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SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Inquiry into an Australian Republic

WEDNESDAY, 14 APRIL 2004

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SENATE
LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Wednesday, 14 April 2004

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

Substitute members: Senator Stott Despoja to replace Senator Greig for the committee's inquiry into the establishment of an Australian republic with an Australian Head of State

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

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

Terms of reference for the inquiry:

To inquire into and report on:

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

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Committee met at 9.29 a.m.**BEAHAN, Mr Michael Eamon, (Private capacity)**

CHAIR—Welcome. This is the second hearing of the Senate Legal and Constitutional Affairs References Committee inquiry into an Australian republic. The inquiry was referred to the committee by the Senate on 26 June 2003. The committee has received over 600 submissions for this inquiry. Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses. Further copies are available from the secretariat. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers that all evidence be given in public but, under the Senate's resolution, witnesses have the right to request to be heard in private session. It is important that the witnesses give the committee notice if they intend to do so.

I welcome the Hon. Michael Beahan. You have lodged a submission numbered 334 with the committee. Do you wish to make any amendments or alterations to it?

Mr Beahan—Yes, I would like to make an amendment to page 5 of the submission. In the first paragraph under the heading 'Elections and campaigns' I wish to delete the words 'to two' on the fourth line down. There was a merger of two previous drafts, and it got confused. It does not make a lot of sense the way it is. I also have a comment to make on that part of it later. I have developed some ideas after having read some of the other submissions.

CHAIR—I now invite you to make an opening statement and to take that as an opportunity to make that comment.

Mr Beahan—Thank you. I would like to thank the committee for the opportunity to talk to my submission. I apologise that the submission was very hastily prepared and that I could not give it the time and attention I would have liked to have given it. I have not addressed equally all the questions in the discussion paper. While I have views on most aspects of the issue, I consider that there other better qualified people to respond to some of the more technical questions, especially where these involve complex legal considerations—although I would be happy to comment on any aspect of the inquiry.

The submission starts from the point that, contrary to the views of a number of your other submitters, the 1999 referendum did not resolve the issue satisfactorily. I say that because polls both before and since have consistently shown support for an Australian republic and very strong support for an Australian head of state. I say that also because of the level of the referendum vote. It was by no means, as some of your submitters are suggesting, an overwhelming victory for the no vote. Over 45 per cent voted yes, nearly 50 per cent in this state and over 63 per cent in the ACT. So it was by no means an overwhelming vote.

I state the obvious in saying that it is difficult to achieve any constitutional change against the backdrop of Australia's traditional conservatism on constitutional issues. The joint difficulty of achieving a double majority and what people are calling the iron law—that constitutional change demands a higher level of consensus—make it very difficult to achieve majorities with both of those things in mind. I would like to see more comprehensive constitutional change, and I

address that in the paper. I think the Constitution is not a very good document; it is patchy and incomplete, and well overdue for substantial reform. There are a number of reasons I give for that. But I recognise and accept that comprehensive change is not possible and that any change must be cautious and limited.

I have also spent a little time addressing the role of government in constitutional change, with the conclusion that government has a legitimate role in anticipating the need for constitutional change, just as it has in anticipating social and economic change, and that there is a role for government also in assisting and managing such change. This has been the case, as I pointed out in my paper, in Britain where the monarchy itself has been reinvented a number of times, very substantially towards the end of the last century and the beginning of this century. And now, following the bad behaviour of some of the royal kids and the death of Princess Diana, it is reinventing itself once again.

I also make the point that Australia has undergone a series of quite fundamental changes which have made us more independent of our British founders. I go on to assert that the move to a republic should be seen in this light as part of a process of gradual evolutionary change—change that reflects contemporary majority views and the increasingly multicultural mix in Australia. In this context government has a duty to assist in this process.

I make the key point that the emphasis now needs to be on process rather than on specific models. The public must be given the opportunity to express their views, firstly, on whether they want a republic and, then, on what sort of republic they want. While in the past I have favoured a model involving minimal change—for obvious practical reasons it is very hard to get more substantial change—I now accept that the public might well demand a different model. I am comfortable with this provided the integrity of the process can be assured. However, I do make it clear that I support a continuation of a largely ceremonial role for the Governor-General. There seems to be little support for a head of state who exercises executive powers.

I will not go to specific responses to the questions but I would like to make a general comment. I have amended page 5 of that section but I have also changed my mind about the idea of a run-off election. 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. It is understood that you vote in the order that you want people elected. I do think, however, that the preferential system should be an optional preferential system so that people do not have to put preferences next to everybody. I think I have changed my mind about that. I am happy to respond to any questions you might have.

CHAIR—Thank you. There was no need to apologise for your submission; we see it as a very valuable one, and of high quality. In your introduction you said that you do not think that the issue is resolved. Without asking you to go into a full post mortem, is there anything out of the past experience that you think should guide us in developing proposals for the next referendum, and how critical in that context is the role of government? You mention in your submission that the role of government is important in terms of not only the constitutional change but also what it represents of Australia's identity to itself and the rest of the world. Are there other aspects from the last referendum process that we should take into account?

Mr Beahan—The referendum showed us that the public is much more interested in what is going on these days than it was in the past. Referendums are always going to be difficult because of those constitutional constraints that I have mentioned and a conservatism about what people regard as a hallowed institution—the Constitution. Having said that, I really think there is a case for engaging the public much more than has happened in the past. There has not been the level of interest. There now is a greater knowledge of what is going on through, obviously, better media. There is infinitely more information available to people not just through the Internet but through media generally. In whatever we do we have to engage the public. We can no longer set up institutions which are seen as elitist and separate. For example, if we are setting up a constitutional commission my initial response is to say, ‘Let’s have a small group of experts to give us advice on these things.’ I now believe that is not appropriate in the modern world. We have to go to the public on this. We have to allow them to elect people and we take all the faults that come with that and manage it in that way.

I say in the submission that the process is all-important, and I think the process must involve plebiscites for that reason—to get opinions from the people before we go to the next stage. It must involve, when we are drawing up the detail of a model or models, an elected constitutional commission of some sort where the public is involved. It must involve participation by the people in the nomination process of whatever model we come up with. I think if we have learned anything from the 1999 referendum and recent experiences it is that public involvement is paramount at all stages.

CHAIR—You also make the point that it is desirable to get a non-partisan figure as head of state. Is it possible to actually have that sort of outcome with a direct election model? Should we be considering—I know you have mentioned all the options in your submission—direct election or election by parliament? Is there a possibility of a collegiate sort of system? With reference to your background as a senator for Western Australia, would it be desirable to look at a college which may be composed in the same way that the Senate is composed in order to try and get smaller states to warm to the proposal?

Mr Beahan—I would be comfortable with that. As I have indicated at the outset, I supported the minimalist model, not simply because of the difficulty of making substantial change to the Constitution but also because I felt that was implementing as little change as possible in replacing what is now a de facto head of state here, the Queen’s representative, with a real Australian head of state. I thought that was the best way of achieving that, because it would get the biggest consensus behind it. Having said that, I now agree that we must involve the public and, if the public were to want a model that involved a collegiate process, I think that would be quite acceptable. If the process of engaging the public has integrity, I am happy with whatever model comes out of it—even if it is a direct election model. You asked the question of whether that creates a situation where you have an alternative head of power, and I think there is that danger, but I have got faith in Australia’s ultimate commonsense to ensure that that will not happen. I think that we can structure as system to ensure that does not happen. The collegiate system is one but, 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.

Senator PAYNE—The issues which the committee are considering particularly reflect your observation about process and how we might make—

Interjector—Excuse me, could the speakers get a bit closer to the microphone?

Senator PAYNE—We will do our best. Most people do not usually complain about not being able to hear me! I was talking to Mr Beahan about the emphasis on process and the fallout or the leftovers from the 1999 process. You suggest, towards the end of your submission, a plebiscite to determine the threshold question of whether or not the Australian people want to move towards a republic. There is a view which was put to us yesterday and is present in a number of submissions that in fact it should be a two-tiered question because, when asked to buy a product without knowing what the end result might be, the Australian people are more likely to say no. It has been suggested to have the question ‘Do you want an Australian head of state?’ and then a question about what sort of model, with some choice, obviously. Do you think that is a reasonable approach?

Mr Beahan—Yes, I do. I noted that George Winterton made that point and I think it is substantial. I think, again, it is about engaging the public and getting their confidence in the plebiscite in the first place. I think we should be using modern techniques, such as the sampling techniques, to do that and going out to the people and testing ideas. If you are running a campaign—as all of you senators would know—the first thing you do when you have an idea that you want to go to an advertisement with is to test the idea and then test the words in the advertisement. I think we should test questions. I do not think that enough of that is done. The Electoral Commission, I think, has the capacity to do that sort of thing. Certainly, I agree with the point that 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.’

Senator PAYNE—When you say ‘we’—and you also mentioned the Australian Electoral Commission—is it your view that that process should be run by the Commonwealth? Yesterday in taking evidence from Professor George Williams we discussed the level to which the Commonwealth was able to permeate in that way and that perhaps there was room for engagement at both the state and local government level in the public engagement process and that that would be more effective.

Mr Beahan—Maybe in the public engagement process they might be able to be brought into that process. But it seems to me that—certainly if there is an election—the AEC is the obvious instrument for running it. It is highly respected worldwide, it is national and it is respected by the states. I do not think there would be any question about that. I think the idea of engaging state and local government agencies in propagating the cases has merit, but that is a separate thing from running the election.

Senator PAYNE—I think that flows from your observation about the use of modern techniques. One of the other things that Professor Williams raised yesterday, which I was interested in, was the need to make some amendments to the referendum process—section 128—as well so that the yes/no case, which is catered for in the referendum act, is amended to make it a more effective process. He was concerned about the difficulties that were encountered in 1999 and which have, in fact, as we have observed, been encountered repeatedly. You make the observation yourself that, when governments of any hue have tried to make amendments to the

Constitution, the Australian people have not been inclined to agree. Part of the difficulty is probably about the capacity to communicate the case.

Mr Beahan—Part of it is also the politics of it. Oppositions cannot resist the temptation to knock off referendum proposals put up by governments—and I mean all oppositions. That is a real pity, because there have been some very good recommendations made by constitutional committees—

Senator PAYNE—Sometimes governments cannot resist the prospect either.

Mr Beahan—that have never been taken up by parliament, or effectively taken up. Yes, the question of process is most important, but I would like to know how Professor Williams proposes to change section 128.

Senator PAYNE—Not to change section 128 itself, but rather to change the act which governs the holding of referenda and to make some amendments to that—so it would be a legislative change as opposed to a constitutional change—as to the way information is conveyed and the obligations relating to the presentation of the cases and things like that.

Mr Beahan—That sounds very interesting. I have not given a lot of thought to it. The use of the Internet, for example, is a new thing, which obviously can be brought in, but it also needs to be remembered that it still is an exclusive instrument and that any results coming from that are going to be skewed. But if you are looking for opinions on things, then the use of the Internet would be interesting. I think the idea of sampling is useful. Opinion polling is done consistently by governments as a way of reading the public rather than holding referendums all the time. That could be part of the referendum process if it were constrained and limited. Ultimately, for a change to the Constitution or something like that you would have to go to a full referendum. But I agree that the process leading to that and getting opinions might well be done by sampling, by the Internet and by other mechanisms.

Senator KIRK—Thank you, Mr Beahan, for your submission. I have a question following on from what Senator Payne was asking you. In the last paragraph of your submission you talk about holding the plebiscite to determine the threshold question, and then you go on to say, ‘followed by the development of a limited number of models but culminating with one model which is put to referendum’. I wonder how you thought that the development of that limited number of models might come about and whether you had in mind some type of constitutional convention or something that a parliamentary committee would develop.

Mr Beahan—I guess I would hope that some of that would come out of the plebiscite questions and people’s acceptance of a way of going forward. Ultimately, if there are important decisions to be made like that, there probably is a case for a constitutional commission. As I said at the outset, I think that should be an elected body, to engage the people, and that it be representative of all of all the states and territories. But it may well be that some of the work could be done by committees in developing up those models for final consideration by a constitutional convention. Some of the detailed technical work can certainly be done by committees or by groups of experts set up for that purpose. Provided the whole thing is open and the public are engaged, they are not going to be concerned about that. It is if the whole thing is not open—as it was last time—that the public turns off.

Senator KIRK—So, some sort of constitutional commission or elected body. Would you see that body being a fully elected body?

Mr Beahan—A fully elected body. I think it was a mistake last time to have half of it appointed and half elected.

Senator KIRK—By a compulsory or a voluntary vote—have you thought that through at all?

Mr Beahan—I believe in compulsory voting—or I prefer to put it as compulsory attendance. All you have to do is compulsorily turn up to vote. What you do with your ballot paper is your business, so it is not compulsory voting. The idea of compulsory attendance is that it is a civic duty, and I am a strong supporter of it for whatever ballot, yes.

Senator KIRK—Would you see that as being held at the same time as a general election?

Mr Beahan—Yes. You certainly have to be aware of costs of elections, and running these concurrently with an election would certainly be a sensible idea. Lots of other countries have run series of referenda—and loads of questions—at the same time as elections, so I do not think it is beyond the wit of our electors to deal with that.

Senator BUCKLAND—You made a comment earlier that you had moved away from the idea of a select group of experts in favour of a large convention type process. What is behind your thinking, given that you have already said in your submission that we are a reasonably politically conservative country? Is it just moving with the times to say we would have a large group?

Mr Beahan—I think there is a growing awareness that the public now demands to be involved in a way they did not before, and that is a good thing ultimately. There is greater awareness now, there is greater knowledge and there is a greater level of education. Sure there will be ignorant things done in that process but there are even in select smaller groups. But I am comfortable with that because I think ultimately there is a sort of wisdom that comes out of public participation and there are not that many drastic mistakes made. People are quite good judges as a group, even if they individually surprise you with their level of ignorance! The smaller specialist group appeals because you know you get a very quick result that is technically sound, and a cheaper and easier way of doing the whole thing. But I do not think that satisfies the public any longer, and we have to engage the public so much more, not just in dealing with referenda and so on but in dealing with politics generally. We have to engage the public more.

Senator BUCKLAND—Do you see that an amalgam of the two could be of benefit, with a small expert group, to call them that, setting the scene and the guidelines for the manner in which the convention would try to pursue putting up expert options? We heard some evidence yesterday that I had never given consideration to in the past. Had I been a part of the convention at the last get-together, I would have liked to have known those things. I do not think some people would have known them.

Mr Beahan—Yes, absolutely. As I indicated to Senator Kirk, having a small expert group looking at the detail of models, processes or whatever else and feeding that into the broader group would be an ideal thing. But the ultimate decisions have to be made by a group that the

public sees as representative of their interests. That is a difficult thing to achieve but it is important these days. Certainly I have strong support for a two-stage process where you have an expert group feeding in, whether that is a parliamentary committee, a committee of experts or whatever.

CHAIR—Thank you for your very valuable submission.

[9.56 a.m.]

PHILLIPS, Dr Walter Wynne, Member, Corowa Committee

CHAIR—Welcome. In what capacity do you appear today?

Dr Phillips—I am a historian. I am also a member of the Corowa Committee. I am one of the authors of the process toward the resolution of the republican question, which received the endorsement of the Corowa conference in December 2001. I appear as a member of that committee and confine myself to its concerns. The committee was formed to promote the process that was endorsed at Corowa towards the resolution of the republican question.

CHAIR—You have lodged a submission, which has been numbered 219, with the committee. Is there any need to amend or alter that?

Dr Phillips—I do not wish to make any alteration to my submission.

CHAIR—Would you like to make an opening statement?

Dr Phillips—My submission to this inquiry into an Australian republic is in response to questions 26 to 30 in the discussion paper. It relates in particular to the proposal in the Corowa resolution that there should be a multiquestion plebiscite as set out in the Corowa proposal A in the discussion paper. My argument is that an indicative plebiscite or threshold plebiscite asking one question—for example, whether or not the voter is in favour of replacing the Queen with a republic, having an Australian head of state—may in fact produce a negative result, despite the evidence from the polls and, I would also add, from the events of 1997 that the majority of Australians are in favour of a republic.

I came to this view early in 2000, soon after the failed republican referendum, when the Australian Republican Movement, of which I was an active member at the time, was calling for an indicative plebiscite, believing that this would return a vote in favour of a republic. Around this time also, the Hon. Kim Beazley foreshadowed a series of moves that he proposed to introduce, should he win government, beginning with a threshold plebiscite. But it became clear at the time that the opponents of a republic would mount a campaign of fear and suspicion or would make an attempt to trivialise the issue, confident that they could turn such a plebiscite into another defeat for the Republican Movement. I was engaged in a considerable amount of correspondence at this time with members of the ARM and others. Eventually, some of us saw a plebiscite with two questions asked simultaneously as the better and safer way to seek a resolution of the issue. I found that Professor George Winterton supported this view. As a result of this, he and I collaborated, in consultation with the late Sir Rupert Hamer, in developing a proposal that became the substance of the Corowa resolution.

During 2001 I also canvassed several politicians on the question of a plebiscite and was gratified to receive, in August 2001, a letter from Mr Beazley indicating that he was prepared to consider, 'one, two-question plebiscite.' However, the situation changed and the republic was not an issue in that election campaign, but I have that letter here if the panel is interested in it. As I

have indicated, I believe that a multiquestion plebiscite would minimise the danger of an unproductive negative fear or trivialising campaign on the question.

I have submitted that it would seem wiser and more efficient to ask the two questions or, I should say, the several questions in the Corowa proposal simultaneously. I would also 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. I would add that a plebiscite in which only 50 per cent or less of the voters took part would not return a safe verdict and would certainly be challenged by those opposed to a republic.

The Corowa resolution also proposes that an elected constitutional convention should meet to consider the decision of the people as revealed in the plebiscite on the model for an Australian republic. I submit that this would be the most open and democratic way of dealing with the issues and would inspire the greatest confidence in voters when the question is finally put to a referendum. I came across this remark some time ago: Sir Robert Garran remarked in 1950 that popularly elected conventions promised valuable legitimacy in any scheme of constitutional change. I would further submit that such a constitutional convention would differ from the 1997 convention in that it would not have to deal with the case for or against a republic, nor would it have to argue the merits of various models. It would be charged with giving shape and structure to the expressed wish of the people.

In response to question 30 of the discussion paper, I draw attention to the program of public education and information which the Corowa resolution proposes should be initiated by a joint parliamentary committee. I might add that in this morning's *Age* there is an article by Professor George Williams emphasising the importance of impartial education and information for people before we reach the stage of a referendum. In my submission, I suggest that there should be a discussion of those successful republics in the West which have a Westminster style of parliamentary government even though they have a variety of ways of electing or appointing their president. In conclusion, I would submit that the Corowa resolution proposes an open and democratic process that should lead to an informed decision on an Australian republic.

CHAIR—Thank you. I do not think anyone has actually put to the committee by way of formal submission the Corowa proposal. You may like to do that and provide the documentation.

Dr Phillips—I would like to do that.

CHAIR—We would like to receive it from you. I will start with this question, and I suppose my smaller-states background is showing this morning. We talk about the need to engage the public. One part of the country where people were not as engaged as they would have liked to have been last time was the outlying and smaller states. Should we, for instance, in contemplating an elected constitutional convention—which, as you say and as we accept, would have a critical role in the formulation of models—be looking at the old, tried model of the Senate with an equal number of representatives from each state? Should we, for instance, be looking at that model for a collegiate approach, were we to have a collegiate approach to the selection or the election of the head of state? Or should we be looking at popular election?

Dr Phillips—Because of the fact that we are a federation, I would favour equal representation on a constitutional convention. I have some sympathy for an electoral college, through my own study of the German constitution. I take your point about smaller states, and something needs to be written into it or it needs to be structured so that the more populous south-eastern states do not really have the decisive influence in these matters. However, I have a great deal of sympathy for the scheme set out by Professor George Winterton in his booklet *Resurrection of the Republic*, and a nomination committee that was representative of the states would perhaps go some way to addressing the problem that you have outlined.

CHAIR—You have made reference both this morning and in your submission to the German model and to the Indian and Italian models. Is there anything specifically you would like to bring to our attention from any one of those three models?

Dr Phillips—It is the German model that I have paid most attention to. In Italy, which is not a federation, they still appoint their President through a combination of members of the national parliament and representatives of regional councils. In Germany, the presidential convention is made up of an equal number of members of the Bundestag, the lower house, and representatives of the states. I do not think the representatives of the states have to necessarily be members of the state parliaments, but there is an equal number. They then elect the President. I had a quick look at it again last night and I could not see how the nomination process operates in the German situation, whereas the Irish constitution specifies how the candidates for the presidency are to be nominated.

CHAIR—In the German situation is it spelt out, to your knowledge, how the number of representatives of the states is calculated?

Dr Phillips—It is unlike our Senate. It is not quite clear in the constitution, but the German constitution gives more representatives to the more populous states.

Senator PAYNE—Dr Phillips, from your observations about the community consultation and educational process, what sort of time frame do you envisage this would need to occur over?

Dr Phillips—It is hard to say. I was thinking about this a while ago and thinking, ‘What sort of model do we have for this process of consultation and education?’ I think it would be at least a year or more. I think the Centenary Constitutional Foundation, which is no longer in existence, provides a very good model for the process of community education. I would also like to add that that same foundation produced the only impartial informative booklet during the 1999 referendum, and I do not think it was widely enough circulated. What is needed is some way of providing people with information that shows them both sides of the question and explores the issues rather than gives them politicised arguments for and against, which of course will be part of it too.

Senator PAYNE—You may have heard my question to Mr Beahan about the need to drill down—to use that rather hackneyed phrase—to make sure that the consultation process involves the public at all possible levels. I explored this yesterday with Professor Williams. I think it is a worthy option to talk about the engagement formally of state and local governments in this process because they are often closer to the people we are trying to encourage to participate.

Dr Phillips—I think that is a good suggestion. Local government may be a very good way of bringing it down to the local level. If you can get councils to convene meetings of citizens to consider the question, I think that should be encouraged.

Senator PAYNE—Finally, I wanted to ask you a question about your response in relation to question 29. You suggest an elected constitutional convention. I am assuming from your observations on voting for the plebiscite being compulsory that you would suggest that voting for the constitutional convention members also be compulsory.

Dr Phillips—Yes.

Senator PAYNE—How would they be chosen? How would nominations be brought forward in your view?

Dr Phillips—I have not given a lot of thought to that. Going back to the answer I gave to the chair, if there are to be equal representatives then there would have to be some scheme in which members of the public are invited to make nominations before the elections for such a committee. The decision would have to be made in the first place as to how the convention is to be structured.

CHAIR—There was one point you made that I thought I would come back to—that is, your first point. As you said, there has been an expectation in some quarters that we have one plebiscite and then, after the government or the parliament is empowered by that, we move on to a second raft of questions to put to the public proposing different models. You are saying, essentially, that that could form the basis of a very strong fear campaign. Would you like to elaborate on that?

Dr Phillips—In March 2000, soon after Mr Beazley had announced his program, there was a *Four Corners* program which was a kind of review of the republican referendum campaign. Several people who had taken part in the campaign against the republic spoke. Mr David Elliott, who was the organiser of the monarchist campaign, welcomed the prospect of a single plebiscite with relish. He foreshadowed how it would operate and was confident that such a plebiscite would return a negative result. We only have to think back to the campaign against the referendum. The campaign against it did not defend the Queen or the monarchical system; it concentrated on public perceptions of what it saw as the weaknesses of the referendum model. The campaign said, ‘Vote no against this politicians’ republic.’

I think it was a very clever campaign from that point of view. I think in the case of a single threshold plebiscite we can expect people to be warned against signing a blank cheque or saying yes to something they do not know all the details about. The campaign will say, ‘If you don’t know, vote no.’ Therefore I have grave fears for a single plebiscite if we really want to move forward in this direction or get a reliable result. That is the question: how best can we get a reliable result? The value of the multiquestion plebiscite is that people have an opportunity to express their view as to what kind of republic they think it should be. In that case they are more likely to return an informed vote to the first question.

CHAIR—Let us presume that, after that first question has been put, one or two models stand out. In the next stage would you be looking at putting just one model to the public, or would you be looking at putting two or three options?

Dr Phillips—You mean following the plebiscite?

CHAIR—Yes.

Dr Phillips—The constitutional convention has got to sort out what happens if the plebiscite returns two models—if it is not a clear result. If we have preferential voting there is the possibility that two particular models might receive relatively strong support, but that is what the constitutional convention will have to try to resolve. I cannot see any other way around it. I do not think that, under the present rules, the referendum would permit options.

CHAIR—That is what I was leading to: how do you overcome the problem of getting two preferred models with a strong constituency supporting each?

Senator PAYNE—Dr Phillips, there were observations both in submissions and in evidence given to the committee yesterday that the plebiscite process is not a democratic approach to this question before the committee. I wonder what your views are on that. I am not sure if the word ‘unconstitutional’ was used, so I am not going to use it, but I think it was suggested to the committee that it might be an inappropriate exercise of the parliament’s power to put a plebiscite question such as this to the community. We were discussing the issues of consultation and participation and the best way to engage people; that is how the issue came up.

Dr Phillips—I cannot see that the plebiscite is an undemocratic thing. Also there is precedent in Australian constitutional history for the use of a plebiscite to inform the government. We talk about the conscription referendums in the First World War, but they were actually plebiscites. They were not properly constituted referendums, but the government was seeking an opinion in favour of conscription. The other notable case is the plebiscite on a national anthem which was held in the 1970s under the Fraser government. So there is precedent for it. It has always been understood that a plebiscite does not have the constitutional legal force of a referendum but I cannot see that there is anything undemocratic about it, especially as it may lead eventually to a proper constitutional referendum which fulfils the legal requirements.

CHAIR—I think it is fair to say that for most people the desired outcome would be to have a head of state who is not partisan politically. Can you see that happening if a direct election model is adopted, and in what circumstances?

Dr Phillips—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. I think that they would

fall into the role, particularly if we set out the powers and duties of the President or the head of state.

CHAIR—That is the critical proviso, isn't it?

Dr Phillips—Exactly, yes. I think that will have to be done whichever model prevails, because our Constitution, as it stands, does not take the office of the Prime Minister into account. So if we do move to a republic it will be necessary to write the President or head of state into the Constitution and specify his or her role.

CHAIR—Have you had a chance to look at former Justice Brennan's evidence yesterday and his submission?

Dr Phillips—Yes, I did look at that.

CHAIR—Is there anything in that that you would have trouble with?

Dr Phillips—I actually had some correspondence with Sir Gerard Brennan on his submission. I have some reservations about the council of state that he proposes. I understand its intentions—and I am open to conviction on the matter—but it seems to introduce an extra element into the Constitution outside the democratic process.

CHAIR—He suggested that essentially as an alternative to making issues justiciable. What is your response to that?

Dr Phillips—Again speaking as someone who has studied the German Constitution, the President's roles in the German constitution are limited but if the President does anything which is unconstitutional it is, I suppose, justiciable in the sense that, on a motion from either house of parliament, the matter goes to the Federal Constitutional Court to determine whether the President has acted constitutionally or not. That is a slower process. But I do not think that the council of state would necessarily ensure impartial advice.

CHAIR—Is that possible anyway?

Dr Phillips—Perhaps not.

CHAIR—Dr Phillips, thank you very much for your submission and your evidence this morning.

[10.22 a.m.]

PATMORE, Mr Glenn Anthony, (Private capacity)

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

Mr Patmore—I appear in a personal capacity. I am a senior lecturer in law at the University of Melbourne.

CHAIR—Your submission has been numbered 534. Do you wish to make any amendments or alterations to it?

Mr Patmore—I do wish to make some alterations to my submission in relation to question 24. I want to change one word and delete another word. In the third sentence I have referred to the word ‘legality’ and I would like to replace it with the word ‘validity’. In the last sentence, which says ‘All information and advice should be sought ...’ I would like to delete the word ‘All’.

CHAIR—Would you like to start with an opening statement?

Mr Patmore—Yes. I would like to thank the committee for inviting me to speak to you today and to appear as a witness. In my written submission, I have addressed two issues. First, I have proposed a new function for the head of state and, secondly, I have briefly addressed the question of whether the Chief Justice should be consulted by the head of state. I do not intend to speak very much about this latter point, other than to stress that I believe the head of state should not consult the Chief Justice. There is a real risk that the matter may come before the High Court or that the Chief Justice may be seen as a partisan figure.

Turning to my main point, I have proposed a new function for the head of state as the guarantor of democratic government. What I am proposing is not a model per se but rather a new job description for the head of state. Under this function of the head of state acting as the guarantor of democratic government the head of state would only intervene where there has been some breakdown in the democratic process. The head of state would only intervene in very limited circumstances. For present purposes, I have assumed that the head of state would possess this function in addition to the current powers of our Governor-General. In particular, the head of state would exercise this guarantor function when exercising the reserve powers.

I believe that this new function for the head of state would have numerous advantages. Firstly, I believe that it would strengthen our current democratic system. It would provide guidance to a President by providing a straightforward justification for political action at a time of political crisis. It would also provide a community standard by which the public could assess the conduct of the President and indirectly the Prime Minister. Secondly, I believe that the guarantor function may serve to be a rallying point for republicans, a point upon which they could unite. Many republicans believe that we should retain our current Westminster system of government but they disagree over the mode of appointment—that is, whether the head of state should be appointed

by direct election or by parliament. The guarantor function may be seen as appealing to republicans of either persuasion as it addresses weaknesses with each mode of appointment.

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. A Prime Minister might suggest that the head of state was elected by the parliament and not the people and that the head of state should leave it to the parliamentarians to resolve the crisis themselves.

The guarantor function may provide the answer to both problems. By providing guidance to a new head of state it may empower a parliamentary elected President to intervene where necessary. It could also constrain a popularly elected head of state: the head of state only intervenes as the guarantor of the continuance of democratic government. A third advantage of the guarantor function of the head of state is that it may be appealing to voters. Voters would not only vote for an Australian as a head of state, but one that has a clear and straightforward function. The conceptual simplicity of the function may make it appealing to voters.

Finally, I believe that the guarantor function may add a new focus to the debate over a future republic. Without a clear function being set out for the head of state the referendum debate may be over whether a popularly elected President is too powerful or whether a parliamentary elected President is a pawn of the politicians. I believe that if we state this guarantor function it might provide for a more informed discussion of both the function and the powers of the head of state. In addition, it might neutralise the rhetoric of the ‘politicians’ republic’ or the ‘popularly elected tyrant’ which distracts from a consideration of the proper functions and activities of our head of state. That concludes my submission and I look forward to questions from the committee.

Senator PAYNE—Mr Patmore, I am trying to work out where your proposal fits into the ongoing discussion about codification, the suggestion by Sir Gerard Brennan of a constitutional council and the suggestion by George Winterton of a constitutional council differently elected, and whether there is complete divergence between your suggestion and those and whether your suggestion complicates the process more. I am not looking forward to the challenge of trying to explain the guarantor proposition in a plebiscite or referendum process.

Mr Patmore—You have given me three points to consider: how my proposal fits into codification of the powers of the head of state, how my proposal might affect a constitutional council and whether or not the proposal complicates the referendum debate. Let me address the first question. I think it would be possible to write a new, straightforward job description into our Constitution. There are a variety of ways in which I envisage that might take place. It might be possible to do it as a fairly brief provision that stipulates that the head of state’s function is to be the guarantor of continuity of democratic government and never the provider of government. It might be possible to distinguish the head of state’s function from the Prime Minister’s functions in the Constitution—these functions are not specified in our Constitution. And I think it would also be possible for that to be made an additional function to codifying the current reserve powers of the head of state, so that we would have both a function in the Constitution and a codification of the reserve powers.

Senator PAYNE—Is that only if the head of state is directly elected?

Mr Patmore—I would have thought that some further refinement of the powers of our head of state is warranted, whether the head of state is elected by the parliament or by popular election. My reason for saying that is that under our current system the current Governor-General has very significant powers in the Constitution and these are only constrained by constitutional conventions. These constitutional conventions could be seen as conventions of monarchical government. If we remove the monarchy from our constitutional system of government, then perhaps those traditions and conventions might also fade away. Hence, I think it is both necessary and appropriate to state in some way that the head of state's powers should be restrained in our Constitution. That might include partial codification or full codification of the powers. I think that probably addresses your question on codification.

The question of a constitutional council raises the question of whether or not the head of state should seek advice from this council. I have concerns about that. I think that the council could act as a rival source of advice to the Prime Minister or the government and that this might undermine our system of responsible government. I think we should retain our current system where the head of state seeks advice from the Prime Minister and parliament. He or she obviously may also obtain information from other sources. So I would counsel against the council of constitutional advisers.

Senator PAYNE—Could I interrupt you there to say that in Sir Gerard Brennan's proposition—I do not have his submission with me today so I am working from memory from reading it and from yesterday's evidence—the role that he envisages for the constitutional council is that if the head of state finds him or herself in a position of acting without the advice of or against the advice of members of the executive council—

CHAIR—I can give you the wording. I have the submission here. It says:

... 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.

Mr Patmore—What was your question to me, Senator?

Senator PAYNE—I was going to say that he is looking at putting in a level, if you like, of not so much a rival source of power but a sense of guidance to the head of state in that circumstance. I am interested in how you see that as potentially a rival source of power.

Mr Patmore—Potentially there would be questions about when the head of state might consult them, would they consult them in private or would it be public, would the advice be made public or would the Prime Minister get the opportunity to comment on it? Also, what would happen if the head of state decided not to take the advice of the constitutional council—would that call into question his or her judgment? If we have this council, why do we have a Governor-General there who is supposed to be the person who makes the decision about when to intervene or not?

I also think that if we get our job description right for the head of state then it may not be necessary for him or her to consult such a council. It may be possible to work through the

ordinary parliamentary process. I am also concerned that such a council, as you say, could act in some rival way to either the government or the parliament. It is likely to be not elected by the people; it is likely to be an undemocratic institution. I have those concerns with such a body being introduced into our system of parliamentary government. I think the process should be resolved more through parliamentary means and through our system of responsible government.

This brings me to your next point about the notion of the constitutional guarantor being a complicated idea to explain to the public. I actually take a contrary view. I think the notion of the constitutional guarantor of the continuance of democratic government is an idea most people will readily understand. I think they will understand it from their own personal experience, if we draw an analogy with the notion of the contractual guarantor. Many people are aware of how that works: it is only when the contract breaks down that the contractual guarantor is required to act. At that very basic level, people will understand that idea and see it as a way of setting out broad parameters for what the head of state should do. It is only if there has been, say, a key breach of a constitutional provision that the High Court has ruled upon and that the head of state continues to ignore. In those circumstances, I think that the people would say, 'Yes, this is an appropriate time for the head of state to act to remove this type of political crisis.' So I actually think it is something that will be understood and could be championed.

Senator KIRK—Thank you for your submission, Mr Patmore. In relation to this concept of constitutional guarantor that you have as a theme throughout your paper, are you aware of any overseas examples of where the head of state has been viewed in this capacity that you describe?

Mr Patmore—I am not aware of any overseas examples that have exactly viewed the head of state as a constitutional guarantor in the way that I have described it in the paper. I am aware that in countries such as France the head of state is viewed as a constitutional guarantor; however, the French President has more of an oversight role than the role I am envisaging. The notion of the constitutional guarantor of democratic government that I am proposing does draw upon well-known concepts of constitutionalism, legality and, as I have mentioned, legitimacy or constitutional propriety. So I think it does draw upon fairly established principles.

Senator KIRK—I am having some difficulty trying to understand the role of this constitutional guarantor. In relation to the methods of selection of a President—I think you mentioned this a moment ago, and perhaps you could clarify it for us—it seems to me that, depending on the different methods of selection of the President, this role as a constitutional guarantor is going to vary. As you say, if they are popularly elected they will see themselves as having a stronger mandate. If that is the case they might not be as willing to fulfil their role as constitutional guarantor, or at least might perceive it in a different manner, than if they were appointed, say, by the parliament. Would you elaborate on how you see the different selection methods impacting upon the role as a constitutional guarantor.

Mr Patmore—Let us again take the notion of the popularly elected leader having a popular mandate. If that head of state has the current powers of the Governor-General it is suggested that, just because they have a popular elected mandate, he or she has strong powers in reserve and that there might be party or constituent pressures that might encourage that kind of head of state to intervene in parliamentary politics. At the moment, it is suggested that the head of state might be tempted to in some way take on a governing role, whereas their current role would be formal, such as to decline to sign a piece of legislation. In those circumstances the head of state

clearly would be breaching a constitutional convention under our current system, but there are fears that popular election might encourage that to occur. I think the notion of the head of state acting as the guarantor of constitutional government would act as a check against that, because here the head of state is not acting in any kind of residual capacity, they are taking a proactive role. The claim is that it would be clearer and more easy to see that the head of state was not performing the function that was appropriate under our current system.

In relation to a parliamentary elected head of state the concern is that this head of state will not have the power to stand up to a Prime Minister or government. It is a concern that he or she will be seen in some way as just a puppet of parliament, one of the people who have been appointed by parliament, or that in some way the head of state should not intervene. By giving the head of state a clear function that there is an appropriate way to intervene, and that is where there has been some, if you like, breach of the law as adjudicated by the High Court or that the head of state has abused their power in a different way, then the head of state would have a stronger justification to intervene to resolve the political crisis—but only to resolve it in such a way as to return it to parliament to make the decision or to the people. There is no power on the head of state to actually take on a governing role themselves.

Senator KIRK—I am also attracted by the idea of a constitutional council. From what you have said, you are not that keen on the idea. You talked about the appointment of such a council and you said you thought it would be non-democratic and, therefore, not something we would want to introduce into our constitutional system. It seems to me that by its very nature a constitutional council really ought to be non-democratic in the sense that it would not have any sort of popular mandate, it would really be there just to enforce the law.

I suppose I am thinking that, again, it depends on the method of selection of the President. If the President is elected by popular election, they may be more ready to act in the absence of ministerial advice. Perhaps then you do need to have some oversight body apart from the courts to ensure that he or she does not breach constitutional conventions and act contrary to ministerial advice, or at least to be able to give them advice in relation to that. Do you have any thoughts on that?

Mr Patmore—I have already voiced my concerns that the council may in some way act as a rival source of advice, and the other objections, but I think the council may also lack democratic legitimacy. It might be seen to be a very select group of people who are not in touch with the views of the people or the voters. That might also undermine its credibility. Again I go back to the fact that if we get our job description right it will not be that necessary for the head of state to seek legal advice in these circumstances from a council. They can obtain the advice and information they need through the parliamentary processes or through meetings between the head of state, the Leader of the Opposition and other relevant members of the federal parliament.

Senator KIRK—Thank you.

ACTING CHAIR (Senator Payne)—Thank you; that was timely. Mr Patmore, I am afraid I fail to see how ‘getting the job description right’ is going to completely obviate the need in certain circumstances for the head of state to seek advice if they are in the position of acting either against or without the advice of Prime Minister and ministers. It seems to me simplistic to contend that a good job description will avoid that problem. I have reread your notes on question

24, about whether the head of state should be free to seek constitutional advice from the judiciary. I gather your aversion to a constitutional commission or council, or council of state—whatever it might be called—is related to your view as expressed in your response on question 24 as well.

Mr Patmore—Yes, it is. Responding to your point that it is simplistic to suggest that the head of state would not need to seek legal advice, my view is that the head of state can certainly gain the advice from the executive. The question is: what happens when the head of state wants to act contrary to that advice? I think the head of state might not get advice but might be able to get information through actually convening, say, a meeting with the Prime Minister, the Leader of the Opposition and others so that the head of state could be exposed to the kind of information that would be necessary to make a judgment. That would be conducted through the ordinary parliamentary processes. I think that could provide the information that would be necessary for the head of state to make a considered judgment. Moreover, the views in that meeting could be contested, criticised or analysed—

ACTING CHAIR—How? By whom?

Mr Patmore—The head of state would be able to listen to the different views of the Prime Minister, the Leader of the Opposition or the other relevant senators on how he or she should act. I think that is quite an appropriate forum for consideration of these matters.

ACTING CHAIR—I suppose I am perhaps constrained by my existence within the parliamentary and political process and have less confidence than you that that is a viable suggestion. But I take the point you make.

Mr Patmore—If I could just reply, one would also expect that the head of state would get advice certainly from the Solicitor-General or the government, and if this is good advice it will canvass all of those possibilities. Perhaps again I am being naive in thinking that it would not contain both sides of the argument, but one would hope that that is something that would come through as well.

ACTING CHAIR—Thank you.

Senator BUCKLAND—As the non-legal person on this committee I am really struggling with your submission and some of the views you have expressed. I do not say that rudely. I am struggling with that because I sense that you have a view that we are going to be in continual crisis if we move to a republic. You talked about the job description and things like that for the head of state. What is the real role of the head of state as you see it? Is it only at times of crisis? There must be another role, otherwise we might as well try and battle on the way we are. I am struggling with your submission.

Mr Patmore—I have said that the head of state would retain their current powers. The head of state has generally three types of power. First, the new President or the Governor-General acts as our head of state. They have a ceremonial capacity—they open parliament and large enterprises such as universities and hospitals et cetera, and they award honours. In Sir Ninian Stephen's words, the head of state represents Australia back to Australians. That is an important

function they performance and we would probably want to keep that with an independent head of state rather than giving that very great power to, say, a Prime Minister.

Second, the head of state has a modest oversight role to ensure that the workings of government are properly carried out and basically fall within the law. But the head of state in this role has very little power. He or she can counsel, advise or warn the government against certain actions, but ultimately he or she must yield to what the government says or advises. This is the day-to-day function of the head of state. Governor-Generals have said in the past that they think this is very important, but it is very limited.

Third, it is the role of the head of state to act to resolve a constitutional crisis or dispute. These are very considerable constitutional powers. So I hope you can see that I would see the head of state carrying on in the same way that our current head of state does. My paper and submission were only really directed to that third exercise of the reserve powers when there is a kind of distinct constitutional crisis or problem. This has happened several times in our system of government, with the dismissal of the Whitlam government and the Lang government highly contentious, but I think it is an important point for us to address in any new future republic.

Senator BUCKLAND—I understand that you have come at this from one point of view: the third role. What would be the criteria, then, for the selection of a head of state? Taking it from that one very confined direction that you are coming from, I think we would inevitably only have a choice of someone who had a reasonably if not extremely good founding in constitutional law. That would really limit the choice that Australians could make and would take it out of the hands of the people. What do you say to that?

Mr Patmore—Why do you think they would have to have a strong founding in constitutional law?

Senator BUCKLAND—Because the line that you have taken—and, as I said, I am not critical of that but I am struggling with it—only really addresses crises or the legal aspects of crises that might confront the Australian people from time to time. If there is such a strong emphasis on that, the other roles—the opening of a local fete or flower show or whatever they may be—seem to be very minor in your point of view. Therefore I struggle to see how you would be able to properly select a person.

Mr Patmore—Perhaps now I am clearer on what your point is. As I said, I would see that the head of state would retain the current powers of the Governor-General. I have not really addressed that in my submission because I assumed that the functions would exist and the head of state would continue to perform them. Those two functions—the ceremonial function and the oversight function—are still appropriate and important functions and they would be the day-to-day functions of any head of state. The head of state would continue to carry those out. But under the current system of government the head of state still retains these reserve powers. We have had several constitutional crises in our history and we are likely to have them again. If we just retain our current system, the head of state may well have to deal with these constitutional crises. My submission just addresses that question—that is, how best can he or she be equipped to deal with such a crisis? My thought is that a clearer job description will help that person to address these issues of constitutional crisis.

Senator BUCKLAND—Have you any suggestions for what the job description would be?

Mr Patmore—I have suggested the constitutional guarantor idea—the notion that if there is some breakdown in the system of democratic government then he or she should intervene to resolve it. Those circumstances could be spelt out in some kind of codification as well. So it would give a general idea of how the head of state should act, only when there is a breakdown in the system, but we could also spell out that he or she can only use these kinds of powers to resolve it.

Senator BUCKLAND—What would be your real objection to having a constitutional council to work in conjunction with the head of state?

Mr Patmore—My real objection is that it could call into question the whole function of the head of state. As I mentioned, if he or she does not act in accordance with the views of the council or if he or she is criticised, will his or her authority be doubted? And if we have this council, why do we need our President to resolve the crisis? Our Westminster system of government has operated reasonably well, it could continue to operate, and the advice that could be sought through that process or through a convening of a meeting of various political leaders would be appropriate.

I guess we are only talking about whether the head of state should exercise the reserve powers, and that is when we should seek advice from the council. Otherwise the head of state is free to seek advice or to ask the Prime Minister if he or she can obtain advice from elsewhere—I do not think that that would be denied to him or her—and also to seek advice during a crisis. It would be difficult for a Prime Minister to deny the Governor-General or the President a request to seek some kind of legal advice from the Attorney-General's Department.

CHAIR—In section 3A of your submission you identify the problems of the current system. You say:

Given the problems with the current system and codification of the reserve powers ...

That is one area of problems with the current system. But it seems to me that you go on to offer another broad range of powers to whoever and whatever we might call this person—the powers that would flow from a person being a guarantor of democratic government. Aren't you in essence offering a blank cheque of powers to this person? Wouldn't you have the same problems as we have now with the codification of reserve powers?

Mr Patmore—I think the notion of a constitutional guarantor of powers in itself would have the opposite effect. If you look at the concept itself, it is meant to suggest that the head of state does not have *carte blanche* to intervene into politics. He or she is only able to intervene in politics in very limited circumstances. It is only where there has been, if you like, a breakdown in the democratic process.

CHAIR—Is that under existing provisions or under what you are proposing?

Mr Patmore—My view is that the head of state would have the same powers as our current Governor-General but there is no clear guidance on how those powers should be used.

CHAIR—There are conventions at the moment.

Mr Patmore—There are conventions but they are open to different interpretations. This proposal seems to add an additional check on the powers of the head of state in most circumstances, particularly where the head of state is popularly elected. It adds a further brake on the powers of the head of state. It does not give them *carte blanche*.

CHAIR—All of us have experience with bank guarantees, and they give the bank *carte blanche*. How would the concept of guarantee in the Constitution be interpreted differently? Are you talking about codifying it?

Mr Patmore—I am talking about putting this function into the Constitution. There would need to be some full or partial codification of the powers of the head of state simply because if that does not occur, if we just leave it as it is, the current constitutional conventions may be seen as conventions of the monarchy. If the monarchy is removed from the system, those conventions or restraints may also fade away or disappear—and, if that is the case, then our current Constitution leaves the head of state with some considerable governing powers.

CHAIR—Sir Gerard Brennan put to us a mechanism where one could anticipate the head of state having power to act without ministerial advice. That was, as I read earlier:

... 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.

Are you contemplating something broader than that, or something in line with that?

Mr Patmore—I think it would be something in line with that. Perhaps this is the nub of the committee's concern: won't the head of state need some type of legal advice as to whether a provision of the Constitution is being breached or not? If that is the concern of the committee, then I think that really that should be left to the courts. A matter should be decided by the courts, and it is only once the courts have had a chance to make a determination that the head of state should act. If the Prime Minister ignores a rule of the courts then the head of state should intervene. That would be one very clear way where it would not be necessary for a council because you would get the most professional advice you could get: from the High Court.

CHAIR—A court which may later have to decide on the matter.

Mr Patmore—A court that would probably have already decided. I do not see it as a reference power. I do not imagine a reference power. It is a matter that should be determined by the court when the problem arises. If there is a breach of the constitutional provisions, as there often is, those matters are decided by the court. Does the law fall within one of the powers of the federal parliament? Can the federal parliament enact this law? Is it constitutional? Those questions are decided all the time by the courts, and they should be left to be decided by the courts.

CHAIR—Thank you for your evidence and your lengthy submission.

Mr Patmore—Thank you.

[11.04 a.m.]

KELLY, Mr John James, (Private capacity)

CHAIR—Welcome. Your submission has been numbered 142. Do you wish to make any alterations or amendments to it?

Mr Kelly—No, I do not.

CHAIR—Would you like to make an opening statement?

Mr Kelly—Thank you. I should say at the outset that there is an association with the Australian Republican Movement: I have been an ARM member for some years and was a foot soldier during the referendum campaign in 1999. I concluded that the model put forward was defective and that this had much to do with the referendum being lost. I was therefore surprised and disappointed that the agenda for the ARM members' kickstart workshop held in February 2000 did not include the preparation of an improved model.

I decided to do something about it by preparing a proposed strategy for the selection of an Australian head of state involving the detailed consideration of different models. I worked on the strategy until mid-2001 in association with three other ARM members: Kerry Lovering, Graham McGarvie and Glyn France. Several versions were prepared in turn, some being submitted to the ARM. Its scope widened as a result of comments received and our identifying and investigating significant matters of detail. The last update was prepared in mid-2003.

I think it is fair to say that the paper has had some influence on the direction the ARM has been following—for example, its recognition that direct election may be workable and the six models for an Australian republic approach. When I compared the Senate inquiry's 30 questions with the matters addressed in the paper, I found that 22 of them had been discussed in some detail. I therefore concluded that the paper could be of some use to the inquiry. It has a sort of ARM background but it is not an ARM paper; it is mine.

The issues discussed in the paper include the means of selecting the candidates for the position of head of state, irrespective of the method of selection adopted. This issue is, I think, particularly difficult. It also looks at the desirability of investigating how some of the components of these methods as used in other countries work in practice; methods of selection of the head of state by parliament or by election either by the people or by parliamentarians in a secret ballot; and, lastly, the extent to which legislation, rather than changing the constitution, can be used to bring as many subsidiary requirements as possible into law.

I apologise for the nuts and bolts approach of the paper but I am a civil engineer, not a lawyer. The ultimate goal, as I see it, is to have at least two workable methods of selecting an Australian head of state properly thought out in full detail, explained at length to the Australian people and appropriately modified in response to comments received before any plebiscite or referendum is put before them.

CHAIR—You have raised in your submission all options and configurations. Is there one that you yourself would recommend to the committee?

Mr Kelly—I favour, generally, the Irish model modified to suit Australian conditions. Back at the time of the referendum the idea of a direct election was anathema to a lot of people, but I believe that a model can be developed which would get away from some of the criticisms which that type of model attracted.

CHAIR—Have you had a chance to look at the Corowa A proposal?

Mr Kelly—I was at the Corowa convention. I was in favour of the one we came out with and recommended—the Bill Peach model. That approach was, I thought, quite good. It really gets down to deciding first whether you want a republic or not and then which model. The main point is that as much detail as possible must be known about the model before any serious consideration can be given to putting it to the people for a referendum or for a decision as to which one should be the subject of a referendum.

CHAIR—It has been put to us that it is not really even a matter of codification of the powers but a matter of defining when the head of state's powers are available, and once you do that then whether it is directly elected, nominated or collegiate, the issue becomes very much more benign and you do not have the problem that people anticipated and were concerned about last time, that a directly elected President would give you two pockets of power—a Cambodian type, two prime ministers situation. Do you share that view?

Mr Kelly—I think it can be developed in such a way that such a position does not arise. That does not arise in Ireland. It really depends on the way in which the powers of the head of state or President are set out and agreed upon in the first place.

CHAIR—Using that Irish model as the goal, how would you anticipate the nomination process running?

Mr Kelly—That is what this paper talks about in some detail. Having put up something in there, and a lot of thought was given to it by a lot of people, I am not sure that it is right. The idea put forward was that you had to have nominations from the people and a particular number of nominations for whichever candidates may come up. Those nominations should include some sort of 200-word declaration as to why that person would make a head of state. 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. Another approach, which we had a look at in the paper, was the one alluded to when you were talking to Dr Walter Phillips earlier, with a greater representation of the states as you go through the process. I think that was a very well thought out arrangement, but we came to the conclusion that it was just all too complicated—that it would be too hard to go through and people would get sick of it. That is not to say that the idea in the first place was not a good one.

CHAIR—Is it a question of how one nominates or is it a question of how people are selected or become eligible to stand for a direct election, for instance, or any other selection process?

Mr Kelly—First there is the nomination and then there is the selection, down to a limited number—maybe three candidates or whatever. So it is really a bipartite process even to get that far—quite apart from going on to an election, a selection by a two-thirds majority of parliament or whatever.

Senator PAYNE—Mr Kelly, I want to thank you for your ‘nuts and bolts’—I think they are very useful to the committee in a number of ways. We have had lots of contributions from our legal friends so it is useful to have your submission. One of the things that you observed in passing as you were making your opening remarks was the importance of explaining in detail to the community the propositions to be advanced. That is obviously part of our consideration in this inquiry but is not expanded upon in your submission. I wondered if you wanted to add more to those remarks about community consultation, information and education.

Mr Kelly—How you do it, how wide it should be and whether people would take any notice of it in the first place are rather difficult issues. My main point was that if you have a model fully thought out in all details which is the basis of that education campaign, which is not likely to be successful, then at least it is there. If somebody wants to say that the whole thing is no good—say, the monarchists, for argument’s sake; that may be their view of the whole thing, and they are entitled to take that view—they are quite entitled to pick holes in the model and say: ‘What about this? What about that?’ If those holes have been filled up as much as possible, at least that cuts down the extent to which a molehill can be blown up into a mountain to make some sort of a point, like it was in the previous referendum debate with the line about the ‘politicians’ republic’.

Senator PAYNE—Is it your view that that should precede a plebiscite?

Mr Kelly—Yes. I think that if people do not want to be educated about it that is their lookout, but they should at least have the opportunity to be educated about it. An attempt at that was made in the referendum with the 70 pages, or whatever it was, which came out. That was probably too little too late and did not really help the issue at all. It has to be there for some time so that somebody can be given the opportunity to pick holes in it and say what is wrong with it. Then, if there is something wrong with it, you might want to do something about it. I do not think it is right to bring it all out at the end and say: ‘Here it is, signed, sealed and delivered. Sign on the bottom line.’ It is going to take some time to get through this educational process so that people at least know something is there, and the people who want to be educated about it do look at it, do read it and then do comment and criticise if they so desire. That is a good thing.

Senator PAYNE—Have you turned your mind at all to how we can actually encourage the Australian community to participate in this process? I see the Hon. Neil Brown here, who has been recently running the consultation process on the section 57 discussion. We know what happened before the republic referendum in 1999 and we know what happened in relation to the referenda in 1988. The level of engagement, education and information is not really something that Australians take to with alacrity. I wonder whether you have turned your mind to how we might engage further. I have discussed with other witnesses the involvement of state and local government in a formal sense to pursue that process. Is that an option you would think is worth considering?

Mr Kelly—That would certainly help. I turned my mind to it and then I turned my mind away from it because I was not getting anywhere with the enormity of the problem.

Senator PAYNE—We do not have that luxury, I am afraid! Thank you very much.

Senator KIRK—Thank you for your submission, Mr Kelly. At page 1 of your submission, towards the bottom of the page, you say:

With respect to Question 29, there should be at least two, not one, models formulated in complete detail before holding a plebiscite, preferably by a Constitutional Council of Experts.

Could you elaborate upon how this constitutional council of experts would be constituted and on where the experts would be drawn from? Would they be elected? Would they be appointed?

Mr Kelly—This is a general comment. I have found, both in my profession and in some of the things that have happened in the republic debate, that you start first with an idea and then you go to a group of experts to try and flesh out that idea. It is only when you have something which they think is workable that you can then put it to the people. If it goes the other way around, you will finish up with something which could be found too late in the process to be quite unworkable. A good example of this, as is pointed out in the paper, is the efforts the government of the day made to prepare legislation in case the republic won out. I thought a lot of that stuff, which is repeated here in the submission, made for an excellent basic approach to the whole thing. That was done by a group of experts. At the Corowa convention, an idea from Bill Peach was fleshed out into something by a group of experts who happened to be there—one of whom is in the audience—under conditions of great difficulty, and they did it extremely well. I think you have to have the expert input very early and not down the line. You might have something which is politically acceptable or not acceptable and then you might try to make something out of it, which just cannot be done.

Senator KIRK—So this body might be something along the lines of what we have had previously, such as the constitutional commission and committee that I think assisted during the 1980s. Is a kind of body of experts what you have in mind?

Mr Kelly—I do not know anything about that, so I cannot give an opinion. But certainly start off with the best expert advice you can possibly get and then see how that is accepted by the people.

Senator KIRK—That goes to the next point I was going to discuss. You say with respect to the models that we should ‘subject them to protracted public scrutiny and debate and finetune them accordingly’. How do you envisage that process of public scrutiny taking place? Would that be done through perhaps another constitutional convention of elected delegates?

Mr Kelly—With a constitutional convention to look at this sort of thing you get back to the same problem of how do you find people to go on it, how do you elect them, and how do you nominate them in the first place? If you follow that route, it has to be something better than the last one and given a much shorter brief to work on. That shorter brief should be in terms of just what the models are. If they go out for public scrutiny, if they are criticised and if they go back to an expert commission of some sort that is asked, ‘What about this, what about that?’ then you

continually improve them. That is the way this paper was developed. We had that criticism and that commentary, and better ideas came along. What I have in here is a far cry from what I started off with, I can tell you, because it really had that general process. If that can be repeated in the public arena in some way, that has got to be pretty good.

Senator KIRK—Yes, I agree. It is just a matter of how you involve the public. Do you need to set up something similar to what we had in 1998—that is, a constitutional convention which is popularly elected by voluntary or compulsory vote, or do you go down the same line that has occurred with the section 57 discussion paper, which was released into the community and then a small committee was set up to travel around to hear from the people as to what their comments are in relation to it?

Mr Kelly—Yes, it would have to be brought out into the public arena in a bigger possible way through television, not with something quite as long as the constitutional convention, but by way of giving a progress report every now and again. That would certainly get wide coverage in the press; but it should not be too often, otherwise people just get sick of it.

Senator KIRK—Thank you.

CHAIR—Mr Kelly, thank you for your submission—as the Deputy Chair said, it is a very detailed one and we appreciate that—and thank you for your evidence.

[11.23 a.m.]

FOTHERGILL, Mr Toby, (Private capacity)

RUSTON, Major Edward Walter, MC, (Rtd), (Private capacity)

CHAIR—Welcome. I invite you to make an opening statement.

Major Ruston—Firstly, may I say thank you to you, Mr Chairman, and to the committee for coming interstate to see us and to listen to us—and I hope listen carefully and note what we have to say. May I introduce my grandson? I am a bit rickety on my pins, because I have passed my ‘sell by’ date.

CHAIR—You sound very strong.

Major Ruston—I like a bit of company in case things do not go quite right physically. I hope you will permit him to stay with me.

CHAIR—Sure.

Major Ruston—My profession was Her Majesty’s forces and, after that, timber engineering. I am an Australian citizen. I am British by birth and very proud of it. I am an Australian by choice and I have a vote. I think that is all you need to know about me. My grandson, Toby Fothergill, is with me.

Mr Fothergill—I am currently studying at Melbourne University.

CHAIR—Now we can proceed.

Major Ruston—The literature which I have already passed to the committee and which I will be referring to today is my letter dated 26 March, which has my answers to your 30 questions, and my letter dated 26 February, which was addressed to the secretary of the Senate subcommittee and which drew attention to an issue which, to me at least, seems to cast some doubt on the fact that in your discussion paper you say—and almost every day we hear it on the radio or read it in the paper—that the majority of Australians want a republic. In your discussion paper—I think it is on page 22—you refer to a poll taken by the *Australian Newspoll* department as being good evidence to support your statement in endnote 6 that most Australian people wanted a republic. You quoted a figure of 52 per cent, and I thought that was a bit odd when, two years ago, not a single state supported the idea. I thought that tremendous change in public opinion was worth a bit of exploration, so I took the trouble of ringing up the *Australian Newspoll* department and they gave me the percentages which appear in my letter of 26 February.

As you will see, it would appear from the figures which I got from the *Newspoll* department themselves that the 52 per cent—which was quoted by your good selves, presumably, in support of what the committee is about—is made up of the 39 per cent of those polled who wanted a

republic and the 13 per cent who, shall we say, were *comme ci comme ça*—certainly not in favour, certainly not against. But the greater number, the 48 per cent, wanted no truck with the idea. So I suggest when you added the 13 per cent to the 39 per cent to get your 52 per cent, you might well have added it to the 48 per cent who implied they did not want it and that would have come to 61 per cent. I got these figures from the actual numbers I calculated myself. I believe you will find the numbers are right, but the percentages were the figures given to me by the *Australian*.

When I made my call to them, they asked me exactly what questions I wanted answered. I told them I wanted to know exactly what the questions were which were asked, how many people were polled and what the results of the poll were. They were pretty fair, open-ended questions but straight. They rang back and told me that 1,200 people were polled. I realise that polls are a selection across the spectrum, but I fail to see how you can say that 52 per cent of 1,200 people—which I dispute because I think that 61 per cent thought otherwise; the greater number thought otherwise—justifies the statement in your paper that says:

Recent polling suggests that a majority of Australians now support the move to an Australian republic.

I hope, Mr Chairman, in all friendliness, that that will be looked into, because I think the statement stands on sand and not on rock.

I will go to my answers to the questions. It is my belief that when Mr Keating said in 1993 that the monarchy has served Australia pretty well, he was speaking from his heart as well as his head. It has served this country well. When you think about what has happened in the last 100 years since Federation, about the progress of this country and that 250 years ago you did not even have a wheel here and there were not two bricks stuck together with mortar, what has been achieved under a monarchy is absolutely fantastic. I really believe that. Somebody once said during the war, particularly with regard to transport, that if it works well, leave it alone. It was wise advice. I was in the war myself. Today they say: don't crack it. I fear that you might well be cracking what has proved to be a wonderful system by building a case on sand. You have my answers to your questions. Is there anything which any member of the committee would like to ask me questions about? I have pretty defective hearing; I might have to refer to Toby.

CHAIR—Thanks for that. For the record, the factors driving the committee were that for the last five years or so every respectable poll has shown that a majority of Australians support an Australian head of state. In the poll that we referred to in our paper, my recollection is that 52 per cent were either strongly or partially in favour of a republic, 33 per cent were against a republic and 15 per cent were not interested or undecided. So of those who have a view, something like 60 per cent were in favour of a republic one way or another. That has been the driving force or the factor behind that statement in the paper.

Thank you for your presentation and for your submission. You have expressed very strongly that you would rather not see a republic but you have also been very constructive in putting to us some of your thoughts if there were to be a referendum. You state that you prefer the Irish model—the directly elected model. Can you see us having that sort of model and keeping the head of state above politics? Can you have a non-partisan head of state with a directly elected model?

Major Ruston—I felt your analysis was flawed. That is the most polite way I can put it. I still think it was flawed. If this thing were really put to the public, the public would agree that 61 per cent does in fact exceed 52 per cent, if you are with me, and I think you are.

CHAIR—I can understand you. I am not travelling down the road with you but I can understand you.

Major Ruston—I have made my point and I rely on your judgment. Are there any questions on my answers to your questions?

CHAIR—Your preferred model was a directly elected one. Is it important for you to have a non-partisan head of state above politics? Can you have both?

Major Ruston—You will understand from the word go that I am not in favour of a republic.

CHAIR—That is right; we have picked that up.

Major Ruston—I am a convinced monarchist. I am not ashamed of that. I know the Irish. They served under me during the war, and I must say the Irishmen from the south were absolutely super chaps. So I am not anti-Irish; I am very pro-Irish.

CHAIR—I will not ask you about the north.

Major Ruston—Of all the solutions, the Irish one seems to me to fit in the best. As far as possible politics, either direct or indirect, should be kept out of the election and appointment of a head of state. The one thing the head of state must be is above politics, so you should keep it out. Just how you do that is up to you chaps and ladies—it is not for me to say—but I am sure you will agree that politics should be kept out as far as possible. That is one reason why I suggest that the whole thing should be by postal vote. I was most impressed with the postal vote which took place in Victoria after Jeff Kennett's sacking of the councils and the reorganisation—it was a postal vote and it worked like a clock. We have got this system of an Australian Electoral Commission. We should put the ball in their court, and they would do a very good job of it. I frankly think that that is the best way to do it. That is the best way to find the best person.

Senator PAYNE—Major Ruston, I want to ask you about the postal vote question first of all. Why, when it is such a profound change from our current method of voting, would you support that? I use as an example the fact that in the postal vote for the constitutional convention fewer than 50 per cent of Australians chose to participate. Even if you made it compulsory, how do you envisage enough Australians participating to give it the legitimacy it would need?

Major Ruston—I am well aware that your paper says 45 per cent voted in the referendum. Frankly, if people do not want to vote they will not vote. I think it is impossible to get people to vote if they do not want to vote, and if they do not vote then they sacrifice the right to complain afterwards.

Senator PAYNE—Then wouldn't it be easier to guarantee at least their presence at a polling booth, as one of our former speakers said this morning, by encouraging voting in person rather than a postal vote?

Major Ruston—I have some experience of polling stations and voting and all that; I served for quite a number of years in the United Kingdom as a county councillor and on other sorts of councils, regional bodies and whatnot. It is a deplorable system, the pressure put on people by political parties—and you will know all about this—and it is reflected right into the polling station. But the postal vote stops all that, and I think that is healthy.

Senator PAYNE—So your support for the postal vote is in fact broader than just in electing a President; you would prefer to see postal voting across the entire system?

Major Ruston—I am firmly of the opinion of what I just said. I really cannot add to that. I heard you mention the United States. I really do not go in for their systems or the way their parties traverse that continent collecting money to get their chap into the White House. You can do that in the United States, where you have 170 million people; it is probably the only way to do it. But here, where we have a population of 20 million and a vast continent which is very sparsely populated in places, I do not think that is on. I think the state—and when I say the ‘state’ I mean the Commonwealth—should bear the cost of the election for the head of state. When the figures are produced as to what it would cost, I believe a few people might shake their heads. I know one who would anyway. I already pay more tax than Mr Packer—that is too much.

CHAIR—Now we can agree on one thing.

Senator BUCKLAND—I want to ask one question in relation to your view of a vice head of state. What would their role be? How would we decide our vice head of state?

Major Ruston—I thought that was a very good point which you raised in this paper—a vice head of state. I think it is an excellent idea. I would have him on the same ticket as the head of state, and knock both birds over—they would not appreciate that, would they? We should deal with both birds with the same piece of paper bit of paper; why shouldn’t we? It would save a lot of trouble in the long run. He would automatically fall into the role if the other chap fell by the wayside. I think that is an excellent idea. I do not think you should change that idea; I think it is absolutely excellent.

Senator BUCKLAND—What would their role be during their term of office? Would it be a duplication of the role of the head of state or a shared role?

Major Ruston—I said in my paper—and you have read the qualifications I listed to be a candidate for the job—that if a person is doing a rattling good job, is happy to continue and everybody is happy with them then the system should allow them to go on for a second term. That would apply to the deputy head of state as well. That is pretty sound thinking when you come down to it. After all, Senator, you do it in your political parties. You should know all about this, Mr Chair. I am sure that you do too, Ma’am.

CHAIR—That is a very pertinent comment.

Senator KIRK—In terms of those persons you say should be eligible to stand for the position of President, you say in 20.1 of your submission that the person should be a registered citizen of at least third generation status. I wondered why you came up with that. You also list an age

requirement—that is, that they be between the ages of 35 and 60. It seems to me that that could well exclude some very good candidates.

Major Ruston—I think that is sound reasoning.

Senator KIRK—Could you just elaborate on that for us?

Major Ruston—If you read the very end of my letter you would see that I referred to a Polish ex-serviceman who became British by choice at the end of the Second World War. He used to be one of my general foremen. He said to me: ‘You must go in through the front door and, having been given admittance, you must learn to write, speak and understand the language of your new country. Only then can you be certain you understand the laws.’ Of course to obey them you have to understand them—except the simple ones which are issues of right and wrong.

He and I discussed this issue, and I believe my Polish friend was absolutely dead right. It is the only way to get people who really understand what Australia is all about. You cannot change history. Dr Goebbels used to say, ‘If you tell people a lie long enough, they’ll believe it.’ That was very true, as you all know. And if you tell them a half-truth, they will believe it. But, if you go to the third generation, you will have people who were born in this country, who were raised in this country and who have worked in this country. I do not think people should just knock on the door and come in through the front door, or the back door if the front door is closed, and then be able to hold public office. I think that is a sure way for a nation to decline, and nobody wants that.

Senator KIRK—Indeed. Perhaps you could also comment on the upper age limit of 60 that you have placed. It seems a bit young.

Major Ruston—Let us put it like this: you are talking to somebody who is nearly 90. At 90, you do not really function as well as you used to before your use-by date. At 60, I reckon I was in my prime. The physical decline, which you cannot stop, catches up with you, and at 70 you are on borrowed time anyway. Going to the other end, I think that people have got to not only learn the law but take their place in society. I do not have much time for professional politicians because, in most cases, they have gone into politics at the beginning and they have never had their hands dirty in industry. I do not think that is too good—not for a country of which we are all so proud, Australia, and dear old England, the United Kingdom. That is why I fixed that age. They have got to have experience. Somebody said they have got to rub off the rough edges—put that how you like.

CHAIR—You can do that in politics.

Major Ruston—I must say I have enjoyed my stint.

CHAIR—Major Ruston, thanks for your submission and your evidence. You have left a lot of nervous 60-year-olds at both sides of the table this morning, and a lot of nervous politicians. Is there something else you would like to say?

Major Ruston—No, except that I am very sorry I do not hear very well. But everything up top works except the ears—blame that on the Germans.

CHAIR—You can be sure that we had no trouble hearing you. Thank you.

Committee suspended from 11.48 a.m. to 12.40 p.m.

RUBENSTEIN, Associate Professor Kim, (Private capacity)

CHAIR—Welcome to this afternoon's proceedings. Do you have any comment to make on the capacity in which you appear?

Prof. Rubenstein—I am an associate professor in the law school at the University of Melbourne but I am appearing in a private capacity.

CHAIR—You have lodged a submission with the committee, which we have numbered 448. Do you wish to make any amendments or alterations to it?

Prof. Rubenstein—No.

CHAIR—I invite you to making an opening statement.

Prof. Rubenstein—I thank the committee for this opportunity to present orally to the submission that I have presented, submission No. 448. I would like to highlight the theme throughout both parts of the submission which is that, in any move to a republic, significant concern should be placed on the accessibility for women to the position of head of state and on the nature of the role of a head of state in light of the gendered nature of the exercise of power in society.

The paper is broken up into two parts in order to draw out the theme. The first is the role of the head of state. It looks at the current role of the head of state and analyses the fact that there are what I categorise as public and private aspects to that role and that the combination of those two is valuable and should be continued. The more private aspects, as in the ceremonial aspects, are very important to the role of head of state and should be emphasised, keeping in mind that the role of head of state need not necessarily be constituted by someone who was formerly a constitutional lawyer. The ceremonial aspects draw upon other qualities that people in various roles in society could fulfil and, when combined with the role of constitutional umpire, may make it even more valuable at times to have someone who does not necessarily have a constitutional background. That is the major theme from the first part of the paper in relation to the current powers of the head of state and the gender issues that flow from it.

The second theme, which is in relation to the appointment of a head of state and links directly into one aspect of this inquiry, is that, in whatever system is chosen, strong regard be given to the accessibility for women to that position, given that no woman has ever been head of state in the entire history of our country. Some people say that we should perhaps mandate for the next 100 years that we have only women so as to make up for that deficit. Perhaps a more appropriate way to provide for the concerns would be to have an alternating head of state—that is, whoever is chosen as the first head of state by whatever appointment process, from that time on it would be constitutionally guaranteed that we would alternate the gender of the head of state. That proposal could be accommodated in any of the methods of appointment that have been put forward. I highlight that, from the various ranges canvassed in the discussion paper, mechanisms could be built in to encourage that outcome in any of the methods of appointment proposed. I am

happy to answer any questions that flow from those recommendations or themes that I have developed in my submission.

CHAIR—In your last point you talked about mechanisms to achieve the outcome. What mechanisms would you contemplate, other than a specific provision for alternation?

Prof. Rubenstein—I was talking about the methods of appointment of that person apart from the actual specification in the Constitution that the gender alternate, so if the parliamentary process were followed and the parliament chose the head of state, that might be all you would need to mandate in the Constitution. If you had a process whereby a standing committee were established to encourage nominations, one extra matter that could be built in would be that the committee be gender balanced to assist in that process of drawing nominations. I am saying that, whichever process of appointment is chosen, the issue of equal numbers of women being involved in that process should also be enforced.

CHAIR—You said there are concerns about this.

Prof. Rubenstein—Yes.

CHAIR—You are the one person who has put this issue to us. How do you quantify these concerns? Are they so strong that we would not remove the current head of state?

Prof. Rubenstein—I do not understand the latter part of the question.

CHAIR—We have a female head of state at the moment, don't we?

Prof. Rubenstein—That is true and we could keep the Queen as the head of state, but she does not guarantee a woman head of state. It is not a necessary consequence in terms of the royal system with its preference for males over females. She is a lucky lottery outcome. I am supportive of a move to an Australian as head of state and so I am talking with the underlying acceptance that we remove the current monarch as head of state. We have never had a woman as our Governor-General. Of course, since 1933 an Australian has been appointed as Governor-General, but we have never had a woman in that position.

In terms of the concerns that I have outlined about people's general responses to a mandated system of gender, 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.

CHAIR—Professor Rubenstein, we do not have to rerun all the affirmative action arguments for today; that could take a lot of time on both sides. But we have, for instance, two governors in this country who are women, and there had previously been one in Queensland. Haven't we reached the stage where there is now a greater expectation and recognition of the role of women and that could just about happen automatically without a mandated outcome?

Prof. Rubenstein—I think your statement says the exact opposite. We only have two out of the six. We have never had a woman Governor-General. So the expectations have not fulfilled that result.

CHAIR—Do you not think we have made any progress in the last 20 years?

Prof. Rubenstein—We have made some progress but certainly not enough to be satisfactory. The supposed problems that people articulate in relation to affirmative action are not problems at all. The system has insidiously provided affirmative action for men.

CHAIR—Do you not think that attaching affirmative action to the republican model would make it more difficult to get passed?

Prof. Rubenstein—If there is reasoned discussion—we must remember that over 50 per cent of the population are women—in fact it might make it an even more attractive option to over half of the community.

CHAIR—It is a big qualification though, isn't it—decent, extensive discussion? We are trying to get extensive discussion on the primary issue and that is proving very difficult. What makes you think you would be more successful?

Prof. Rubenstein—This might engage people directly. A lot of people respond immediately to the notion of ensuring that women participate equally. It may encourage them to think more substantively about the significant issues and that the issues are directly related in terms of the notion of having a sense of connection to the head of state. The motivating factor is the Australianness of the head of state. Consistent with that factor is a sense of being connected to the person who is the head of state. Women, who make up half of the population, have often said that they do not feel connected at all to the political process because of the dearth of women in public office. It is nice to see on the committee today two women and two men, but in terms of public power in this country that is not a reflection of the reality throughout.

CHAIR—From my experience I would not presume that women would overwhelmingly support your proposal.

Prof. Rubenstein—From my experience I would say that there would be a lot of support, with respect.

Senator PAYNE—Professor Rubenstein, is there a particular model that you think is best suited to your proposition?

Prof. Rubenstein—I think the model that has the most community consultation is consistent with the themes that have been developed. It does not necessarily lead to direct election, because I think there are some concerns about that, although the discussion paper in relation to campaign financing might be a way of dealing with those. I will refer to the direct election model first. Some of the concerns with the direct election model may be similar to concerns about the nature of the political process regarding access to money for campaigning, and that would be a factor that would discourage women from participating. If these financing issues were dealt with, that might be one way of dealing with it. But I would suggest that a community group established to

draw upon nominations that presented to a parliamentary committee that was made up of equal numbers of men and women may be the most appropriate way of being transparent about women being involved in the process and about achieving the results of alternating men and women and ensuring that those nominated are reflective of the pools of people who are available in the community.

Senator PAYNE—It is an interesting proposition on a number of levels. One of the matters we have been discussing today is the nature of the Federation—that is to say, when you start to put together committees or colleges do you have to guarantee equal representation for the states? If you guarantee equal representation for the states and then you guarantee equal gender representation, is that where you stop, or do you think you have to keep going?

Prof. Rubenstein—I think that is a fair question. I think that Indigenous issues might also be an aspect of a sense of community within this country. But of course women make up all the other subgroups as well, so in that notion of ensuring that you have equal numbers of men and women, multicultural issues or Indigenous issues may not necessarily be mandated but might be stated as principles to be encapsulated within that mandated gender and federal balance. The recently established International Criminal Court is an interesting guide for taking into account similar issues of representation. There are mandated aspects regarding gender and federal issues which are the same as ours, but within those there are other matters that people who are responsible for appointments are meant to take account of, and those could be stated without being mandated. The mandated provisions of gender and federal representation would be the minimum that would need to be guaranteed. I think a statement about other matters that need to be taken into account, and being transparent about that, would enhance the democratic and pluralist process.

Senator PAYNE—In your submission, on page 2, still under the heading of the role of head of state: I am not sure what you are describing when you use the turn of phrase: ‘This also lessens a singular political brute character role of the Head of State.’ What do you mean?

Prof. Rubenstein—I am talking in terms of the role of constitutional umpire and the whole question of the dismissal power, that that is the notion of having the ultimate say as to who wins a political contest. I am discussing that there are two aspects to the role of Governor-General: there is a ceremonial role and there is a role of constitutional umpire. The constitutional umpire might be categorised more closely as one in a contest between wills—which is what happened in relation to the dismissal—in that there are two people in power who are not prepared to give up that power so the umpire is called in to act, as in terms of the brute force of determining who wins out over that struggle.

Senator PAYNE—In relation to your proposition that we alternate, based on gender, the head of state. What happens if there are no good chaps?

Prof. Rubenstein—The broad principle is that if we looked beyond the issue of former governors and constitutional players, that if we looked throughout the entire community, it would be difficult to find not one single person of the male gender.

CHAIR—There’s Eddie McGuire!

Senator PAYNE—We had a big advocacy for chaps this morning, so I was just pursuing that.

Senator KIRK—Thank you for your submission, Professor Rubenstein. On page 2 of your submission you talk about the more controversial area as being reserve powers, and in the second paragraph you say:

The broader those powers, the more reason not to have a popularly elected Head of State. The narrower those powers, the less controversial or problematic the direct election of a Head of State.

I think that is right. I wonder if you could expand upon that and say how you think the method of selection or appointment of the President will impact on not only the reserve powers but the powers of the President more generally.

Prof. Rubenstein—To expand on that notion, the broader powers would mean that there would be more contest between the head of state and the head of the government of the day. If that were the case then there would be less reason to have a directly elected head of state because there would be more contest between the will of each of those positions in terms of the democratic legitimacy. So if there were two people—both directly elected—exercising significant powers, that would cause problems in terms of who would have the ultimate source of power. So I would be less enthusiastic about a direct election if the republic model chose to give the head of state broader powers.

In terms of a desire to give a head of state broader powers, I think there is a way of doing that and involving the community without direct election. Either way, the codification of those broader powers is fundamental to deal with any potential constitutional crises, so you would need those powers to be transparent in the constitutional document. But if we had a process whereby there was a committee of people taking into account the issues that I have already raised this morning that appointed a head of state that alternated in gender, then I do not think that would be as problematic as long as community participation in the process was ensured without a direct election model.

Senator KIRK—Have you thought about a group, which perhaps I could call an ‘additional constitutional umpire,’ to adjudicate—or not really adjudicate—between the Prime Minister and the President, if that is what we are going to call them? We heard evidence yesterday from Sir Gerard Brennan and he suggested the idea of a constitutional council to whom the President may look if he or she was in any doubt as to the exercise of his or her powers. He suggested that the constitutional council should provide some advice—or perhaps even a ‘certificate’, which was the word that Sir Gerard used—upon which the President could then act. Have you thought about that idea?

Prof. Rubenstein—I have not thought directly about Sir Gerard Brennan’s idea but the late Sir Richard McGarvie’s model had a similar notion. I do not have any specific problems with the concept of a constitutional council but I have problems with Sir Richard McGarvie’s idea of the members of that council being confined to former governors or constitutional lawyers, because that inherently favours men over women being members of that council. I would also say that the council would not necessarily have to be made up of lawyers. Similar to the notion that I was talking about earlier in relation to the broader role of the head of state, that council—even

though it is called a constitutional council—should not necessarily be made up solely of constitutional lawyers.

Senator KIRK—How would you see that council being appointed or elected? Would you prefer to see election?

Prof. Rubenstein—No. Again, as in the discussions earlier about community involvement in the choice of the council, I would see participation being through the community in that way rather than by direct election. I think that would be a more appropriate way, recognising that the nominees did not have to be constitutional lawyers. People who had exercised judgment and wisdom in their professional lives would be equally capable of exercising that judgment and wisdom in the context of a constitutional issue.

Senator KIRK—So you would see a role for the public to nominate persons to this constitutional council—not necessarily to select them?

Prof. Rubenstein—Yes. The public could nominate them. Depending on the numbers on the council, I would recommend a minimum number of women. If you had three people on the council I would recommend a minimum of one woman. If there was an even number I would recommend that you should have even numbers of men and women.

Senator BUCKLAND—I have a couple of questions. In reading your submission, Professor Rubenstein, and being a bloke, I see the very strong bias you put on lack of representation by women. I do not say that critically because my belief in equal opportunity for women is on the public record. So do not misinterpret me, but I am somewhat critical of your submission on the basis that it is singularly focused. Are you saying that we are not doing enough about getting a female head of state? I see the idea of alternative male/female adding complications to the system, and it worries me greatly. I wonder how you would feel if we were to pursue that properly.

I do not want or expect to be asked to be our governor or head of state, but I am excluded at the moment because I am Catholic. My understanding is that I cannot get that. If you were going to broaden it out to, say, gender, must we broaden it out sufficiently to include religion? Sexuality would also have to be put in because we have these groups who are also becoming very vocal in society saying that they are a minority group—women are not—so they should be included too. How do you feel about that?

Prof. Rubenstein—With respect, Senator Buckland, those groups are part of our gender groups in society. They are not mutually exclusive. You can mandate women without restricting someone on the basis of their religion or otherwise.

Senator BUCKLAND—I stand corrected on my comment that my being a Catholic would rule me out of being considered. So I might put my name forward—but that is another question!

Prof. Rubenstein—In relation to the broader principle underpinning your question, you say that it is singularly focused. It is singularly focused and highlights gender issues, but not purely from a question of affirmative action without a context. It is singularly focused for the very purpose of what this discussion on a republic is about, which is about a connection between the

people and the head of state. In being singularly focused it is not exclusive of all the other matters we are talking about but is linking gender to all those other matters that we are talking about.

In relation to other groups within society and gender, women constitute more than 50 per cent of the community as opposed to those other groups you have referred to, but as I said earlier they are not mutually exclusive. We are emphasising gender as a fundamental aspect of our society but it does not exclude those other factors that you talked about earlier, and beginning to think in terms of the diversity of gender encourages and is certainly a step towards thinking about those other issues and reflecting the nature of our community today.

Senator BUCKLAND—You are right, we have not had a woman as head of state. We do in South Australia—a wonderful governor. I wonder how you would interpret that. We have never had a female prime minister. Do you think we should be alternating the head of our government? I say that quite seriously. Certainly my party is making great efforts to try to get that gender balance right, and trying to do it so that we get people who are genuinely committed to what we are doing. We are not looking for people just to fill numbers.

Prof. Rubenstein—That is probably a subject for its own inquiry. The political process we have today needs substantial review in relation to gender. Certain political parties, as you have identified, are trying to deal with that issue internally, but perhaps there are other ways apart from the party system, which has dominated our political structure for so long. The party system is one way to deal with that but perhaps there are other ways. Our Constitution does not even refer to the Prime Minister so the Constitution would not currently be a way. It could be one way to amend our current political process but I certainly agree with you, Senator Buckland, that it is about time that more attention was given to issues to do with gender in our political process.

Senator BUCKLAND—Thank you.

Senator PAYNE—Professor Rubenstein, slightly away from the point we have been discussing, you make an observation on page 3 of your submission that there is:

... dissatisfaction with the current nature of our political framework and exercise of power.

You go on to use as an example parliamentary question time. I want to take you up on that for a moment. It is my observation that it is the representation of the party political and parliamentary systems by the media, which is overwhelmingly focused on one hour in any given parliamentary sitting day, that results in that dissatisfaction, as you term it, not the nature so much of the political framework and exercise of power itself.

Prof. Rubenstein—So your point is that the broader political picture is better for women?

Senator PAYNE—Yes.

Prof. Rubenstein—I think that point is an absolutely valid one. It does not deny that the parliamentary question time is a problem. But you are saying that the broader political picture is a better one. I have written an article called 'From Federation forward: representations of women in the Australian constitutional system' with a colleague of mine, Deborah Cass. In it we discuss

the meaning of representation. One is being represented in the ability to vote. One is being a representative: the ability to be a member of parliament. The other is representations of parliament. It is the latter that my theoretical work draws from. I agree with you that most of the depictions of parliament are either from question time or from the more adversarial aspects of parliament. Even though they may not be properly representative, they are representations of parliament that the public see a lot of. Perhaps our attention should also be towards the media showing the nature of committees such as this, which is made up of equal numbers of men and women, to enhance women's consciousness about the political process. Women in parliament are perfect role models for other women, but there is a limit to how much they can get out and talk to the people, to women and to schools about their roles in parliament. I see that as being a very important responsibility of women politicians. I am appreciative of all those women politicians who take on that role.

Senator PAYNE—Thanks.

CHAIR—Thank you very much, Professor.

[1.07 p.m.]

CHAIR—We are about to embark on something that very rarely happens with parliamentary committees—this may in fact be the first time for this committee—and that is to allow those who have made submissions and those who have not to have a say, even though it will be a short one, at the microphone. Before I ask for contenders I want to say a few things. This is a short period. It comes on top of the 600 or so submissions we as a committee have received so far. It comes on top of a draft program that at this stage takes us to every state and will take us to all territories—and the program has not been completed. We have had those 600 submissions with very little publicity. I suspect that, after the last 24 to 48 hours, we will be getting quite a few more submissions, and we will get more as the process continues.

What we intend to do is give people the opportunity to speak for just a short period, three minutes, to express a point of view. The brevity of the time does not mean the view will not be taken as seriously as other views—quite often you find that people who talk longest say the least—and the three minutes will give us an opportunity to hear people who otherwise would not fit into a program. Also keep in mind that this committee has over the last 12 months conducted or is in the process of conducting about 16 different inquiries into legislation and issues such as this. Most of us appear on this committee or on the legislation committee, which is the other side of the coin of this committee. Having said that, we will probably have time here for at least 10 volunteers.

David Morgan—I am a professor of law in Cork, Ireland; so I have come 4,000 miles for every minute I have to speak! We have a President in Ireland who has been referred to as one of your precedents. I would like to say a few words about that, as it may be of interest and helpful to you in your deliberations on this important subject. First of all, in respect of this proposal regarding the role of President as a guarantor of democratic government, we have something rather like that except that it is rather more sharply focused. I naturally suppose it would be in any draft that you would put to the people. We find that the powers which make up our equivalent of that have substantially never had to be used because the Irish government is a rather well-behaved constitutional government and it has the courts to keep it within the law anyway. The sorts of things that have not been used are provisions for short-circuiting the Senate, which is a much lesser creature in the Irish constitution than in yours. If that were to be done the President would be involved, having a discretion to control the government.

The aspect that I think is of interest to you is a provision by which when a bill is brought to the President for signing, if the President considers it to be unconstitutional then he does not sign it; he refers it to the supreme court, which has 40 days Lenten period to decide. If it decides that the bill would be unconstitutional then it so advises the President and he does not sign the bill. Therefore, you are less likely to have unconstitutional legislation walking around the place and doing harm. That seems to me to be quite a useful provision, which you would need to consider. It has pros and cons, which I do not have time to go into, but it seems to me that that is much better than the kind of generalised discussion I hear in Australia as to whether the President should simply decline to do that which he regards as illegal or unconstitutional. That proposal, I think, comes from an era when public law was much less well developed than it is now and you could not rely on a court to have a view on things.

The danger if you have something like this proposal that the President can refuse to sign a bill is that the court may take a different view from the President, so you would in fact have the President frustrating the government from doing something that is in fact constitutional. How do you know whether it is constitutional or not? The body to decide that is obviously the High Court of Australia, not the President. So I would suggest that you would use the President in that way, as a facilitator, but leave the last word with the court.

The only other thing I have to say is that we have an elected President. There is a danger that if you have a President who is elected by all the people, she will take the view that she has authority to disagree with the government in all kinds of areas. We have only had that for one part of the period, from 1990 to 1997 when Mary Robinson was President; otherwise, our presidents have on the whole toed the line. It seems to me that the Irish presidency is a fairly small office and if you have to have an election of all the people for it, there is a danger that the President will regard herself—you understand I am using the term ‘she’ because our present President is a woman—there is a danger that they will take the view that they do have some sort of authority and you will need to build in safeguards against that. I think that is something that needs to be considered.

CHAIR—Thank you very much. I am pleased to say from the committee’s perspective that we did not have to pay witness fees to get this witness before us! It would have been expensive.

Fred Carter—I have put in a submission. I start with some very simple propositions. The first is that we can be very proud of the way the system of government has worked in Australia. So why change it? Most of us, I think, no longer want to be governed by a queen who lives in another country or, even worse, by the representative of a queen who lives in a foreign country. The referendum model that will get up, or is most likely to get up, is the simplest. That is the reason I am starting with a simple proposition. To make that happen, we need to change the smallest number of things and add on the smallest number of things. The smallest number of things to change is simply to change the title of Prime Minister to the title of President. We do not have a conflict of interest and a conflict of power between the President and the Prime Minister, because it is the same person. The sovereign becomes the parliament, so the President only rules while he has the confidence of the parliament. Everything else flows from that. We do not need to add on extra rules which will sink the referendum, like gender equality. I come from a party where our best leaders have been female. The women have been twice as good in our party and they have naturally risen to the top without any legislation. I am happy to take questions on that, but it is a very simple and basic proposition.

CHAIR—Thank you very much for the point.

Tom Spall—I am representing myself. I believe in the republic. I think we should have a republic and the way to proceed is to have a plebiscite to find out whether the Australian people want that. Whether the President is then chosen by direct election or by appointment does not matter to me. Given the choice of no republic or a President elected directly, I would go for the latter. If the President is elected directly, problems arise in that it is likely to be a political process. So it does seem necessary for the power and the role of the President to be circumscribed and to be defined rather well so that the electors understand that it is a very limited position that they are electing the person to.

I see the role of the President as similar to that of the present Governor-General. It is largely ceremonial and formal, with one major exception: the use of the reserve power. The use of the reserve power is a very important matter. In our Constitution the role of the Senate is important, as is the role of the House of Representatives. When the two are deadlocked there is a need to break that deadlock, and that is done by the use of the reserve power. It was used in 1975 to good effect because we had a bloodless transfer of power and we had an election in due course so that the sovereignty of the people was eventually established. The President would need to use that reserve power. The problem with today's system is that ultimately the Prime Minister can refer to the Queen and seek the removal of the Governor-General, which potentially drags the Queen into a terribly embarrassing conflict under the Australian Constitution. That is very unsatisfactory. The way to avoid it is, firstly, not to have the Queen as head of state and, secondly, to accept that the President will have the reserve power to be used when needed.

CHAIR—Thank you very much. That was within three minutes, too.

Darilyn Adams—I am holding up a picture of the Queen, so you can see where I stand. Thank you for the opportunity to speak. Being Australian and having the right of free speech, I can say that I think this inquiry has been a waste of time and money. Millions of dollars could have been better spent on education, hospitals et cetera. I do not think it is fair that only pro-republicans and no constitutional monarchists are on this committee; therefore it is biased and not democracy in action.

Our present system of government should be an alternative in this inquiry. Australians have already voted for the constitutional monarchy to stay. It is the best system in the world; time has proven that. By the way, Kim, we have had a female head of state for 50 years. Countries in the past thought that they were being modern and removed the monarchy, such as Germany et cetera. I cannot go into any detail on this because I do not have time. I am rushing this and being brief. They put hell in its place, ending up with the evil-isms of dictatorship, Nazism et cetera where people had no freedom. Therefore if we get republicanism we could end up with a dictatorship too.

Power corrupts and absolute power corrupts absolutely. The monarchy is answerable to God for their actions whereas the leader of a republic is answerable to nobody. Thank God we have a Christian monarchical system. We could get a regime in our country where people, especially women, do not have the freedom to do what they like. Our forebears fought for years to get our freedoms and equality—for example, the vote. Being a woman in a free democratic country, I am alarmed and horrified at the life of women in male-dominated societies in countries overseas—where the males run the home and the country. I am sorry I am shaking, but I am not used to this.

CHAIR—It is coming across pretty well.

Darilyn Adams—Women there are subject to so many rules and regulations in every aspect of their lives and have no freedom compared to women in Western countries. They need the permission of a male carer to do anything and must obey him. They can be physically punished. They must be covered up with a sheet, usually black.

CHAIR—Ms Adams, you are getting close to the end of your time. I think you have half a minute to go.

Darilyn Adams—I feel sorry and startled to see the women like this—all hidden away. They are literally nobodies. They are not allowed to do many activities we take for granted, such as swimming, dancing et cetera. Their men do not want women in ministerial leadership roles—for example, as head of state. I dare say they would not approve of Her Majesty the Queen. Their system of government is a threat to our way of life and values.

CHAIR—Ms Adams, I will have to stop you there.

Darilyn Adams—I beg you, please let me finish.

CHAIR—How can I resist.

Darilyn Adams—Our Western culture would be taken away if an Eastern-minded power got into government as they criticise the way we live and think it is disgusting.

CHAIR—I am sorry, Ms Adams. I really have to stop you there.

Darilyn Adams—The Islamic way of life is totally different to our way of life. It is harsh and stricter.

CHAIR—Ms Adams, I will have to stop you there. We will have to move on to the next speaker. I call Kerry Lovering.

Kerry Lovering—I wish to submit that the process of a second constitutional convention should not be supported by this inquiry. The first constitutional convention was new, innovative and great fun to watch, although flawed in various ways. A second ConCon would be an anticlimax, expensive and a waste of time. The practical problem would start with the nomination of candidates for the ConCon. It would be undemocratic to restrict participation in the election of such a body. The process would be a Senate style election, with no real leadership for any group. The result would be a very well organised monarchist group and a rabble—I use that term as an endearment—of republicans of all sorts and persuasions. The monarchists' main aim would be to overturn the results of the plebiscites. The republican rabble would be hopelessly split on details.

The only sensible, practical and cost-effective process to advance a republic would be to refer the results of the plebiscites to an all-party parliamentary committee assisted by constitutional experts. Within several months of the plebiscite process—and six to nine months should be sufficient—this committee should have drafted a bill or perhaps two bills and it could then hold public hearings, in a short time frame similar to those you are now conducting, to explain the details of those referendum bills. The final bill, as amended after consultation, should then be presented to parliament for the required parliamentary process for a referendum. This means parliament actually owning the bill, and I think that is very important, as well as the people owning the bill. The Australian public charges its elected representatives with the responsibility of running the country. It is the proper group to draft a bill for this important referendum.

Mark Dossator—Thank you for the opportunity to provide input to the senators and the Senate. I speak on my own behalf. I do not want to talk here about models particularly. I think that the Australian people have shown over a couple of hundred years that we are sensible enough to devise a system that can work, and I think there are plenty of other people who have put up models in this place. I would just like to say that as a fifth-generation Australian with a sixth-generation couple of littlies, one of whom just started school this year, I have nothing against the British monarchy and I think we will always have ties with Britain, but I do not see that it is relevant to modern-day Australia. With respect to the lady who spoke earlier, you have a British monarchy where men are worth more than women; where religion, or a particular religion, must be adhered to. I do not believe that is an Australian way of life. I believe it is contrary to our Constitution as it stands. The British parliament and the British people can do something about the monarchy if there is a problem, but the Australian parliament and the Australian people cannot, and I do not believe that is acceptable in a democracy.

I think the important issue is part of the process of how we come to making a decision about a particular model, whatever that is. I think part of the lesson that should be learnt from the 1999 referendum is that a lot of Australians simply did not understand our Constitution, our system of government and how everything worked. I believe that we should have a process which educates people so that they understand the difference between a Governor-General and an executive President or a Governor-General and a Prime Minister. A friend of mine—a doctor—who I thought was fairly intelligent and well educated did not understand that what was being proposed in that referendum was replacing the Governor-General. I think it is important that people understand the process, understand where we stand and therefore what is being proposed. I hope that the committee will look at having some sort of civic program in the lead-up to that process so that people are making an informed decision, regardless of their views. The important thing is that we do not have furrphies, misconceptions and lies which can muddy the waters.

The last thing I wish to say is that I do not think we should have a ‘President’. I think we can design our own word or use some other term, whether it is a head of state or perhaps, in the spirit of reconciliation, an Aboriginal word for ‘senior leader’ or ‘respected elder’. We might have to work out which Aboriginal group, but perhaps from Canberra would be a good step. We can have our own word. I think ‘President’ carries its own baggage in people’s understanding, with people thinking about French presidents or US presidents or other things. We are not the US, we are not France. We are Australia. We should be completely by ourselves, but we can still be friends with those who were part of our formation. Thank you very much.

Diane Teasdale—I am from Shepparton in Victoria. All of the talk here and all of the questions and what have you are about how we can change from our constitutional monarchy and alter it to a republic. But we have heard nothing about the possible existence of any mechanism that would simply abolish our Constitution. Some time ago I was given some information, which I have attempted to follow up, that it is possible that parliament itself could do this under the Westminster Act. If we go ahead and the Australian people say, ‘Yes, we would like a republic,’ is it possible that, while they believe that under our Constitution they will have the final say, they may not if this mechanism exists? I think this is something that we all need to have a good look at. Is there a mechanism? The way this inquiry has been set up indicates to me that there is something else that is happening here that the average Australian does not know about.

To suggest that this has been a public inquiry is not really supported by the facts. I am a fairly aware Australian: I get emails from all over Australia, and I read papers and quite a lot of publications. It concerns me that the only way that I have been kept informed is through the Monarchist League. I am not a member of the Monarchist League, but they have kept me informed because of my role as president of a political party, which is the Australia First Party. Otherwise, I would not have any idea that all this was happening. Even up until yesterday, we could not find out what time this was happening today. It is all right if you live in the city, maybe, and you have not got a job or commitments, but for those of us who needed to travel—and we had to get up very early this morning to be here—we only found out yesterday through the Internet, through me and through Sophie Panopoulos, the timing of this event. So many of our members simply could not be here.

I will make the point that Senator Buckland, when I spoke to him before, was a little defensive when I pointed this out to him. I went back to a document that I got off the Internet yesterday. It was a Senate document that said:

The committee is also required to facilitate wide community participation in this inquiry by conducting public hearings throughout Australia, including in rural and regional areas.

Now, this is not rural; this is not regional. Perhaps Albury, Shepparton or Bendigo—one of those areas—would be appropriate. Certainly the people who are on my side of politics would have liked to have been more involved. We cannot be.

CHAIR—Thank you. Ms Teasdale, that is over three minutes.

Diane Teasdale—I will just finish off with one little thing. Could I be so bold as to suggest that, if this is a genuine inquiry, an honest finding may be that we have the best system of government and what we lack is the people of quality to honour it.

CHAIR—I will make two points at this stage. The person who was concerned about millions of dollars can be assured that there are no millions of dollars being spent in this inquiry. In terms of publicity for this inquiry, it has been advertised in the normal way and has probably got a lot more publicity than most other inquiries that have been conducted by the parliament. That is just for the record.

Ka-sing Chua—I am a general practitioner in Mitcham. I would like to congratulate this non-partisan Senate inquiry. I am a relative newcomer. I came to Australia in 1970 as a student and had my vintage year in Monash University, seeing all the ups and downs of Australian politics. I was always very interested in politics. I will come back to the point, but let me introduce myself a bit.

CHAIR—Only if you can do it within three minutes.

Ka-sing Chua—Let me know when my three minutes are up and I will quietly give up the microphone. I am a new Australian. I become an Australian citizen in 1976. Why I chose to stay in Australia was a very interesting experience for me. When I came here Australia had the White Australia Policy. If that were still in place I probably would not be here. I have been following our political leaders. For the last 30 years, I have admired our Australian political leaders. It does

not matter what political persuasion they are, they are a very good bunch of people. They can see that when it comes to the common good of the nation, they will show support in a non-partisan way. The abolition of the White Australia Policy is one example.

Following that, we had a multicultural policy, which was institutionalised by Malcolm Fraser, Whitlam and Keating. You name it, they liked it. Even John Howard likes it, although he sometimes has misunderstandings on that part. But, overall, we have a good bunch of political leaders. I hope that we continue to have that. Recently, Sir William Deane, our former Governor-General, said that in the last few years we have had some signs that our harmony is being threatened by so-called wedge politics. I agree with that. We have to try to avoid wedge politics.

In this debate, I want to appeal to everyone to try not to play wedge politics. We had enough acrimony in the last referendum, in 1999, among republicans, among monarchists and between republicans and monarchists. I think that in the last 30 years we Australians have changed so much in our outlook. We have become so modern and global. We can actually sit down and talk about this issue as part of a non-partisan Senate inquiry. One of the things I admire in politicians is that they can have a non-partisan Senate inquiry and work for the common good of all citizens, regardless of who they are.

CHAIR—That is a very good point to finish on.

Ka-sing Chua—I have a submission. You can all read my submission if you want to. Thank you.

John Flower—I appreciate the opportunity to be here this afternoon. I do not represent any organisation but I am a member of the Australian Republican Movement. According to George Williams's article in today's *Age*, process, process, process is the vital matter. I fully agree with that. I think a one-question plebiscite to begin the process will suffice—namely: do you approve of moving from a constitutional monarchy to a republic with an Australian head of state? The head of state should be appointed, not elected. I have given reasons for that view in my submission, which you already have. I think the appointment should be by a two-thirds majority of a joint sitting of federal parliament. Therefore I also believe that nominations for the position should be made by parliamentarians. But of course it should be possible for anybody to submit to a member of parliament a suggestion for appointment as head of state.

I believe that the next part of the process should be the establishment of a constitutional advisory commission to undertake the work described by a previous speaker this afternoon: firstly, education, and, secondly, consideration of the alternative models for moving to a republic. That commission should be 95 per cent elected and should undertake that important work long before the preparation of a bill for a referendum is put together. That is enough for me to say. Thank you for the opportunity.

Barry Woods—I am from Devenish. Basically, I am a concerned citizen. The first thing I would like the committee to take note of is the lack of advertising. It has been difficult for us to appreciate what has been going on and when et cetera, so I would like it to be better advertised. I will get to the real issues now. I consider this is a waste of time, effort, energy—everything. We had a referendum less than five years ago, and there was a very strong no result. So what it is? It is no and it cannot be taken as anything else.

We have been questioned along the lines that we need an Australian head of state. In my opinion we do have an Australian head of state. Our Governor-Generals have been Australian for years. They do not go running home to England to the Queen or the King. They are truly independent. Republics around the world seem to be falling apart. Italy, for instance, is still hanging together, but how many elections has it had since becoming a republic? Most nations around the world that have lost a monarchy during the last couple of centuries and gained a republic have had quite severe revolutions—up to 20 million deaths—such as in France, for instance.

With regard to the election of a President, I see conflict either way we go. If the President is popularly elected, who is the king leader—the President or the parliament? If the President is elected by the parliament, isn't he just a puppet for the parliament? In my opinion it creates problems. With regard to plebiscites, they are not even in our current Constitution so how can any note be taken of a plebiscite? If anything is to happen, there must be a properly arranged referendum, like we have already had. It is over—no. Thank you.

Maurice Alexander—I live in Barwon Heads, Victoria, the setting for *Seachange*. Hopefully my submission—which is way down the list: about 300 and something—has been received and will be available in Word format, I am told, fairly soon. The submission follows up both my attendance at the Corowa People's Conference and my later attendance at the Brisbane conference, where this committee was first put forward by the Democrats. At that conference I put to Senator Vanstone the fact which is no doubt known to you as senators that under section 128 of our present Constitution it is quite possible for the Senate to initiate a bill to go to a referendum—it has to go through the lower house, but it can be put to the people even if it is rejected by the lower house. I am suggesting to this committee that that is a very positive step that they could take in the direction of the process for moving towards a republic. In the long run, that process must be to change the Constitution. We all realise that nothing can happen until we get to a point where a referendum is proposed to the people and a majority of the people and a majority of the states agree to it. So it is pointless putting up all sorts of out of the way propositions that have no hope of passing a referendum. What I am suggesting, too, as the first thing is that the main process can also be changed.

My underlining proposition is that we really do not need a change to the way in which this country is governed or has been governed for the last 50 years. I am quite in agreement with the large number of people here who say: 'Be very careful. Don't change things that are all right.' What I am saying fundamentally is that we need to rewrite the Constitution. That does not mean that we need to change—in fact we should be very careful to retain—those parts of the Constitution which are good and which are democratic, of which one of the main ones is section 128. That is the referendum process, which is the most democratic way that there is of having a constitution.

I am also suggesting that, in the long run, we should change the beginning and the middle of the Constitution. The main thing that needs to be looked at first is chapter III. It says two different things at the same time, one of which is not consistent with the way this country is governed. It says that the monarch is the king, is the ruler—in other words, we are under a sovereignty of the British monarchy. That is what the Constitution says. In fact, as other parts of the Constitution say, we are governed by a democratic system, which revolves around another section of the Constitution that says it is the House of Representatives, directly elected by the

people. We operate under a system where we elect the House of Representatives. That election results in a group within the House of Representatives having a majority, and from that majority is chosen the cabinet, and that cabinet becomes the ruling cabinet with the Governor-General. The import of my submission is in its detail. I hope I have given enough indication of its important points to bring it to your attention.

CHAIR—And it is on the Web for anyone else. Thank you very much. The last person on my list is a former federal minister, the Hon. Neil Brown—a good person to end this hearing on, given his current responsibilities.

Neil Brown—Thank you. Mr Chairman, I think it was unfair of someone to criticise the committee for being biased, but could I warn you, with respect, about the way this is being done, and I would like to object, with respect, to the way it is being done. Firstly, I rang your man who is manning the telephones at the committee office in Canberra today who told me that this meeting was not advertised. It was not advertised, according to him. You say that it was; he says that it was not.

CHAIR—I said the inquiry has been advertised in the normal way. Not a paid advertisement but a press statement went out for this committee hearing today and yesterday in the normal way.

Neil Brown—Yes, but it has not been advertised.

CHAIR—The inquiry has been advertised, Mr Brown.

Neil Brown—I am sorry, this public meeting has not been advertised.

CHAIR—It has been publicised.

Neil Brown—It is, with respect, very unwise to try to embark on a public consultation exercise without telling the public what you are doing, because you will not get public support if you conduct it in that way. Secondly, in relation to your web site on the Internet—and I am trying to be constructive here; I pursued this myself only because I read Professor Williams's article in the paper this morning—the Senate web site has a section on committee public hearings. It has the Sydney meeting announced; it does not have the Melbourne meeting announced at all. So there is no advertisement. There is nothing on the web site under the committee program, although there is with respect to some separate entry on the Internet concerning your committee. I think those things, with the greatest of respect, are a very bad way to start off if you are looking for public support. As someone who wants to see no change whatsoever in the Constitution in this regard—and I am not being clever when I say this—I urge you to continue on this because what you are doing is divorcing yourself from the public view. The public view is that they have already voted on this, and they said no. That remains the public view.

Finally, so that I do not take up any more than the allotted time—although I must register as a citizen my concern that we as people are being hemmed into half an hour of three-minute bursts on this subject; I do not think that is very wise at all—could I simply say that when we did the rounds of Australia on the consultations on section 57 of the Constitution—that is on the deadlocks between the Senate and the House—at the end of each meeting I asked for a straw

poll, being at least some way of getting a view. Will you ask this company here today what their reaction is to the issue: is there a majority in favour of a change or not? That will at least give you some view, albeit not a scientific one, of the prevailing opinion here.

CHAIR—Thank you. For the record, as Mr Brown would realise, having been on parliamentary committees in the past, the process for this one is no different from the process for others that have been run for decades. The committee inquiry is advertised and when a hearing occurs press statements are put out. In respect of this one, yesterday in Melbourne channels 7 and 10 would have covered it, the ABC covered it on radio and television, and a press statement was put out in Sydney but it was covered in Melbourne. I hazard a guess that we probably have more people coming to this inquiry and putting more submissions to it than Mr Brown is getting through his process. On that note, I thank everyone for their submissions. We will continue to go around the country and we will get more submissions. Thank you very much.

Committee adjourned at 1.51 p.m.