were concerned that the title "President" implies power, which may be inappropriate for a non-executive President.[30] Some also suggested that the title of "President" "conjures up images of existing republics – many of which don't function

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23 *Committee Hansard*, 20 May 2004, p. 6.

24 *Committee Hansard*, 29 July 2004, p. 44.

25 *Submission 37*, p. 5.

26 Note that, although this report refers to the 'head of state' throughout, this does not suggest an endorsement or rejection of any particular title.

27 *Submission 471,* p. 24.

28 For example, Sir Gerard Brennan, *Submission 497*, p. 22; Republic Now!, *Submission 466*, p. 14; Australian Freedom Forum, *Submission 467*, p. 15; Dr Barry Gardner, *Submission 482*, p. 2.

29 Mr Dominic Pellegrino, *Submission 461*, p. 15.

30 Premier of New South Wales, *Submission 721*, p. 2; see also Professor George Winterton, *Submission 319*, p. 4.

as well as the Westminster system".[31] It was also pointed out that there may be some confusion with the President of the Senate.[32]

5.20 A considerable number of submissions supported the title of "Governor-General" for a republican head of state.[33] Some of the reasons for favouring this title included continuity and to avoid confusion with an executive–style presidency.[34] On the other hand, it was suggested that the title "Governor-General" would be inappropriate, particularly due to its ties to the monarchy and Australia's colonial past.[35] Dr Mark McKenna also argued that:

> On no account should it be Governor-General. This would allow monarchists to argue that republicans were asking the electorate to introduce an office that Australians already possessed.[36]

5.21 There was also significant support for the title "Head of State",[37] although some suggested that the term was "too bland" for such a significant office.[38]

5.22 Submissions also suggested that Indigenous Australians could put forward an indigenous title. For example, the ARM suggested that:

> … indigenous groups be consulted and invited to submit some appropriate indigenous titles for consideration.[39]

5.23 Other suggestions for the title of the head of state included: "Honorary President";[40] "Queen of Australia";[41] "Protector";[42] and "Premier-General".[43] Others expressed no particular preference.[44]

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31 Ms Shirley McKenzie, *Submission 694*, p. 1.

32 Mr John Flower, *Submission 447*, p. 6.

33 For example, Mr Andrew Cole, *Submission 41*, p. 14; Major Edward Ruston, *Submission 110*, p. 4; Dr Baden Teague, *Submission 538*, p. 9; Premier of New South Wales, *Submission 721*.

34 See for example ARM, *Submission 471,* p. 24.

35 See for example ARM, *Submission 471,* p. 24; Mr Howard Teems, *Submission 100*, p. 5; The Hon Michael Beahan, *Submission 334*, p. 5; Mr Dominic Pellegrino, *Submission 461*, p. 14; Mr Andrew Newman-Martin, *Submission 107*, p. 39.

36 *Submission 201*, pp. 2-3.

37 Mr John Kelly, *Submission 142*, p. 1; Mr Mark Collins, *Submission 138*, p. 2; Mr John Flower, *Submission 447*, p. 4; Ms Shirley McKenzie, *Submission 694*, p. 1; Ms Joan Dwyer, *Submission 530,* p. 1.

38 Mr Andrew Newman-Martin, *Submission 107,* p. 47.

39 *Submission 471*, p. 24.

40 Mr David Latimer, *Submission 519*, p. 43.

41 Mr Robert Vogler, *Submission 480*, p. 9.

42 Mr Andrew Newman-Martin, *Submission 107,* pp. 45-47.

43 Mr Andrew Newman-Martin, *Submission 107,* pp. 45-47.

5.24 As discussed earlier in this report, the Committee also heard evidence which suggested that the title of the head of state is a question that could be put to the Australian people in a plebiscite.[45]

## Functions of the head of state

### *Do we need a separate head of state?*

5.25 Although the Committee's terms of reference assume the existence of a designated head of state, some submissions argued that a separate head of state was not necessary.[46] This suggestion was considered in the past by the 1988 Constitutional Commission, and the 1993 Republic Advisory Committee, both of which concluded that a head of state should be maintained in our system of government – whether republican or monarchical.[47] The Advisory Committee on Executive Government, which was associated with the 1988 Constitutional Commission, concluded that:

> … a head of state, as a symbol of national identity, is an appropriate and desirable element in our system of government.[48]

5.26 The 1993 Republic Advisory Committee noted that, while the ceremonial functions of a head of state could readily be fulfilled by other officials, the Committee also considered that the role of a separate head of state can play an important role as a "constitutional umpire":

> … a separate head of state may be part of the checks and balances inherent in the system of government, preventing too great an accumulation of power, or even prestige, in the hands of a Prime Minister and the Executive.[49]

5.27 Nevertheless, some submissions to this inquiry suggested that in the move to a republic, an executive-style presidency, with a combined head of state and head of

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44 For example, Mr Peter Bishop, *Submission 113*, p. 5.

45 See for example, Mr Bill Peach, *Submission 37*, p. 9; ARM, *Submission 471*, p. 24; Women for an Australian Republic, *Submission 476*, p. 9; Mr Eric Lockett, *Committee Hansard*, 20 May 2004, p. 9; Mr Richard Fidler, ARM, *Committee Hansard*, 13 April 2004, p. 28; Mr Bill Peach, *Committee Hansard*, 13 April 2004, p. 47.

46 For example, Mr Andrew Nguyen, *Submission 246*, p. 6; Dr Brian Regan, *Submission 696*, pp. 2-3.

47 *Final Report of the Constitutional Commission,* Canberra, 1988, p. 314; *Report of the Advisory Committee on Executive Government to the Constitutional Commission,* Canberra Publishing and Printing Co., Canberra, 1987*,* p. 2; Republic Advisory Committee, *An Australian Republic: the options* (RAC Report), Volume 1, AGPS, Canberra, 1993, pp. 47-51.

48 *Report of the Advisory Committee on Executive Government to the Constitutional Commission,* Canberra, 1987*,* p. 2.

49 RAC Report, Volume 1, 1993, p. 50.

government, should be considered.[50] These submissions proposed that the position of the monarch and the office of Governor-General could be abolished without a separate head of state to replace them. It was suggested that many of the current powers and functions of the Queen and Governor-General could be exercised by some other person or body, such as the Speaker of the House of Representatives, President or the Senate and others, or even a combination of people.[51]

5.28 However, the evidence received by the Committee overwhelmingly supported the retention of a separate head of state.[52] Only a very few submissions supported a combined head of state and head of government.[53] Many submissions also noted that there appeared to be little general support in the Australian community for a combined head of state and head of government.[54] A number of these submissions raised concerns that such a system would require a substantial change from our current system of government.[55] Others were concerned that this would result in too great a concentration of power in one person, and could potentially result in political instability.[56] Despite the apparent lack of support for such suggestions, executive presidency models will be discussed in further detail later in this report, in the discussion of alternative models for an Australian republic.

5.29 At the other end of the spectrum from those who favoured a combined head of state/head of government, were those who suggested that a new republican head of state should replace the Queen, while the position of Governor-General should be retained.[57] This proposal will also be discussed further later in this report.

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50 See, for example, Dr David Solomon, *Submission 457*, p. 1; Mr Andrew Nguyen, *Submission 246*; Dr Bruce Hartley, *Submission 330*, p. 1; Ms Laetitia Legg-Capelle, *Submission 479*, pp. 1-2; Mr Matthew Harrison, *Submission 10*, p. 1; Mr Fred Carter, *Submission 23*, p. 1; Mr James Stack, *Submission 404*, p. 1.

51 For example, Dr David Solomon, *Coming of Age, Charter for a new Australia*, University of Queensland Press, Brisbane, 1998, p. 38, attached to *Submission* 457 from Dr David Solomon; Mr Andrew Nguyen, *Submission 246*, pp. 6-7.

52 Dr Ken Coghill, *Submission 536*, pp. 1-2; Mr Ross Garrad, *Submission 533*, p. 3; Mr John Pyke, *Submission 512*, p. 2; The Hon Michael Beahan, *Submission 334*, pp. 3-4; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, pp. 6-7; Sir Gerard Brennan, *Submission 497*, p. 21; Mr Peter Crayson, *Submission 322*, p. 1.

53 For example, Dr David Solomon, *Submission 457*, p. 1; Mr Andrew Nguyen, *Submission 246*, p. 1; Dr Bruce Hartley, *Submission 330*, p. 1; Ms Laetitia Legg-Capelle, *Submission 479*, pp. 1-2; Mr Matthew Harrison, *Submission 10*, p. 1; Mr Fred Carter, *Submission 23*, p. 1.

54 For example, ARM, *Submission 471*, p. 9; Dr Clem Jones, *Submission 492*, p. 4.

55 For example, ARM, *Submission 471*, p. 9; Mr John Pyke, *Submission 512*, p. 2.

56 For example, Mr Peter Crayson, *Submission 322*, p. 1*;* Dr Ken Coghill, *Submission 536*, pp. 1-2.

57 Professor John Power, *Submission 28*; Dr Peter Carden, *Submission 105*, p. 2; Mr David O'Brien, *Submission 126*, p. 1; Mr Robert Vogler, *Submission 480*, p. 4; Mr David Latimer, *Submission 519*.

## Role of a republican head of state

5.30 Before considering the specific powers and functions that could be conferred on a republican head of state, it is important to examine the broader issue of the role of the head of state. As the ARM pointed out, the various options and models for an Australian republic "centre around the key question of what we want an Australian head of state to do for us?".[58]

5.31 Many submissions saw the head of state fulfilling an important role as a symbol of national identity.[59] For example, Mr Gino Cocchiaro shared the following view:

> … it is important that all Australians see their national identity and aspirations reflected in a head of state who is truly Australian: someone who shares our rich, pluralistic culture, someone with whom the people can identify, whatever their background and culture.[60]

5.32 The ARM's submission pointed out the statement by former Governor-General, Sir Zelman Cowen, and former High Court Chief Justices Brennan and Mason on the role of the head of state in the lead up to the 1999 referendum:

> It is a central aspect of the office of president that he or she should always be concerned to promote the unity of the nation. He or she is head of state, and not of government. He or she should possess the capacity, intuition and skills to promote the unity of the nation. By speech, conduct and example, the president can help to interpret the nation to itself, and foster that spirit of unity and pride in the country which is central to the well-being of our democratic society.[61]

5.33 Mrs Janet Holmes a Court expressed her vision for the desired qualities and role of a republic head of state:

> 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.[62]

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58 *Submission 471*, p. 4.

59 For example, Mr David Morris, *Committee Hansard*, 20 May 2004, p. 29; Mr Gino Cocchiaro, *Committee Hansard*, 19 May 2004, p. 7; Ms Ruth Thomson, *Submission 464*, p.1; Mr Gino Cocchiaro, *Submission 487*, p. 1.

60 *Committee Hansard*, 19 May 2004, p. 7.

61 ARM, *Submission 471*, p. 10, quoting Cowen, Z., Brennan, G., Mason, A., Letter to *The Australian*, 3 November 1999.

62 *Committee Hansard*, 18 May 2004, p. 32.

5.34 Many submissions favoured a largely ceremonial and non-executive role for a republican head of state.[63] Others recognised an important aspect of the role of a head of state as a "constitutional umpire"[64] or even "constitutional guarantor of democratic government".[65] For example, Mr John Kelly submitted that:

> The Head of State should be much more than a ceremonial encapsulation of the people, important as this role may be. As well as having the "right to be consulted (by), the right to encourage and the right to warn the government of the day" … the Head of State must have sufficient power to act with wisdom and in accordance with the Constitution should constitutional crises arise in order that effective government will continue.[66]

## Powers of a republican head of state

5.35 In terms of the more specific powers and functions of a republican head of state, the general consensus appeared to be that these should be similar to those powers and functions currently exercised by the Governor-General.[67] For the moment then, it will be assumed the powers of the head of state would be largely the same as the powers presently exercised by the Governor-General. Some submissions did suggest that certain powers could be reduced or updated, and these will be considered further in this report after consideration of the powers that are currently exercised by the Governor-General.

### *Governor-General's current functions and powers*

5.36 The Governor-General currently exercises a range of "ordinary" or "non-reserve" powers, which, by convention, are exercised only with advice from government. The Governor-General's "ordinary powers" are set out in the Constitution and include, for example, the power to:

- issue writs for general elections (section 32);
- summon and prorogue Parliament (section 5);

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63 For example, the Hon Michael Beahan, *Submission 334*, p. 4; Women for an Australian Republic, *Submission 476*, p. 6; ARM, *Submission 471*, pp. 9-10; see also the Hon Michael Beahan, *Committee Hansard*, 14 April 2004, p. 2.

64 Mr Glenn Patmore, *Committee Hansard*, 14 April 2004, pp. 19-20; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 8.

65 Mr Glenn Patmore, *Submission 534*, p. 7.

66 *Submission 142*, p. 1.

67 For example, ARM, *Submission 471*, p. 11; Sir Gerard Brennan, *Submission 497*, p. 13; Dr Barry Gardner, *Submission 482*, p. 1; Mr Andrew Cole, *Submission 41*, p. 16; Dr Baden Teague, *Submission 538*, p. 9; Mr Ross Garrad, *Submission 533*, p. 2; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, pp. 8-9; Mr Andrew Newman-Martin, *Submission 107*, p. 39; The Hon Bob Carr MP, Premier of New South Wales, *Submission 721*, p. 1*;* The Hon Peter Beattie MP, Premier of Queensland, *Submission 722*, p. 1; Mr Jon Stanhope MLA, ACT Chief Minister, *Submission 730*, p. 3.

- assent to legislation which has been passed by Parliament, in the name of the Queen (section 58);
- appoint and dismiss Ministers (section 64);
- appoint members of the Executive Council (section 62);
- appoint and remove Federal judges (section 72);
- exercise the executive power of the Commonwealth (which includes the prerogative powers) (section 61); and
- act as commander-in-chief of the defence forces (section 68).[68]

5.37 As noted above, the general rule is that these powers are exercised by the Governor-General only on the advice of responsible Ministers, but this rule is largely an unwritten constitutional convention.[69]

5.38 There is also a small number of powers which the Governor-General is entitled to exercise without, or contrary to, the advice of government. These are known as the "reserve powers".[70] Effectively, the "reserve powers" are an exception to the rule that the Governor-General's powers are only exercised on the advice of government. The Constitution does not expressly mention the term "reserve powers", but they are generally considered to include the power to:

- appoint and dismiss the Prime Minister (section 64 of the Constitution);
- refuse to dissolve Parliament (including a double dissolution under section 57 of the Constitution).[71]

5.39 Sir Gerard Brennan explained the background behind the "reserve powers" in his submission:

> The reserve powers exist to protect the people and the Constitution against the possibility that a Government may pursue an unlawful course of conduct or that the elements of our parliamentary democracy are unwilling or unable to discharge their intended function. They enable the Governor-General to act to ensure compliance with the general law and the effective

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68 Note that this list is not exhaustive. See also, for example, Sir Gerard Brennan, *Submission 497*, p. 10; and RAC Report, Volume 2, Appendix 6, pp. 241-273.

69 Technically, certain powers are expressly provided to be exercisable only on the advice of the Federal Executive Council. Others are exercised on the advice of responsible Ministers or the Prime Minister by convention. See Sir Gerard Brennan, *Submission 497*, pp. 6 & 10; Professor George Winterton, *Submission 319*, p. 1; RAC Report, Volume 2, Appendix 6, pp. 243-244.

70 For a comprehensive discussion of the reserve powers of the Governor-General, see RAC Report, Volume 2, Appendix 6, pp. 241-273.

71 For an in-depth discussion of the reserve powers, see RAC Report, Volume 2, Appendix 6, p. 245; *Final Report of the Constitutional Commission,* Canberra, 1988, Volume 1, p. 342, referred to by Sir Gerard Brennan, *Submission 497*, p. 13; see also Professor George Winterton, *Submission 319*, p. 2; and Dr Bede Harris, *Committee Hansard,* 29 July 2004, p. 34.

> working of parliamentary democracy in accordance with the law and custom of the Constitution.[72]

5.40 The exercise of the Governor-General's reserve powers is also regulated to a large extent by unwritten constitutional conventions.[73] It was pointed out to the Committee that one of the advantages of such unwritten constitutional conventions is their flexibility, and ability to adapt and evolve with changing circumstances. However, the very fact that they are unwritten can also mean uncertainty and widely differing interpretations of their content.[74]

***Ordinary powers: the convention of acting on the advice of government***

5.41 Several submissions suggested that the convention that the non-reserve or ordinary powers are exercised only on the advice of government should continue for the powers of a republican head of state, but that the convention should be expressly stated in the Constitution.[75] Professor George Winterton argued that:

> … since this convention and those governing the exercise of the reserve powers may be seen as conventions of the monarchy, rather than more generally conventions of Australian government, a republican Constitution should expressly provide for these conventions to continue under a republic.[76]

5.42 Sir Gerard Brennan proposed that:

> If responsible government is to be retained under a republican form of government, a new legal duty should be imposed on the President, corresponding with the duty which convention now imposes on a Governor-General, to act and to act only on the advice of his or her Ministers, subject to certain exceptions. The duty should be entrenched in the Constitution.[77]

5.43 At the Committee's hearing in Parramatta, Sir Gerard reiterated this point:

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72 *Submission 497*, pp. 11-12.

73 For example, Professor Greg Craven, *Submission 167*, p. 6; Dr Bede Harris, *Submission 93*, p. 5; *Final Report of the Constitutional Commission,* Canberra 1988, Volume 1, p. 342; RAC Report, Volume 1, p. 89.

74 For example, Professor Greg Craven, *Submission 167*, p. 6 and *Committee Hansard*, 18 May 2004, p. 4; see also RAC Report, Volume 1, p. 90.

75 For example, Professor George Winterton, *Submission 319*, p. 2; Sir Gerard Brennan, *Submission 497*, p. 10; A Just Republic, *Submission 281*, p. 5; Dr David Solomon, *Coming of Age, Charter for a new Australia*, University of Queensland Press, Brisbane, 1998, p. 49 attached to *Submission 457*; ARM, *Submission 471*, pp. 9-10.

76 *Submission 319*, p. 2. Professor Winterton pointed out that such a clause was contained in clause 59 and Schedule 2, clause 7 of the Constitutional Alteration (Establishment of Republic) 1999; see also Mr Glenn Patmore, *Committee Hansard*, 14 April 2004, p. 22.

77 *Submission 497*, p. 11.

> I would like to stress the importance of entrenching the presidential obligation to act only on ministerial advice as the basis of parliamentary democracy and as essential to prevent a fixed-term President from acting independently except on the occasion of the exercise of reserve powers.[78]

5.44 Professor George Winterton agreed and warned in particular that:

> … it is critically important that section 61, conferring the Commonwealth's executive power, be made exercisable solely on ministerial advice, whether through the executive council or otherwise. This was quasi dealt with in the 1999 model, but not really adequately. Although the principle was accepted, it was not well drafted. But if you do not do that then you run the risk that the popularly elected President might end up as a quasi-executive President along French lines, for example.[79]

5.45 Others argued that there is no need for this convention (or indeed, other conventions relating to the head of state's powers) to be written into or "codified" in the Constitution. For example, in the context of a non-directly elected head of state, Mr Jack Hammond QC and Ms Juliette Brodksy considered that codification was unnecessary because:

> … the most effective sanction against a head of state's refusal to comply with conventions is the prospect of instant dismissal.[80]

5.46 On the other hand, Sir Gerard Brennan argued that this convention should be included, regardless of the method of selection of the head of state:

> Entrenching the duty would be desirable to avoid any misunderstanding *even if* the President, like the Governor-General, were appointed and could be removed by the Prime Minister.[81]

5.47 Sir Gerard Brennan also pointed out that the 1988 Constitutional Commission recommended that this convention should be incorporated into the Constitution, even without changing from a constitutional monarchy to a republic.[82]

### *Reserve powers and associated conventions*

5.48 The issue of how to deal with the reserve powers and associated conventions in the context of the establishment of an Australian republic was one of the more complex issues examined during the Committee's inquiry. Indeed, Sir Gerard Brennan argued that the critical question for a republic is not how the head of state should be selected, but:

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78 *Committee Hansard*, 13 April 2004, p. 18.

79 Ibid, pp. 61-62.

80 *Submission 719*, p. 9.

81 *Submission 497*, p. 11.

82 Ibid, pp. 10-11, referring to *Final Report of the Constitutional Commission,* Canberra, 1988, pp. 19-20.

> … should the President have any powers which might be exercised without ministerial advice and, if so, what is the mechanism for regulating their exercise?[83]

5.49 The ARM expressed a view that "the office of head of state should carry most of the conventions of the Governor-General with it".[84] At the same time, the ARM also noted that "the scope and extent of the reserve powers are surrounded by significant uncertainty".[85]

5.50 However, Sir Gerard Brennan stressed to the Committee that the uncertainty surrounding the reserve powers related not so much to the reserve powers themselves, but rather to the conventions or circumstances under which those powers might be exercised. For example, Sir Gerard Brennan considered that:

> A distinction must be drawn between the powers of a head of state and the conventions which might govern their exercise without ministerial advice.[86]

5.51 Sir Gerard Brennan elaborated on this issue during the hearing in Parramatta:

> There is not really much controversy about the powers which might be exercised. The controversy is about the circumstances in which the powers might be exercised, and to speak about codifying the circumstances in which powers can be exercised is indeed a very daunting task. But that distinction between powers and the circumstances of their exercise is, I think, basic to much of the misunderstanding which has surrounded this problem.[87]

5.52 Dr Bede Harris submitted:

> … there are circumstances in which the Governor-General can exercise some of his powers independently of advice, albeit subject to conventional rules. These are commonly referred to as the "reserve powers", but this is somewhat misleading — there is no separate set of powers known as the reserve powers, rather there are circumstances in which the statutory powers of the Governor-General (found in s 64 and s 5 of the Constitution) can be exercised independently. The key issue … is precisely what the conventions of the Constitution are in relation to these powers.[88]

5.53 In terms of how these issues should be dealt with under a republic, the ARM submitted that some provision should be made in the Constitution in relation to the exercise of the head of state's powers:

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83 Ibid, pp. 20-21.

84 *Submission 471*, pp. 9-10.

85 Ibid, p. 12.

86 *Submission 497*, p. 13.

87 *Committee Hansard*, 13 April 2004, pp. 18-19.

88 *Submission 93*, p. 5.

> … we do not think it is a viable option to simply leave the provisions conferring powers on the Head of State in their present very broad terms, saying nothing about the constitutional conventions and simply assuming they will continue to apply in a republic.[89]

5.54 The ARM pointed out that "there are several ways to clarify the nature, scope and extent of the powers currently exercised by the Governor-General and the conventions surrounding them".[90] The ARM then noted that some of the ways in which the reserve powers could be clarified were discussed in the 1993 Republic Advisory Committee report including incorporating the conventions by reference, or codification of the relevant conventions.[91]

5.55 The 1998 Constitutional Convention, in resolving that the powers of the President should be the same as those currently exercised by the Governor-General, recommended that the non-reserve powers be spelled out "so far as is practicable"; and that the Constitution should be amended to contain a "statement that the reserve powers and the conventions relating to their exercise continue to exist".[92]

5.56 The republic model put to the 1999 referendum took the approach of exempting the reserve powers from the requirement that the President act on ministerial advice, but did not identify the specific reserve powers. Three of the republic models put forward by the ARM mirrored this approach.[93] However, this approach was criticised by Professor George Winterton:

> … the 1999 Republic Bill [Constitutional Alteration (Establishment of Republic) 1999] clause 59 expressly exempted "a power that was a reserve power of the Governor-General" from the requirement that the President act on ministerial advice, but these powers were not identified. Such a provision is unsatisfactory, especially with a directly elected head of state. The preferable course is either to identify the reserve powers which are to be exempted from the general rule that the head of state must act in accordance with ministerial advice or state how each power is to be exercised.[94]

5.57 The ARM acknowledged that:

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89 *Submission 471*, p. 12.

90 Ibid.

91 As summarised by ARM, *Submission 471*, pp. 12-13; see also RAC Report, Volume 1, pp. 94-112. Note that the RAC Report also discussed two other options: formulation of written conventions; and parliament making laws concerning the conventions.

92 See Constitutional Convention Communiqué, reproduced in the Explanatory Memorandum to the Constitutional Alteration (Establishment of Republic) 1999, p. 39, paras 26 & 27.

93 *Submission 471*, p. 13.

94 *Submission 319*, p. 2; see also Dr Bede Harris, *Committee Hansard*, 29 July 2004, p. 34.

> This "incorporation by reference" begs the question of course as to the complete content of the conventions. On the other hand, it allows them to develop and evolve in the future as they have in the past.[95]

5.58 The Committee also received a considerable amount of evidence supporting some form of codification of the conventions governing the exercise of the reserve powers.[96] The ARM pointed out that there could be either "partial" or "full" codification:

> · PARTIAL CODIFICATION: By setting out the most important conventions about which there is general agreement (such as that the head of state appoints as Prime Minister the person the head of state believes can form a government with the support of the House of Representatives), and providing that the remaining (unwritten) conventions are otherwise to continue; or
>
> · FULL CODIFICATION: By setting out in the Constitution all the circumstances in which the head of state can exercise a reserve power and stating expressly that in all other circumstances the head of state is to act on the advice of the Prime Minister, the Executive Council, or some other minister.[97]

5.59 Of those who supported codification, some supported full codification.[98] However, many considered that only partial codification of the conventions governing the exercise of the reserve powers was necessary.[99] Several of those who supported codification pointed to the 1993 Republic Advisory Committee report and its possible provisions for codification.[100]

5.60 For example, Professor George Winterton expressed the view during the Committee's hearing in Parramatta that "partial codification provides the proper

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95 *Submission 471*, p. 13.

96 Professor George Winterton, *Submission 319*, p. 2; Women for an Australian Republic, *Submission 476,* p. 5; Mr Andrew Cole, *Submission 41*, p. 16; Mr John Pyke, *Submission 512*, pp. 3-4; Dr Bede Harris, *Submission 93*, pp. 2-12; Mr Glenn Patmore, *Committee Hansard*, 14 April 2004, pp. 16 & 22; Dr Ken Coghill, *Submission 536*, p. 3.

97 As summarised by ARM, *Submission 471*, pp. 12-13; see also RAC Report, Volume 1, pp. 101 & 106-107. Note that the RAC Report actually discussed two separate versions of complete codification.

98 For example, Premier of Western Australia, *Submission 73*, p. 2; Dr Bede Harris, *Submission 93*; ARM (Models Four and Five), *Submission 471*, p. 13 and Appendix A, pp. 25-31.

99 Professor George Winterton, *Submission 319*, p. 2; A Just Republic, *Submission 495*, p. 5; Mr Andrew Newman-Martin, *Submission 107*, p. 41.

100 Professor George Winterton, *Submission 319*, p. 2, referring to RAC Report, Volume 1, pp. 101-106; A Just Republic, *Submission 495*, p. 5; ARM (Models Four and Five), *Submission 471*, p. 13 and Appendix A, pp. 25-31.

balance between no codification and full codification".[101] Professor George Winterton has argued that:

> Complete codification would be both inadvisable — because the flexibility necessary for dealing with political crises would be lost — and extremely difficult, if not impossible, because the community is divided on some powers, especially the power to dismiss a Prime Minister denied Supply by the Senate.[102]

5.61 In supporting partial codification, Professor George Winterton has suggested that:

> … the principle underlying codification should be that the President is granted only such power as is *absolutely necessary* to enforce the fundamental constitutional principles of the rule of law and representative and responsible government.[103]

5.62 Several submissions also suggested the conventions and reserve powers should be codified regardless of whether Australia becomes a republic.[104] For example, Dr Bede Harris stated during the Committee's Canberra hearing:

> … codification is a very worthwhile endeavour. Whether we retain the status quo or move to a republic, I think it would be a very valuable constitutional exercise to codify the powers of either the Governor-General or, if we had one, the president.[105]

5.63 At the other end of the spectrum, some submissions argued against any form of codification.[106] For example, Professor Greg Craven argued that:

> First, all attempts at codification of the primary conventions of responsible government in Australia historically have collapsed in a welter of political disagreement, and there is no reason to suppose that this position will differ in the future. Second, there is very considerable room for disagreement on the precise formulation of many of the conventions of the Constitution. Third, codification would leave many of our political-constitutional norms in a straightjacket of legalese, without room to develop.[107]

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101 *Committee Hansard*, 13 April 2004, p. 62.

102 Winterton, G., *Resurrection of the Republic,* Federation Press, Canberra and Sydney, 2001, p. 17, referred to by Professor George Winterton, *Submission 319*, p. 1.

103 Ibid; see also Sir Gerard Brennan, *Submission 497*, p.12.

104 For example, Mr John Kelly, *Submission 142*, pp. 20-21; Professor George Williams, *Submission 152*, p. 2; Dr Bede Harris, *Committee Hansard*, 29 July 2004, p. 33.

105 *Committee Hansard*, 29 July 2004, p. 33.

106 Dr Baden Teague, *Submission 538*, p. 9; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719,* p. 9; Dr Nigel Greenwood, *Submission 303*, pp. 1-2. Some suggested that the issue of codification could be 'postponed' until after Australia becomes a republic: Mr Ross Garrad, *Submission 533*, p. 3; Mr Michael Pepperday, *Committee Hansard*, 29 July 2004, p. 32.

107 *Submission 167*, p. 6; and see also *Committee Hansard*, 18 May 2004, p. 4.

5.64 However, Dr Bede Harris disagreed:

> … codification is an important and certainly an achievable outcome… I am philosophically averse to a Constitution that grows unregulated … I do not like the uncertainty of conventional powers developing in either substance or the circumstances in which they can be exercised… I think that the powers should be stated and the circumstances in which they should be exercised should be stated and I do not think there is that much disagreement on exactly what those powers are.[108]

5.65 In his submission, Dr Harris set out the exact rules which he felt should be included in a republican Constitution.[109] Dr Harris also gave examples of many overseas countries, both republics and monarchies with governors-general, which have codified the powers of their presidents or governors-general.[110]

5.66 While supporting codification of the conventional duty to act on ministerial advice in relation to the exercise of non-reserve powers, Sir Gerard Brennan did not appear to be supportive of the codification of the conventions surrounding, or circumstances relating to, the exercise of the reserve powers:

> … there could be some ambiguity about … the circumstances in which those powers should be exercised. I would be against any attempt to codify this, whereas I think there might be a considerable view that it would be desirable, if we could, to codify the circumstances in which those powers could be exercised.[111]

5.67 Sir Gerard Brennan also argued that:

> It is not possible to foresee the precise circumstances which might warrant an exercise of power without ministerial advice — a question of timing as much as substance — if it became absolutely necessary to ensure compliance with the general law and the effective working of parliamentary democracy in accordance with the law and custom of the Constitution.[112]

5.68 It is important to note that people who did not support codification were more likely to prefer an appointed head of state over an elected head of state. The relationship between powers and selection method will be discussed later in this chapter.

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108 *Committee Hansard,* 29 July 2004, p. 34.

109 *Submission 93*, pp. 11-12.

110 Ibid and also *Committee Hansard*, 29 July 2004, p. 33.

111 *Committee Hansard*, 13 April 2004, p. 20.

112 *Submission 497*, p. 14.

### *Powers of the head of state and the judiciary*

5.69 If the Constitution were amended to codify the rules specifying when the reserve powers can be exercised, it was pointed out that the validity of the exercise of the reserve power could become "justiciable" — that is, an alleged breach of a convention could be reviewed by a court.[113]

5.70 Several submissions felt that the head of state's powers should remain non-justiciable.[114] For example, Mr Jack Hammond and Ms Juliette Brodsky argued that:

> … utilisation of the High Court to preside over crises such as 1975 would require key amendments to the Constitution and permanently disfigure the current balance of power between the government, the Prime Minister and the head of state and the judiciary.[115]

5.71 The Committee notes that codification of powers would not necessarily result in justiciability. It might be possible, for example, to include a provision in the Constitution to make it clear that the exercise of particular powers is not justiciable, although there may also be difficulties with this approach.[116] However, the Committee received little evidence on this issue.

5.72 Others considered that the powers and conventions should be justiciable.[117] However, it was pointed out to the Committee that justiciability would be problematic. For example, Sir Gerard Brennan submitted that:

> In all probability, proceedings would be brought in the High Court with consequent delay and uncertainty and issues that are more political than legal might have to be litigated. Occasions when speedy action is required might pass by while the litigation proceeded. The effectiveness of the Presidential action might be frustrated, placing at risk the constitutional stability of the nation.[118]

5.73 Similarly, the ARM commented that:

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113 Sir Gerard Brennan, *Submission 497*, p. 14; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 9. Note that it is generally thought that the current position is that neither an exercise of the reserve powers, nor the content of conventions, are 'justiciable', although there has been some debate on this issue: Joint Select Committee on the Republic Referendum, *Advisory Report on the Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee Bill 1999*, August 1999, pp. 46-50; RAC Report, Volume 1, p. 107.

114 For example, Women for an Australian Republic, *Submission 476*, p. 5; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 9.

115 Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 9.

116 See, for example, the Joint Select Committee on the Republic Referendum Report, 1999, p. 50.

117 Dr David Solomon, *Coming of Age, Charter for a new Australia*, University of Queensland Press, Brisbane, 1998, p. 46, attached to *Submission 457*; Dr Bede Harris, *Submission 93*, p. 8.

118 *Submission 497*, p. 15.

> … the time required for the High Court to deliberate and arrive at an opinion means that such a mechanism may ultimately obstruct the timely resolution of a political crisis.[119]

5.74 At the same time, Sir Gerard Brennan also expressed concern at the proposition that the exercise of reserve powers would be non-justiciable:

> Whenever a rule is made non-justiciable and no other check and balance is provided to enforce it, it ceases to be a legal rule and a party bound thereby is free to disregard it. Some check and balance is always needed when a limited power is conferred.[120]

5.75 As an alternative, some submissions suggested less formal mechanisms for seeking advice from the judiciary in relation to the exercise of reserve powers. In this context, it was pointed out to the Committee that there is currently no formal mechanism for the Governor-General to seek advice from the judiciary,[121] and that the High Court is not currently empowered to deliver advisory opinions.[122]

5.76 Others felt that the head of state should be free to seek constitutional advice from the judiciary, such as from the Chief Justice of the High Court.[123] Some qualified their support by suggesting that the judiciary should be free to refuse to provide advice.[124]

5.77 Others expressed concern at the notion of the head of state seeking advice from the judiciary.[125] Mr Glenn Patmore suggested that such advice should only be sought with the express permission of the Prime Minister.[126] Sir Gerard Brennan argued that:

> The Judiciary should be kept apart from any issue relating to the propriety of the exercise of executive power. There are two reasons: one, in order to ensure that the Judiciary may, without embarrassment, determine judicially any issue relating to the lawfulness of the exercise of executive power that might arise directly or incidentally in a justiciable controversy; two, in order to ensure that the Judiciary is not seen to be involved in the making of

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119 *Submission 471*, p. 36.

120 *Submission 497*, p. 15.

121 For example, Mr Glenn Patmore, *Submission 534*, p. 12; ARM, *Submission 471*, p. 35.

122 ARM, *Submission 471*, p. 35; Mr Glenn Patmore, *Submission 534*, p. 13, referring to *In re Judiciary and Navigation Acts* (1921) 29 CLR 257.

123 Mr Ross Garrad, *Submission 533*, p. 7; Dr Bruce Hartley, *Submission 300*, p. 8; Mr Howard Teems, *Submission 100*, p. 7; Mr Andrew Cole, *Submission 41*, p. 21; Major Edward Ruston, *Submission 110*, p. 6; Mr John Flower, *Submission 447*, p. 10.

124 For example, Mr Peter Crayson, *Submission 322*, p. 5.

125 Mr Glenn Patmore, *Submission 534,* p. 12; Mr Bill Peach, *Submission 37*, p. 11; Dr Clem Jones, *Submission 492*, p. 9; Mr John Pyke, *Submission 512,* p. 14.

126 *Submission 534,* p. 12.

> decisions which turn or may be thought to turn on political considerations.[127]

5.78 Professor George Winterton pointed out that:

> It is inappropriate for the head of state to seek the advice of a serving judge and inappropriate for the latter to give it. … However, an express constitutional prohibition to this effect would be inappropriate, especially since future exigencies cannot be foreseen.[128]

5.79 The ARM agreed:

> … a constitutional prohibition on a head of state from seeking informal constitutional advice would be impractical and unrealistic. Moreover, such a prohibition would be extremely difficult to enforce short of placing the head of state in solitary confinement during a constitutional crisis.[129]

5.80 Some submissions proposed that some form of "constitutional council" could be established to provide the head of state with independent advice on the exercise of the reserve powers. Such a mechanism was proposed not only as an alternative to justiciability, but also as a limit on the reserve powers of the head of state, particularly a directly elected head of state. For example, Sir Gerard Brennan, proposed that a "constitutional council" could be established to provide:

> … a non-judicial control mechanism to ensure that Presidential power can be exercised without ministerial advice only when there are reasonable grounds for the opinion that such an exercise of power is absolutely necessary to ensure compliance with the general law and the effective working of parliamentary democracy in accordance with the law and custom of the Constitution.[130]

5.81 Sir Gerard Brennan suggested that such a council could be composed of former heads of state, State Governors, or retired judges. He proposed that the council would be appointed by the Prime Minister within three months of a general election (or in order to fill a casual vacancy).[131] In Sir Gerard Brennan's proposal, the council would act only if the head of state consulted it:

> If the Council certified that there are reasonable grounds for the President's opinion that the President's proposed exercise of power is an absolutely necessary exercise of power, the certificate would be final and conclusive of those grounds. In practice, the existence of a Council's certificate would preclude judicial review of the President's action. If the Council denied a certificate, the President's action would be subject to judicial scrutiny and

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127 *Submission 497*, p. 23.

128 *Submission 319*, p. 6.

129 *Submission 471*, p. 35.

130 *Submission 497*, p. 15; and see also *Committee Hansard*, 13 April 2004, p. 19.

131 *Submission 497*, p. 16.

> disallowance. That consequence would provide a significant disincentive to an exercise of power without ministerial advice.[132]

5.82 Sir Gerard Brennan considered that his proposal for a constitutional council would assist in situations of potential political crises, as it would "be not only a brake on the precipitate use of power without ministerial advice; it would facilitate the exercise of the most appropriate power (if any) to resolve the impasse".[133]

5.83 A similar proposal was also suggested by Professor George Winterton. Professor Winterton pointed out that models for such councils exist in Ireland and Portugal.[134] Under Professor Winterton's proposal, the head of state would be required to consult, but not necessarily follow the advice of a similar council of "constitutional experts" before exercising a reserve power. The council would consist of between three and five members chosen by an independent person or body, such as the state and territory chief justices acting jointly (rather than appointed by the Prime Minister).[135] Provision might also be made for the eventual publication of the council's advice.[136] Professor Winterton also expressed a view that Sir Gerard Brennan's constitutional council model:

> … with all respect, is a little complicated in terms of justiciability. Besides that, some of the exercises of the reserve powers would not really be justiciable, so I think that making their [the Council's] consent a condition of non-justiciability is rather complicated. I would prefer to specify what is justiciable and what is not justiciable and make their consultation a requirement but not their consent.[137]

5.84 Others had reservations about the proposals for a constitutional council to advise the head of state, and were concerned that such a council would be outside the democratic process and might undermine the principle of responsible government.[138] Another concern was whether the advice of the council would be made public, or kept

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132 Ibid.

133 Ibid, p. 19.

134 *Submission 319*, p. 7. Dr Walter Phillips also pointed out that in the German republic model, both the Parliament and the Federal Constitutional Court are involved in judging whether the head of state has acted unconstitutionally or not: *Committee Hansard*, 14 April 2004, p. 13.

135 *Submission 319*, p. 7; see also *Committee Hansard*, 13 April 2004, pp. 62-63.

136 Professor George Winterton, *Committee Hansard*, 13 April 2004, pp. 62-63.

137 Ibid.

138 For example, Dr Walter Phillips, *Committee Hansard*, 14 April 2004, pp. 12-13; Mr Glenn Patmore, *Committee Hansard*, 14 April 2004, p. 16; Professor Greg Craven, *Committee Hansard*, 18 May 2004, p. 8; Mr Glenn Patmore, *Submission 534*, p. 12; ARM, *Submission 471*, pp. 35-36.

confidential.[139] It was also suggested that such a council would not necessarily ensure impartial advice.[140]

5.85 For example, Professor Greg Craven criticised this proposal:

> … 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.[141]

5.86 Professor Craven argued further that the constitutional council proposal does not solve the problems with a directly elected President:

> … it ignores the main problem with a directly elected President. The main problem with a directly elected President 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 … 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.[142]

5.87 In the direct election models submitted by the ARM, specific provision was made for the head of state to refer to the High Court in certain circumstances. This reflected the codification provisions proposed by the 1993 Republic Advisory Committee. Under this proposal, the head of state, after giving the Prime Minister an opportunity to demonstrate that the government is acting constitutionally and legally, would be able to refer the matter to the High Court.[143] The ARM explained:

> … we have provided for the highly unlikely situation where the President may need to resolve a political crisis by dissolving the House of Representatives, and/or dismissing the Prime Minister. This proposed amendment is an innovation, designed to retain but limit the Governor General's current powers. With these models, the only circumstances in which the President can sack a Prime Minister who commands a parliamentary majority are where the Prime Minister has been found by a

139 Mr Glenn Patmore, *Submission 534*, p. 12; ARM, *Submission 471*, pp. 35-36.

140 Dr Walter Phillips, *Committee Hansard*, 14 April 2004, p. 13.

141 *Committee Hansard*, 18 May 2004, p. 8.

142 Ibid, pp. 8-9.

143 *Submission 471*, Appendix A, p. 27; see also A Just Republic, *Submission 281*, pp. 5-6; RAC Report, Volume 1, p. 106.

> court to be persisting in a breach of the constitution and refuses to desist from that breach.[144]

5.88 However, Mr Glenn Patmore commented that:

> Any reference power would call into question the conduct of government. Hence, the Head of State would be taking on an overtly political role. This would increase the likelihood of conflict between the Head of State and the Prime Minister. This proposed reference power would also be a radical departure from our system of responsible government …[145]

5.89 The ARM acknowledged that:

> … it might be preferable if the Head of State does not refer matters of illegality to the courts, but only acts once there is a High Court decision declaring a government action illegal and the government refuses to abide by it.[146]

### *Other specific issues relating to the head of state's powers*

5.90 Although the general consensus appeared to be that the powers of a republican head of state should be similar to those currently exercised by the Governor-General, it was submitted to the Committee that some specific powers could be updated or reduced.[147] It was also suggested that some particular powers were "obsolete" or "inappropriate" and could be removed altogether.[148]

5.91 One power which was specifically mentioned for removal was the Queen's power under section 59 of the Constitution to disallow legislation assented to by the Governor-General.[149] Indeed, some suggested that this power should be removed regardless of whether Australia becomes a republic. For example, Sir David Smith stated in evidence that:

> That provision – section 59 – has been there and no government has bothered to waste time and money in having it removed. I wish they had. But it has no effect, it has never had any effect and since 1926 it could no longer have any effect.[150]

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144 *Submission 471*, p. 36.

145 *Submission 534*, p. 13.

146 *Submission 471*, p. 36.

147 For example, Mr Bill Peach, *Submission 37*, p. 6; Dr Barry Gardner, *Submission 482*, p. 1; Mr Andrew Cole, *Submission 41*, p. 16; Women for an Australian Republic, *Submission 476*, p. 5.

148 For example, Women for an Australian Republic, *Submission 476*, p. 5.

149 Winterton,G., *The Resurrection of the Republic*, Federation Press, Canberra and Sydney, 2001, p. 15 referred to by Professor George Winterton, *Submission 319*, p. 1; Sir David Smith, *Committee Hansard*, 29 July 2004, p. 12.

150 *Committee Hansard*, 29 July 2004, p. 12.

5.92 Others suggested that the power to prorogue Parliament may be unnecessary, particularly if parliamentary terms were fixed.[151] Others proposed that the head of state should not have the power to dismiss a Prime Minister, but that he or she should have the power to call an election if the Prime Minister loses the confidence of the House of Representatives.[152]

5.93 On the other hand, there appeared to be general agreement that other specific powers should be retained, such as the powers to appoint and remove Federal judges,[153] and to retain the prerogative of mercy, which is currently part of the executive power.[154]

5.94 Other specific issues were also raised in relation to the functions and powers of the head of state. For instance, Professor George Winterton suggested that an issue to be considered is whether the head of state should enjoy immunity from criminal and/or civil process while in office.[155]

## Relationship between powers and selection method

5.95 As is perhaps apparent from some of the comments above, the extent of the need to clarify and codify the powers and the conventions surrounding their exercise may depend on the method of selection of the head of state. This issue will be discussed further in the examination of various models for an Australian republic later in this report.

5.96 For the moment, it is noted that those who favoured a directly elected head of state were more likely to favour partial or complete codification of the head of state's powers,[156] while those who supported minimalist models often argued that codification would be unnecessary or undesirable.[157] There was a general consensus that it would be more important, if not vital, to clarify and codify the powers in the case of a directly elected head of state, or to provide some other mechanism to limit those powers.[158] It was felt that this would "overcome objections that a directly elected

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151 Winterton, G., *The Resurrection of the Republic*, Federation Press, Canberra and Sydney, 2001, pp. 15-16, referred to in Professor George Winterton, *Submission 319*, p.1.

152 Mr Bill Peach, *Submission 37*, p. 6; Women for an Australian Republic, *Submission 476*, p. 5.

153 ARM, *Submission 471*, p. 33; Sir Gerard Brennan, *Submission 497*, p. 23; Professor George Winterton, *Submission 319*, p. 6; Mr Dominic Pellegrino, *Submission 461*, p. 16.

154 Sir Gerard Brennan, *Submission 497*, p. 23; ARM, *Submission 471*, p. 34.

155 *Submission 319*, p. 8; see also Mr David Denton, *Submission 327*, p. 4.

156 For example, the Hon Michael Beahan, *Submission 334*, p. 4; Premier of Western Australia, *Submission 73*, p. 2; Dr Bede Harris, *Committee Hansard,* 29 July 2004, p. 34.

157 Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 9; Professor Greg Craven, *Submission 167*, pp. 6-7.

158 See, for example, Associate Professor Kim Rubenstein, *Committee Hansard*, 14 April 2004, p. 38; Mr Glenn Patmore, *Committee Hansard*, 14 April 2004, p. 15; Dr Bede Harris, *Committee Hansard*, 29 July 2004, pp. 34 -35.

head of state will, or could, develop a rival base of political power in opposition to a Prime Minister".[159] For example, Professor George Williams expressed a view that:

> … if you are able to codify the powers I do not see any greater dangers in a directly elected President than in a parliamentary appointed President.[160]

5.97 Similarly, Professor George Winterton pointed out:

> There certainly is a risk that a directly elected non-executive head of state could become a rival power centre. Providing that Commonwealth executive power is exercisable only in accordance with ministerial advice and partially codifying the conventions governing the exercise of the reserve powers will go far to lessen this risk, but such provisions cannot, for example, prevent speech-making or invitations to, or meetings with, people or groups which challenges Government policy. The key to lessening such conflict is to ensure that high quality candidates are nominated.[161]

5.98 Likewise, the Hon. Michael Beahan expressed the view that:

> … if you went to a direct election model, the process for selection would become important. The codification of reserve powers becomes more important there to hem in, if you like, the powers that are currently enjoyed by the Governor-General.[162]

5.99 Mr Glenn Patmore also explained:

> A key question is how the head of state should address a political crisis—for example, whether or not the head of state should dismiss a Prime Minister. The response to this question will vary according to the mode of appointment of the head of state. A popularly elected President will have a popular mandate, which might encourage some inappropriate intervention in parliamentary politics. Conversely, a parliamentary elected head of state may have too weak a mandate to intervene in parliamentary politics to resolve a constitutional crisis.[163]

5.100 In the five republic models submitted by the ARM, the extent of codification varied depending on the method of selection of the head of state.[164] However, the ARM acknowledged that:

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159 Premier of Western Australia, *Submission 73*, p. 2; see also Professor George Winterton, *Committee Hansard*, 13 April 2004, pp. 61-62; Dr Bede Harris, *Committee Hansard,* 29 July 2004, p. 34. For counterarguments as to whether it would actually overcome these objections, see further discussion in the later chapter on alternative models for an Australian republic.

160 *Committee Hansard*, 13 April 2004, p. 45.

161 *Submission 319*, p. 3.

162 *Committee Hansard*, 14 April 2004, p. 3.

163 Ibid, p. 15.

164 *Submission 471*, p. 13.

> … although codification of powers under these "minimalist" models may not be strictly necessary, it may still be desirable. The ARM acknowledges there is a strong case for codifying the conventions even in a "minimalist" republic, just as there is a strong case for codifying the conventions today.[165]

5.101 Indeed, it was submitted that clarifying the powers of a republic head of state and their exercise should be the first priority, and that this would be required regardless of the method of selection of the head of state.[166] For example, Sir Gerard Brennan expressed a view that:

> Concentration really has to be on the powers that you are going to allocate to this person rather than on the method of election or dismissal.[167]

5.102 Sir Gerard Brennan argued further:

> By entrenching the Presidential duty generally to exercise power only on ministerial advice and by virtually ensuring that Presidential power is not otherwise exercised unless the non-justiciable certificate of a Constitutional Council is first obtained, the essential characteristics of responsible and representative government under the Constitution can be preserved if Australia should become a Republic. Whatever the mode of election of the President might be, those essential characteristics can be preserved by governing the powers of the President and the manner of their exercise.[168]

5.103 Professor George Williams even suggested that the Governor-General's powers should be codified, regardless of the move to a republic:

> We could also look at codifying the powers of the Governor-General; they ought to be codified today in any event. Frankly, if they cannot be codified with the Governor-General via legislation at the moment, it seems unlikely to me that we would be able to agree on any such codification as part of a more difficult referendum process.[169]

## Relationship with executive, parliament and judiciary

5.104 The Committee notes that term of reference (b)(iii) for this inquiry requires an examination of the relationship of the head of state with the executive, the parliament and the judiciary. This is an issue which has arisen throughout this chapter, and also arises in the next two chapters of the report.

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165 Ibid.

166 Sir Gerard Brennan, *Submission 497*, p. 11; Dr Walter Phillips, *Committee Hansard*, 14 April 2004, pp. 12-13; Mr Glenn Patmore, *Committee Hansard*, 14 April 2004, p. 16.

167 *Committee Hansard*, 13 April 2004, p. 23.

168 *Submission 497*, p. 17.

169 *Committee Hansard*, 13 April 2004, p. 40.

5.105 Some of the main issues relating to the head of state's relationship with the judiciary have been discussed in this chapter, such as whether a republican head of state should be able to seek advice from the judiciary, or indeed, whether those reserve powers should be justiciable. The head of state's role as a "constitutional umpire" is also relevant to the head of state's relationship with the executive and parliament. Certain specific powers of the head of state will also directly impact on this relationship, such as the powers to dissolve Parliament; appoint and dismiss Ministers and Prime Ministers; and powers to assent to legislation.

5.106 Other issues relevant to this term of reference will be discussed in the next two chapters, including the effect of appointment methods on the powers and political mandate of the head of state compared to the head of government; and whether Parliament should have a role in the selection or appointment of the head of state.

# CHAPTER 6

# SELECTION AND REMOVAL OF HEAD OF STATE

## Introduction

6.1 This chapter will examine the possible methods for selection and removal of the head of state in an Australian republic (term of reference (b)(ii)). This is one of the key differences in the various models for an Australian republic. In this context, the Committee considered a number of issues relating to the position of head of state including:

- qualification requirements;
- selection – nomination and short listing;
- selection – appointment or election processes;
- tenure;
- removal processes, including possible grounds for removal; and
- casual vacancies.

6.2 As with the issues discussed in the previous chapter, while some of these issues vary depending on the particular republic model, some are interchangeable and independent of any particular model. Each of these issues is considered in turn below.

6.3 Once again, it is noted that, as outlined in previous chapters**,** many submissions suggested that, in the event of further progress towards an Australian republic, the details of the method of selection and removal of the head of state and related issues should be decided as part of that process.

## Qualifications

6.4 The first issue to be considered in the context of selection of a head of state in an Australian republic is whether there should be particular requirements for qualifications or disqualifications for the office of head of state. Some of the suggested requirements which arose during the Committee's inquiry included:

- Australian citizenship;
- eligibility to vote;
- age limits; and
- gender-based requirements.

6.5 Some of the disqualifications suggested included:

- the same disqualifications as set out in section 44 of the Constitution for members of Parliament; and

- former and/or current politicians.

### *Qualifications*

6.6 The ARM suggested that the same qualification requirements for election as a Member of Parliament should apply to a republican head of state.[1] These qualifications are outlined in section 163 of the *Commonwealth Electoral Act 1918*, and require a person to be:

- an Australian citizen;
- at least 18 years of age; and
- either an elector entitled to vote at a House of Representatives election, or a person qualified to become such an elector.

*Australian citizenship*

6.7 There seemed to be consensus that the head of state should, as a minimum, be required to be an Australian citizen.[2] Indeed, some suggested that Australian citizenship should be the *only* eligibility requirement for the head of state.[3] Others suggested that there should also be a minimum period of residency in Australia, such as 10 or 20 years.[4]

6.8 Others expressed a view that, in addition to the requirement for Australian citizenship, persons holding foreign citizenship should be excluded from standing for head of state.[5] For example, Dr Barry Gardner considered that:

> In view of the overall change we are seeking to make, from using someone else's monarch to having a system entirely our own, it would be unconscionable to have a head of state with any sort of external allegiance or identification, or multiple citizenship.[6]

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1 *Submission 471*, pp. 31-32.

2 For example, ARM, *Submission 471*, p. 31; Mr Bill Peach, *Submission 37*, p. 11; Republic Now!, *Submission 466*, p. 15; A Just Republic, *Submission 281*, p. 4; Mr Howard Teems, *Submission 100*, p. 6; Mr Andrew Cole, *Submission 41*, p. 20; Mr Gino Cocchiaro, *Committee Hansard*, 19 May 2004, p. 10; Mr John Pyke, *Submission 512*, p. 13; Dr Clem Jones, *Submission 492*, p. 7; Women for an Australian Republic, *Submission 476*, p. 9; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, pp. 14-15.

3 Women for an Australian Republic, *Submission 476*, p. 9; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 14.

4 Dr Barry Gardner, *Submission 482*, p. 2; see also Dr Barry Gardner, *Committee Hansard*, 14 April 2004, p. 19; Mr Howard Teems, *Submission 100*, p. 6; Mr John Flower, *Submission 447*, p. 8; Major Edward Ruston went further and suggested an Australian citizen of at least third generation status: *Submission 110*, p. 5.

5 Dr Barry Gardner, *Submission 482*, p. 2 and *Committee Hansard*, 14 April 2004, p. 19; Mr Dominic Pellegrino, *Submission 461*, p. 16.

6 *Submission 482*, p. 3.

6.9 It was commonly suggested that, to achieve this end, a disqualification provision along the lines of section 44(i) of the Constitution could be used for a republican head of state.[7] Section 44(i) disqualifies any candidate for, or member of, Commonwealth Parliament who is under the "acknowledgment of allegiance to a foreign power".

6.10 The Committee notes that, although it can be problematic sometimes for a person to relinquish his or her original nationality,[8] High Court decisions in recent years have clarified the meaning of section 44(i). This paragraph has been interpreted by the High Court as relating only to a person who has formally or informally acknowledged allegiance, obedience or adherence to a foreign power and who has not revoked that acknowledgment. Where a person has dual nationality, whether or not a person has taken reasonable steps to renounce a foreign nationality, and what amounts to the taking of reasonable steps, depends on the circumstances of a particular case.[9] Dr Baden Teague suggested a requirement along these lines for the head of state – that is, the head of state should be required to be "an Australian citizen who has taken all reasonable steps to renounce any other nationality".[10]

*Eligibility to vote*

6.11 Several submissions suggested that eligibility to vote in a Federal election should be a requirement to be eligible for the position of head of state.[11] The Committee notes that, under current electoral laws, this would effectively require a person to be 18 years or over and an Australian citizen.[12] It would also exclude certain people, such as:

- people who, by reason of being of unsound mind, are incapable of understanding the nature and significance of enrolment and voting;[13]

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7 Sir Gerard Brennan, *Submission* 497, p. 23; Mr Bill Peach, *Submission 37,* p. 11; Professor George Winterton, *Submission 319*, p. 6; Republic Now!, *Submission 466*, p. 15; Republican Party of Australia, *Submission 495A*, p. 2; Mr Andrew Cole, *Submission 41*, p. 20; A Just Republic, *Submission 281*, p. 4.

8 RAC Report, Volume 1, p. 57.

9 *Nile v Wood* (1988) 167 CLR 133; *Sykes v Cleary* (1992) 109 ALR 577; *Sue v Hill* (1999) 163 ALR 648; see also H. Evans (ed.), *Odgers' Australian Senate Practice*, Dept. of the Senate, Canberra, 9th ed, 1999, p. 154; B. Bennett, *Candidates, Members and the Constitution*, Department of the Parliamentary Library, Research Paper No. 18 2001-02, p. 11.

10 Dr Baden Teague, *Submission 538*, p. 9.

11 See, for example, Dr Bede Harris, *Submission 93A*, p. 3; ARM, *Submission 471*, p. 31.

12 *Commonwealth Electoral Act 1918*, s. 93. Note that British subjects who were on a Commonwealth of Australia electoral roll on 25 January 1984 are eligible even if they are not Australian citizens: see *Commonwealth Electoral Act 1918*, para 93(1)(b)(ii).

13 Note that specific exclusion of head of state candidates who were of 'unsound mind' was also a common suggestion in evidence to this inquiry: Mr Howard Teems, *Submission 100*, p. 6; Republic Now!, *Submission 466*, p. 15; Mr John Pyke, *Submission 512*, p. 13; Dr Clem Jones, *Submission 492*, p. 7.

- prisoners serving a sentence of five years or more;
- people who have been convicted of treason and not pardoned;
- Australian citizens permanently living overseas who do not have a fixed intention of returning to Australia; and
- any person who renounces their Australian citizenship.[14]

*Age limits*

6.12 Many submissions also suggested age limits for eligibility for a republic head of state. Some submissions proposed that the head of state should be at least 35[15] or 40[16] years of age. Others felt that a minimum age of 18 was sufficient.[17] As noted above, a requirement of eligibility to vote would effectively require a minimum age of 18.[18] A maximum age limit was also suggested in some evidence, for example, of 75,[19] 70[20] or even 60.[21] However, others objected to the idea of an upper age limit.[22] Mr Jack Hammond QC and Ms Juliette Brodsky endorsed Richard McGarvie's observation that:

> There is advantage in appointing persons, who, while still physically and mentally fit enough to carry out the demanding duties, are towards the end of their working life. They will have had time to gain public standing and an understanding of their community and its constitutional system.[23]

*Gender-based requirements*

6.13 Another issue related to eligibility requirements was a proposal from Associate Professor Kim Rubenstein that the gendered of the position of head of state should alternate:

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14 *Commonwealth Electoral Act 1918*, ss. 93-97; and Australian Electoral Commission website, http://www.aec.gov.au/_content/what/enrolment/general.htm, accessed 29/7/04.

15 Republican Party of Australia, *Submission 495A*, p. 2; Major Edward Ruston, *Submission 110*, p. 5; Mr Howard Teems, *Submission 100*, p. 6; Mr Stephen Souter, *Submission 526*, p. 324.

16 Republic Now!, *Submission 466*, p. 15.

17 ARM *Submission 471*, p. 31; Mr Gino Cocchiaro, *Committee Hansard*, 19 May 2004, p. 10.

18 See *Commonwealth Electoral Act 1918*, s. 93.

19 Republic Now!, *Submission 466*, p. 15.

20 See, for example, Republican Party of Australia, *Submission 495A*, p. 2.

21 Major Edward Ruston, *Submission 110*, p. 5; Republican Party of Australia, *Submission 495A*, p. 2.

22 For example, Dr Barry Gardner, *Committee Hansard*, 14 April 2004, p. 23.

23 Richard E. McGarvie, *Democracy: Choosing Australia's Republic*, Melbourne University Press, Melbourne, 1999, p. 236, quoted by Mr Jack Hammond QC and Ms Juliette Brodksy, *Submission 719*, p. 15; also Mr Jack Hammond QC, *Committee Hansard*, 29 July 2004, p. 7.

> For instance, the Constitution could guarantee that the gender of the first person appointed as Head of State would then be the basis upon which gender would alternate for the position. Therefore, if a woman was appointed as the first Head of State in a move to a republic, then the Constitution would mandate that the next person appointed to the position would be a man.[24]

6.14 Associate Professor Rubenstein elaborated further during the hearing in Melbourne:

> … some people argue that this consideration should not be put above merit for the position. This suggests that the best person for the position may miss out because of the mandating of gender in that requirement. But underlying that argument are some assumptions that need unpacking. The first is the notion that there will only ever be one best person for the position of head of state, and I do not think that that is a fair or realistic reflection of the pool of people available.[25]

6.15 However, Ms Clare Thompson disagreed with this proposal:

> A woman would be great but it is not a prerequisite obviously … 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.[26]

6.16 In response to questioning from the Committee, Ms Sarah Brasch from Women for an Australian Republic supported the proposition that the head of state position should be alternated by gender, but acknowledged that "whether that becomes legislated or not I think would be extremely contentious".[27]

### *Disqualifications*

6.17 It was commonly suggested to the Committee that a disqualification provision along the lines of section 44 of the Constitution (which sets out disqualifications for members of Parliament) could be used for a republican head of state.[28] The disqualification under paragraph 44(i) relating to allegiance or obedience to a foreign

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24 *Submission 484*, p. 4.

25 *Committee Hansard*, 14 April 2004, p. 35.

26 *Committee Hansard*, 18 May 2004, p. 35.

27 *Committee Hansard*, 29 July 2004, p. 20.

28 ARM, *Submission 471*, p. 31; A Just Republic, *Submission 281*, p. 4; Dr Bruce Hartley, *Submission 330*, p. 7; Dr Barry Gardner, *Submission 482*, p. 3; Mr Andrew Cole, *Submission 41*, p. 20; Dr Baden Teague, *Submission 538*, p. 9; Mr Ross Garrad, *Submission 533*, p. 6; Republican Party of Australia, *Submission 495A*, p. 2; Mr Dominic Pellegrino, *Submission 461*, p. 16; Mr John Flower, *Submission 447*, p. 9.

power has already been discussed above. Some of the other disqualifications under section 44 include persons who:

- are undischarged bankrupts;
- have been convicted of an offence punishable by imprisonment by one year or more; or
- hold an office of profit under the Crown.[29]

6.18 Some submissions questioned whether it was really necessary for people to be ineligible for the position of head of state due to bankruptcy or insolvency.[30] Mr John Pyke observed:

> As to the traditional disqualification for bankrupts, I have always regarded this as harsh even for those seeking to become members of Parliament … If the people want to elect a bankrupt to parliamentary or Presidential office, why shouldn't they, as long as the candidate has disclosed the facts on nomination? Non-disclosure should disqualify, but not simply being bankrupt.[31]

### *Political or apolitical head of state?*

6.19 Many submissions expressed a desire for a head of state who is "apolitical", "above politics" or "non-partisan".[32] It was frequently suggested in evidence before the Committee that one way to achieve this would be by excluding former and/or current politicians from the possibility of becoming head of state.

6.20 For this reason, many submissions to the inquiry supported disqualifications along the lines contained in the 1999 referendum proposal, which stated that the person must not be a member of the Commonwealth Parliament or a state parliament or territory legislature, or a member of a political party.[33]

6.21 All the models submitted by the ARM stipulated that the head of state should not be a member of the Commonwealth Parliament or a state parliament or territory

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29 See section 44 of the Constitution. For further information on section 44, see also B. Bennett, *Candidates, Members and the Constitution*, Department of the Parliamentary Library, Research Paper No. 18 2001-02.

30 Professor George Winterton, *Submission 319*, p. 6, referring to G. Carney, *Members of Parliament: law and ethics,* Sydney, 2000, pp. 51-55.

31 *Submission 512*, p. 13.

32 See, for example, Mr Ross Garrad, *Committee Hansard*, 29 June 2004, p. 32; Major Edward Ruston, *Committee Hansard*, 14 April 2004, p. 30; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, pp. 26-27 & 32; The Hon Michael Beahan, *Submission 334,* p. 4.

33 See clause 60 of the Constitution Alteration (Establishment of Republic) Bill 1999 ('1999 Republic Bill'), and also, for example, A Just Republic, *Submission 281*, p. 4; Dr Clem Jones, *Submission 492*, pp. 7 & 14; Dr Baden Teague, *Submission 538*, p. 9; Professor George Winterton, *Submission 319*, p. 6.

legislature.[34] All but one ARM model (ARM Model Four) went further to require that the head of state not be a member of a political party.[35]

6.22 On the other hand, some submissions disagreed with restrictions on the political involvement of a head of state.[36] For example, the Hon. Michael Beahan argued:

> I do not believe that politicians should be excluded from consideration as candidates for the position. I do not subscribe to the popular view that politicians are somehow not to be trusted. Politics is a noble profession, which prepares many well for other high offices. There are many politicians who have serve with distinction in the position of governor general.[37]

6.23 Similarly, Dr Bruce Hartley suggested that it would be desirable to have a head of state who is politically knowledgeable.[38] Mr John Pyke also observed that:

> It seems to me that too much artificial fear has been raised about the President being a politician … We have had governors-general here who have been politicians—Bill Hayden, Bill McKell, Lord Casey, Paul Hasluck—and they have all been totally neutral, unbiased, admirable governors-general. In Austria, Iceland, Ireland and Portugal the President is always an ex-politician. They are even allowed to run for office while they are still politicians. The Foreign Minister of Austria recently ran but was defeated. They know what the role of President is. They immediately switch out of the political role into the presidential role and they do their job admirably. The rule of law and responsible government continues.[39]

6.24 The Committee notes that, in this context, the 1993 Republic Advisory Committee observed:

> It could be argued that a political life is a very valuable background for a head of state. Familiarity with the procedures of government and the Parliament would certainly be useful, as indeed would a familiarity with constitutional law and procedure. It would appear that a large part of the work of a head of state consists of making speeches and attending community functions, for which politics is no doubt also a good background.[40]

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34 ARM, *Submission 471*, p. 32.

35 Ibid.

36 See, for example, Dr Bruce Hartley, *Submission 330*, p. 7; Mr John Pyke, *Submission 512*, p. 13.

37 *Submission 334*, p. 5.

38 *Committee Hansard*, 18 May 2004, p. 22.

39 *Committee Hansard*, 29 June 2004, p. 16; see also Mr John Pyke, *Submission 512*, p. 13.

40 RAC Report, Volume 1, p. 56.

6.25 Professor George Winterton argued that excluding parliamentarians and former parliamentarians:

> … unnecessarily denigrates our parliamentary representatives, denies the public freedom of choice, and would ultimately be ineffective in excluding "politicians" – although first-rank politicians are excluded, what prevents the election of second-rank politicians?[41]

6.26 However, Professor Winterton did suggest that the head of state should be prohibited from holding any other public office or belonging to a political party at the time of entering office.[42]

6.27 It was pointed out to the Committee that there may be more effective ways to achieve an apolitical head of state, such as through selection methods, which will be discussed further below. The Committee notes that the RAC in 1993 observed that:

> If the objection to a politician is based on a fear that the functions of the office may not be carried out in an impartial manner, the method of choosing the head of state may be the better means of meeting this concern. If, for example, the head of state were to [be] selected by a two-thirds majority of Parliament, it would require bipartisan support of a particular candidate, more or less guaranteeing that someone known, or expected to be politically partial would not be appointed. If, on the other hand, the head of state were to be appointed at the sole discretion of the Prime Minister or popularly elected, the option of excluding former politicians might warrant more serious consideration.[43]

6.28 Similarly, the ARM submitted that:

> If it is thought desirable to avoid an elected Head of State that has party political affiliations, then the best place to ensure this may be in the design of the nominations process. Model Five (People Elect from Parliament's List) attempts to do just that, by ensuring that each candidate must be approved by no less than a two-thirds majority vote of parliament.[44]

6.29 As will be discussed further in the next chapter, many of those who wanted an apolitical head of state felt that this would be difficult to achieve if a head of state were to be directly elected.[45] On the other hand, Dr Walter Phillips noted:

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41 *Submission 319*, p. 4.

42 Ibid.

43 RAC Report, Volume 1, p. 56.

44 *Submission 471*, p. 15.

45 See, for example, Professor Greg Craven, *Submission 167*, p. 6; Sir Gerard Brennan, *Submission 497*, p. 20; Dr Baden Teague, *Committee Hansard*, 19 May 2004, p. 25; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 26; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 7.

> … I do not think that direct election necessarily means you are going to get a partisan head of state. The two most recent cases in Ireland, the two women presidents, have shown that. Even though Mary Robinson came from a political background, I think they acted in a uniquely non-partisan way. The German presidents have all been members of a political party, but once people get into that position they more or less create their own role and style in much the same way as we could say Sir William Deane did as Governor-General. I have enough confidence in the prospects of such a scheme to say that it would produce people of some calibre, whether they are from a political or a non-political background.[46]

6.30 The desirability or otherwise of a politician as head of state may also depend on the powers allocated to that head of state. As Mr David Latimer observed:

> … if you have a position where there is no political power, are political parties necessarily going to be that interested in finding someone to fill it?[47]

*Timing of political involvement*

6.31 If there were to be some restriction on parliamentarians and membership of political parties, the timing of the application of that restriction needs to be considered.[48] Submissions varied as to the appropriate timing of any restriction.

6.32 Many submissions suggested that a person should not be a Member of Parliament at the time of nomination.[49] Some supported a restriction preventing nominations from any person who is currently, or has during the past five years been, a member of any Parliament or any political party.[50] Others suggested that any such restriction should only take effect at the time the head of state is declared to be elected (or appointed),[51] or at the time of entering office.[52]

6.33 The republic models submitted by the ARM varied in relation to this requirement, with the variations as follows: the time of nomination (Model Two and

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46 *Committee Hansard*, 14 April 2004, pp. 12-13.

47 *Committee Hansard*, 13 April 2004, p. 16; see also Mr Bill Peach, *Submission 37*, p. 8.

48 This was an issue in the 1999 Republic model – see Joint Select Committee on the Republic Referendum, *Advisory Report on the Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee Bill 1999*, August 1999, pp. 31-33.

49 Dr Baden Teague, *Submission 538*, p. 9; A Just Republic, *Submission 281*, p. 4; Mr Ross Garrad, *Submission 533*, p. 4.

50 See, for example, Mr Andrew Newman-Martin, *Submission 107*, p. 39; Mr David Latimer, *Submission 519*, p. 45; Mr Dominic Pellegrino, *Submission 461*, p. 16; see also RAC Report, Volume 1, p. 71.

51 Mr John Pyke, *Submission 512*, p. 13.

52 Professor George Winterton, *Submission 319*, p. 4.

Model Four), the time of appointment (Model Three), or the time of assuming office (Model One and Model Five).[53]

## Selection of head of state

6.34 The method for selecting the head of state could be considered one of the most critical issues in relation to the models for an Australian republic. This issue will be discussed briefly below. However, as the method of selection of head of state is one of the key variations in the republic models, further detail on this issue is contained in the next chapter.

6.35 The current situation, in terms of appointment of the Governor-General, is that the Queen appoints the Governor-General on the advice of the Prime Minister.[54] Supporters of "minimalist" models for an Australian republic prefer something close to this situation for a republican head of state – for example, where the Prime Minister appoints the head of state, or where the Prime Minister nominates and the Parliament appoints.[55]

6.36 The methods of selection can be broken down into two separate, but probably interdependent parts: nomination and short listing of candidates, then the actual selection of the head of state from these candidates. Each of these steps is discussed further below.

### *Nomination and short listing*

6.37 The first step in the selection process would be the nomination and short listing of candidates for the position of head of state. Mr John Kelly noted:

> I think the most difficult thing in the whole process is how you get the candidates. Whether you have an election, a referendum or whatever afterwards, that is an easy process; but getting a proper nomination process is very difficult.[56]

6.38 However, it is clear that some of the key issues to be considered in this context include:

- who should be eligible to put forward nominations?
- in the case of nomination by petition, what should be the minimum number of nominators?

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53 ARM, *Submission 471*, p. 21.

54 Of course, our current head of state, the Queen, is not appointed, but rather is a hereditary position.

55 See, for example, ARM Model One or Two, ARM, *Submission 471*, Appendix A, pp. 3-6*;* Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 27; Dr Baden Teague, *Submission 538*, pp. 9-10; Professor Greg Craven, *Submission 167*, p. 5.

56 *Committee Hansard*, 14 April 2004, p. 24.

- should there be a minimum or maximum number of candidates – and if so, what are the appropriate numbers?

6.39 In terms of who should be able to put forward nominations, proposals received by the Committee included nomination:

- by the Prime Minister;[57]
- by a nominations committee established by Federal Parliament (including parliamentary and community representatives);[58]
- by the Senate or the House of Representatives, or either house of a state or territory parliament; or any local government followed by short listing by a joint sitting of the Senate and House of Representatives;[59]
- nominations by state or territory governments;[60]
- by a petition of voters with a minimum number of signatures, perhaps with Parliament to select a short list;[61] and
- by open nomination – that is, any Australian citizen.[62]

6.40 Some suggested more than one avenue for nomination should be used.[63] For example, Dr Barry Gardner submitted that nomination by petition could be used as a supplementary process for a main nomination process.[64] Others suggested a combination of methods, such as open nomination, followed by short listing by some form of nominations committee,[65] or by Federal Parliament.[66]

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57 See, for example, Mr Andrew Cole, *Submission 41*, p. 17; ARM (Model One), *Submission 471*, Appendix A, pp. 3-4; Dr Baden Teague, *Submission 538*, pp. 9-10; Mr Jack Hammond and Ms Juliette Brodsky, *Submission 719*, pp. 11-12.

58 See, for example, Professor George Winterton, *Submission 319,* p. 3; ARM (Model Two), *Submission 471*, Appendix A, pp. 5-6.

59 See, for example, A Just Republic, *Submission 281*, pp. 4-5; ARM (Model Five), *Submission 471*, Appendix A, pp. 13-14.

60 See, for example, Professor George Winterton, *Submission 319,* p. 3; Mr John Pyke, *Submission 512,* p. 11; Mr Allan Patterson, *Submission 205*, p. 1.

61 See, for example, Professor George Winterton, *Submission 319,* p. 3; Republican Party of Australia, *Submission 495A*, p. 2; Mr John Pyke, *Submission 512*, p. 11; ARM (Model Four), *Submission 471*, Appendix A, pp. 10-12.

62 See, for example, Women for an Australian Republic, *Submission 476*, p. 5; ARM (Model Five), *Submission 471*, Appendix A, pp. 13-14; A Just Republic, *Submission 281*, pp. 4-5.

63 Professor George Winterton, *Submission 319,* p. 4; Mr John Pyke, *Submission 512*, p. 11; ARM (Model Five), *Submission 471*, Appendix A, p. 13; A Just Republic, *Submission 281*, pp. 4-5.

64 *Submission 482*, p. 2.

65 See, for example, Women for an Australian Republic, *Submission 476*, p. 5.

66 ARM (Model Five), *Submission 471*, Appendix A, pp. 13-14; A Just Republic, *Submission 281*, pp. 4-5.

6.41 While these were some of main proposals suggested, the Committee received many variations on each of these particular options. This was particularly the case in relation to nomination by petition, where suggestions for the minimum number of signatures ranged from as low as 100[67] to up to 50,000[68] or 100,000[69] or more. The "Hayden model", which was discussed at the 1998 Constitutional Convention, suggested one per cent of the electorate.[70] It was suggested to the Committee that this would require 125,000 electors, which was considered "rather large".[71] It was clear that, if nomination by petition were chosen as an option, an appropriate balance would be required to ensure that the number were low enough to allow genuine nominations to succeed, while restricting frivolous nominations. As Dr Bede Harris (who suggested a minimum of 500 nominators) stated:

> It was a difficult figure to choose. I was trying to balance the need for the process to be as accessible as possible to potential candidates against the danger of have thousands of candidates with eccentric platforms ... I think once would have to be guided in that by expert evidence from the Electoral Commission as to what an appropriate number would be.[72]

6.42 It was also suggested that nomination by petition should comprise minimum numbers from each state, to ensure adequate involvement and representation of every state, particularly smaller states.[73]

6.43 Other interesting proposals were also put forward. For example, Mr Ross Garrad suggested that, following an open nomination procedure, "citizen's juries" could shortlist candidates prior to an election:

> If we are to have a reasonably open nomination procedure, then how is a potentially large field of nominees going to be cut down to a manageable short list to go to an election? If the short-listing is not to be done by the parliament, the parties or by a government appointed committee—and I believe all of these approaches are fatally flawed—then one obvious approach is to use a representative sample of the population. I suggest the use of citizen juries of 12 randomly chosen electors in each federal electorate—a total of about 1,800 people meeting in their electorates for one full day, sifting through the nominees and then voting as individuals to produce a short list of six candidates.[74]

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67 Mr Ross Garrad, *Submission 533*, p. 4.

68 Professor George Winterton, *Submission 319,* p. 4.

69 Dr Bruce Hartley, *Submission 330*, p. 6.

70 *Final Report of the Constitutional Convention*, 1998, Volume 1, Attachment E.

71 Professor George Winterton, *Submission 319,* p. 4.

72 *Committee Hansard,* 29 July 2004, p. 35.

73 Mr David Latimer, *Submission 519*, p. 42; ARM (Model Four), *Submission 471*, Appendix A, p. 10; Professor George Winterton, *Submission 319*, p. 4.

74 *Committee Hansard,* 29 June 2004, p. 31.

6.44 In terms of whether there should be minimum or maximum numbers of actual candidates, some submissions considered that there should be no minimum or maximum number.[75] Others suggested restrictions of somewhere between 3-10 candidates[76] or even up to 50 candidates.[77] Women for an Australian Republic proposed that half the candidates should be women, and at least one an Indigenous person.[78]

6.45 Of course, as several submissions noted, the nomination process would be heavily dependent on the final method of selection (such as appointment or election) of the head of state.[79] For example, the models put forward by the ARM provided for the different nomination processes relating to the particular method of selection.[80] Similarly, nomination by petition was obviously more likely to be suggested by supporters of direct election.[81]

### *Appointment or election processes*

6.46 The next crucial step in the selection process involves the actual appointment or election of the head of state. As will be discussed further in the next chapter, the Committee received a considerable amount of evidence which suggested that the chances of becoming a republic hinged on this very issue.[82]

6.47 The Committee received some original suggestions for methods for selecting the head of state. For example, Mr Michael Pepperday proposed a "popular appointment" model for the head of state, whereby the people would approve (or reject) the Prime Minister's candidate for head of state via a postal vote.[83] Some of the other suggestions included:

- randomly selecting the head of state from the Federal electoral roll;[84]

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75 Professor George Winterton, *Submission 319*, p. 4; Dr Ken Coghill, *Submission 536*, p. 4.

76 Republic Now!, *Submission 466*, p. 14.

77 Mr Peter Crayson, *Submission 322*, p. 3.

78 *Submission 476*, p. 8.

79 ARM, *Submission 471*, p. 20; Professor George Winterton, *Submission 319*, p. 3.

80 *Submission 471*, p. 20.

81 ARM (Model Four), *Submission 471*, Appendix A, p. 10; Mr Ross Garrad, *Submission 533*. See also the direct election models outlined in the next Chapter.

82 See for example, Mr Andrew Newman-Martin, *Submission 107*, pp. 18-22; Mr Peter Consandine, *Committee Hansard*, 13 April 2004, p. 79; Mr Howard Teems, *Submission 100*, p. 8; Mr Don Willis, *Submission 474*, p. 4.

83 *Submission 621*, pp. 11-12. A similar suggestion was put forward by Mr Phill Chadwick, *Submission 81*, p. 1, except that the people would approve or reject a candidate endorsed by a two-thirds majority of Parliament.

84 Mr Chris Borthwick, *Submission 695*, p. 1.

- rotating the head of state on an annual basis, with each state governor serving a one-year term, followed by a directly elected head of state for one year;[85] or
- allowing each state in-turn to appoint a head of state for a term of five years using their own preferred selection process.[86]

6.48 However, most of the evidence received by the Committee related to the following options for the final stage of the selection of a head of state:

- appointment by the Prime Minister;
- appointment by Federal Parliament (for example, by a two-thirds majority of both Houses);
- appointment by an elected "presidential assembly" or "electoral college";
- direct election with parliamentary involvement; or
- direct election.

6.49 Given that the method of selection is one of the key differences in the various republican models, the issues relating to these methods of selection will be discussed in further detail in the next chapter. However, it is noted here that, in the case of selection by direct election, some additional factors would need to be considered. These include:

- voting methods and systems; and
- campaign assistance and financing issues.

*Direct election: voting methods and systems*

6.50 The Committee's discussion paper sought views on potential methods of voting in the case of a directly elected head of state. Submissions and evidence overwhelmingly supported a preferential voting system, with which Australians are already accustomed.[87] One submitter who originally supported other voting methods was persuaded by the arguments of other submissions in favour of a preferential voting system:

> At first I was thinking that a run-off gives a clear view to the public about who the last two remaining candidates are, and they get a second chance to make a decision between those two. I think I am convinced by a number of your submitters who say that the preferential voting system is really well accepted in Australia, and it is less costly because you have only one ballot. ... I do think, however, that the preferential system should be an optional

85 Mr Robert Sadleir, *Submission 508*, pp. 1-2.

86 Mr Yogi Marriott, *Submission 17*, p. 1.

87 ARM, *Submission 471*, p. 17; Women for an Australian Republic, *Submission 476,* p. 9; Mr Bill Peach, *Submission 36*, p. 8; Republic Now!, *Submission 466*, p. 12; Mr John Kelly, *Submission 142*, p. 13; Dr Ken Coghill, *Submission 536*, p. 4.

> preferential system so that people do not have to put preferences next to everybody.[88]

6.51 The Committee did not receive a great deal of evidence on the issue of whether voting for a directly elected head of state should be compulsory or voluntary. Perhaps it was assumed that voting should be compulsory, as for other Australian elections. However, Women for an Australian Republic suggested that voting for the head of state should be voluntary as this would remove "any perception that the head of state has a political mandate to threaten the elected government of the day".[89] Some submissions also proposed that the election for the head of state could be conducted by a postal ballot.[90] It was also suggested to the Committee that the voting system could be prescribed by legislation, not by the Constitution.[91]

*Direction election: campaign assistance and financing*

6.52 The Committee's discussion paper also sought views on campaign and financing issues associated with a directly elected head of state, and in particular:

- whether campaign assistance should be available to nominees;
- whether and how political parties should or could be prevented from assisting or campaigning on behalf of nominees; and
- who should administer any campaign assistance provided.

6.53 Varying opinions were put forward on whether campaign assistance should be available to candidates. Many supported some form of campaign assistance, including public financial assistance.[92] For example, the ARM argued that:

> Public funding of election candidates is now accepted in Australia as a way to encourage political participation on an equitable basis in a democracy. In this spirit, some form of campaign assistance should be available to nominees if an election is held.[93]

6.54 The ARM proposed that a "reasonable level of assistance" could be provided to all nominees prior to the election, supplemented by post-election assistance:

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88 The Hon Michael Beahan, *Committee Hansard*, 14 April 2004, p. 2

89 *Submission 476*, p. 8; see also Ms Sarah Brasch, Women for an Australian Republic, *Committee Hansard*, 29 July 2004, p. 20.

90 See, for example, Major Edward Ruston, *Committee Hansard*, 14 April 2004, p. 30.

91 Professor George Winterton, *Submission 319*, pp. 2-3.

92 Republic Now!, *Submission 466*, p. 12; Republican Party of Australia, *Submission 495A*, p. 2; Mr Andrew Newman-Martin, *Submission 107*, p. 39; Professor George Winterton, *Submission 319*, p. 2; A Just Republic, *Submission 281*, p. 5; Women for an Australian Republic, *Submission 476*, p. 6; Mr James Stack, *Submission 404*, p. 4; Dr Ken Coghill, *Submission 536*, p. 3; ARM, *Submission 471*, p. 14.

93 *Submission 471*, p. 14.

> This should be supplemented by post-election assistance, the level of which could be related to the proportion of the vote achieved by a candidate over and above a minimum of 4% of the vote (or as otherwise determined).[94]

6.55 Several submissions suggested that restrictions should be imposed on presidential campaigns,[95] such as limits on commercial advertising[96] and a limit on the amount of money that candidates could spend on their presidential campaigns.[97] For example, the Hon. Michael Beahan suggested that "strict conditions be placed on the nature of campaigns which candidates can run with a view to placing a strong emphasis on the conveying of information rather than on emotive advertising".[98] He suggested, for example, limited government-funded "information" be provided, such as an official information booklet, and information in newspapers, and on TV and radio.[99] He acknowledged that this would require constitutional amendments to ensure that such regulation is not held invalid as a constraint on freedom of political communication.[100]

6.56 There were similarly diverse opinions on whether political parties should be prevented from assisting or campaigning on behalf of candidates. Some felt that political parties should be prevented from assisting, campaigning and officially endorsing any particular candidate.[101] On the other hand, many felt that political parties should not be prevented from assisting or campaigning on behalf of candidates, although some of these submitters suggested restrictions on campaigning as outlined above.[102] For example, the ARM felt that:

> Any attempt to prevent the participation of political parties would be undemocratic and likely to fail in any case. The parties would be very tempted to form "political action groups" in support of their preferred candidates; these would be to all intents and purposes front organisations for the parties themselves. It would be unusual, to say the least, to legally

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94 Ibid.

95 See, for example, Mr John Kelly, *Submission 142*, pp. 13-14; Dr Barry Gardner, *Submission* 482, p. 1; The Hon Michael Beahan, *Submission 334A*, pp. 1-2; Professor George Winterton, *Submission 319*, p. 2; Mr Ross Garrad, *Submission 533*, p. 3.

96 See, for example, Mr David Latimer, *Submission 519*, p. 39; Women for an Australian Republic, *Submission 476*, p. 6.

97 Mr Andrew Newman-Martin, *Submission 107*, p. 39.

98 *Submission 334A*, p. 1.

99 Ibid.

100 Ibid, p. 2.

101 Republic Now!, *Submission 466*, p. 13; Mr John Morris, *Submission 449*, p. 2; Mr Ross Garrad, *Submission 533*, p. 4.

102 Mr John Pyke, *Submission 512*, p. 10; Professor George Winterton, *Submission 319*, p. 2; The Hon Michael Beahan, *Submission 334*, p. 5; Dr Bede Harris, *Submission 93A*, p. 1; Women for an Australian Republic, *Submission 476*, p. 7.

> proscribe specific institutions like political parties from taking part in a democratic process, but not others.[103]

6.57 Similarly, Professor George Winterton expressed his view that:

> Political parties probably cannot effectively be prevented completely from providing assistance, which can always be directed through surrogates, as American campaign funding reform demonstrates. Nor should they be, since freedom of expression is desirable. However, legislation should impose funding limitations on parties and other groups. The Constitution should expressly authorize Parliament to pass such legislation to ensure that it is not held invalid as a constraint on freedom of political communication.[104]

6.58 The Hon. Michael Beahan also argued that:

> I see no reason why political parties should not be involved in such open, direct election. Political parties are an integral part of the community and have a right to be involved. If their involvement were proscribed, a number of other institutions would also have to be considered for similar treatment. It would be difficult to agree on the criteria for such proscription.[105]

6.59 The ARM further commented that "… objections to having political parties involved in a campaign often arise from a desire to keep the office of Head of State non-partisan and positioned above party politics".[106] The ARM then noted, as discussed previously, that there may be other mechanisms for encouraging a non-party political head of state.[107]

6.60 There appeared to be a general consensus that the Australian Electoral Commission would be the most appropriate and suitable body to administer and/or regulate issues relating to campaign assistance.[108]

6.61 Another issue for selection using direct election related to the timing of elections, and whether it should be held in conjunction with elections for the House of Representatives. This issue overlaps with the issue of the tenure of the head of state, and is therefore considered below.

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103 *Submission 471*, p. 15.

104 *Submission 319*, p. 2.

105 *Submission 334*, p. 5.

106 *Submission 471*, p. 15.

107 Ibid.

108 See, for example, ARM, *Submission 471*, p. 16; Professor George Winterton, *Submission 319*, p. 2; Mr Bill Peach, *Submission 36*, p. 8; The Hon Michael Beahan, *Submission 334*, p. 5; Major Edward Ruston, *Submission 100*, p. 2; Mr James Stack, *Submission 404*, p. 4; Dr Ken Coghill, *Submission 536*, p. 4.

## Tenure

### *Length of term*

6.62 Under the current arrangements, the Constitution does not currently specify a fixed term for the Governor-General. However, by convention and informal arrangements between the Prime Minister and the Governor-General the term is usually five years. By convention, this term can be extended.[109]

6.63 The 1993 Republic Advisory Committee considered that the term of office of a republican head of state should be specified, and anywhere from four to seven years was considered "reasonable".[110]

6.64 A few submissions suggested that a term of six years[111] or four years[112] might be appropriate for a republican head of state. However, consistent with the current practice for Governors-General, there was general support for a five year term for a republican head of state.[113] In his support for a five year term, Professor George Winterton proposed that the term:

> … should be long enough to provide some stability, but not so long as to diminish legitimacy.[114]

6.65 Professor Winterton also pointed out that five years is the term of office of the heads of state in the republics of Germany, India, Israel and Portugal.[115]

6.66 Other submissions suggested that the term should be linked to parliamentary terms.[116] In particular, it was suggested that if the head of state is to be directly

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109 See ARM, *Submission 471*, p. 25.

110 RAC Report, Volume 1, pp. 2 & 59-60.

111 Mr Bill Peach, *Submission 37*, p. 10; Mr Peter Crayson, *Submission 322*, p. 4; Mr David Latimer, *Submission 519*, p. 43; Women for an Australian Republic, *Submission 476,* p. 9.

112 Republican Party of Australia, *Submission 495A*, p. 1; Mr Stephen Souter, *Submission 526*, p. 300; Mr Mark Collins, *Submission 138*, p. 3.

113 Professor George Winterton, *Submission 319*, p. 4; Republic Now!, *Submission 466*, p. 14; ARM, *Submission 471*, p. 25; Mr Andrew Cole, *Submission 41*, p. 18; Dr Baden Teague, *Submission 538*, p. 10; Dr Bede Harris, *Submission 93*, p. 18; Mr Andrew Newman-Martin, *Submission 107*, p. 40; Mr Dominic Pellegrino, *Submission 461*, p. 16; Mr John Flower, *Submission 447*, p. 4. This was also the term of office contained in the 1999 republic proposal.

114 *Submission 319*, p. 4.

115 Ibid.

116 See, for example, Dr Ken Coghill, *Submission 536*, p. 5; Women for an Australian Republic, *Submission 476,* p. 9.

elected, the election should be held conjointly with a federal election, in order to minimise election costs.[117] Others disagreed, such as the ARM, who argued that:

> … the term of office should not be tied to the term of the parliament, as this may present the head of state with a conflict of interest when given advice to dissolve parliament.[118]

6.67 Similarly, Professor George Winterton reasoned that:

> The term should not be the same as that of the House of Representatives (to facilitate differentiation between the head of state and the Government).[119]

***Restrictions on re-appointment or re-election***

6.68 Many republics also restrict the number of consecutive terms that a head of state can serve.[120] On this issue, there appeared to be general support for the head of state to be eligible for re-election or re-appointment for one further term (that is, a total maximum of two terms).[121] It was also suggested that a two term limitation would be more appropriate in the case of a directly elected head of state, to prevent the head of state becoming too powerful.[122]

6.69 Others suggested that there should be no provision for re-appointment or re-election.[123] However, Mr Howard Teems did recognise that there may be an "opposing opinion that a good head of state should not be barred from seeking another term in office".[124] The ARM noted that, while it might be appropriate to allow for a second term for a successful head of state, heads of state "that are limited to a single term cannot be improperly influenced by offers to renew their term".[125]

6.70 This issue was considered in the context of the 1999 republic model, which simply provided that "a person may serve more than one term as President", with no

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117 See, for example, Mr Bill Peach, *Submission 37*, p. 10; A Just Republic, *Submission 281*, p. 5; Mr Christopher Wolfs, *Submission 96*, p. 5; Ms Sarah Brasch, Women for an Australian Republic, *Committee Hansard*, 29 July 2004, p. 21.

118 *Submission 471*, p. 25; see also Women for an Australian Republic, *Submission 476*, p. 2.

119 *Submission 319*, p. 4.

120 RAC Report, Volume 1, p. 60.

121 See, for example, Professor George Winterton, *Submission 319*, p. 4; Republic Now, *Submission 466*, p. 14; Mr Bill Peach, *Submission 37*, p. 10; Mr Peter Crayson, *Submission 322*, p. 4; Andrew Cole, *Submission 41*, p. 18; Mr Stephen Souter, *Submission 526*, p. 300.

122 Professor George Winterton, *Submission 319*, p. 4.

123 For example, Republican Party of Australia, *Submission 495A*, p. 1; Mr David Latimer, *Submission 519*, p. 43; Dr Ken Coghill, *Submission 536*, p. 5; Mr Howard Teems, *Submission 100*, p. 5; Women for an Australian Republic, *Submission 476,* p. 9.

124 *Submission 100*, p. 5.

125 *Submission 471*, p. 26.

apparent limits on the number of terms.[126] However, any reappointment had to be made through the normal appointment process. The Advisory Report of the Joint Select Committee on the Republic Referendum (Republic Referendum Committee) noted concerns that the "possibility of reappointment might lead to bias in favour of the Government in an incumbent President who wanted to serve another term", but concluded that there were "good policy reasons for permitting a person to serve more than one term as President".[127]

6.71 The ARM suggested that this was an issue that should be resolved by an elected constitutional convention, but acknowledged that "it may be appropriate to allow for a second term for a successful head of state".[128]

## Removal of head of state

6.72 Another controversial area relates to the possible processes for the removal of the head of state. The Committee's discussion paper sought views on who or what body should have authority to remove the head of state from office, and whether any grounds for removal should be specified.

### *Process for removal*

6.73 Under the current system, the Governor-General holds office "during the Queen's pleasure" under section 2 of the Constitution. By convention, the Governor-General is therefore subject to removal by the Queen, acting on the advice of the Prime Minister, at any time.[129] It is perhaps worth noting that no Governor-General has ever been removed.[130] For this reason, several submissions suggested to the Committee that the removal of a head of state was not a particularly urgent or important issue to be addressed in the context of a republic.[131] On the other hand, several submissions noted that this was quite a controversial issue in the context of the

126 Constitution Alteration (Establishment of Republic) 1999, clause 61.

127 Joint Select Committee on the Republic Referendum, *Advisory Report on the Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee Bill 1999*, August 1999, p. 37.

128 *Submission 471*, p. 26.

129 See RAC Report, Volume 1, p. 77; and Joint Select Committee on the Republic Referendum, *Advisory Report on the Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee Bill 1999*, August 1999, p. 63.

130 Although some have resigned: see for example Mr Michael Pepperday, *Submission 476*, p. 15

131 For example, Mr Michael Pepperday, *Submission 476*, p. 15 and *Committee Hansard*, 29 July 2004, p. 30.

1999 republic referendum.[132] Some submissions even suggested that the current system for removal should be changed regardless of whether we become a republic.[133]

6.74 A few submissions suggested that the Prime Minister should have the power to remove a republican head of state.[134] In the 1999 Republic Bill, the Prime Minister was empowered to remove the President, but it was proposed that the Prime Minister would be required to seek the approval of the House of Representatives within 30 days.[135] Although this removal mechanism was considered to be an improvement on the existing situation in relation to the Governor-General,[136] it was a feature of the 1999 republic model which attracted considerable debate and criticism – both in 1999 and during this inquiry.[137] For example, Professor Greg Craven observed during the Committee's hearing in Perth:

> … the dismissal mechanism in the last model was always a problem. It was cobbled together too quickly … 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.[138]

6.75 The "McGarvie model" mentioned by Professor Craven is discussed further in the next chapter. Essentially, the model proposes that the head of state would be dismissed on the advice of the Prime Minister, by a constitutional council of three appropriately experienced Australians.[139]

6.76 Some submissions suggested that the removal process should depend on the particular model and, in particular, the selection process for the head of state. For

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132 Mr John Kelly, *Submission 142*, p. 17; ARM, *Submission 471*, p. 28; Professor George Winterton, *Submission 319*, p. 5; Professor Greg Craven, C*ommittee Hansard*, 18 May 2004, p. 3; Dr Bede Harris, *Submission 93*, pp. 16-17.

133 Professor George Williams, *Submission 152*, p. 2.

134 For example, Dr Baden Teague, *Submission 538*, p. 10. The ARM noted it as an option in its Model One (where the Prime Minister appoints the head of state): *Submission 471*, p. 28; see also Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 14.

135 Note that the appointment mechanism was a two-thirds majority of a joint sitting of both Houses of Parliament approving a single nomination by the Prime Minister.

136 Joint Select Committee on the Republic Referendum, *Advisory Report on the Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee Bill 1999*, August 1999, p. 65.

137 Ibid, p. 63; see also Mr John Kelly, *Submission 142*, p.17; ARM, *Submission 471*, p. 28; Professor George Winterton, *Submission 319*, p. 5; Professor Greg Craven, *Committee Hansard*, 18 May 2004, p. 3; Dr Bede Harris, *Submission 93*, pp. 16-17.

138 *Committee Hansard*, 18 May 2004, p. 3.

139 See Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 21.

example, the removal mechanisms proposed by the ARM varied depending on the particular republic model:

> In the case of Model One (Prime Minister Appoints the President), it is recommended that the Prime Minister have the authority to dismiss the Head of State, mirroring the current practice with the Governor-General …
>
> Model Two (People nominate, Parliament appoints the President) provides for the removal of the Head of State by an ordinary resolution of the House of Representatives.[140]

6.77 Under its direct election and electoral college models, the ARM recognised that:

> … an elected Head of State would have a greater democratic legitimacy than one appointed by the parliament or the Prime Minister. Here we suggest that the Head of State may be removed from office by a resolution of both the House of Representatives and the Senate, in the same session.[141]

6.78 However, many submissions supported a role for parliament in the removal of the head of state, regardless of the method of selection.[142] For example, Professor George Winterton argued:

> Enjoying legitimacy derived from direct [ie direct election] or indirect popular choice [ie approval by a parliamentary super-majority], the process for removing the head of state must, likewise, be based upon popular authority. The appropriate body to remove the head of state is the Commonwealth Parliament.[143]

6.79 Submissions which supported dismissal by Parliament varied as to the level of majority that should be required, and whether it should be a decision made by a single House, or both Houses of Parliament. Some considered that an ordinary resolution of the House of Representatives would be sufficient,[144] while others argued that this was equivalent to dismissal by the Prime Minister.[145] Another proposal was that the Prime Minister should be able to dismiss the head of state only with the concurrence of the Senate.[146] Overwhelmingly, submissions supported dismissal by a resolution of a joint

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140 *Submission 471*, p. 28.

141 Ibid.

142 See, for example, Professor George Winterton, *Submission 319*, p. 5.

143 Ibid.

144 See, for example, ARM (Model Two), *Submission 471*, p. 2.

145 Mr Howard Teems, *Committee Hansard*, 19 May 2004, p. 5.

146 Mr Andrew Cole, *Submission 41*, p. 19.

sitting of both Houses of Parliament with a two-thirds majority.[147] Others considered that an absolute majority of each House of Parliament would be sufficient.[148]

6.80 Dr Bede Harris supported a role for the High Court in the removal of the head of state, arguing that:

> … removal by the legislature would be "undesirable" because there might well be circumstances in which the question of whether or not the Governor-General should be removed could become politicised. For that reason, I think it should be in the hands of the courts. Secondly, I think the standing to bring an application, obviously with evidence of misbehaviour or incapacity, should be as wide as possible and, basically, any enrolled voter should have that standing to bring an action … the key thing is that it must be on legal rather than political grounds that the application is brought.[149]

6.81 In response to questioning from the Committee as to whether this might politicise the role of the High Court, Dr Harris responded:

> No, I think they are capable of dealing with it as a purely legal question. In fact, in most countries questions of impeachment are addressed that way — by a constitutional court or by the ordinary court system.[150]

6.82 Mr Michael Pepperday, who supported a popular appointment model, suggested that the removal of the head of state should also be put to a vote of the Australian people.[151]

### *Grounds for removal*

6.83 Another issue to be considered is whether grounds should be specified for removal of a republican head of state. At present no grounds for removal of the Governor-General are specified in the Constitution.

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147 For example, Mr Bill Peach, *Submission 73*, p. 10; Mr Peter Crayson, *Submission 322*, p. 4; Republic Now!, *Submission 466*, p. 15; Mr John Kelly, *Submission 142*, p. 18; Republican Party of Australia, *Submission 495B*, p. 2; The Hon Michael Beahan, *Submission 334*, p. 5; Dr Barry Gardner, *Submission 483*, p. 2; Mr Howard Teems, *Submission 100*, p. 6; Sir Gerard Brennan, *Submission 49*, p. 22; Mr Andrew Nguyen, *Submission 256*, p. 12; Dr Bruce Hartley, *Submission 330*, p. 7; Dr Clem Jones, *Submission 492*, p. 8; Dr Ken Coghill, *Submission 536*, p. 5; see also Sir Gerard Brennan, *Committee Hansard*, 13 April 2004, p. 21, in which Sir Brennan also noted that 'the German or the Irish solutions have certain advantages'; Mr Andrew Newman-Martin, *Submission 107*, p. 43. Mr Ross Garrad suggested a three-quarters majority should be required: *Submission 533*, p. 10.

148 For example, Professor George Winterton, *Submission 319*, p. 5. Note that absolute majority is a majority of those eligible to vote, whether or not actually voting. A simple majority is a majority (half plus one) of the Senators present and voting.

149 *Submission 93*, p. 17 and *Committee Hansard*, 29 July 2004, p. 37.

150 *Committee Hansard*, 29 July 2004, p. 38.

151 *Submission 621*, p. 15 and *Committee Hansard*, 29 July 2004, p. 30.

6.84 In the models submitted by the ARM, the grounds for dismissal were "adjusted according to the democratic mandate of the office of the head of state".[152] Where the head of state was proposed to be appointed by the Prime Minister, or Parliament, as with the current situation, no grounds or guidelines were set out (as at present).[153] In the case of direct election, the ARM suggested that the head of state may be removed on the grounds of "proven misbehaviour or incapacity" — that is, the same formula that applies to the removal of High Court judges.[154]

6.85 Some submissions suggested that no grounds for removal were required,[155] particularly if the removal process itself were sufficiently rigorous.[156] For example, Mr Bill Peach suggested that the head of state should only be removed by a two-thirds majority of a joint sitting of Commonwealth Parliament, and this would be sufficient in itself.[157]

6.86 However, many submissions and models appeared to support the grounds for removal being specified, regardless of the appointment method. A considerable number of these submissions supported the use of the same process and grounds for removal of High Court judges under section 72 of the Constitution – that is, in circumstances of "proven misbehaviour or incapacity".[158] For example, Professor George Winterton suggested that:

> Since the head of state will possess reserve powers enabling him or her to act as "ultimate constitutional guardian", the head of state should enjoy greater security of tenure than the Governor General… the head of state should not be removable on purely political grounds, but solely for misconduct or incapacity…[159]

6.87 Professor Winterton argued that this formula:

> … is appropriate because it enjoys long-standing recognition in our constitutional tradition, and because it has been the subject of considerable informed commentary…[160]

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152 ARM, *Submission 471*, p. 29; see also RAC Report, Volume 1, p. 5.

153 ARM, *Submission 471*, p. 29; see also Mr Bill Peach, *Submission 37*, p. 10.

154 *Submission 471*, p. 29.

155 For example, Dr Ken Coghill, *Submission 536*, p. 5.

156 For example, Mr Ross Garrad, *Committee Hansard*, 29 June 2004, p. 34.

157 *Submission 37*, p. 10; see also the Hon Michael Beahan, *Submission 334*, p. 5.

158 See, for example, Sir Gerard Brennan, *Submission 497,*p. 22 and also *Committee Hansard*, 13 April 2004, p. 21; Professor George Winterton, *Submission 319*, p. 5; Mr Peter Crayson, *Submission 322*, p. 4; Mr John Pyke, *Submission 512*, p. 12; Women for an Australian Republic, *Submission 476*, p. 9; Dr Bede Harris, *Submission 93*, p. 18; Mr Andrew Newman-Martin, *Submission 107*, p. 43; Mr Stephen Souter, *Submission 526*, p. 303.

159 *Submission 319*, p. 5.

160 Ibid.

6.88 Some other proposals for specific grounds for removal included:

- "misdemeanour, neglect of duties, ill health, abusing his or her functions constitutionally";[161]
- activity in a political party or an improper exercise of powers;[162]
- "ill health, incompetency, malversation or any criminal activity";[163] and
- "acting unconstitutionally, persistent behaviour in a manner unbecoming for the head of state of Australia or being physically, medically or mentally incompetent".[164]

6.89 However, specifying grounds for removal raises an issue of whether the person or body making the removal decision should be able, or even required, to obtain advice on the matter. Professor George Winterton suggested that:

> Whether conduct constitutes "proved misbehaviour" should be judged dispassionately by persons with experience in evaluating evidence. Parliament should, therefore, be assisted by a Commission of retired judges…[165]

6.90 In the case where the Prime Minister alone could dismiss the head of state, it was suggested that advice should be sought from a panel of three "constitutional advisors" drawn from either the High Court, academic constitutional lawyers and/or the Solicitor-General.[166]

6.91 Finally, it was suggested that there should be a provision for a republican head of state to be "suspended" if necessary — for example, pending an inquiry into alleged misconduct.[167]

## Casual vacancies

6.92 Provision would also need to be made for situations where the office of head of state is vacated before the end of a term. The ARM recommended that casual vacancies should be filled by the most senior republican state governor (or

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161 Republic Now!, *Submission 466*, p. 15.

162 Mr David Latimer, *Submission 519*, p. 19; see also *Committee Hansard*, 13 April 2004, pp. 18-19.

163 Dr Bruce Hartley, *Submission 330*, p. 7.

164 Mr John Kelly, *Submission 142*, p. 17.

165 Professor George Winterton, *Submission 319*, p. 5.

166 Mr John Kelly, *Submission 142*, p. 18.

167 Professor George Winterton, *Submission 319*, p. 6; Mr John Kelly, *Submission 142*, p. 17; Mr Ross Garrad, *Submission 533*, p. 10.

equivalent).[168] This would be consistent with the current convention that where the office of Governor-General is vacated,[169] the most senior state governor is appointed as Administrator. This was also the solution proposed in the 1999 Republic Bill.[170]

6.93 Another option suggested was that a vice-president could be appointed or elected, and this vice-president (or equivalent) could fill any casual vacancies.[171] The current practice where the Governor-General is in Australia but is temporarily unavailable, is for the Governor-General to appoint a deputy to exercise specified powers or functions (although deputies are rarely called on to exercise powers or perform functions).[172] Again, the 1999 Republic Bill reproduced this arrangement by providing for the President to appoint a deputy President.[173]

6.94 Another suggestion for filling casual vacancies included a High Court judge.[174]

6.95 It was also suggested that the method for filling vacancies in the office of head of state should reflect the method of selection of the head of state.[175] For example, it was suggested that if Parliament appoints the head of state, it may be appropriate for Parliament to appoint a caretaker.[176] Similarly, in the context of a direct election, another suggestion for filling casual vacancies was the person who obtained the next highest vote from the list of candidates at the previous election.[177]

6.96 Submissions also pointed out that a new head of state should be selected as soon as practical after a vacancy occurs.[178]

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168 *Submission 471*, p. 30; see also, for example: Andrew Cole, *Submission 41*, p. 18; Dr Baden Teague, *Submission 538*, p. 10; Professor George Winterton, *Submission 319*, p. 6; The Hon Michael Beahan, *Submission 334*, p. 5; Mr John Kelly, *Submission 142*, p. 17; Dr Bede Harris, *Submission 93*, p. 18; Mr Dominic Pellegrino, *Submission 461*, p. 16.

169 That is, the Governor-General is absent from Australia, or if he or she were to die in office or become incapacitated or be removed from office.

170 See Constitution Alteration (Establishment of Republic) 1999, clause 63.

171 This was suggested to be a particularly relevant consideration in the context of a 'direct election model': ARM, *Submission 471*, p. 30; Mr Peter Crayson, *Submission 322*, p. 4; Mr David Latimer, *Submission 519*, p. 44; Mr Howard Teems, *Submission 100*, p. 6; Mr John Pyke, *Submission 512*, pp. 12-13; Mr Andrew Nguyen, *Submission 256*, p. 12; Republican Party of Australia, *Submission 495*, p. 1; Mr Stephen Souter, *Submission 526*, p. 317.

172 Constitution Alteration (Establishment of Republic) 1999, *Explanatory Memorandum*, p. 22.

173 See Constitution Alteration (Establishment of Republic) 1999, clause 63.

174 Republic Now!, *Submission 466*, p. 15; Dr Barry Gardner, *Submission 482*, p. 2.

175 Sir Gerard Brennan, *Submission 497*, p. 23.

176 Mr Bill Peach, *Submission 37*, p. 10.

177 Women for an Australian Republic, *Submission 476*, p. 4.

178 Dr Barry Gardner, *Submission 482,* p. 2; Mr John Pyke, *Submission 512*, p. 13.

# CHAPTER 7

# THE "BATTLE OF THE MODELS"[1] –

# ALTERNATIVE MODELS FOR AN AUSTRALIAN REPUBLIC

*"It seems that every Australian has at least one model for a republic"* [2]

## Introduction

7.1 This chapter will discuss the key features of various alternative models for an Australian republic, including the perceived advantages and disadvantages of each.

7.2 It is important to state at the outset that this Committee does not intend to endorse any one model over the others — that is ultimately a role for the Australian people. The report merely outlines some of the advantages and disadvantages of a number of the broad models that were presented in submissions and evidence during the Committee's inquiry.

7.3 In over 700 submissions, the Committee received a plethora of different proposals for models for an Australian republic. These ranged from "ultra-minimalist" style models which proposed as few changes as possible to our current system, through to more radical proposals for a complete overhaul of Australia's system of government. Some models were submitted with complete suggested constitutional amendments, others were just a broad outline of the proposed model. Unfortunately it is not possible in this report to examine each and every model submitted, many of which varied only slightly in the detail. However, many of the possible variations and related issues have been discussed in the previous two chapters.

7.4 As was outlined in earlier chapters, one of the fundamental differences between alternative republican models is the method of selection of the head of state. Other important variations relate to the powers of the head of state and the method for removing the head of state. Many other aspects, such as the qualifications and term of office, or methods for dealing with casual vacancies, varied slightly in the different models submitted to the Committee. However, some of these variations are not necessarily dependent on any particular type of model, and the issues surrounding them have been discussed in the previous two chapters.

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1 Professor George Williams, *Committee Hansard*, 13 April 2004, p. 39.

2 Professor Greg Craven, *Committee Hansard*, 18 May 2004, p. 1.

7.5 After making some comments on models generally, this chapter aims to outline some of the main types. These models are discussed under the following broad categories:

- minimalist models;
- direct election models; and
- other models, including "hybrid" or "indirect election" models.

## General comments on models

7.6 Before examining some key models for an Australian republic, it is worth presenting a few of the general observations that were made about "models" during the Committee's inquiry.

7.7 Several submissions emphasised that examining particular models was not a useful exercise at this point in time, and that the process was more important. For example, Professor Greg Craven commented that:

> A major difficulty here has been the rush to models, with each participant hastening to produce his or her own version of a republic. Particularly at a point when no referendum on the subject is imminent, this is not a particularly useful activity. Far more important is the need to structure the debate by asking and answering some fundamental and quite general questions about the Australian Constitution, and relating them broadly to its possible amendment in a republican direction.[3]

7.8 Professor Craven reiterated this during the Committee's hearing in Perth:

> 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?[4]

7.9 It was also suggested that, in order to achieve a republic, supporters of a republic should be flexible and not get too attached to any particular model. For example, Dr Barry Gardner expressed a view that:

> I am not terribly dogmatic about models, and I think that anybody who is serious about the republic should not be dogmatic about models either.[5]

7.10 Indeed, a considerable number of submissions indicated a willingness to accept and support any model that was chosen by the Australian people through an appropriate public process.[6] The Hon. Michael Beahan, for instance, submitted that:

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3 *Submission 167*, p. 3.

4 Professor Greg Craven, *Committee Hansard*, 18 May 2004, p. 1.

5 Dr Barry Gardner, *Committee Hansard*, 20 May 2004, p. 18.

> … while I have personally favoured the minimalist model for essentially practical reasons, I am open minded about the model which will emerge from a process involving the public and would be prepared to support any model, provided I am satisfied with the integrity of the process.[7]

7.11 Mr Jack Hammond QC suggested that one of the prerequisites for any republic model should be the "retention or improvement of our democracy while not putting too much strain on the federation".[8] Several submissions also suggested that, to be successful, a republican model should be simple and easily understandable.[9]

7.12 Finally, it was suggested that almost any model would be achievable from a constitutional perspective. Professor George Williams stated in evidence:

> As a constitutional lawyer, I would have to say that almost any model is potentially achievable. Many have their strengths and weaknesses … It is a matter of giving people a say and making sure that whatever model they agree with is constitutionally safe and secure and has been worked out over a period of time by incremental change with existing offices.[10]

## Minimalist models

7.13 Many submissions supported what has been described as a "minimalist" approach to achieving an Australian republic. At its simplest, minimalist models involve minimal changes to our current system of government. Some of the main republican models put forward during the Committee's inquiry that could be described as "minimalist" include:[11]

- ARM "Model One" (Prime Minister appoints);

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6 For example, Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 32; Mr Eric Lockett, *Submission 354*, p. 3; The Hon Michael Beahan, *Submission 334*, p. 6; Mr Howard Teems, *Committee Hansard*, 19 May 2004, p. 3.

7 *Submission 334*, p. 6.

8 *Committee Hansard*, 29 July 2004, p. 5.

9 For example, Professor George Williams, "The Treaty Debate, Bills of Rights and the Republic: Strategies and Lessons for Reform" in *Balayi: Cultural, Law and Colonialism Volume 5, 2002*, p. 21, attached to *Submission 152* from Professor George Williams; see also Dr Barry Gardner, *Committee Hansard*, 20 May 2004, p. 19; Women for an Australian Republic, *Submission 476*, Attachment A, p. 2.

10 *Committee Hansard*, 13 April 2004, p. 45.

11 Other variations of 'minimalist' models were also received: for example, Mr Michael Pepperday, *Submission 621*, pp. 11-15. Some models submitted were described as 'minimalist' but could not actually be considered as such because, for example, they appeared to shift the power arrangements under our current system: see for example, Mr Andrew Nguyen, *Submission 256*, pp. 6-9. Some submissions suggested that even some 'direct election' models could arguably be considered to be minimalist: see Mr Stephen Souter, *Submission 526*, p. 209; Mr James B Kelly, *Submission 506*, p. 28. However, for current purposes, direct election models will be considered separately.

- the "McGarvie Model";
- the model put to the 1999 referendum ("1999 republic model"); and
- ARM "Model Two" (People nominate, Parliament appoints).

7.14 Table 1 summarises some examples of minimalist republican models, which will then be outlined in slightly more detail below.

**Table 1: Some Examples of Minimalist Models**

| | **PM appoints (ARM Model One)** | **McGarvie model** | **1999 referendum model** | **People nominate, Parliament appoints (ARM Model Two)** |
|---|---|---|---|---|
| **Eligibility** | Australian citizen qualified to be a member of Commonwealth Parliament (MP) provided not an MP at the time of nomination. | Australian citizen | Australian citizen qualified to be a member of Commonwealth Parliament, provided not an MP or member of a political party at the time of appointment. | Australian citizen qualified to be a member of Commonwealth Parliament, provided not an MP at the time of nomination. |
| **Nomination** | By the Prime Minister (PM) | Chosen by the Prime Minister | Single nomination by the Prime Minister after consideration of a report of a 32-person committee. | Made to a nominations committee established under legislation, which shortlists between 3-7 candidates. |
| **Appointment** | By the Prime Minister | By a three-member Constitutional Council bound to act on the Prime Minister's advice. | Nomination by the PM, seconded by the Leader of the Opposition. Approved by a two-thirds majority of a joint sitting of Commonwealth Parliament. | PM chooses from shortlist, seconded by the Leader of Opposition. Nomination must be ratified by a two-thirds majority of a joint sitting of Commonwealth Parliament. |
| **Tenure** | 5 years | At pleasure (no defined term) | 5 years. More than one term possible. | 5 years |
| **Removal** | By the Prime Minister | By the Constitutional Council within two weeks of the Prime Minister's advice. | By the PM, approved by the House of Representatives. | Ordinary resolution of the House of Representatives. |
| **Powers** | Same powers as Governor-General. Non-reserve powers incorporated by reference. | Same powers as Governor-General, but (except for reserve powers), powers may only be exercised on advice of Federal Executive Council or a Minister. | Same as Governor-General. Non-reserve powers exercised on advice of Federal Executive Council, the Prime Minister, or another Minister. | Same powers as Governor-General. Non-reserve powers incorporated by reference. |

### *Prime Minister appoints the head of state*

7.15 Under "Model One" put forward by the ARM, the Prime Minister would select, appoint and remove the head of state.[12] The powers of the head of state would be the same as the powers currently exercised by the Governor-General, although the non-reserve powers would be incorporated by reference. As the ARM commented, this model reflects "the current political reality", and requires only minimal change to our existing Constitution.[13]

7.16 Perhaps the main disadvantage of this model, acknowledged by the ARM, is that the appointment of the head of state is left to the discretion of a single individual – the Prime Minister, and neither the Australian people nor Parliament have any say in the appointment.[14]

7.17 A similar, if not identical model, was supported by Dr Baden Teague,[15] although Dr Teague specifically noted that in his model there would be an informal mechanism for any Australian citizen to be able to nominate any other Australian citizen to be considered by the Prime Minister.[16]

### *Parliament appoints the head of state*

7.18 "Model Two" submitted by the ARM[17] and the model put to the 1999 referendum ("1999 republic model") are very similar, and will be outlined here.

7.19 Under ARM "Model Two", nominations for the head of state would be accompanied by a required number of signatures, and would be presented to a nominations committee established by Parliament. The nominations committee would then shortlist nominations to between three to seven names. The Prime Minister would then choose a name from that shortlist, which the Leader of the Opposition would need to second. A two-thirds majority of a joint sitting of Parliament would then be required to ratify or endorse that candidate.[18]

7.20 As can be seen from Table 1, one of the main differences between ARM "Model Two" and the 1999 republic model is the dismissal mechanism. Another difference is that the nomination process in ARM "Model Two" allows for greater public participation, and the Prime Minister would be obliged to nominate someone who is on the short list of the nominations committee. Under the 1999 republic model,

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12 *Submission 471*, Appendix A, p. 3.

13 Ibid.

14 Ibid, p. 4.

15 *Submission 538*, pp. 9-10.

16 *Committee Hansard*, 19 May 2004, p. 31.

17 *Submission 471*, Appendix A, pp. 5-6.

18 Ibid, p. 5.

the Prime Minister would only be obliged to consider the nomination committee's report, but would not be required to select a candidate from the nomination committee's short list.[19]

7.21 Many of the advantages and disadvantages of this form of model are discussed below in the section on arguments for and against minimalist and direct election models. Some of the advantages of "Model Two" were also summarised by the ARM in its submission. These included the opportunity for public participation in the nomination process, and the fact that every nomination is considered and made public. It also noted that the Prime Minister would lose the power to dismiss the Governor-General.[20] The ARM also submitted that this form of model provided the:

> … best chance of obtaining an independent, impartial and non-political person as president because the Prime Minister and the Leader of the Opposition have to agree and neither would accept a candidate allied with the other side.[21]

7.22 Ms Sarah Brasch, from Women for an Australian Republic, while not actually supporting this model, suggested that it:

> … presents the best opportunity for a woman to become head of state in the shortest possible time. However, we think the chances of that model being successful are becoming slimmer by the day.[22]

7.23 However, as the ARM acknowledged, while this model has a few significant alterations, including greater public consultation and an improved dismissal mechanism, it is essentially the same model that was defeated in 1999.[23] Many submissions were therefore sceptical about the future prospects of this sort of model.[24] Nevertheless, many submissions still supported a model along these lines.[25] As Dr Barry Gardner commented:

> … for the record, I would prefer some kind of election or appointment—call it what you will—by a majority of both houses of parliament, provided there is sufficient or adequate community input in nominating people and

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19 Joint Select Committee on the Republic Referendum, *Advisory Report on the Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee Bill 1999*, August 1999, p. 27.

20 *Submission 471*, Appendix A, p. 6.

21 Ibid; see also Dr Bede Harris, *Submission 93*, p. 13, commenting on the 1999 model.

22 *Committee Hansard*, 29 July 2004, p. 19.

23 *Submission 471*, Appendix A, p. 6.

24 For example, Mr Michael Pepperday, *Submission 621*, p. 5; Mr John Pyke, *Submission 512*, pp. 5-6*;* Mr Andrew Newman-Martin, *Submission 107*, pp. 14-17; Mr Howard Teems, *Submission 100*, p. 8; Mr James Kelly, *Submission 506*, p. 27.

25 For example, Dr Debra Rosser, *Submission 325*, p. 2*;* Mr Mike O'Shaughnessy, *Submission 329*, p. 2 & 6-7; Ms Louise Houston, *Committee Hansard*, 19 May 2004, p. 40; Mrs Janet Holmes a Court, *Committee Hansard* , 18 May 2004, p. 27.

> so on. In other words, this is a model quite like the one that got done in 1999. The conventional wisdom is that such a model does not have much chance any more but we shall see.[26]

### *"McGarvie Model"*

7.24 Another model described as minimalist is the "McGarvie Model". The model was developed by the late Richard McGarvie, and was discussed at the 1998 Constitutional Convention.[27] The model was outlined in the Committee's discussion paper, and the Committee received some evidence directly supporting this particular model.[28]

7.25 Under the "McGarvie Model", as outlined in Table 1, a Constitutional Council would appoint and dismiss the head of state (titled "Governor-General"). The Constitutional Council would be bound to act in accordance with the Prime Minister's advice (by a convention backed by the penalty of public dismissal for breach). [29]

7.26 The three members of the Constitutional Council, who can act by majority, are determined automatically by constitutional formula, with places going first to former Governors-General or Presidents (with priority to the most recently retired), and excess places going (on the same basis) in turn to former state governors, lieutenant-governors (or equivalent), judges of the High Court or judges of the Federal Court.[30]

7.27 The tenure of the head of state would be under the same arrangements as the existing practice for the current Governor-General.[31] The head of state would also have the same range of powers as the current Governor-General, but, except for the reserve powers, they could only be exercised on the advice of the Federal Executive Council or a Minister. Otherwise there would be no codification of the constitutional conventions.[32] The only eligibility requirement for a head of state under the "McGarvie Model" would be Australian citizenship because the process for selecting the head of state is designed to ensure a non-political head of state.[33]

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26 Dr Barry Gardner, *Committee Hansard*, 20 May 2004, p. 18.

27 See McGarvie, R., *Democracy: Choosing Australia's Republic*, Melbourne University Press, Melbourne, 1999; *Final Report of the Constitutional Convention*, 1998, Volume 1, Attachment E.

28 Mr Jack Hammond QC and Ms Juliette Brodksy, *Submission 719*, pp. 4-16; Professor Greg Craven, *Submission 167*, p. 5; Festival of Light Australia, *Submission 540*, p. 15; Ms Shirley McKenzie, *Submission 694*, p. 1.

29 Mr Jack Hammond QC and Ms Juliette Brodksy, *Submission 719*, p. 14.

30 Ibid, pp. 4-5.

31 Ibid, p. 14.

32 Ibid, pp. 8-9.

33 Ibid, pp. 7 &14-15.

7.28 Mr Jack Hammond QC and Ms Juliette Brodsky noted in their submission supporting the "McGarvie Model" that:

> It has been described as "no-risk but uninspiring" and occasionally misrepresented as "elitist", but has the not-inconsiderable advantage of being developed by one with experience as a Governor and hence a working knowledge of how the system of governorship actually functions in Australia. The McGarvie model is not perfect (no approach is), but it is straightforward, easily implemented, demonstrates twin requirements of practicality and principle, and keeps the separation of powers intact.[34]

7.29 Professor Greg Craven, suggested that the "McGarvie Model" is one of only two models that is "broadly consistent with the Constitution's existing arrangements".[35] Others argued that it is in fact the only model that could be accurately described as minimalist.[36] Professor Craven felt that the "McGarvie Model" is:

> … 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.[37]

7.30 Others were still critical of the dismissal process in the "McGarvie model".[38] For example, Women for an Australian Republic suggested that this model was:

> Too minimalist and has the appearance of entrenching power in the establishment by leaving the choice of head of state to a small group of people — almost certain to be men for the foreseeable future.[39]

## Direct election models

7.31 Many submissions supported an Australian republic with a directly elected head of state. Some of the direct election models put forward during the Committee's inquiry included:

- ARM "Model Five" (People elect the President);
- ARM "Model Four" (People elect from Parliament's List); and
- executive presidency models.

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34 Mr Jack Hammond QC and Ms Juliette Brodksy, *Submission 719*, p. 5.

35 *Submission 167*, p. 5.

36 Mr Martin Kjar, *Submission 682*, p. 30.

37 *Committee Hansard,* 18 May 2004, p. 3.

38 For example, Mr Andrew Cole, *Submission 41*, pp. 142-143; Mr Michael Pepperday, *Committee Hansard*, 29 July 2004, p. 28; Mr Howard Teems, *Submission 100*, p. 8; Dr Noel Cox, *Submission 335*, p. 5.

39 *Submission 476*, Attachment D, p. 1.

7.32 Table 2 summarises these examples of direct election models with non-executive heads of state, which are then outlined briefly. Some of the main arguments for and against minimalist and direct election models generally will then be outlined. Finally, an executive presidency model will be considered.

**Table 2: Some Examples of Direct Election Models**

| | **People elect the President (ARM Model Four)** | **People choose from Parliament's list (ARM Model Five)** | **"Direct election A"** | **"Direct election B" — Hayden model** |
|---|---|---|---|---|
| **Eligibility** | Australian citizen qualified to be a member of Commonwealth Parliament. | Australian citizen qualified to be a member of Commonwealth Parliament, provided not an MP at the time of nomination. | Australian citizen qualified to be a member of Commonwealth Parliament, provided not an MP at the time of nomination and not a member of a political party during office. | Australian citizen of voting age and enrolled on federal division rolls. |
| **Nomination** | Nomination by petition of a minimum 3000 nominators, with at least 100 from each state. | By any Australian citizen qualified to be a member of Cwth Parliament; by any state or territory parliament; or any local government. Short listing of at least seven candidates by a joint sitting of the Senate and House of Representatives, by at least a two-thirds majority. | By any Australian citizen qualified to be a member of Commonwealth Parliament; the Senate or the House of Representatives; either house of a state or territory parliament, or any local government. Short listing of at least three candidates by a joint sitting of Commonwealth Parliament. | Nomination by petition – minimum of 1% of voters enrolled on all Federal division rolls. No voter to endorse more than one candidate. |
| **Appointment** | Direct election (preferential voting) | Direct election (preferential voting) | Direct election (preferential voting) | Direct election (preferential voting) |
| **Tenure** | Five years. | Five years. No more than two terms. | Two terms of the House of Representatives. Not eligible for re-election. | Four years, maximum of two terms. |

| | | | | |
|---|---|---|---|---|
| **Removal** | Same as for federal judges: resolution of both Houses of Parliament in same session on the ground of proved misbehaviour or incapacity. | Same as for federal judges: resolution of both Houses of Parliament in same session on the ground of proved misbehaviour or incapacity. | By an absolute majority of the House of Representatives for misbehaviour, incapacity or behaviour inconsistent with the terms of appointment. | Resolution of an absolute majority of both Houses of Parliament in joint sitting on the grounds of proved misbehaviour or incapacity. |
| **Powers** | Same as Governor-General. Constitution to state that non-reserve powers should only be exercised in accordance with the advice of government. A presidential oath emphasises a duty to act impartially and without favour to any political interest. Codification of existing reserve powers. | Same as Governor-General. Constitution to state that non-reserve powers should only be exercised in accordance with the advice of government. Codification of existing reserve powers. | Same as Governor-General. Partial codification of existing reserve powers. Constitution to state that non-reserve powers should only be exercised in accordance with the advice of government. | Same as Governor-General. Partial codification of existing reserve powers. Constitution to state that non-reserve powers should only be exercised in accordance with the advice of government. Obsolete powers to be removed, existing conventions to be referred to in Constitution. |

### *Direct election with parliamentary involvement*

7.33 One of the direct election models submitted to the Committee was the ARM "Model Five: People Choose from Parliament's List". Under this model:

> [N]ominations for President may be made by any Australian. They may also be made by either House of a State or Territory Parliament or by the Council of any unit of local government. The full list of nominees would be published for public scrutiny for one month and then presented to the Federal Parliament. A joint sitting of both Houses shall by a two thirds majority choose no fewer than seven candidates from eligible nominees. The people will then choose their President from the seven nominees … by voting directly by secret ballot with preferential voting by means of a single transferable vote.[40]

7.34 The powers of the head of state would be similar to the current Governor-General, except that the existing practice that non-reserve powers should be exercised

40 ARM, *Submission 471*, Appendix A, pp. 13-14.

only in accordance with the advice of the government would be stated in the Constitution and in the presidential oath of office. The existing reserve powers would be partially codified.[41]

7.35 A very similar model, described in Table 2 as "Direct Election A", was discussed at the 1998 Constitutional Convention.[42] It was also supported by A Just Republic during this inquiry.[43] There are some minor differences – for example, "Direct Election A" restricts membership of political parties during office, the minimum number of candidates is three (rather than seven). Tenure is also fixed to two terms of the House of Representatives, rather than five year fixed terms. Removal of the head of state is by an absolute majority of the House of Representatives, rather than a joint sitting of Parliament.[44]

7.36 The advantages of this model as summarised by the ARM included that it provides for direct popular election of the head of state. The ARM also suggested that:

> Shortlisted nominees are more likely to be non party political, due to the necessity of bipartisan parliamentary approval of the shortlisted nominees - although this is by no means assured.[45]

7.37 Some of the disadvantages of this model were then summarised by the ARM as follows:

> · Parliamentary shortlisting could be seen to be undemocratic - screening out of undesirables from the top job could be seen as contemptuous of the public's commonsense.
>
> · The model stops short of open direct election yet still empowers a president with a greater personal mandate than the Prime Minister of the day.
>
> · The political hurdles contained within the codification of the powers must still be faced.
>
> · Politicians could simply collude to have a candidate from each of the Government and Opposition parties with five also-runs with no prospect of winning.[46]

7.38 Mr Andrew Newman-Martin also thought that this model:

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41 Ibid, p. 14.

42 *Final Report of the Constitutional Convention*, 1998, Volume 1, Attachment E; see also Dr Geoff Gallop, Premier of Western Australia, *Submission 73*.

43 *Submission 281*, pp. 4-5.

44 A Just Republic, *Submission 281*, p. 5; see also Dr Geoff Gallop, Premier of Western Australia, *Submission 73*.

45 *Submission 471*, Appendix A, p. 14.

46 Ibid.

> … resembles the "elections" for the Communist Party in the old Soviet Union, where people were given a list of Party-endorsed candidates at every election. The people would reject having the "politicians" decide who they would vote for.[47]

7.39 Some of the other advantages and disadvantages of this form of model are discussed below in the general section on arguments for and against minimalist and direct election models.

***Direct election***

7.40 The other direct election model submitted by the ARM was "Model Four: People elect the President".[48] As summarised in Table 2, under "Model Four", the head of state is directly elected by the Australian people after nomination by petition. Both Houses of Parliament would have to vote to remove the head of state on the grounds of misbehaviour or incapacity.[49]

7.41 In terms of the powers of the head of state, the ARM proposed that:

> The existing practice that non-reserve powers should be exercised only in accordance with the advice of the Government shall be stated in the Constitution. A Presidential Oath shall emphasise the President's duty to act impartially and without favour to any political interest ... The existing reserve powers shall be codified as provided in the Republic Advisory Committee's 1993 report where the head of state retains appropriate discretion.[50]

7.42 This model is quite similar to the "Hayden model", which was discussed at the 1998 Constitutional Convention,[51] and was supported by some submissions during this inquiry.[52] As can be seen from the summary in Table 2, there are some differences in relation to nomination requirements, and the powers of the head of state.

7.43 The ARM commented that this model "is the most openly democratic method of appointing the president, a symbol of the people's sovereignty".[53]

7.44 Again, some of the other advantages and disadvantages of this form of model are discussed below in the general section on arguments for and against minimalist and direct election models. Some of the disadvantages of this model were also summarised by the ARM as follows:

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47 *Submission 107*, p. 17.

48 ARM, *Submission 471*, Appendix A, pp. 10-12.

49 Ibid, p. 10.

50 Ibid, pp. 11-12.

51 *Final Report of the Constitutional Convention*, 1998, Volume 1, Attachment E.

52 For example, Councillor Betty Moore, *Submission 76*, p. 1.

53 *Submission 471*, Appendix A, p. 12.

> · Any popularly elected president would enjoy great prestige and be able to claim a powerful personal mandate. This would necessitate the substantial constitutional reform (and political debate) involved in codifying the President's powers.
>
> · With such codification, critics might ask: why go to the trouble of electing someone to such a powerless office?
>
> · Candidates for the office would inevitably be tempted to campaign on the issues of the day, impinging on the president's status as a politically disinterested figure.[54]

7.45 Mr Andrew Newman-Martin commented that ARM "Model Four" is "the only option with the popular appeal needed to achieve the difficult task of winning a constitutional referendum."[55]

### *Arguments for and against minimalist versus direct election models*

7.46 Supporters of minimalist models argued that a republican model should be broadly consistent with our current constitutional arrangements.[56] For example, Professor Greg Craven was a notable supporter of the minimalist approach to an Australian republic. He submitted to the Committee that:

> … an Australian republic should be achieved not through radical surgery, but by the modest adaptation of the existing executive arrangements from a monarchist to a republican idiom. This follows inexorably from the conclusion that the relevant aspects of the Constitution are fully functional and in no demonstrable need of reform, other than by virtue of their outmoded monarchist connection. This is not to say that there no aspects of the executive arrangements of the Constitution that might not be improved, but none of these are directly relevant to the achievement of an Australian republic.[57]

7.47 Ms Louise Houston expressed a similar view:

> We have a very strong and very stable democracy and I would like to see a model that changes that in as few ways as possible.[58]

7.48 Professor Craven also submitted that there were only two models that are "broadly consistent with the Constitution's existing arrangements", these being the

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54 Ibid.

55 *Submission 107*, p. 17.

56 See, for example, Dr Baden Teague, *Submission 538*, p. 1 and *Committee Hansard*, 19 May 2004; The Hon Bob Carr MP, Premier of New South Wales, *Submission 721*, p. 1*;* Professor Greg Craven, *Submission 167*, p. 5; Ms Louise Houston, *Committee Hansard*, 19 May 2004, p. 40.

57 *Submission 167*, p. 5.

58 *Committee Hansard*, 19 May 2004, p. 40.

"McGarvie Model", and some form of parliamentary appointment along the lines of that put to the referendum in 1999.[59] He explained that:

> The reasons underlying the consistency of these two models with existing arrangements are straightforward. Each is designed specifically to preserve the central constitutional reality that the head of state (or surrogate) is an apolitical figure of unity, substantially without power, while political power resides in the Prime Minister and Cabinet.[60]

7.49 However, many submissions argued that, since a minimalist model was rejected in 1999, a similar minimalist model is unlikely to succeed at any future referendum.[61] Mr John Pyke even claimed that "an appointed head of state is no longer seriously on the agenda."[62] Professor George Williams suggested that one of the lessons from the 1999 referendum was that "minimalism" should be rejected:

> Minimalism has its advantages in enabling debate to be focussed on one model and a specific set of issues. However, the 1999 republic debate and referendum demonstrated that this also creates the likelihood that such a change will not only be opposed by people who reject the need for reform altogether, but also by people who would prefer a different model. Any change ought to be tailored to the problem in a way that matches community expectations without seeking to confine the solution to such a narrow outcome as to alienate potential supporters. Minimalism rightly failed as a strategy at the 1999 referendum.[63]

7.50 Supporters of direct election models believed that they were the "most democratic" and gave sovereignty to the Australian people. Some argued that this was the whole point of a republic.[64] Professor George Winterton has acknowledged that:

> Since a republic is essentially a state based upon popular sovereignty, direct election of the Head of State is, perhaps, the most natural form of republic.[65]

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59 *Submission 167*, p. 5.

60 Ibid.

61 For example, Mr Michael Pepperday, *Submission 621*, pp. 4-5; Mr Andrew Newman-Martin, *Submission 107,* p. 17; Mr John Pyke, *Submission 512*, p. 11; Mr Howard Teems, *Submission 100*, p. 8.

62 *Submission 512*, p. 11.

63 Professor George Williams, "The Treaty Debate, Bills of Rights and the Republic: Strategies and Lessons for Reform" in *Balayi: Cultural, Law and Colonialism* Volume 5, 2002, p. 20, attached to *Submission 152* from Professor George Williams.

64 For example, Mr David Muir, *Submission 451*, p. 4; Mr Michael Pepperday, *Committee Hansard*, 29 July 2004, p. 26.

65 Winterton, G., *Resurrection of the Republic,* Federation Press, Canberra and Sydney, 2001, p. 5, referred to by Professor George Winterton, *Submission 319*, p. 1.

7.51 The Committee also received a considerable amount of evidence which suggested that a republic with some form of directly elected head of state had the greatest level of support in the Australian community. Many pointed to opinion polls indicating that this is the sort of republic that the Australian people want.[66] Ms Sarah Brasch from Women for an Australian Republic suggested:

> From everything we hear people do want to vote for the head of state. Of course they do — they are voting for all sorts of things all the time. They are voting people off reality TV shows and they are voting for classic catches. People are used to being able to make a choice.[67]

7.52 Others also suggested that a direct model has the best chance of success at a referendum.[68] For example, Dr Geoff Gallop, Premier of Western Australia, argued that:

> In my view, the only model which will be acceptable to voters is a model that contains provisions for the direct election of an Australian head of state. The fact that the model which was put to electors at the 1999 referendum did not involve such a direct election was the reason for its defeat, rather than the Australian people preferring to remain a constitutional monarchy under the Queen.[69]

7.53 Others expressed doubt that a direct election model would be successful at referendum.[70] For example, Professor Greg Craven submitted to the Committee that:

> Direct election cannot win a referendum because it will produce [a] coalition between monarchists and conservative republicans … 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.[71]

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66 For example, Mr John Pyke, *Submission 512*, pp. 5-6; Mr Ross Garrad, *Committee Hansard*, 29 June 2004, p. 30; Dr Bede Harris, *Submission 93*, p. 15.

67 *Committee Hansard*, 29 July 2004, p. 19.

68 For example, Mr Andrew Newman-Martin, *Submission 107*, pp. 18-22; Mr Peter Consandine, *Committee Hansard*, 13 April 2004, p. 79; Ms Sarah Brasch, Women for an Australian Republic, *Committee Hansard*, 29 July 2004, p. 17; Mr Howard Teems, *Submission 100*, p. 8.

69 *Submission 73*, p. 1.

70 Dr Baden Teague, Committee Hansard, 19 May 2004, pp. 24-25; Mr Michael Pepperday, *Committee Hansard*, 29 July 2004, pp. 28-29; Professor Greg Craven, *Committee Hansard*, 18 May 2004, p. 2.

71 *Committee Hansard*, 18 May 2004, p. 2.

7.54 As outlined in earlier chapters of this report, it was suggested that a models plebiscite would give an indication of whether a direct election model would be likely to be successful at referendum.[72] On the other hand, Mr John Pyke argued that:

> The majority of the people of Australia do not care too much about the fine details as long as there is a clause in there that says, in the end, they get to choose between the candidates [for head of state].[73]

7.55 Conversely, Professor Craven observed that:

> … 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.[74]

7.56 Many of those who objected to direct election models were concerned that they are not consistent with our current constitutional arrangements, and could create power struggles between the head of state and the Prime Minister.[75] For example, Professor Greg Craven argued that any form of direct election is in "constitutional outer space",[76] because "it is fundamentally inconsistent with the assumptions of the Australian Constitution".[77] Professor Craven explained further that:

> ... the reason for this is straightforward. The presently apolitical, symbolic character of the Governor General as surrogate head of state is grounded on the fact that the Governor-General is not elected but appointed, effectively by the Prime Minister, formally by the Queen. The significance of this is that within Australia's contemporary constitutional and political mores, an unelected official can have no claims to the exercise of political power or leadership. Moreover, as the procedure for the dismissal of a Governor-General mirrors that for appointment — royal removal on prime ministerial direction — any Governor-would be most unwise to entertain interventionist ambitions.[78]

7.57 Professor Craven continued:

> Neither of these factors would survive direct election. An elected head of state necessarily would stand for election … and would arrive in office if

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72 Professor George Winterton, *Committee Hansard*, 13 April 2004, p. 61.

73 *Committee Hansard,* 29 June 2004, p. 15.

74 *Committee Hansard*, 18 May 2004, p. 4.

75 For example, Professor Greg Craven, *Submission 167*, p. 9, and also *Committee Hansard*, 18 May 2004, pp. 1-2; The Hon Bob Carr, MP, Premier of New South Wales, *Submission 721*, p. 2*;* Mr John Flower, *Submission 447*, p. 4; see also Sir David Smith, *Committee Hansard*, 29 July 2004, p. 10; Dr Ken Coghill, *Submission 536*, p. 3; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, pp. 26-27; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 7.

76 *Committee Hansard*, 18 May 2004, p. 11.

77 Ibid, pp. 1-2.

78 *Submission* 167, pp. 5-6.

> not with policies then with positions. Once elected, the logic of the office as representative of the Australian people would impel the incumbent towards intervention. Depending upon the powers of the President this could take more or less dramatic forms, but at the very least would be highly likely to involve institutional conflict with the Prime Minister.[79]

7.58 Many submissions expressed a similar concern that direct election models would not deliver an apolitical head of state.[80] In the same vein, it was argued that minimalist models were more likely to result in an apolitical head of state,[81] which, as discussed in the previous chapter, is a notion that was supported by most submissions to this inquiry. For example, Mrs Janet Holmes a Court argued 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.[82]

7.59 Professor George Winterton acknowledged these concerns:

> … it seems to me that there are two main concerns if one has direct election. We will have the only nationally elected public officer, who will presumably feel that he or she has a popular mandate and is able to rival the government. There are two problems with this, basically. One is that there will be a greater willingness to exercise powers, including the reserve powers, by such a head of state. The second is that, even apart from powers, there is the potential for interference with the government—destabilising the government potentially by interfering, making speeches, seeing people and all those kinds of things.[83]

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79 Ibid, p. 6.

80 For example, Dr Baden Teague, *Committee Hansard*, 19 May 2004, p. 25; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 26; Professor Greg Craven, *Submission 167*, p. 9; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 7; Mr Jon Stanhope MLA, ACT Chief Minister, *Submission 730*, p. 6.

81 For example, Professor Greg Craven, *Submission 167*, p. 9; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 7; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 26.

82 *Committee Hansard*, 18 May 2004, p. 26.

83 *Committee Hansard*, 13 April 2004, p. 61.

7.60 As discussed earlier in this report**,** many submissions suggested that the problems with direct election could be overcome through "codifying the powers" of the head of state.[84] For example, Professor George Williams argued that:

> … if you are able to codify the powers I do not see any greater dangers in a directly elected President than in a parliamentary appointed President.[85]

7.61 Similarly, Sir Gerard Brennan submitted that, in relation to the non-reserve powers:

> If the conventional duty [for the Governor-General to act on Ministerial advice] were entrenched in the Constitution, the main objection to an elected Presidency would be reduced substantially.[86]

7.62 On the other hand, Professor Greg Craven disagreed that some of the problems with direct election could be resolved through codification of the powers of the head of state, arguing that this was "an illusory hope".[87] Professor Craven noted that there were many potential problems with codification, as outlined in Chapter 5 of this report, and concluded that:

> … a republican model saddled with a major measure of codification would face prodigious difficulties at referendum.[88]

7.63 The Committee also heard concerns that suitable candidates would not make themselves available for the position of head of state under direct election models, because they would not want to stand in a popular election.[89] As Sir Gerard Brennan pointed out:

> … the model of direct election could be adopted only at a price, namely, the virtual elimination of eminent, non-political citizens as candidates for the Presidency … A choice must be made between that loss and any desire to vote to elect the Head of State.[90]

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84 For example, Professor George Winterton, *Committee Hansard*, 13 April 2004, p. 62; Dr Bede Harris, *Submission 93*, p. 15; Professor George Williams, *Committee Hansard*, 13 April 2004, p. 45; Mr John Kelly, *Committee Hansard*, 14 April 2004, p. 24; Dr Geoff Gallop, Premier of Western Australia, *Submission 73*, p. 2; Dr Walter Phillips, *Committee Hansard*, 14 April 2004, pp. 12-13.

85 *Committee Hansard*, 13 April 2004, p. 45.

86 *Submission 497*, p. 11.

87 *Submission 167*, p. 6.

88 *Submission 167*, pp. 6-7.

89 See, for example, Mr Bill Peach, *Committee Hansard,* 13 April 2004, p. 51; Ms Clare Thompson, *Committee Hansard*, 18 May 2004, p. 35; Sir Gerard Brennan, *Submission 497*, p. 20; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 32; ARM, *Submission 471*, Appendix A, p. 14; Dr Baden Teague, *Committee Hansard*, 19 May 2004, p. 25; Mr John Flower, *Submission 447*, p. 4.

90 *Submission 497*, p. 20.

7.64 Ms Clare Thompson expressed the same concern:

> … 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 … Asking them to go through a process of public scrutiny and then potentially the humiliation of losing is really not appropriate … The evidence in Australia is that an election is more likely to throw up a football player.[91]

7.65 Dr Bede Harris acknowledged that this could be a possible problem, but then pointed to the example of Ireland, which has a directly elected president (with non-executive powers):

> … up until the 1990s it was difficult to get people to stand for election because the process was bland; it was very unemotive. I think that for any public office, particularly the one of President, if people want to stand for election to it then they should be prepared to expose themselves to the scrutiny of the voters. That is what a republic is all about—that you have survived the rigours of a process of election. I know there are negatives associated with that, but I think that is one of the costs of democracy.[92]

7.66 Mr John Pyke also suggested that opponents of direct election were not only ignoring popular support for a direct election, but had an "elitist" attitude.[93] Mr Pyke argued strongly that the Australian people want to be trusted, and should be trusted to vote sensibly.[94] Professor George Winterton expressed a similar view:

> We can trust the good judgement of the Australian people; they will elect good heads of state provided that the Constitution enables such candidates to be nominated.[95]

7.67 Similarly, Mrs Janet Holmes a Court acknowledged:

> … I may have to move from being 100 per cent against it [direct election] 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 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.[96]

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91 *Committee Hansard*, 18 May 2004, p. 35; see also Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 26.

92 *Committee Hansard*, 29 July 2004, p. 38.

93 *Submission 512*, p. 6.

94 *Submission 512*, p. 6 and *Committee Hansard*, 29 June 2004, p. 11.

95 *Submission 319*, p. 3.

96 *Committee Hansard*, 18 May 2004, p. 32; see also Ms Clare Thompson, *Committee Hansard*, 18 May 2004, p. 34.

7.68 Several submissions pointed to successful overseas examples of republics with directly elected non-executive heads of state.[97] The Committee's discussion paper outlined the Irish republic model as an example of a popularly elected non-executive president. Many submissions expressed support for a similar model, modified to suit Australian conditions.[98] Mr John Kelly submitted that:

> The Irish direct election method of appointing a Head of State is the most relevant to Australia in terms of inherited concepts of law and parliamentary democracy…[99]

7.69 Other overseas examples were also pointed out to the Committee.[100] Mr John Pyke observed that:

> … there are in fact 4 models of stable republics in Europe with directly elected, non-executive Presidents and parliamentary governments – Iceland, Austria and Portugal, as well as Ireland. [And, though I know less about their constitutions, I understand most of the former Soviet republics and Soviet satellites have adopted similar structures in the last 14 years].[101]

7.70 Professor Greg Craven warned, however, that overseas examples of republics with directly elected heads of state may not necessarily be applicable in an Australian context:

> Nor should facile arguments that direct election has "worked" in other countries lightly be accepted. Unless a careful assessment is made of the relevant comparator constitutions with a view to determining the similarity of conditions between Australia and the nation state in question, such comparisons are futile. To take the most common example, Ireland, that country has a very different and complex tradition regarding its head of state; is not a federation; is a vastly smaller nation state than Australia; and does not possess one of the chief complicating characteristics of the Australian Constitution, a strong upper house.[102]

7.71 Another possible objection to direct election included the cost. By comparison, this was a perceived advantage of minimalist models, which could be less costly, because there is "no need for spending on a presidential election".[103]

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97 See, for example, Dr Tony Adams, *Submission 24*, pp. 1-2*;* Mr John Pyke, *Submission 512*, p. 4; Dr Walter Phillips, *Submission 219*, p. 2; Mr John Kelly, *Submission 142*, p. 12.

98 See, for example, Mr John Kelly, *Committee Hansard*, 14 April 2004, p. 24; Mr Peter Bishop, *Submission 113*, p. 6*;* Mr Matthew Lovering, *Submission 307*, p. 1.

99 *Submission 142*, p. 12.

100 *Submission 512*, p. 4; see also Dr Walter Phillips, *Submission 219*, p. 2; Mr John Kelly, *Submission 142*, p. 12.

101 *Submission 512*, p. 4.

102 *Submission 167*, p. 7.

103 ARM, *Submission 471*, Appendix A, p. 6.

7.72 Another potential disadvantage of direct election models was the possibility that, depending on the design of the voting system, voters in smaller states may be outnumbered by those in larger states. As a result, heads of state may only ever come from those larger states.[104]

7.73 Finally, Professor Craven also expressed concern in relation to dismissal mechanisms for a directly elected President:

> Further, it would not be plausible to devise a model where the President was elected by the whole people, but was readily dismissible. This would mean that the sanction of dismissal would be removed from the equation at the same time as the logic behind the office of Australian head of state was fundamentally changed.[105]

### *Executive presidency model*

7.74 Some submissions suggested that, if Australia is to become a republic, an executive-style presidency should be considered.[106] As mentioned earlier in this report, an executive-style presidency model would go beyond merely replacing the current Queen and Governor-General with a largely ceremonial head of state. An executive presidency would involve an elected head of state who is also the head of government, and would require some fundamental changes to our current system of government.

7.75 For example, Dr David Solomon argued strongly for an elected executive President, along the lines of the US system of government. In arguing for a head of state who is also the head of government, he suggested that other changes to the Constitution would be required to "enhance the powers of the parliament vis-a-vis those of the head of government".[107] Some of the other changes that Dr Solomon proposed as a part of an executive style presidency included a single chamber Commonwealth Parliament and fixed parliamentary terms.[108]

7.76 Dr Solomon countered the argument that a combined head of state and head of government would have too much power by arguing that:

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104 For example, Mr Geoff Calder, *Submission 543*, p. 2; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, pp. 28-29.

105 *Submission 167*, p. 6.

106 For example, Mr Charles Mollison, *Submission 129*, p. 1; Dr Bruce Hartley, *Submission 330*, p. 1; Dr David Solomon, *Submission 457*, p. 1; Ms Laetitia Legg-Capelle, *Submission 479*, pp. 1-2; Mr Matthew Harrison, *Submission 10*, p. 1; Mr James Stack, *Submission 404*, p. 1; Mr Stephen Souter, *Submission 526*, p. 295.

107 *Committee Hansard*, 29 June 2004, p. 38.

108 Dr David Solomon, *Submission 457*: "A Single-Chamber Australian Parliament", *Papers on Parliament 36*, June 2001, p. 2.

> The fact is that the American president, despite his very high profile, exercises less power in the American system of government than the Australian prime minister exercises in modern Australia.[109]

7.77 Dr Solomon acknowledged that this would be a "major change to our system of government".[110] However, he considered that there were strong arguments for changing our current system, arguing that:

> Those changes would deal with what I see to be a major problem with our current democratic system; namely, that too much power has accrued in the person who is the Prime Minister … These powers have developed in the absence of any separation of powers between the government—the executive, that is—and the parliament. They are moderated to some extent by the way the electoral system has empowered the Senate … However, while the legislative power remains split between the government and the Senate, the executive power is subject to few restrictions.[111]

7.78 The ARM acknowledged this problem to a certain extent:

> Constitutional lawyers, former governors-general and commentators have noted an inclination over the past 25 years for Prime Ministers to perform many of the ceremonial roles that, arguably, would usually be performed by a Head of State … The declining relevance of the Queen in Australia has created a vacuum that Prime Ministers have inevitably filled. Although Prime Ministers are party political figures, they do at least have a national and democratic relevance for Australians.[112]

7.79 However, the ARM also argued that:

> The blurring of the roles of a Head of State and a Head of Government is undesirable in a parliamentary system such as ours, where the two roles ought to remain distinct and separate. It is a weakness of our current system that these roles are becoming blurred, and another good reason to make the change to a republic.[113]

7.80 However, as also mentioned earlier in this report, there appeared to be minimal support for an executive presidency system in the evidence received by the Committee, and many objected to such a fundamental change to our system of government.[114] In fact, the ARM deliberately excluded an executive presidency model in the models it submitted to the inquiry. The ARM explained:

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109 Dr David Solomon, *Submission 457*: *Coming of Age, Charter for a new Australia*, University of Queensland Press, Brisbane, 1998, p. 57.

110 *Committee Hansard*, 29 June 2004, p. 38.

111 Ibid.

112 *Submission 471*, p. 9.

113 Ibid.

114 For example, ARM, *Submission 471*, p. 9; Professor George Winterton, *Submission 319*, p. 1; Dr Ken Coghill, *Submission 536*, pp. 1-2; Professor Greg Craven, *Submission 167*, p. 4.

> We have not included the original Model 6, which briefly outlined the features of a US style system with an executive presidency, as the ARM has detected little support for such a radical break with our current parliamentary system.[115]

7.81 The ARM further observed that:

> We find that much of the public sentiment towards direct election is based in a desire for people to have a say in who their head of state is, not from a wish to overturn our long standing parliamentary system.[116]

7.82 Professor John Warhurst, on behalf of the ARM, explained further:

> The ARM believe that the chosen model should be consistent with Australia's established parliamentary system of government. We therefore rule out an executive style presidency as it is found in the American constitution. There is little support among the Australian community and within the ARM membership for such a model. To adopt it would be to transform Australia's system of government in an unacceptable way.[117]

7.83 Professor George Winterton also argued against a combined head of state and head of government:

> Such a move would probably mean moving to a system, like that of the United States, based upon the separation of legislative and executive power. There is no evidence of significant support for such change in the Australian community. Moreover, if the American system were introduced into the Australia political environment with its strong party system it would operate very differently from the American system, at least initially.[118]

7.84 Similarly, Professor Greg Craven argued persuasively that:

> … it is worth noting the central feature of our Constitution's executive arrangements that has served us so well. These arrangements produce a surrogate head of state - the Governor-General - that enjoys respect and legitimacy, but no power; and a head of government - the Prime Minister - who exercises power, but is entitled to no great institutional respect. In this way, our Constitution ensures that no political figure is produced who simultaneously embodies constitutional power and popular respect, like the Emperor Napoleon, or more prosaically, an American President. At the same time, it ensures that political and constitutional wires stay uncrossed: the Prime Minister runs the country, the Governor-General presides over it.[119]

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115 *Submission 471*, Appendix 1, p. 2.

116 *Submission 471*, pp. 9-10.

117 *Committee Hansard*, 13 April 2004, p. 28.

118 *Submission 319*, p. 1; see also Dr Ken Coghill, *Submission 536*, p. 2.

119 *Submission 167*, p. 4.

7.85 In arguing against an executive-style presidency, Dr Ken Coghill also pointed to "ample evidence of the relative instability of executive presidencies" in a number of overseas countries.[120]

## Hybrid and other models

7.86 Several submissions received by the Committee proposed models that could not be classified easily as either direct election or minimalist models. In fact, many of these submissions proposed what could be described as "hybrid" models. For example, the ARM, in discussing its "Model Three: Presidential Assembly" stated that:

> Proponents of this model see it as a bridge between popular election and parliamentary appointment, giving the people a vote (if only an indirect one) while avoiding the risks of a President claiming a superior personal mandate to the Prime Minister of the day.[121]

7.87 Similarly, Mr Peter Crayson observed that "republicans are generally divided into two main camps: minimalists and direct electionists".[122] Mr Crayson, in presenting his "Constitutional Council" model, argued that it:

> … moves beyond the "minimalists" and the "direct electionists" paradigms, reconciling the two camps. The prospect of this reconciliation is the driving motivation behind this model.[123]

7.88 However, it is also possible that some of these models may please neither side. For example, the ARM, again discussing its "Presidential Assembly" model, acknowledged that:

> [T]he model stops short of full direct election with all its attendant democratic appeal. While it is intended to bridge the gap between direct electionists and those who favour parliamentary appointment, it may please neither group.[124]

7.89 Some of the other models proposed to the Committee are outlined further below, including:

- electoral college style models;
- models with both a republican head of state and a Governor-General; and
- other republican models.

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120 *Submission 536*, p. 1.

121 *Submission 471*, Appendix A, p. 7.

122 *Committee Hansard*, 13 April 2004, p. 53.

123 *Submission 322*, p. 6.

124 *Submission 471*, p. 9.

### *Electoral college models*

7.90 The Committee received only a few submissions supporting or proposing "electoral college" style models.[125] However, it was pointed out to the Committee that in several overseas republics, such as Germany, India, Indonesia and Italy, the President is elected by an electoral college comprising members of parliament of the national and state or regional governments.[126]

7.91 "Model Three" put forward by the ARM was an example of an electoral college system.[127] Under this model, the republic head of state would be appointed by a directly elected, special-purpose Presidential Assembly. The ARM proposed that the Presidential Assembly would be:

> … composed of 48 members in total: 42 members being directly elected by the people with the addition of the 6 state governors. The elected seats may be apportioned to each state as follows: NSW and VIC: 8 seats each, QLD: 6 seats, SA and WA: 5 seats, TAS: 4 seats, NT and ACT: 3 seats.[128]

7.92 Under the ARM's proposal, elections for the Presidential Assembly would be held simultaneously with every half Senate election, to reduce the costs of the election. Each elected member would hold office for six years, with elections for half the Presidential Assembly to be held every three years.[129] The ARM commented that the Presidential Assembly would ideally conduct itself as a non-party political body, but that:

> While this would be the ideal, there is no way to ensure this would happen, short of banning party participation, which would be both undemocratic and probably unconstitutional.[130]

7.93 The ARM further explained:

> Candidates for the Presidential Assembly would ideally ask to be elected on the basis of their standing in the community, rather than their support for a party's nominee, as there would be no official nominees at the time of the election. The presence of the six state governors is intended to "set the

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125 See, for example, Mr Wilby Lawrence, *Submission 8*, pp.2-3, who supported a modified version of ARM Model Three; Mr Paul Canet-Senior, *Submission 724*, p. 1; Mrs V.D. Burnett, *Submission 726*, p. 1; ARM (Model Three), *Submission 471*, Appendix A, pp. 7-9.

126 Dr Walter Phillips, *Committee Hansard*, 14 April 2004, p. 10; Mr Paul M. Canet-Senior, *Submission 724*, p. 34; see also RAC Report, Volume 1, p. 73; and Ms Anne Twomey and Ms Rosemary Bell, "Methods of Choosing a Head of State", Department of Parliamentary Services, *Parliamentary Library Background Paper 12 1997-1998.*

127 *Submission 471*, Appendix A, pp. 7-9.

128 Ibid, p. 8.

129 Ibid, pp. 7-8.

130 Ibid, p. 7.

tone" for the body and provide the assembly with the benefit of their constitutional knowledge and experience.[131]

7.94 In terms of the appointment process for head of state, the ARM proposed that:

- one year before the end of the incumbent head of state's term, the chair of the Presidential Assembly would call for nominations;
- at least 1000 nominators would be required for a candidate to be considered by the Presidential Assembly, of which at least one hundred must be from each state;
- once nominations close, the full list of nominees would be published for public scrutiny before being presented to the Presidential Assembly; and
- the Presidential Assembly would then convene to begin the process of appointing the new president (or re-appointing the incumbent) from the list of nominees. Appointment would be carried by a simple majority of votes in the Presidential Assembly.[132]

7.95 In terms of removal processes, the ARM proposed that it would be the same as for federal judges — that is, the head of state may be removed from office by a resolution of both Houses of the Parliament in the same session on the ground of proved misbehaviour or incapacity.[133]

7.96 The ARM submitted that one of the advantages of this form of model would be that it offers public participation through the vote for the Presidential Assembly and through the open nominations process, yet does not require codification of the president's powers because the existence of the college curbs the presidential mandate. The ARM argued that a wide range of people who might otherwise be reluctant to enter the fray of a general election campaign, would agree to nominate for the presidency. The ARM also submitted that the Presidential Assembly would "keep the presidency at least one step removed from an issues based campaign and therefore from needing to take a stance on political issues of the day".[134]

7.97 Some of the disadvantages of this model outlined by ARM included concerns as to whether the Presidential Assembly may be filled by politicians, and political involvement of the major parties in and around the Presidential Assembly which might transform it into a very political body. In this case, a model which uses Commonwealth Parliament to appoint the head of state (as in ARM "Model Two") might be preferred.[135]

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131 Ibid.

132 Ibid, pp. 7-8.

133 Ibid, p. 8.

134 Ibid, p. 9.

135 Ibid.

7.98 The Committee notes that another possible advantage of an electoral college system might be that each state elects a certain number of delegates to the electoral college. This could reassure people concerned that, in direct election models, the smaller states may be swamped by votes from bigger states.[136] The Committee notes that a possible alternative electoral college model could deal directly with this issue by providing for an equal number of electoral college delegates from each state, along the lines currently provided for in the Senate. That is, 12 delegates could be elected from each state and two delegates from each territory. Similar to the Senate, these delegates could be elected for two terms of the House of Representatives.

7.99 However, the Committee received evidence which was quite critical of an electoral college model.[137] An "electoral college" model did not convince Professor Greg Craven, who asserted that:

> … to the extent that the members of the college were elected, this merely would comprise the election of the head of state at one remove, with the creation of a transferred popular mandate rather than an immediate one, as is the case with the President of the United States. Conversely, were a substantial number of the members of the College to be appointed, such a model hardly would appeal to supporters of direct election. Indeed, as soon as one seeks to compromise direct election, its raison d'etre — popular choice — dissipates.[138]

7.100 Professor Craven elaborated on this issue further at the Committee's hearing in Perth, arguing that a head of state selected under an electoral college system would still have popular mandate:

> 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.[139]

7.101 Mr Ross Garrad also commented in response to questioning from the Committee, that while this model would provide for greater public input:

> … the electoral college model manages to most likely take one of the negative aspects of many direct election models—that is, the likelihood that we would see an election fought by political parties—and combine it with at least the partial exclusion of the most positive aspect of direct election

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136 See, for example, Mr Geoff Calder, *Submission 543*, p. 2; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 32; Dr Walter Phillips, *Committee Hansard*, 14 April 2004, p. 10.

137 See, for example, Professor Greg Craven, *Submission 167*, p. 6; Mr Andrew Newman-Martin, *Submission 107*, p. 17; Mr Michael Pepperday, *Committee Hansard*, 29 July 2004, p. 26; Women for an Australian Republic, *Submission 476*, Attachment D, p. 1; Mr Howard Teems, *Submission 100*, p. 8.

138 *Submission 167*, p. 6.

139 *Committee Hansard*, 18 May 2004, p. 12.

> models, which is that the people have more of a sense of ownership of the election process … I think there are better ways of achieving the same end.[140]

7.102 Similarly, Mr Andrew Newman-Martin suggested that "most people would see a presidential assembly as poor substitute for direct election".[141] He also commented that this sort of model appears to have little public support, and would be unlikely to succeed at a referendum.[142] Women for an Australian Republic also observed that an electoral college model would be "impractical and very costly".[143]

### *Models with both a President and a Governor-General*

7.103 A number of separate, but similar, models were put to the Committee which proposed to replace the Queen with a directly elected Australian head of state, but also retain the position of Governor-General.[144]

7.104 These models proposed different nomination methods, but retained the essential ingredient of a direct election of potential candidates for the Australian head of state. For example, Mr David Latimer suggested an "Honorary President" model.[145] Under this model, Mr Latimer proposed a nomination process for the office of "Honorary President" involving public petition, each of six state parliaments nominating former Governors or Lieutenant Governors of their state, and the Commonwealth Parliament nominating a former Governor-General.[146] This would be followed by a direct election with a maximum of ten candidates.[147]

7.105 In terms of the role and powers, while these similar models varied slightly, most suggested that the distribution of powers and functions between the new Australian head of state and the Governor-General would remain essentially the same as the current situation with the Queen and the Governor-General.[148] For example, Mr

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140 *Committee Hansard*, 29 June 2004, p. 33.

141 *Submission 107*, p. 17.

142 Mr Andrew Newman-Martin, *Submission 107*, p. 17; see also, for example, Mr Michael Pepperday, *Committee Hansard*, 29 July 2004, p. 28.

143 *Submission 476*, Attachment D, p. 1.

144 See, for example, Professor John Power, *Submission 28*; Dr Peter Carden, *Submissions 105* and *105A;* Mr David O'Brien, *Submission 126*, p. 1; Mr Robert Vogler, *Submission 480*, p. 4; Mr David Latimer, *Submission 519.* Note that these models are discussed here because, although their authors may describe them as 'minimalist', they provide for a directly elected head of state and hence do not fit neatly under either the 'minimalist' or 'direct election' headings above.

145 Mr David Latimer, *Submission 519*. Note that in mentioning this specific model, the Committee is not intending to endorse any particular version of this model over another.

146 Mr David Latimer, *Submission 519*, pp. 16-18.

147 Ibid.

148 See, for example, Mr Robert Vogler, *Submission 480*, p. 12; Professor John Power, *Submission 28*; Mr David Latimer, *Submission 519*, p. 38.

Latimer proposed that the "Honorary President" would have a ceremonial and symbolic role with no executive powers. The "Honorary President" would hold all powers of the current Queen of Australia, but the exercise of those powers would be limited to appointing and dismissing the Governor-General and state Governors.[149] The Constitution would allow the "Honorary President" to delegate other powers to the Governor-General, who would be chosen by the Prime Minister and continue to exercise all powers in a similar way to the existing arrangements.[150]

7.106 The Committee queried the potential for duplication and possible confusion over the roles of the Australian head of state and the Governor-General. In response, one of the proponents of this sort of model, Mr David Latimer, acknowledged that there may be overlap in terms of the ceremonial aspect of the roles of the proposed Governor-General and the Australian head of state, and that perhaps greater clarity might be required.[151]

7.107 Submissions which proposed this type of model often argued that the advantages include minimal changes to the Constitution.[152] However, the Committee notes that considerable change may still be required, for example, in terms of delineating and limiting the powers of the head of state as compared to the Governor-General. Some of the submissions proposing this form of model also acknowledged that there may be additional expense and costs involved in maintaining both the Governor-General and a directly elected Australian head of state.[153]

### *Variations on a theme*

*"The last thing we need at this stage is another model"*[154]

7.108 The Committee also received many other proposed republic models. Aspects of some of these models have been discussed in earlier chapters, particularly the chapter on the methods of selection of the head of state.[155] Some models could be considered to be variations on the main minimalist or direct election models outlined above.[156]

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149 Mr David Latimer, *Submission 519*, p. 38.

150 Ibid, p. 38-40.

151 Mr David Latimer, *Committee Hansard*, 13 April 2004, pp. 11-12.

152 Mr David Latimer, *Submission 519*, p. 6.

153 For example, Mr Robert Vogler, *Submission 480*, p. 12.

154 Professor Greg Craven, *Committee Hansard,* 18 May 2004, p. 8.

155 See, for example, Mr Ross Garrad's "citizen's jury model", *Submission 533,* pp. 9-12; or Mr Michael Pepperday's "popular appointment" proposal, *Submission 621*, pp. 11-15.

156 For example, Mr Phill Chadwick, *Submission 81*, p. 1, suggested that a single candidate could be selected by a two-thirds majority of Parliament, who the Australian people could then either endorse or reject at an election.

7.109 Others could be described as "compromise" models which attempt to reconcile "direct electionists" and "minimalists".[157] For example, Mr Peter Crayson proposed a "Constitutional Council model", which provided for the popular election of the head of state, who would have a symbolic role.[158] The head of state would not exercise the reserve powers, but rather would assign those powers to the Speaker of the House of Representatives, with the office of the Speaker reformed "so as to be more independent and impartial".[159] The model also had a Constitutional Council which would play a "review, appointment-dismissal, advisory and symbolic role".[160]

7.110 As outlined earlier in this report, other submissions proposed incremental changes to our current system, prior to any move to a republic, such as allowing greater public involvement in the selection of the current Governor-General and codifying the powers of the Governor-General.[161]

7.111 Other models examine our political values and system of government and proposed some different changes in the context of a republic, such as directly electing the Prime Minister.[162] Some submissions also proposed broader constitutional changes, which were outside the terms of reference of this inquiry, such as including a bill of rights in the Constitution,[163] or abolishing the states.[164]

7.112 Many submissions also supported a revision of the preamble to the Constitution.[165] Some felt the preamble should be considered separately so as not to distract from the republic issue.[166] On the other hand, Dr Mark McKenna, suggested that the preamble should provide constitutional recognition of Indigenous Australians, argued strongly that:

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157 See, for example, Mr Peter Crayson, *Submission 322*; Dr John Costella, *Submission* 25.

158 Mr Peter Crayson, *Submission 322* and *Committee Hansard*, 29 July 2004, pp. 53-60.

159 Mr Peter Crayson, *Submission 322*, p. 7.

160 Mr Peter Crayson, *Committee Hansard*, 29 July 2004, pp. 54.

161 For example, Professor George Williams, *Submission 152.*

162 Mr Andrew Cole, *Submission 41*, p. 188.

163 ATSIC, *Submission 112*, p. 6*;* Dr Klaas Woldring, Republic Now!, *Committee Hansard*, 13 April 2004, p. 77; A Just Republic, *Submission 281*, p. 2; Australian Freedom Forum, *Submission 467*, p. 2; Mr Bill Willcox, *Submission 5*, p. 12; Progressive Labour Party, *Submission 498*, p. 2.

164 Republic Now!, *Submission 466*, p. 8; Mr Fred Carter, *Submission 23*, p. 3*;* Mr Mark Drummond, *Submission 128*, p. 1; Dr Lionel McKenzie, *Submission 350*, p. 8.

165 Aboriginal and Torres Strait Islander Commission (ATSIC), *Submission 112*, p. 6*;* Dr Mark McKenna, *Committee Hansard*, 29 July 2004, p. 41; see also Professor George Winterton, *Submission 319*, pp. 8-9; A Just Republic, *Submission 281*, p. 2.

166 Dr Baden Teague, *Committee Hansard*, 19 May 2004, pp. 24-25; Ms Louise Houston, *Committee Hansard*, 19 May 2004, p. 39; Mr Andrew Newman-Martin, *Submission 107*, pp. 48-54.

> To image that we would end up with a republican constitution that says nothing about the constitutional position of Aboriginal people would be a great tragedy, a lost opportunity.[167]

167 *Committee Hansard*, 29 July 2004, p. 41.

# CHAPTER 8

# THE COMMITTEE'S CONCLUSIONS

8.1 The 1999 constitutional referendum left many Australians with mixed feelings. Although some who opposed change felt that the matter had been determined, many felt very strongly a sense that issues had not been resolved. Not the least of concerns was that Australians had felt disengaged from the process, and that the fundamental question of Australia's future as a republic or as a constitutional monarchy had not been answered.

8.2 The Committee is of the view that Australians need the opportunity to properly address that question, and they need to be able to do so in a way that is fully informed. Australians are entitled to be active participants in making decisions about the future of their country.

8.3 Although the Committee considered and examined a number of proposals for republic models, it is strongly of the view that the form a future Australian republic may take should be decided by Australians. The Committee therefore makes no recommendation regarding a preferred republic model. That decision should be one for the Australian people.

8.4 The Committee believes that the process of community involvement and consultation should be done in a considered and measured way, and that the time to begin preparing for that process is now. This view is the basis for the Committee's conclusions.

## Education, Engagement and Inclusion

8.5 The Committee received a considerable amount of evidence which suggested that lack of "ownership" was one of the problems associated with the 1999 referendum. The Committee acknowledges this evidence and considers that the Australian people should be fully consulted and involved in any process leading towards a future Australian republic. This process should be inclusive and democratic, and should engage as broad a cross section of the Australian public as possible.

8.6 However, the Committee recognises that, in order for the process to be fully democratic, informed participation is required. The Committee considers that constitutional awareness and education is the key to effective participation in any proposed constitutional reform, including reforms leading towards an Australian republic. The Committee heard evidence from all sides of the republic debate of the importance of constitutional education and awareness, particularly in the context of proposed constitutional change.

8.7 The Committee also received a considerable amount of evidence of a general lack of understanding in the Australian community of the Australian Constitution and

system of government. The Committee also notes the recent experience of the Consultative Group on Constitutional Change which was formed to consult with the public on possible reforms to section 57 of the Australian Constitution. This Group found that 'in a substantial segment of our society there is a lack of knowledge and confidence to express informed views on constitutional questions'.[1]

8.8 The Committee therefore considers that there is a need for an ongoing and extensive information and education program to ensure Australians can make an informed choice in relation to constitutional reform, including the options that may be put to them relating to an Australian republic. The Committee strongly believes that constitutional education and awareness should be an on-going and continuous priority, not just in relation to any proposed move towards an Australian republic.

8.9 In this context, the Committee considers that there is a need for a standing body to facilitate and oversee on-going education and awareness programs to improve the level of awareness and understanding of the Australian Constitution. The Committee recommends that a parliamentary committee should be established and fully resourced to undertake this responsibility. Such a Committee would also facilitate and oversee the on-going education, involvement and engagement of the Australian people throughout any proposed process of moving towards a republic.

**Recommendation 1**

**8.10 The Committee recommends that constitutional reform needs to be underpinned by increased awareness and understanding within the community of our constitutional system. Such objectives can be best realised by an inclusive approach which engages as broad a cross section of the public as possible. To this end the Committee is of the view that a new structure and program needs to be established on a permanent basis, with initial focus on general constitutional education and awareness.**

**Recommendation 2**

**8.11 To this effect, the Committee recommends that a Parliamentary Joint Standing Committee on Constitutional Education and Awareness be established, with responsibility for overseeing and facilitating:**

> **(a) education and awareness programs to improve the level of awareness and understanding of the Australian Constitution; and**
>
> **(b) on-going education, involvement and engagement of the Australian people in discussion of constitutional matters and development.**
>
> **This Committee is to be adequately resourced to ensure it can meet its objectives.**

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1 Brown, Neil, *Resolving Deadlocks: The Public Response*, Report of the Consultative Group on Constitutional Change, Canberra, March 2004, p. 29.

**Recommendation 3**

**8.12 The Committee recommends an ongoing education program be implemented to ensure Australians become as informed as possible about the issues surrounding an Australian republic and to enable them to make informed choices. This education program should commence prior to the first plebiscite on the republic, and should continue throughout the proposed process for moving towards a republic.**

8.13 The Committee recognises the diversity of the Australian population, and the need to ensure that the proposed process and education program is open and accessible to all Australians, regardless of their gender, age or ethnic background. The Committee believes that the proposed education program should therefore utilise mechanisms to ensure that information is broadly inclusive and reaches the full range of people in the Australian community.

**Recommendation 4**

**8.14 The Committee recommends that this ongoing education program recognise the ethnic, gender and age diversity of the Australian population, and be inclusive of all Australians.**

8.15 The Committee also considers that it is important to use not just one but several methods to reach Australians in any education program. The Committee recognises that people receive information in different ways, and acknowledges the evidence received which emphasised the importance of using a range of media including the internet, television and radio. The Committee acknowledges that there may be a significant cost to conducting an ongoing program across a range of media, but is of the opinion that the question of Australia's future direction is important enough to justify the application of the necessary resources to allow Australians to be fully aware and informed.

**Recommendation 5**

**8.16 The Committee recognises that people receive information in different ways and recommends that in order to reach as many Australians as possible, an education program should use several methods to provide information, including printed material, television, radio, local discussion groups and the internet.**

8.17 The Committee also recognises the skills and experience of community education and adult learning organisations and their potential to play an important role in increasing the level of constitutional awareness and understanding in the Australian community. The Committee acknowledges suggestions made during its inquiry for such organisations to be involved and resourced to facilitate discussion and participation in the community in relation to the issues surrounding an Australian republic.

**Recommendation 6**

**8.18 The Committee recognises the capacities and experience of adult learning organisations and bodies, and recommends that such organisations and bodies be involved in an education process relating to an Australian republic, and be funded accordingly.**

8.19 The Committee recognises the importance of targeting education and engagement not just at a national level, but also at a local, regional and state level. The Committee therefore considers that all levels of government should be involved in educating and engaging Australians in the proposed process of moving towards an Australian republic.

**Recommendation 7**

**8.20 The Committee recommends that all three tiers of government — Federal, State and local — should be utilised to educate, engage and involve Australians in the process of moving towards an Australian republic.**

8.21 In keeping with the Committee's proposed inclusive approach, the Committee also considers that all Australians should be engaged and consulted in the proposed process for moving towards an Australian republic. To this end, the Committee believes that particular consideration should be given to mechanisms to ensure that Indigenous Australians are fully consulted and involved in the proposed process.

**Recommendation 8**

**8.22 The Committee recommends that, throughout the process of moving towards a republic, particular consideration should be given to engagement with Indigenous Australians.**

## A process

8.23 The process by which Australia would move towards a republic was a key focus of the Committee's inquiry. The Committee is of the view that Australians have a fundamental entitlement to be fully involved in any future process. It fully supports the compelling evidence of the crucial importance of engaging the Australian people and giving them ownership of their Constitution, and in the course of events, their republic. The Committee is of the view that the optimum way to provide this ownership is to allow Australians to express their wishes in a series of plebiscites.

8.24 In any process leading to an Australian republic, the final and deciding event, as required by section 128 of the Australian Constitution, would be a referendum to amend the Constitution. During the course of the inquiry, it was convincingly argued that Australians are entitled to be involved in a debate about the nation's future at an earlier stage than during the lead-up to a referendum. Plebiscites provide that opportunity to be involved and to be active participants.

8.25 The process of conducting plebiscites would also provide a focus for community involvement and education. The Committee noted arguments that education and

awareness programs are more effective when focussed on a specific proposition, rather than when conducted in the abstract.

8.26 The Committee is in favour of a three-stage consultative process, involving two plebiscites and a drafting convention, followed by the fourth and final stage of a constitutional referendum to amend the Constitution. The Committee believes that before initiating any process, it is vitally important to lay out the intended steps in the process, so that Australians have a clear picture of the opportunities they will have for involvement.

8.27 The Committee recognises that there may be some who would question stated intentions to involve Australians in future processes, and who may require reassurance that they will be active participants in the process. The Committee therefore supports suggestions that intended future steps should be spelt out in legislation, so that there are legislated guarantees.

**Recommendation 9**

**8.28 The Committee recommends a three-stage consultative, non-binding process for moving towards an Australian republic, followed by a fourth stage of a Constitutional referendum to amend the Constitution, and that such a process be enshrined in legislation. This legislation would spell out the future steps, in order to give Australians confidence that they will have a say in future decisions, and it would include provisions to make voting in plebiscites compulsory.**

## A first plebiscite

8.29 The Committee believes it is essential that the first step in the process should be to seek from Australians their view on the fundamental question of whether Australia should become a republic. The Committee notes evidence that opinion polls showing majority support for an Australian republic, but supports the argument that before expending substantial resources it is important to first test this proposition in a full national non-binding plebiscite.

8.30 The Committee believes that the importance of this question for the future of Australia calls for a requirement that **all** Australians should have their say. The Committee therefore supports compulsory voting in this threshold plebiscite. The Committee suggests that relevant provisions for compulsory voting could be included in the legislation that lays out the framework for the entire process.

8.31 The Committee believes that the result of this plebiscite should be determined by a simple absolute majority of voters nationally.

8.32 In the course of the inquiry the Committee examined a range of models for the type of republic Australia might become. It was strongly argued that Australians should be fully involved in determining the form of a future Australia republic, before the stage of a constitutional referendum, where they would be presented with a final option. The case was made for a second plebiscite in which Australians would be

asked for their preferred model of a republic, and this issue is discussed in the next section of this chapter.

8.33 The question of conducting the two plebiscites separately or concurrently was the subject of extensive evidence to the Committee. Some argued that the initial plebiscite should be held separately from the second models plebiscite. A separate, stand-alone first plebiscite would allow clear discussion and deliberation about the fundamental issue of whether Australia should become a republic or not, and would allow Australians to focus on the issue of our national identity. As already stated, the Committee is strongly convinced of the need for constitutional awareness and education, and notes evidence that a stand-alone initial plebiscite would enable an education program to focus on how the current system works, and what changing to a republic would mean. Holding a second choice-of-models plebiscite separately would enable an information campaign that allowed Australians to focus on and learn about the different republic models.

8.34 The primary argument for holding the two plebiscites together is that Australians may be reluctant to vote in favour of a republic without knowing what type of republic Australia would become. The Committee recognises this concern, but is of the view that this apprehension of "signing a blank cheque" can be countered by making it clear from the outset that there will be further opportunities to actively participate in determining the form of republic, subsequent to the initial non-binding plebiscite. The Committee does not by any means discount "blank cheque" concerns, and believes that the importance of this issue to Australia's future warrants that the future planned process is not merely made clear but is enshrined in legislation.

8.35 The Committee therefore supports holding the initial plebiscite and the models plebiscite separately, rather than concurrently.

8.36 The Committee also recognises that the wording of the initial threshold question is important. The Committee is of the view that Australians should be able to cast a Yes vote for a republic with the assurance that they will be consulted in the future about what type of republic Australia may become. Therefore the Committee supports suggestions that the initial plebiscite question be worded to allow a conditional Yes vote.

8.37 Accordingly, the Committee makes the following recommendations regarding a first plebiscite:

**Recommendation 10**

**8.38 The Committee recommends that the first step of the process should be an initial plebiscite, asking Australians whether Australia should become a republic with an Australian head of state, separating from the British monarchy.**

**Recommendation 11**

**8.39 The Committee recommends that the result of this initial plebiscite should be determined by a simple majority vote.**

**Recommendation 12**

**8.40 The Committee recommends that voting be compulsory.**

**Recommendation 13**

**8.41 The Committee recommends that this initial plebiscite should be conducted separately from any further plebiscites relating to the form of a future Australian republic.**

**Recommendation 14**

**8.42 The Committee recommends that the wording of the initial plebiscite question should enable Australians voting Yes to cast that vote ON THE CONDITION that a future plebiscite would be held, where the type of republic would be decided by a majority of Australians.**

## A second plebiscite

8.43 If the result of the initial threshold plebiscite is a majority vote for becoming a republic, the Committee is strongly of the view that Australians have a right to participate in any decision regarding what type of republic Australia may become, before reaching the stage of a constitutional referendum. The Committee considers that the optimum way to achieve this participation is through a second non-binding plebiscite, giving Australians a choice of models.

8.44 The Committee believes that a plebiscite offering a choice of republic models should be conducted on a preferential voting basis, with voters given a choice of five models. The Committee considers that the models included in this plebiscite should be similar to the five models that have been put forward by the Australian Republican Movement. Broad details of the models should be prepared by the proposed Parliamentary Joint Standing Committee on Constitutional Education and Awareness.

8.45 It is clear that Australians need to be fully informed about the options before them, and the Committee considers that the proposed Parliamentary Joint Standing Committee on Constitutional Education and Awareness would be the appropriate body for overseeing an education program to promote this awareness.

8.46 As in the case of the initial threshold plebiscite, the Committee is of the view that it is important to seek the input of **all** Australians, and that the importance of this issue warrants the requirement that voting be compulsory. The Committee suggests that the relevant provision be included in the legislation that lays out the framework for the entire process.

8.47 In the course of the inquiry the Committee considered evidence suggesting that further questions be put to the Australian people, including a question seeking views as to the preferred title of a head of state. The Committee considers that it would be appropriate to ask this question at the time of the second models plebiscite. Other relevant questions may also be included at this time, and the Committee suggests that the proposed Parliamentary Joint Standing Committee on Constitutional Education

and Awareness would determine the nature of any additional questions and make recommendations to government.

8.48 Accordingly, the Committee makes the following recommendations regarding the second plebiscite:

**Recommendation 15**

**8.49 The Committee recommends that should the initial plebiscite result in a majority vote for an Australian republic, the second step of the process should be a plebiscite to ask Australians what type of republic Australia should become, by indicating a preference for the model for selecting a head of state.**

**Recommendation 16**

**8.50 The Committee recommends that this second plebiscite be conducted on a preferential voting basis, and that voting be compulsory.**

**Recommendation 17**

**8.51 The Committee recommends that this second plebiscite include the following five alternative methods of selecting a head of state:**

- **Prime Ministerial appointment**
- **Appointment by a two-thirds majority of a joint sitting of parliament**
- **Appointment by an electoral college, which has been elected on the same basis as the Senate**
- **Direct election of Parliament's candidates: Powers of head of state to be codified**
- **Direct election by the people: Powers of head of state to be codified**

**Recommendation 18**

**8.52 The Committee recommends that prior to the second plebiscite, broad details of the options for these republic models be prepared by the proposed Parliamentary Joint Standing Committee on Constitutional Education and Awareness.**

**Recommendation 19**

**8.53 The Committee recommends that the second plebiscite should also include other relevant questions, including a question asking Australians for their preferred title for a head of state in an Australian republic.**

## A Drafting Convention

8.54 Following the second plebiscite, Australians will have had the opportunity to express their views about whether they want a republic, and what they want that republic to look like. At this point it will be necessary to refine the details of the republic model that has emerged as the preferred option, and to make preparations for

amending the Constitution, in readiness for the final, and binding, constitutional referendum.

8.55 The Committee considered options for this third, refining stage, and is of the view that the most effective means for achieving optimum outcomes would be the convening of a Drafting Convention comprising Australians who are expert in constitutional law or who have recognised relevant skills and abilities. The Committee noted evidence supporting an elected constitutional convention, but considers that the task of fleshing out the finer details of the necessary amendments to the Constitution requires the expertise of Australia's significant body of capable and skilled constitutional experts.

8.56 The Committee is of the view that members of the Drafting Convention should be appointed by the Parliament, after agreement by both Houses of Parliament. The appointment process should involve all recognised political parties, including minor parties. In appointing members, the Committee believes that Parliament should make every effort to ensure that the Drafting Convention reflects Australia's ethnic, gender and age diversity.

8.57 Accordingly, the Committee makes the following recommendations:

**Recommendation 20**

**8.58 The Committee recommends that the third step of the process should be a Drafting Convention to fine-tune the details of the preferred type of republic, based on the result of the second plebiscite, and to prepare drafting instructions for an amendment to the Constitution.**

**Recommendation 21**

**8.59 The Committee recommends that members of the Drafting Convention should be appointed by Parliament, after agreement by both Houses of Parliament. The appointment process should involve recognised political parties, including minor parties. The Committee recommends that membership of the Convention should comprise constitutional experts and others with recognised relevant skills and abilities to enable the best possible outcome of the Convention.**

**Recommendation 22**

**8.60 The Committee recommends that in appointing members to the Drafting Convention, Parliament should make every effort to ensure that the Convention reflects Australia's ethnic, gender and age diversity.**

## Other issues

8.61 In making recommendations for a process involving plebiscites, the Committee is mindful of concerns regarding the costs of conducting ballots. Although there may be benefits to conducting plebiscites separately from elections, especially the benefits arising from a focussed education program not sidetracked by election issues, the Committee is of the view that where possible, plebiscites should be conducted in

conjunction with federal elections. In the case of the final stage in the process, the constitutional referendum, the Committee is of a similar view.

**Recommendation 23**

**8.62 The Committee is cognisant of the costs of conducting ballots, and recommends that wherever possible, the plebiscites and referendum should be held so as to coincide with Federal elections.**

8.63 The Committee considered evidence put forward regarding the timeframe for any moves towards a republic. It is the Committee's view that on an issue as fundamental as Australia's future as a nation, it is important not to rush any process, but to allow for the fullest possible community consideration and involvement. The work of the Committee in this inquiry has been an important part of that activity, and the recommendations made in relation to constitutional awareness and education will add strength to the process.

8.64 Although the Committee is of a view that it is quite possible to conduct a two plebiscite process in one electoral cycle, the Committee does not support an inflexible and rigid tying down of the process in advance to any arbitrary timeframes, such as a single electoral cycle. Rather, the timeframe should be dependent on the evolution of the issue, as Australians make considered assessments regarding the future of their nation. Over one hundred years ago, the process leading towards Federation took some time. There is no reason to rush the process now.

8.65 In the course of the inquiry, the Committee heard concerns that the existing public information process in relation to constitutional referenda was in need of reform. In particular, the Committee noted suggestions that the public should be provided with basic, factual information regarding the issues, separately from the partisan information provided by proponents of the Yes and No cases. The Committee is of the view that the referendum information process could be improved if preparation of referendum information was overseen by the proposed Parliamentary Joint Committee on Constitutional Education and Awareness.

**Recommendation 24**

**8.66 The Committee recommends that the (Referendum (Machinery Provisions) Act 1984 should be amended to allow the preparation and dissemination to voters of independent information, rather than partisan arguments for the Yes and No cases, and that such preparation be overseen by the proposed Parliamentary Joint Committee on Constitutional Education and Awareness.**

**Senator the Hon. Nick Bolkus**
**Chair**

# ADDITIONAL COMMENTS BY SENATOR MARISE PAYNE, DEPUTY CHAIR

1.1 The Committee's inquiry into an Australian republic has facilitated a valuable discussion about how Australians see the future of their nation. The inquiry has explored ways to make that discussion an ongoing and continuing part of our national debate, and has proved to be a constructive role for the Committee to have undertaken.

1.2 I fully support the Committee's findings that there is a need for an ongoing and extensive information and education program, to enable Australians to be as fully informed as possible about their system of government, and about any constitutional reform that may be proposed. Should Australia proceed along the path towards a republic, it is vital that Australians are able to make informed choices. The Committee's proposal for a Parliamentary Joint Standing Committee on Constitutional Awareness and Education is an important initiative to engage the members of the Australian parliament itself in this key aspect of our democratic processes.

1.3 I would like to make some additional comments regarding a process that may form part of any future moves towards an Australian republic. I agree that it is imperative that Australians are given the opportunity to voice their opinion on the fundamental question of whether or not Australia should become a republic. It is essential that this question be answered before any further effort or resources are expended, and I therefore support conducting an initial plebiscite.

1.4 As noted in the main report, the process should not be tied to an arbitrary time frame such as a single electoral cycle.

1.5 On other aspects of the process, I am unconvinced about proceeding to conduct a second plebiscite asking Australians about their preferred model for a republic, as detailed particularly in Recommendations 15 to 19 of the Committee's report.

1.6 I am concerned that a second plebiscite may be pursued while there is still a great need for serious political dialogue about the phases of the process subsequent to the initial plebiscite. In sounding this quiet bell of caution, I emphasise that I firmly believe that Australians have the right to be actively involved in making decisions about future directions for the nation, and that I want Australians to 'own' their republic. I remain to be persuaded that a second plebiscite with a choice of republic models is the best way forward.

1.7 I note at this juncture that Australia's constitutional future is not the sole property of one side or another of the political divide and it should not be treated as such. That will undoubtedly ensure failure. It is assuredly not the property of politicians either. It is ultimately and fundamentally a matter for the Australian people, who at the least, look to their political leadership for direction on such matters. It would be very damaging if a second plebiscite and more particularly, a referendum, were to proceed without the fullest possible engagement and support across the

political spectrum. I emphasise that I do not believe we can commit to a second plebiscite and 'hope for the best'. I want this process to work and I do not want to risk the result.

1.8 I make these observations as a strong republican from a political party where the issue of constitutional change remains a matter of individual choice, not party policy. Through the months of hearings and numerous submissions received, in my view it has become clearer than ever that we will not achieve constitutional change in this country, on this issue, without multi-partisan support for that change. The only way to ensure multi-partisan support is to equally ensure multi-partisan engagement. And so the spectre called up by some witnesses, of the 'conservative republican', does hover over this process and this inquiry. I note also for the record, that not all conservative republicans are believed to be located in the Coalition parties!

1.9 In short, proceeding to an Australian republic obviously means actively engaging as many republicans as possible, conservative and radical. Although there was considerable involvement of 'conservative republicans' at the time of the 1999 referendum, in the current republican discussion there is limited engagement of the full breadth of the political spectrum in Australia, notwithstanding the level of support for change across that spectrum. This is an important element of ensuring success in moving forward. However, without the involvement of so-called 'conservative republicans' and their support for the process that is eventually adopted, over and above the redoubtable efforts of even those such as constitutional lawyer Professor Greg Craven, it will be very difficult to advance successfully the proposals for change.

1.10 I also note the evidence given to the Committee by Professor Craven, suggesting that a second plebiscite with a choice of four or five republic models would encourage shallow consideration of the options. According to Professor Craven, this would be in part because with several choices on offer, there would be insufficient opportunity for full consideration by Australians of the options. In part it would also be because, with the knowledge that the plebiscite vote would not be binding, many may give only superficial consideration to their vote. As a consequence, he suggests, this would mean that there will be far less time and opportunity for the flaws of any of the proposals put to plebiscite to be exposed and discussed.[1]

1.11 Whilst it could be argued that Professor Craven's views are somewhat pessimistic, I take those views seriously, as reflected in my observations above. In my view his concerns, which he suggests are broadly representative of a significant group of republicans, merit further scrutiny in determining how we should proceed. Given these concerns, and the need to ensure the multi-partisan engagement referred to previously, rushed commitment to a second 'models' plebiscite is unwise and is why I am not supporting the recommendations on this aspect of the process.

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1 *Submission 167*, p. 11.

1.12 As this enquiry has shown, moving towards a republic for Australia continues to be a complex and challenging process. Every Australian has the right to be involved in that process, and I trust the deliberations of this committee may have gone some way to strengthening the Australian republic in coming to fruition.

**Senator Marise Payne**

**Deputy Chair**

# DISSENTING REPORT BY SENATOR NIGEL SCULLION

1.1 The issue of whether Australia should become a republic was comprehensively considered and discussed in the context of the 1998 Constitutional Convention and 1999 referendum. The Australian people rejected the republic proposal put to them at the 1999 referendum. Nothing has changed since that time. No new issues of significance have arisen to suggest that the republic question should be put back on the national agenda in the immediate future. I therefore believe that it is unnecessary and inappropriate to revisit the issue of whether Australia should become a republic at this time.

1.2 I support the Committee's comments on the importance of improving education and awareness of Australia's Constitution and our government processes. I am concerned, however, about the aspects of the Committee's recommendations that link the proposed constitutional educational program to a process for moving towards an Australian republic. I strongly believe that a civics and constitutional education program is needed regardless of the republic issue.

1.3 I recognise that the Committee received evidence of a lack of understanding in the Australian community of the Constitution and system of government. Recent programs and initiatives in schools have improved awareness of our government processes and Constitution among younger Australians. These sorts of educational programs could be extended to the broader Australian population to help all Australians gain a stronger understanding of Australian democracy.

1.4 I believe that an education program should be funded and implemented by government to help all Australians improve their understanding of our democratic processes and system of government. This education program should recognise the diversity of the Australian population and be inclusive of all Australians.

**Recommendation 1**

**1.5 That an ongoing education program be funded and implemented by the Commonwealth Government to improve the knowledge and understanding of all Australians about our Constitution and system of government. This education program should recognise the diversity of the Australian population, and be inclusive of all Australians.**

**Senator Nigel Scullion**

**Country Liberal Party**

# APPENDIX 1

## ORGANISATIONS AND INDIVIDUALS THAT PROVIDED THE COMMITTEE WITH SUBMISSIONS

| | |
|---|---|
| 01 | Mr Ian Westbrook |
| 02 | Mr Loris Erik Kent Hemlof |
| 02A | Mr Loris Erik Kent Hemlof |
| 02C | Mr Loris Erik Kent Hemlof |
| 02B | Mr Loris Erik Kent Hemlof |
| 03 | Mr David Gothard |
| 04 | Mr Reg Rutten |
| 05 | Mr Bill Willcox |
| 06 | Mr Ange Kenos |
| 07 | Mr Victor and Ms Essie Pell |
| 08 | Mr Wilby Laurence Brown AM |
| 09 | Mr Richard Hurford |
| 10 | Mr Matthew Harrison |
| 11 | Eurobodalla Republic Forum |
| 12 | Dr Glenister Sheil |
| 13 | Mr David James Shannon |
| 14 | Mr David Seargent |
| 15 | Mr Eric Jones |
| 16 | Mrs Deborah Foster |
| 17A | Republic Australia |
| 17B | Republic Australia |

| | |
|---|---|
| 17C | Republic Australia |
| 18 | The Australian Heritage Society |
| 19 | Mr Sean O'Leary |
| 20 | Sir David Smith |
| 20A | Sir David Smith |
| 20B | Sir David Smith |
| 21 | Mr Patrick O'Connor |
| 22 | Mr Bryan Lobascher |
| 23 | Mr Fred Carter |
| 24 | Dr Tony Adams |
| 25 | Dr John P. Costella |
| 25A | Dr John P. Costella |
| 25B | Dr John P. Costella |
| 26 | Mr Cedric H. Gray |
| 27 | Mr Rene' Le Cornu |
| 28 | Professor Emeritus John Power |
| 29 | Australian Flag Society |
| 30 | Mr Donald Binks |
| 31 | Ms Helen W Aitkenhead |
| 32 | Mr Kelvin Wood |
| 33 | Mr J R Bruce |
| 34 | C.M McKinney |
| 35 | Mr J. M Adams |
| 36 | Mr Kevin McManus |
| 37 | Mr Bill Peach |

38 Mrs Rosemary Davies

39 Mr Kelly Baker

40 Mr Don Paine

40A Mr Don Paine

41 Mr Andrew J. Cole

42 Australian Monarchist League

43 Mr Gareth Kimberley

44 Mrs June E. Hannes

45 Mr F. Hugh Eveleigh

46 Christian Assemblies International

47 Mrs Linda Banks

48 Ms Jean M Bell

49 Ms Annette Koschera

50 Mr John L & Mrs Faye I Smith

51 Mr Robert Doran

52 Mr John Fletcher

53 Mr Matthias & Mrs Ute Rottschafer

54 Mr Robert & Mrs Angela Rogl

55 Mr Nick Hobson

56 Mr Marco Foerg

57 Mr Joe Tscherry

58 Mr Markus Ganser

59 Mrs Liz Ganser

60 Mr Andrew Roy

61 Mr Steve Forkin

62 Mr Simon Fenton-Jones

63 Ms Tina Tscherry

64 Mr David Hill

65 Mr Pierre Jerlstrom

66 Mr Hauke & Mrs Patricia Mehlert

67 Mr Thomas & Mrs Bridget Baker

68 Mr Frank Hubner

69 Ms Stefanie Kirchmer

70 Mr Robert Marshall

71 Mr John Engelhardt

72 Mr Roger H. Pike

73 Premier of Western Australia

74 Mrs Dorothy Barnard

75 Rev Hendrik Boer

76 Councillor Betty Moore

77 Mrs Michelle Dart

78 Mr Neil Smith

79 Mr Garry R. Kennedy

80 Mr Tony C. Trumble

81 Mr Phil Chadwick

82 Australians for an Informed Discussion on our Constitution (AIDC)

82A Australians for an Informed Discussion on our Constitution (AIDC)

83 Mr R.B. Dewar

84 Rev L.E.W Renfrey

85 Mr Nigel Jackson

| | |
|---|---|
| 86 | Mr Kevin Perkins |
| 87 | Mr Philip L. Gibson |
| 88 | Mrs Phyllis Stephenson |
| 89 | Mrs Elizabeth Verhoeff |
| 90 | Mrs Nola M. McCallum |
| 91 | Mr E.W Ruston |
| 92 | Mr George Said |
| 93 | Dr Bede Harris |
| 93A | Dr Bede Harris |
| 93B | Dr Bede Harris |
| 94 | Mr Robert F. Dancer |
| 95 | Mrs Jessie D. Singleton |
| 96 | Mr Christopher J. Wolfs |
| 97 | Australian Freedom Foundation |
| 98 | Mr F. David Murray |
| 99 | Mr Ian G.M Cameron |
| 100 | Mr Howard Teems |
| 101 | Mrs Edith Knight |
| 101A | Mrs Edith Knight |
| 102 | Mrs J.A. Lees |
| 103 | Miss Dora D. Peno |
| 104 | Mr Gregory David Mayman |
| 105 | Dr Peter Carden |
| 106 | Ms Kerry Lovering |
| 107 | Mr Andrew Newman-Martin |

| | |
|---|---|
| 108 | Colonel D.J Davies |
| 109 | Mr John F. Brett |
| 110 | Maj. E.W. Ruston MC |
| 111 | Mr Allan Mottram |
| 113 | Mr Peter Bishop |
| 114 | Mr Anthony L. Clarke |
| 115 | Corowa Committee |
| 116 | Mr Anthony J. Harris |
| 117 | Ms Margaret McNamara |
| 118 | Mr Peter C. Smith |
| 119 | Mr Matthew R. Sait |
| 120 | Mr Peter Reedman |
| 121 | Ms Anne Russell |
| 122 | Dr Alan Grant |
| 122A | Dr Alan Grant |
| 123 | Ms Anne M. Beer |
| 124 | Mrs Geraldine Whiting |
| 125 | Mr Alan Heath |
| 126 | Mr David O'Brien |
| 127 | Mrs Heather B. Eaton |
| 128 | Mr Mark Drummond |
| 129 | Mr Charles S. Mollison |
| 130 | Lady Virginia Buchan |
| 131 | Mr W.J. Youll |
| 132 | Mr G Thiele |

133 Mr Russell R. Standish

134 Mr D.J Auchterlonie

135 Mr Eric Provis

136 Aboriginal and Torres Strait Islander Commission

137 Ms M.A Palser

138 Mr Mark Collins

139 Mr Liam Camilleri

140 Mr Luca Ferrerio

141 Mr Nikolai Millen

142 Mr J.J Kelly

143 Mrs Wendy Browning

144 Mr Bob Holderness-Roddam

145 Mr P. Wackley

146 Mrs Junee Laless

147 Mr H.J.P Adams

148 Mr Denis Collins

149 Mr Peter Charlesworth

150 Mr Roger H. Pike

151 Mr Aldo Cundari

152 Professor George Williams

153 Mrs Barbara Horkan

154 Ms June A. Gleeson

155 Ms Eli Karlsen

156 F.C Crook

157 Mr William P. Main

158 Mr William Karskems

159 Mr Barry W. Barr

160 Ms Morag Loh

161 Ms Louise Fick

162 J.B Archibald

163 Mr E.L Cummins

164 Mr David D. Christie

165 Ms Jane Castles

166 Ms June Beckett

167 Professor Gregory Craven

168 Mr Ken Grundy

169 Mr Edward & Mrs Mavis Jean Bates

170 Mr William H. McDonnell

171 Dr Tim Rankin

172 Mr Terry Gordon

173 Ms Jennifer Brown

174 Ms S.J Knox

175 Mr Graham Dennis Parish

176 Mr Ray & Mrs Betty Bedford

177 Mrs E.M Slee

178 Mr E.J Price

179 Mr & Mrs Jeff & Marie Yensch

180 Mr Nidal Tarsissi

181 Mr Gil Prescott

182 Mrs Anne Pietsch

183 Mr Richard L Minifie

184 Mr S.J Madden

185 Mrs C.E Howard

186 Mr J.L Goerke

187 Rev Dr D. Clarnette

188 Mr Peter A. Clarke

189 Miss L.J Beaton

190 Mr Martin Penny

191 Mrs Pearl Madden

192 Mrs E.L Kinslur

193 Ms Carey Court

194 Mr Phil Spencer

195 Ms Robin J. Pearce

196 Mr R.J Armstrong

197 Mr Charles Bailey

198 Mr David & Mrs Eunice Porteous

199 Mr Peter Gillespie

200 Mr D. Nocher

201 Dr Mark McKenna

202 Mr Patrick Stock

203 Mr Fred Langenhorst

204 Mr John Wakely

205 Mr Allan Patterson

206 Mr F.S Hespe

207 Mr Peter Yalden

208 Mr David Brennan

209 Mr Robert Roach

210 Mr K.L Lewis

211 Mr David Donaldson

212 Dr I.C.F. Spry QC

213 Mrs Cynthia Wicks

214 Mr Edward Starkey

215 Mr Brian Marshall

216 Mr Christopher Steele

217 Mr Kevin Worrell

218 Mr Robert Harrison

219 Dr Walter Phillips

220 Dr David Mitchell

221 Mr Douglas & Mrs Jeanne Robertson

222 Professor John F. Lovering

223 Ms Barbara Harper-Nelson

224 Mr Bernie Bourke

225 Mr John King

226 Mr Roger Krause

227 Mr Peter Davis

228 Mr Alan H. Ellis

229 Ms Hazel King

230 Mrs Estetie Stone

231 Mr David V. Eves

232 Ms Marymara C-Zecher

233 Mr Malcolm Browning

234 Mr Charles Edmondson

235 Ms Jeanette B. Woods

236 Mr Barry J. Woods

237 Mr J.A.L Slee

238 Mr Edwin Frederick Weston

239 Mrs Jennifer Hammon

240 Ms Lorraine Hancock

241 Mr H.K. Farckens

242 Mr Colin Harding

243 Mr Peter A. Jaensch

244 Mr Robert A. Bishop

245 Mr John W. Salmon

246 Mr Ian Clyde

247 Australian Technology Pty Ltd

248 Mr Don L. Webster

249 Mr Doug M. Conn

250 Mr J Mackenzie

251 Mr Christopher Hallett

252 Mr Alan McMahon

253 Ms Rosemary Colman

254 Dr Ka Sing Chua

255 Ms Katherine Mamontoff

256 Mr Andrew Nguyen

257 Mrs C. Farckens

258 Mr Noel B. Biddulph

259 Mr Michael Boocock

260 Mr George M. Bradney

261 Mr Alf Lelia

262 Mr Ewin Szakacs

263 Mr Michael. D de B. Collins Persse

264 Mr Lionel H. Cross

265 Mr Alex Donovan

266 Mrs Phyllis McMillan

267 Rev W. Ellis

268 Mr & Mrs D.G & J.H Holmes

269 Mrs Diana George

270 Mrs L.J. Gietz

271 Mr Charles Attenborough

272 Mr John Baldwin

273 Mr Adrian Day

274 Mr Kevin Baldwin

275 Mr Gordon Grellman

276 Mr Seymour J. Major

277 Associate Professor Andrew Fraser

278 Mr Bill & Mrs Jenny Bunbury

279 Mr Kevin G. Browne

280 Mr Frank Mundrell

281 A Just Republic

282 Mr Jim Stebbins

283 Mr Roy McKeen

284 Mr Anthony William Grieve

285 Mr Brian L. Bowtell

286 Mr A. Joy

287 Mr Peter Lawson

288 Mr A. Caldwell

289 Mr T.H. Beare

290 Ms Alison Sack

291 Ms Isobel J. Webster

292 J. Hannah

293 V.M. Walke

294 Mr Tom Dolling

295 Mr & Mrs G. Ross & Miriam Tucker

296 Mrs Julie Beare

297 Ms Sheila Abnett

299 Mr John H. Daws

300 Mr B.J. Sloan

301 Mr Jason Falinski

302 Mr Ian Francis Jay

303 Dr Nigel Greenwood

304 Mrs Olga Scully

305 D.M Brown

306 Mr William Michael Woods

307 Mr Matthew J. Lovering

308 Ms Barbara Murphy

309 Mr Bill Adams

310 Ms Michelle Cavanagh

311 Mr Lee Nystrom

312 Ms Julia Anaf

313 Mr Ian Cameron

314 Dr Romaine Rutnam

315 Mr A.J Dreise

316 K.G McIntyre

317 Ms Vicky Marquis

318 Mr Alan David Shephard

319 Professor George Winterton

320 Mr Tomas Nilsson

321 Mrs Judith Douglas

322 Mr Peter Crayson

323 Mr Paul Gannon

324 Mr Robin John Clough

325 Dr Debra Rosser

326 Mr Ken Morrison

327 Mr David H. Denton

328 Ms Elaine Norling

329 Mr Mike O'Shaughnessy

330 Dr Bruce Hartley

331 Mr Maurice Alexander

332 Mr Malcolm K Murray

334 The Hon Michael Beahan

335 Dr Noel Cox

435 Mr & Mrs C & K Faggotter

336 Mr Edward Gisonda

436 Mr A.L. Abbott

337 Mr Keith & Mrs Irene Greenshields

338 Ms Jamuna Fielder

339 Mr Brian Andrews & Ms Kylie McNamara

340 Mr Terry Fewtrell

341 Ms Diann Rodgers-Healey

342 Mr Robert & Mrs Lorraine Mounsey, Mr Glenn Mounsey, Mr Jason Mounsey, Mr Peter & Mrs Sharon Howard

344 Ms Kelly Watson

345 Mr Stuart Strachan

346 Ms Elizabeth Mcarthur

347 Mr Gary J. Martyn

348 Ms Trudy Moore

349 Mr James F. Hutcheon

350 Dr Lionel McKenzie

352 Mr Philip De Rose

353 Mr Les Chittick

354 Mr Eric J. Lockett

354A Mr Eric J. Lockett

355 Mr Neil Every

356 Mr Tim Every

357 Ms Katherine Every

358 Ms Carolyn Gilmore

359 Mr R. & Mrs L. Hisee

360 D.M Beaumont

361 Ms Miriam Johnson

362 Mrs Cathryn M. Irvine

363 Mr Tony D'Agri

364 Mr William Summers

365 B.N Irvine

366 Ms Mary G. Beaumont

367 W. Craig

368 V.H Walpole

369 Mr Adam Kamradt-Scott

370 Ms Jaye-Ann Olarenshaw

371 Messrs AB & GM Francis

372 Mr Simon Moore

373 Mr David Fuller

374 Ms Alison Harris

375 Mr Peter Blackband

376 Mr Peter Kean

377 Mr Glen Griffen

378 Mr Alexander Clarence McGavin

379 Mr Rick Hind

380 Ms Ingrid Viitanen

381 Mr Phil Miller

382 Mr Alan W. Saunders

383 Ms Maria J. Opterman

384 Ms Mary Cummins

385 Mr George Powell

386 Mr E.E & Mrs M.J. White

387 Mr Jeffrey Douglas Dunlop

388 Mr Ian R. Morphett

389 Mr P. & Mrs L. Kelly

390 Ms Elizabeth Wendy McGavin

392 Mr Arthur Phillips

393 Mr John Erbert

394 Ms Kathy Saunders

395 Mr Adam Wand

396 Mr Allan C. Laycock

397 Ms Anne Mamontoff

398 Ms Robyn Gondie

399 Mrs Betty Browning

400 Ms Anne O'Byrne

401 Mrs Laurel G. Young

402 Mr M.H. Dale

403 Mr Julian Lynton

404 Mr James F. Stack

405 Mrs Francis Harding

406 Mrs Thelma Ward

407 Mr Carl & Mrs Barbara Oehm

408 Ms Caroline Gerard

409 Dr Alison Broinowski

410 Ms Katherine Anne Holloman

411 Mr Malcolm C. Page

412 Mr Raymond A. Young

413 Ms Janine Avery

414 Mr Don Wallace-Mitchell

415 Mr Barry Baker

416 Mrs Elizabeth C. Bray

417 Mr Nick Earls

418 Mrs Anna Gloria Holmes

419 Mr Alan G. Fidler

420 Mr Steven Smith

421 Mr David Michael

422 L. Scott

423 Mr George Reynolds

424 Mr Michael Carroll

425 Mr Rhys Edward Allan Bortignon

426 Mrs Rosemary Woolman

427 Mrs Pamela Taylor

428 R. Massey

429 Mr David Andrews

430 Mr Stephen Clarke

431 Mr H. Adams

432 Ms Wendy Every

433 Mr Tony Andrews

434 Mr Max Cranwell

435 Mr C & Mrs K Faggotter

436 Mr A.L. Abbott

437 Rev B.J.H. Tierney

438 Ms Vanessa Davis

439 Mr Alex van Rees

440 Mr Stephen van Rees

441 Ms Judith A.M. Haselgrove

442 Mr Keith Dobson

443 Mr Richard Dart

444 Mr Darcy John Merriok

445 Ms Ashlea Haselgrove

446 Mr George Halley

447 Mr John Flower

447A Mr John Flower

448 Mr Robert Passmour

449 Mr John Morris

450 Mr Mark White

452 Mr John Kingsmill

453 Mr Barry G. & Mrs Phyllis M. Lindner, Mr Harold A. Dreckow

454 Ms Judith Steanes

455 Australians for Constitutional Monarchy

456 Mr Rodney C. Kendall

457 Dr David Solomon

458 Mr Joseph E. Mateus

459 Mr John Bowdler

460 Mr Graham Cassidy

461 Mr Dominic Pellegrino

462 Mr Bruce A. Knox

463 Mr Les Winkle

464 Ms Ruth Thompson

465 Ms Bettyanne Foster

466 Republic Now!

467 Australian Freedom Forum

468 Mr Mervyn Magee

469 Mr John Burgess

470 Mr Steven Liaros

471 Australian Republican Movement

472 Mr Russell den Dulk

473 Ms Helen Milicer

474 Mr Don Willis

475 Ms Barbara J. Little

476 Women for an Australian Republic

477 Mr Duncan Dean

478 Mr Bert Verdicchio

479 Ms Laetitia Legg-Capelle

480 Mr Robert Vogler

481 Mr Owen Carterer

482 Dr Barry Gardner

483 Mr Richard Snell

484 Associate Professor Kim Rubenstein

485 Mr Len Tuohy

486 Ms Gillian Lord

487 Mr Gino Cocchiaro

488 Ms Antoinette Griffiths

489 Ms Ruth Davies

490 Mr James F. Stack

491 Mr Albert G. Hopkins

492 Real Republic Limited

493 New South Wales Council of Civil Liberties

494 Women into Politics

495 Republican Party of Australia

496 Mr Michael Sadleir

497 Sir Gerard Brennan

497A Sir Gerard Brennan

498 Progressive Labour Party

499 Mr Richard Olive

500 Ms Jennifer Jones

501 Mr Peter van Vliet

502 Ms Dawn Moss

503 Ms Linda Keays

504 Mr Ronald MCK Strickland

505 Australian Civil Liberties Union

507 Mr Brian Cox

508 Mr Robert Sadleir

509 Mr Christopher Peacock

510 Ms Louise Rothapfel

511 Mr Brendan Egan

512 Mr John R. Pyke

513 Dr Craig L. Francis

514 Mr Michael Darby

515 Mr Chris Creswell

516 Mr Reinis Kalnins

517 Mr Paul Williamson

518 Mr Robert Walker

519 Mr David Latimer

519A Mr David Latimer

520 Mr David Horkan

521 Ms Fay Lawrence

522 Ms Louise Houston

523 Mr Stephen Atkinson

524 Ms Patricia E. Bowdler

525 Ms Kathy M. Hardie

526 Mr Stephen Souter

526A Mr Stephen Souter

527 Christian Democratic Party

528 Mr Aron Paul

529 Miss Darilyn D. Adams

530 Ms Joan Dwyer

531 Mr Jim McCarthy

532 Mr Michael S. Perry

533 Mr Ross Garrad

534 Mr Glenn Patmore

534A Mr Glenn Patmore

535 Mr John Sturzaker

536 Hon Dr Ken Coghill

537 Mr Simon Bateman

538 Dr Baden Teague

539 Mr Robert Forrest

540 Festival of Light Australia

541 Mr Ian A. Johnston

542 Mr Stephen L. Partridge

543 Mr Geoff Calder

544 Mr Michael Glover

545 Mrs Lorraine Hackwill

546 Mr William Russell

547 Australian Spirit, Consumer Advocate & Public Watchdog

548 Ms Jane Wallace-Mitchell

549 Ms Laura Cook

550 Mr James Johnson

551 Ms Dianne Stewart

552 Ms Beryl Bayley

553 Mr Donald Sykes

554 Mrs Betty Sykes

555 Mr Justin Young

556 Mr George Gillam

557 Mr Allan Ramsay

558 Mr John Baber

559 Mr Frederick Watson-Brown

560 Mr Kevin Smith

561 Mr Andrew Brown

562 Mr Christopher Moller

563 Premier of Victoria

564 Mr Christopher Steele

565 Mr Nick Pippos

566 Mr Sydney Keevers

567 Mr Less Chittick

568 Ms Lorna Lamshed

569 Mr Vincent Cross

570 Mr Geoff Calder

571 Mr Darryl Allen

572 Mr Don & Mrs Janet Milway

573 E. Bennett

574 Mr Chris Skelton

575 Dr John Tate

576 Mr Quentin M.J. Schneider

577 Ms Aimie Killeen

578 Mrs Ida Scholz

579 Mrs Joyce G. Burke

580 Mrs Pam Brodie

581 Ms Joan Lenz

582 I. Bridger

583 A.J. Bridger

584 Mr Joseph W. Morris

585 Mrs Francis Morris

586 Mr H.L. Scholz

587 Ms Jacqueline Nancy Loney

588 Mrs Bernadette Hovens

589 Mr John De Fredrick

590 Mr Bruce F.H. Ingle

591 Sister Winifred P. Woodbury

592 Mr Denis Troy

593 Mr Jonathan Lee

594 Dr Quentin Willis

595 Mr Norman & Mrs Valerie Keeble

596 Ms Tasmin Clarke

597 Mr Matthew Clarkson

598 Ms Carmel McGinley

599 Ms Elizabeth Mooney

600 Ms Patricia M. Clarke

601 Mr Adam Phillips

602 Mrs Judy Jones

603 Mr Brian Clarkson

604 Mr Geoffrey Long

605 Mr Peter R. Bardsley

606 Mr Benjamin Phillips

607 Ms Margaret Sarre

608 Ms Fay Noble

609 Mr Sean Doheny

610 Ms Penny Bell

611 Ms Bronwyn Harper

612 Mr David Stuart Bateman

613 Ms Lindsey Bateman

614 Mr Ian G.H. Macarthur

615 Ms Kath Jones

616 Ms Margaret Rolfe

617 Ms Maureen Morrison

618 Mr Darrell O'Bryan

619 Mr Adam B. Lovering

620 Mr Leon J. Lyell

621 Mr Michael Pepperday

622 Mr Rob Burdock

623 Ms Eva Rodriguez Riestra

624 Mr David McKenna

625 Ms Katherine Henzell

626 Mr Bruce C. Gibson

627 Ms Margaret L. Gibson

628 E.F. Bolt

629 Mr Geoffrey Britton

630 Ms Lindey Hopkins

631 Mrs Bev Pattenden

632 Dr Rodney Spencer

633 Mr G. Herbert

634 Mr Ephrem L. Jones

635 Ms Marjorie Henzell

636 Ms Beryl Dwyer

637 Mr Andrew Coates

638 Ms Gloria O'Connor

639 Mrs Pat R. Blight-Jones

640 J.A. Tillman

641 Mr Tony Carroll

642 Victorian Trades Hall Council

643 Ms Pauline Reilly

644 Ms Claudine Lyons

645 Mrs Geraldine Kenny

646 Ms Norma Breen

647 Mr Philip Atkin

648 Ms Mary-Jo O'Rourke

649 Mr Hong Zheng

650 Ms Tina Shi

651 Mr David Shi

652 Mr Michael G. Cannon

653 Mr Matthew Coleman

654 Mr Brian Lindsay

655 Mr Glenn Mason

656 Mr Jack Evans

657 Mr Rolf Jester

658 Mr Peter Hazeldine

659 Mr Donald Bancks

660 Ms Pauline Shi Huang

661 Mr Anthony Clive Meggitt

662 Ms Claire M. Gorman

663 Mr Brian Cartledge

664 Ms Eileen Fisher

665 Mr David Hind

666 Ms Mary Gallnor

667 D.R.B Thomson

668 Ms Katherine Moir

669 Ms Louise Haynes

670 Ms Judith Bancks

671 Ms Margaret Johnstone

672 Mr Dalle Nogare & Ms Stephanie Mary

673 Mr Bruce Kent

674 Mr Michael Scott

675 Mr John O'Rourke

676 Ms Dawn Whyte

677 Ms Sarah Sacks

678 Ms Margaret Elizabeth Porra

679 Dr Robert J. Porra

680 Mr Percy Leslie Adams

681 Mrs Shirley Adams

682 Mr Martin Kjar

683 Mr R. Carter

684 Ms Muriel Carter

685 Ms Noreen McCarthy

686 Ms Anita McCarthy

687 Mr Jim McCarthy

688 Mr James T. Stevens

689 Ms Merle E. Stevens

690 R.A Provan

691 Vytautas B. Radzivanas

692 Mrs Lois Loftus-Hills

693 Mr Terry Murphy

694 Ms Shirley A. McKenzie

695 Mr Chris Borthwick

696 Dr Brian Regan

697 Mr Greg James

698 Mr Geoff Combe

699 Mr John Lawrence

700 A. Dykeman

701 Mr Rory Farquharson

702 Mr Kevin John Smith

703 H.L Davies

704 Premier of Victoria

705 Ms Daphne Russell

706 Mr Ian Thomson

707 Mr Robert Fowler

708 Mr Edward Rock

709 Mr John Walker

710 Mr Will & Mrs Adele Renfrey

711 Ms Rhonda Graham

712 Mr Kevin Krelle

713 Mr Peter J. Bryne

714 Mr Alan Lowater

715 Ms Irene P. Buchanan

716 K.G Buchanan

717 Mr James Richardson

718 Mr Denis McCormack

719 Mr Jack Hammond QC and Ms Juliette Brodsky

720 Australian Council of Trade Unions

721 Premier of New South Wales

722 Premier of Queensland

723 Ms G.F. Sheridan

724 Mr Paul M. Canet-Senior

725 Professor Freda Briggs

726 Mrs V.D. Burnett

727 Mr Patrick Coleman

728 Mr Max Wallace

729 Mr Stan & Mrs Mavis Carver

730 ACT Chief Minister

# APPENDIX 2

# WITNESSES WHO APPEARED BEFORE THE COMMITTEE

**Parramatta, Tuesday 13 April 2004**

**Australian Monarchist League**
Mr Stewart Hespe, NSW Chairman

**Mr David Latimer**

**Sir Gerard Brennan** (Corowa Committee member)

**Australian Republican Movement**
Professor John Warhurst, National Chair
Ms Allison Henry, National Director
Mr Richard Fidler, National Committee Member

**Professor George Williams**

**Mr Bill Peach** (Convenor, Corowa Committee)

**Mr Peter Crayson**

**Professor George Winterton**

**Australians for a Constitutional Monarchy**
Ms Kerry Jones, Executive Director
Professor David Flint, National Convenor

**Republic Now!**
Dr Klaas Woldring (Convenor)

**Republican Party of Australia**
Mr Peter Consandine (National Executive Director)

**A Just Republic**
Mr Peter Murphy (Secretary)

## Melbourne, Wednesday 14 April 2004

**The Hon Michael Beahan**

**Dr Walter Phillips** (Corowa Committee member)

**Mr Glenn Patmore**

**Mr John Kelly**

**Major Ted Ruston MC (Rtd)**

**Mr Toby Fothergill**

**Associate Professor Kim Rubenstein**

## Perth, Tuesday 18 May 2004

**Professor Greg Craven**

**Australian Monarchist League**
Cmdr SC Chase MBE (Rtd), (Chairman)

**Dr Bruce Hartley**

**Mrs Janet Holmes a Court**

**Ms Clare Thompson**

## Adelaide, Wednesday 19 May 2004

**Mr Howard Teems**

**Mr Gino Cocchiaro**

**Mr Andrew Cole**

**Dr Baden Teague**

**Australian Technology Pty Ltd**
Mr Douglass Potts (Director)

**Ms Sally-Louise Houston**

## Hobart, Thursday 20 May 2004

**Mr Eric Lockett**

**Mr Bob Holderness-Roddam**

**Dr Barry Gardner**

**Australian Republican Movement Tasmania**
Mr David Morris (Convenor)

## Brisbane, Tuesday 29 June 2004

**Major-General "Digger" James AC AO (Mil) MBE MC (Rtd)**

**Mr John Pyke**

**Mr Rodney Kendall**

**Mr Andrew Nguyen**

**Mr Ross Garrad**

**Dr David Solomon**

**Real Republic Ltd**
Dr Clem Jones

## Canberra, Thursday 29 July 2004

**Bill Drafting Committee**
Mr Jack Hammond QC (Chair)
Ms Juliette Brodsky

**Sir David Smith**

**Women for an Australian Republic**
Ms Sarah Brasch, (National Convenor)

**Mr Michael Pepperday**

**Dr Bede Harris**

**Dr Mark McKenna**