



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

**Reference: Inquiry into an Australian Republic**

WEDNESDAY, 19 MAY 2004

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**SENATE**  
**LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE**

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

**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, Payne and Stott Despoja

**Terms of reference for the inquiry:**

To inquire into and report on:

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

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**Committee met at 9.32 a.m.****TEEMS, Mr Howard Alvin, (Private capacity)**

**CHAIR**—I welcome everyone to the Senate Legal and Constitutional References Committee's inquiry into an Australian republic. The inquiry was referred to the committee by the Senate on 26 June 2003, and it is being conducted in accordance with Senate terms of reference and rules and procedures. The committee has received some 700 submissions for this inquiry. The terms of reference of the committee are to consider, amongst other things, the most appropriate process and alternative models for an Australian republic.

Witnesses are reminded of the notes they received relating to parliamentary privilege and the protection of official witnesses. We have further copies for the witnesses with 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 all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that we are given some notice of that, if they so desire.

Welcome, Mr Teems. You have lodged a submission with us, which we have numbered 100. Are there any alterations or amendments you want to make to that submission, or would you like to just start off with an opening statement?

**Mr Teems**—I have one alteration I would like to make in response to query No. 27. I had a second thought about the wording of a proposed plebiscite. It seemed to me that 'should an Australian head of state be' might not be clear to some voters in that they might not realise that they would have more than one choice, so I would like that to be replaced with 'would you support a republic if the head of state is'. That is all.

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

**Mr Teems**—Thank you, yes. First, I would like to quote Kate Carnell, who was a delegate at the Constitutional Convention. On the last day of the convention she said:

I believe that by supporting this cobbled-together compromise, we will be putting the whole basis of a Republic back, back by ten or twenty years. I believe very strongly that one of the principles of democracy is that people are suspicious of government. This model though is based upon the whole premise that governments are suspicious of the people, that they don't trust the people to make the right decisions. I believe this turns democracy totally on its head. I can't bring myself to vote with the Monarchists here; I can't bring myself to vote for a model that I believe will be overturned by the people that isn't right, that isn't a cobbled-together bad compromise. I will be abstaining.

I have a short statement as well. I should like to impress on the committee that altering constitutional arrangements and choosing our own head of state is not just a logical exercise. They are, by nature, more complex than approving or rejecting a proposed trade treaty or tax law revision. Sentiments of national identity are involved. Therefore, it does not matter how close the McGarvie model is to our current arrangements or how many additional safeguards have been added to the Keating-Turnbull model; if the Australian people feel excluded from the process, there will be little support for either one.

Several of the submissions that have been lodged are from royalists who argue that the committee's aims are futile and a waste of money. To some extent, I must agree. That is why it is important to gauge popular support for moving to a republic. That said, I believe that a simple yes or no plebiscite on whether Australia should become a republic is too open ended. The polls that Mr Keating was fond of quoting showed a vast majority wanting the head of state to be an Australian, but that did not translate into victory in 1999. A little thought in the phrasing of the question is required in order to secure an accurate result.

My idea is to let voters identify which of the proposed models they would be willing to support. It could be none of them for a committed royalist or all of them for a zealous republican. Most people would probably fit somewhere in between these extremes. Work could then begin on finalising the model that has the most chance for success in a referendum, if any. If none of the models outpoll the status quo, let us drop the issue for the time being. That would indicate the people are just not ready for a republic yet.

Regarding codifying the reserve powers, I feel obliged to make one observation about the crisis of 1975. Would it not have been simpler if the Governor-General had used his constitutional powers to dissolve parliament directly instead of installing a minority Prime Minister to advise him to do so? Furthermore, the Commonwealth government would not have been left in a dysfunctional state when the Indonesian army marched into East Timor. What happened polarised the nation, with the effects still being felt today. It inevitably reappears when the republic is being discussed, as we are doing now. The path ahead is not going to be an easy one. I commend those republicans who are helping to keep this important issue alive.

**CHAIR**—Can I start by seeking some clarification about the process that you would prefer? At this stage, on the table is a process of having a simple question first: 'Do you or do you not want an Australian head of state or an Australian republic?' You have problems with that. How would you kick off the process?

**Mr Teems**—I think that it would be better to ask what kind of republic people might want to support or would not support. There are four options given in the discussion paper—I know the ARM has circulated five options. It would something along those lines: whether they would support a McGarvie model, say, or parliamentary appointment or an electoral college or direct election.

**CHAIR**—Are you suggesting that maybe five models be put to the public and they can tick one box or another or none?

**Mr Teems**—That is right.

**CHAIR**—What would your second step be after that? What if, for instance, in a majority of states one model was preferred but over the whole country another model was preferred?

**Mr Teems**—That would be a problem, wouldn't it? I suppose one would have to go with what was the best overall. Of course, the Constitution does require that an alteration pass both ways.



**CHAIR**—The other kick-off question I have is that, of the models canvassed at the Corowa convention, you go through them all and seem to have problems—as a lot of people have—with many of them. Is there one that you prefer? For what reason?

**Mr Teems**—I am partial to direct election, I would say. That is mainly because I feel that is what the Australian people want. After all, it is the Australian people's government and I believe that we should respect their opinions and beliefs. If that opinion changes over time then I would have to take that into account.

**CHAIR**—That is a fair point.

**Senator PAYNE**—Mr Teems, thank you for your submission to the committee. I am interested in your observation about barriers to nomination and being a member of a political party, particularly around the question of direct election. You say that you do not see any problem with a citizen of mature age contesting the ballot, as long as they were not incapacitated or incarcerated—I would have to agree. But you said:

I just hope that if that is what gets adopted, we do not end up with sporting figures all the time. Such a situation would only serve to reinforce negative stereotypes of Australians abroad.

You have to excuse the fact that I am from New South Wales and I do not spend a lot of time in clubs such as this—rugby league clubs and rugby union clubs, perhaps—so I think perhaps I am committing a terrible transgression here this morning. I am interested in how you think the nomination process might evolve, if we were to go down the direct election road, and how you might ensure we had a broad field of candidates, for example.

**Mr Teems**—I know that, in Bill Hayden's model, he proposed that anybody with a sufficient number of people signing a petition supporting their candidacy would go forward. I believe the ARM has a similar idea. To me that would be all right; or possibly nominations from members of parliament, the House or the Senate would be fine as well.

**Senator PAYNE**—That would not run the risk of removing the safeguard of keeping the post 'above politics', as you say?

**Mr Teems**—I do not really see that as too much of a problem. There probably would be nominees from the ALP and the coalition, and I accept that.

**Senator PAYNE**—It is an interesting dilemma, isn't it, because the Australian people—people with whom I meet, at least—when talking about the concept of direct election, are often at pains to say they do not want a politician as president. That is the last thing they want. Yet if you think about a direct election campaign and how that might work in our very party-delineated democracy, from big to medium to small, it seems to me to be hard to envisage a campaign for the presidency that would avoid those political overtones. What do you think about that?

**Mr Teems**—I would see that maybe some people might have problems with that. Certainly a lot of the submissions I have had a look over seem to express a worry like that. For myself I do not much care, but I think it would have to almost be a convention—to bring that word back

in—that the chief of state had to refrain from politics while in office. Germany has an indirectly elected president, and that convention has sort of been followed by their presidents.

**Senator PAYNE**—Just finally, in your response to question No. 3, where you talk about the powers and codification, you have referred to the 1975 situation and then go on to other powers, particularly military command functions. Then you say you think it would make good sense to allow the head of state to block acts of parliament that violate an individual's or some group's human rights and, secondly, allow the head of state to overturn unduly harsh penalties that had been handed down by judges. Without a fundamental shift in the power relationships in Australia, how would you see that happening?

**Mr Teems**—I think you are saying that would be a fundamental power shift. I am not sure in fact if any pardons have ever been issued by the Governor-General. I have not come across that in the history. Maybe I am not quite qualified to comment much on that part right there, but it just seemed to me a good thing to put in as a check against another branch of government maybe exercising too much power.

**Senator PAYNE**—I have been thinking about how it might work in your suggestion and how the head of state would make an assessment that a particular act of parliament violated an individual's or a group's human rights. Would they be acting on advice from a new, disparate committee or commission that perhaps might be established to do that? Would they be acting of their own volition? How would you structure such an arrangement?

**Mr Teems**—I would envisage that they would have some kind of staff of advisers, I suppose, and they could possibly act of their own volition as well.

**Senator STOTT DESPOJA**—I would like just to continue on from Senator Payne's point: the issue of the potential for a directly elected non-executive head of state to be a very powerful person and perhaps rival the powers of the Prime Minister of the day or, indeed, the democratically elected government of the day. I am wondering if you have any further points on how you would make sure that did not happen or what powers you would codify. I acknowledge Senator Payne has referred to your answers to question No. 3. You have basically said that the Constitutional Convention squibbed this issue because it was a bit controversial—and it is a controversial issue—but I am wondering if you have some advice for us on the issue of codification of powers of a head of state and what you would do to prevent that potential rivalry.

**Mr Teems**—I have reviewed some of the literature. I suppose I would support more or less a partial codification of powers; I have not specified too much detail, but I would certainly support a codification of powers to dismiss a Prime Minister. I would possibly not support powers to dismiss parliament as well, unless there was a deadlock and it was affecting the country's government.

**Senator STOTT DESPOJA**—If you want to take that on notice, if you think of anything else, we would be more than happy to receive your ideas.

**Mr Teems**—Thank you.

**Senator STOTT DESPOJA**—You mentioned the issue of dismissal, which is something I warmed to in your submission. When asked about the dismissal of an appointed or elected head of state, you said you do not believe it should be just the prerogative of the House of Representatives. You said both houses should be involved in that.

**Mr Teems**—Yes. It seemed to me that dismissal by a Prime Minister is more or less equivalent to dismissal by the House of Representatives. The people did not seem to like that back in 1999, so I think it should be a little more than that.

**Senator KIRK**—On that question of dismissal, I was looking at question No. 18. You mentioned that, if you actually spell out the grounds for removal or for dismissal, this might make the decision subject to judicial review. Could you perhaps expand upon that somewhat?

**Mr Teems**—I suppose my concern was that if it is specified in the Constitution that a president or a head of state can only be dismissed for reasons A through Z, and parliament in fact does that, the president might be able to challenge it in the courts on the basis that the parliament was not following the Constitution.

**Senator KIRK**—You mention it again in question 18. You say:

It would seem to be a better idea to put one of your sample guidelines in the Constitution ...

Sorry, I do not know what you mean by sample guidelines.

**Mr Teems**—Sorry, which one?

**Senator KIRK**—This is question No. 18 on page 6 of your submission. We are talking about grounds for removal.

**Mr Teems**—It must be from the discussion paper, for me to have said ‘your’ sample guidelines.

**Senator KIRK**—That is something I can follow up. Just following on again from what Senator Stott Despoja was asking you, you suggest that you have the guidelines in the Constitution and let legislators—from which I understand that you mean both House of Representatives members and senators—vote yes or no in accordance with their own conscience, but you also mention former chiefs of state voting as well or instead of them. Could you explain this?

**Mr Teems**—I was thinking about a constitutional council which some people have been advocating—in fact, I think it is used in the McGarvie model—whereby former governors-general and heads of state would review such decisions.

**Senator KIRK**—Are you suggesting an either/or—either it is legislators who make the decision as to whether or not the head of state should be removed, or are you suggesting that it should be the constitutional council or similar body that makes that decision? Or do you not have a preference?

**Mr Teems**—I would be happy either way. As a preference, perhaps a constitutional council would be a little more removed from political processes and might appear to be more legitimate, but I could accept legislative removal.

**Senator KIRK**—This question opens up a whole new can of worms. You mentioned in question No. 2 that your preference would be to grant the head of state powers that are along the lines of the French presidency. Could you elaborate on that for us?

**Mr Teems**—That is my ideal but I realise now that many of your constitutional scholars have a contrary point of view, so right now I do not envisage that happening within my lifetime. It is probably more likely to be along the lines of an Irish head of state, with more ceremonial powers.

**CHAIR**—You said earlier on—I think quite rightly—it is the people’s government and therefore if they want direct election then that is what we should listen to. At the same time, it seems to a lot of us that they want direct election but they also want a president who would be above politics. Quite often the Deane type character is mentioned as a person above politics—essentially a statesperson, a statesman or stateswoman, type model. Do you think we can get both? Do you think we can get the latter through a direct election model?

**Mr Teems**—I believe it would be difficult, to be frank. There are nonpartisan elections held for the office of mayor in some American cities, like New York, so I suppose there is a bit of precedent for it. I have also read arguments that that can be circumvented, although I am not quite sure if that ever has in fact happened. I have not read much scandal about elections of mayor in New York or Los Angeles, which are cities that are set up that way.

**CHAIR**—It will be difficult. Thank you very much for your evidence and your submission. We appreciate them.

[9.55 a.m.]

**COCCHIARO, Mr Gino Anthony, (Private capacity)**

**CHAIR**—Welcome, Mr Cocchiaro. You have lodged a submission, which is numbered 487. Do you wish to make any alterations?

**Mr Cocchiaro**—No, thank you.

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

**Mr Cocchiaro**—Thank you. While I believe the advantages of becoming a republic are numerous and would demonstrate our progression to a fully independent nation, I wish to focus on one area where I believe a republic will provide a huge benefit to the Australian people—that is, that it would assist in providing a sense of identity and belonging to all Australians, no matter their background or religion. Given the diverse nature of Australia's current population mix, it is important that all Australians see their national identity and aspirations reflected in a head of state who is truly Australian: someone who shares our rich, pluralistic culture, someone with whom the people can identify, whatever their background and culture.

As a country that prides itself on values such as social inclusiveness, understanding diversity and strength within this diversity, it seems entirely contradictory that a great number of our citizens feel that our current head of state does not represent their interests, has no understanding of their culture and does not appreciate what their backgrounds bring to our country. At present our head of state, while undoubtedly providing some benefit to Great Britain, serves no real purpose for Australia and its peoples. As a young person of non-English-speaking background, I do not identify with the English monarchy. I do not believe that they represent my interests and the interests of the country that I was born and brought up in. I believe that this thought is echoed by countless others.

It is crucial, especially at such a turbulent time, that all Australians, no matter their background or religion, can identify with their country and feel accepted, included and appreciated. Having a head of state that is from this country and that is truly representative of this country and all its citizens would have a significant impact on our people's sense of identity and feeling of belonging. People will believe that they are part of a community, embraced and valued by that community when they can identify with that community and its hierarchy especially the most important symbol, the head of state. Consider, for example, the benefit to reconciliation with our Indigenous groups when our head of state is an Aboriginal.

Perhaps becoming a republic will not solve all of these issues but in my opinion it is certainly an important step in the right direction. Having a head of state that is from this country and is truly representative of this country and all its citizens would have a significant impact on our people's sense of identity and feeling of belonging. It is important for our nation and the growth of our nation that we identify clearly and unambiguously with our head of state.

I would like to make some suggestions on how we can involve as many Australians as possible in this process of transition to a republic. Clearly, it is important for people to first understand the current system and the current Constitution. Once that is understood, the importance and impact to Australia of moving forward and progressing to a republic would be clearly appreciated and understood.

The first step, therefore, would be disseminating this information as widely as possible. For Australians of non-English-speaking background, for example, specific groups need to be involved and closely consulted—for example, the multicultural communities councils in each state, the Federation of Ethnic Communities Council of Australia, specific community groups such as social groups and welfare groups, possibly sporting groups or welfare groups. Ethnic media needs to be used—especially radio stations, as a lot of migrants with poor English-speaking skills obtain information from radio. Radio stations can be encouraged to have debates and provide regular information on the Constitution and our system of government.

This is a focus of mine: all Australians need to understand the Constitution and that need for constitutional change. For example, now virtually all new migrants, especially Asian or Middle Eastern migrants, very quickly become citizens, but they invariably have little knowledge of our system of government and Constitution. For these people, a prerequisite of becoming citizens could be attending classes on our system of government and Constitution. Another idea is that summaries of parliamentary debates and important events, possibly like this morning's, could be made available in different languages to printed and radio media. For younger people in general, a lot more programs should be available and funded by the Commonwealth for primary and high school curricula.

Another way of expanding the currently successful—as I understand it—citizenship program in schools could perhaps be to select or nominate community ambassadors, you could call them, whose job would be to communicate an understanding of our system of government at a more grassroots level, which is in my opinion the best way to communicate. There would be citizenship community ambassadors for regional towns, ethnic groups, youth groups et cetera. These ambassadors would need to attend information classes and would be rewarded and recognised in some appropriate way for what they have done. That is the thrust of my submission today.

**CHAIR**—Thank you. Can I just follow up on your last point. I am sure others will have questions about the overall education proposal. I must say it is something that has come up consistently throughout the hearings as well. It has been put to us that in the formal referendum process the material that goes out to the public now is very limited and probably of very little value and quite often does not use the new forms of communication, whether they be electronic through the Web or in other such forms. You mentioned different levels of radio stations that are around at the moment. Do you have any view on the sort of information that goes out officially during the referendum process through the Electoral Commission and whether we should be looking at ways of maybe making it more relevant, or getting some other organisation to run that education process?

**Mr Cocchiaro**—I think that when the information is dispersed this should be through the proper channels, and I think that is the most important part of it. Whether it be through certain community groups or not, or by radio et cetera, this information should be relevant so that more

people from different backgrounds et cetera can understand it and it is accessible to them. That would be the most important part.

**CHAIR**—You stress the importance of the head of state reflecting, I suppose, what we call the modern Australia—the culturally diverse Australia. You can have a situation where you have a local head of state who will not necessarily be sensitive to or representative of those values. That is obviously a problem for you. Can you see any way of overcoming that, or are you saying that, by having an Australian head of state, you are more likely to have someone sensitive to where Australia is heading?

**Mr Cocchiaro**—Definitely. You would have someone more likely to be sensitive to those needs. It would be an Australian, first and foremost. The head of state would be Australian; hence you have someone who has lived in this country and who understands our identity and values and would, one would assume, be more sensitive to that—more so than someone who lives in a different country and has different interests.

**Senator KIRK**—Thank you for your submission, Mr Cocchiaro. You talk a lot in your submission and also in your opening statement about cultural diversity and the like, which I think is a very good point. I wonder whether or not you have any views about how the culturally diverse nature of our society might be represented in the transition towards a republic. Do you have any views about what should be the process and, if so, how we might involve ethnic communities and the like in that process?

**Mr Cocchiaro**—In terms of the transition, take for example having ambassadors, as I specified. These people could be within these groups, provide such information and educate people or inform people about the possible transition to a republic if it were to go down that path. At least people could make an informed decision either way and have that information. From that start, this would involve them in the process; hence people would be spurred to become involved.

**Senator KIRK**—Who would appoint these ambassadors that you speak of?

**Mr Cocchiaro**—It could be from the minister for citizenship, for example, or from government up, then to state government or linked to community groups—from the top down.

**Senator KIRK**—And what message would they be taking out? Would there be a number of models or ideas, and from where would these derive? I am trying to understand whether it would be a consistent message that is getting out there—or is it just an education program generally?

**Mr Cocchiaro**—I think it would be an education program generally, but I think once you start the process and have these people getting involved, they would want to become more involved and want more information; hence they could be educated or informed on a range of issues.

**Senator KIRK**—You do not have any particular ideas about a process that we might go through? I am thinking about the process last time—that is, the Constitutional Convention in 1998 and the ideas that were generated from there—and then moving forward to the referendum that we have. Do you have any ideas about how we might move forward this time?

**Mr Cocchiaro**—Not specifically, no, but I would have thought that if this information is provided and people do become involved then from there it would lead straight to a referendum—getting people involved and understanding the process.

**Senator KIRK**—You are suggesting there would be a groundswell of interest, almost.

**Mr Cocchiaro**—Exactly—and that is the point of it.

**Senator KIRK**—Finally, again on the question of cultural diversity, do you have any views about cultural diversity and how that may be reflected in a model that we might adopt for a republic? Have you thought through that?

**Mr Cocchiaro**—No, I have not given that too much thought, but I can give it a shot. I would have thought of having a model where ethnic community groups could support a candidate, and I think there was a model where 100 or so nominations could be provided. Obviously this would assist the minority groups in that they could put someone forward and hence support a candidate, for example.

**Senator KIRK**—Do you have views about whether the president, if we can call him or her that, should be popularly elected or should be appointed by parliament or by the government? Have you thought through that?

**Mr Cocchiaro**—Yes. My opinion is that it should be—I think as put forward in the last referendum—a bipartisan election.

**Senator STOTT DESPOJA**—I get the impression, just based on your last comment, that, while you do have a preferred model, your emphasis in your submission has been on information and education.

**Mr Cocchiaro**—That is right.

**Senator STOTT DESPOJA**—Senator Bolkus's question to you was about the fact that there is no guarantee that you would necessarily get someone who was culturally sensitive or diverse and you have answered that dilemma, but I am wondering if you would put any barriers to entry for an Australian head of state. I say that given that we have just had a submission where Mr Teems—if I may borrow from your submission, Mr Teems—was arguing that there should be perhaps an age consideration: no-one younger than 30 or 35 years of age. There are also other submissions that talk about a barrier based on whether or not politicians should be eligible to run. I am wondering if you have a view as to the criteria or the qualifications.

**Mr Cocchiaro**—I certainly do not think there should be any barriers, except being Australian.

**Senator STOTT DESPOJA**—An Australian citizen of voting age?

**Mr Cocchiaro**—Of voting age. And I certainly would not have thought there should be any barriers at all.



**Senator STOTT DESPOJA**—Senator Bolkus alluded to the fact that you might get other questions about education, partly because this was an issue that I was a bit obsessed about yesterday in our inquiry, but I think you pre-empted many of the queries I had—that is, how you would have an educative process. But I am curious as to a couple of things. What kind of time line would you envisage? And that is not only your ideal time line for reaching the stage where we have an Australian head of state but also how long you think it would take to provide adequate information to a broad range of the populace. I do not mean specifically dealing with your particular interest in non-English-speaking backgrounds, different cultures and other backgrounds; how long is sufficient?

**Mr Cocchiaro**—I think it would take considerable time. What I have addressed in my submission is information that is not only advantageous for the referendum for a republic but also just in general. I think it would be of interest for Australia in general that people have this understanding of the Constitution and our system, in any event, and obviously that is helpful for a republic. It is difficult to set down a time line, because I think this information should always be provided, but to gather this groundswell would take some time.

**Senator STOTT DESPOJA**—We heard from one witness yesterday that she thought it might take 10 to 15 years to become a republic, because you would be reliant upon not only increased voter education but also generational change. Do you have a comment on the issue of generational change and particularly education in our schools and how that will add to or benefit this process?

**Mr Cocchiaro**—I can address the issue of schools: certainly, more information could be provided to students on different subjects. As it would be, as I have suggested, in community groups et cetera, so it could be in school education, so students would have this understanding. I understand there are some subjects now. I did study a certain subject in school, but it did not have that information which I think could be provided and certainly should be.

**Senator STOTT DESPOJA**—On that information to which you refer, in your opening comments you talked about the dissemination of information; you were talking about constitutional information. Are you suggesting that every home in Australia gets its own pocket version of the Constitution?

**Mr Cocchiaro**—Of the Constitution, no.

**Senator STOTT DESPOJA**—Can I just say they are available at all members' and senators' offices, if anyone would like one. So how do we provide a copy of the Constitution and perhaps information about the Constitution in an interesting, user-friendly form? I am not sure, if I could do a mail-out tomorrow on constitutional issues, exactly what I would send the good people of South Australia. What would they want? What would make the difference?

**Mr Cocchiaro**—I am not sure either, but I think enough information on the Constitution is basically that which demonstrates our history and what it is based on. As long as this general information is provided—and I cannot unfortunately give specifics—then at least that would give people some understanding. As I see it, the problem is that people do not have a clue about it, so any information is better than nothing.

**Senator STOTT DESPOJA**—Indeed. Do you see something like another constitutional convention or something more playing a role in this education campaign? For example, I see the Senate committee process as the first step in community participation and information. But beyond that, what else can we do?

**Mr Cocchiaro**—In terms of another convention, I would not have thought so. I think that the most important thing is to really get at the grassroots level. So, I think getting this information out and having people to give it out—as long as the community does receive it and it goes out to a large cross-section of the community—is the most important step. It is really going from the grassroots up.

**Senator STOTT DESPOJA**—Thank you very much.

**Senator PAYNE**—Thank you very much for your submission and particularly for your opening remarks this morning. Like Senator Stott Despoja I am very keen on exploring the education and information ideas. I am particularly keen on your citizenship community ambassadors. Can we go back to the point where you talked about what they might have to do to prepare themselves to engage in that process—did you suggest classes or something like that?

**Mr Cocchiaro**—Possibly classes. They would themselves have to be educated and informed. Hence, possibly instead of providing classes—obviously there will be some restrictions on funding et cetera—if you had certain people in the community who were informed on these issues and were interested in them then they could gather the information and provide it to others.

**Senator PAYNE**—Do you envisage that being an honorary role?

**Mr Cocchiaro**—It could be. I would certainly be honoured to do so!

**Senator PAYNE**—Or would it be a paid role?

**Mr Cocchiaro**—Possibly. As I said, they could be provided with something at the end to thank them for what they have completed.

**Senator PAYNE**—What would give them the credibility to convey the message—why would anyone listen to them when they do not necessarily listen to the politicians? In some ways some of us are very keen on conveying educational and constitutional information. But Senator Stott Despoja is right: it does not necessarily permeate as far as we might like it to. Even if we, for example, sent the collected speeches of Senator Bolkus around South Australia on the issue, that might not work either.

**Mr Cocchiaro**—That is the crux of it, because you would have someone who was representative of each specific community. They are more likely to listen to someone like that. I am not saying that they definitely would, but they would be more likely to if it were someone from within that community—somebody who was known and respected within that community, for example.

**Senator PAYNE**—That means that you need to find people from the different communities who are prepared to volunteer and go out and do the job—

**Mr Cocchiaro**—Yes.

**Senator PAYNE**—and appear in newspapers and on radio. It is my recollection from the 1998-99 period that that did not happen as much as perhaps it should have. In Sydney, where there is a significant concentration of ethnic based media—newspapers in particular but also radio—it was sometimes quite hard to get people who were prepared to do it at that level. How would you go about doing that, do you think?

**Mr Cocchiaro**—Part of it comes down to funds also; a lot of it does, unfortunately. But if there were sufficient funding for the radio stations to become involved and advertise then I think they would do so. Part of it is that simple. Also, a number of small community groups are actually involved with radio stations and have times on these radio stations—for example, I know the Italian community has a radio station here that they use—so they could also provide information then.

**Senator PAYNE**—Yes. I do not know whether you were involved or out on the streets campaigning for a yes vote in the 1998-99 period, but do you have a view about the way the convention itself was structured between appointed and elected delegates—do you think that provided an adequate breadth of representation of the diversity of Australia, or could we have done better and, if so, how?

**Mr Cocchiaro**—I thought it did. By having both appointed and elected delegates, so to speak, it was quite positive. I was looking from afar; I was not that involved in the convention back then, or the actual process. I think it was a fair system, but—and this is off the top of my head—there were only a small number of people from non-English-speaking backgrounds at the convention. Possibly it would be of assistance to have a convention which had a greater number of people from non-English-speaking backgrounds involved. Obviously, I could not say whether that was the case or not, but I am quite sure that was the case.

**Senator PAYNE**—But we are looking, as you know from our terms of reference, at how we move forward in this process, and what we might need to take into account for that, which is where I think your submission and your observations are particularly valuable. The specifics of how you go down that road are less clear at this stage, but I do agree that it is very important. Thank you.

**CHAIR**—That was really valuable, so thank you very much.

**Mr Cocchiaro**—Thank you.

[10.20 a.m.]

**COLE, Mr Andrew John, (Private capacity)**

**CHAIR**—Welcome, Mr Cole. Do you have any comments to make on the capacity in which you appear?

**Mr Cole**—I am here in a private capacity but I also have some comments to make as a locally elected councillor for the Marion Council, having seen some of the comments about the involvement of local government.

**CHAIR**—We have numbered your submission No. 41. Do you wish to make any amendments or alterations to it?

**Mr Cole**—No, I do not.

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

**Mr Cole**—Apologies for the weighty size of the submission. The overall nature of the submission is that the model preserves the office of Governor-General. I see that it is worth while preserving that and not creating unnecessary change, which then creates negative attitudes which make any movement forward harder. My submission also looks at repatriating the function of the monarchy in its constitutional role to the institution that best represents the Australian Commonwealth as a whole, that being the Australian Senate. I am not trying to look at advocating new institutions unnecessarily where we already have institutions in place.

The other main thrust of the submission within that structure, as has already been raised, is how you handle the conflict between direct election and having a head of state that is above politics, in that it is focusing the mechanism of direct election on the office of the Prime Minister rather than the office of the Governor-General or the head of state. The main theme behind all that is the principle of consent, in that our current head of state, the Queen of Britain—the Queen of Australia—does not have an office subject to the consent of the people of Australia or the Commonwealth. How do we reintroduce that office so it is subject to that consent?

All the arguments and the debate then centre around how to design or create an arrangement that holds the office of the head of state above politics. I think it is generally seen that it is definitely worth while having an umpire that can keep away from the political day-to-day fray. How do you design a system where the positions of head of state and the head of government do not conflict? Obviously, there is a political office and there is an office that is seen as a symbol of unity for the nation as a whole and that is seen to be above politics. How do you handle the conflict between those aspects of form or design and how do you incorporate the desire of the Australian people to be more engaged within the political process? I think there is generally, too, a desire for or an acceptance of a mechanism of direct election; but then how do you do that, given the existing practice of the Australian government within the context of looking at the issue of an Australian republic?

My submission is not a standard submission, in the sense that it looks at the head of state and then the issues around that solely, but it is about trying to come up with a different perspective on how to introduce or combine all those different aspects into a model for an Australian republic that could be further developed.

On the issue of process, it is critical to have an initial plebiscite, and that comes back to the issue of consent. Do a majority of the Australian people want to move towards an Australian republic or a republican form of government? That has probably generated the most debate, the most discussion—whether that mandate, if you like to use that term, exists or not. To have a concrete answer to that would be a worthwhile exercise, and then further developments flow on from there. Again, the focus of the submission is on establishing and grounding all offices of our system of government on the basis of the consent of the Australian people and being able to handle the various conflicting offices and how they relate to one another.

**CHAIR**—In your submission—I think you said it this morning as well—you said it was important that the public felt ownership of the process and of the outcome. How do you propose to, for instance, in respect of your model, get public support for and engagement with it? It is not one of the models that are on the list of five from Corowa; it is not one of the popular models, in a sense.

**Mr Cole**—With any model, it is about disseminating plain, simple information. Most people out in the community are not constitutional lawyers. I think that is one issue when we talk about education and how that information is passed across—to do it in plain, simple language. The thrust of the submission is to say that, yes, there is conflict if you have a directly elected head of state and a Prime Minister that is the head of government. If you say yes, how do you get around that? One option is to leave the process of nominating a Governor-General as it is now, but focus the mechanism of direct election on a Prime Minister and ask people whether they would like to have a say in who the Prime Minister of Australia should be. It is about the level of simplicity or clarity of the information, and the level at which you pitch it is always going to be difficult.

**CHAIR**—You also stated that the model you propose has the least change to the position of Governor-General, which may make it more attractive, but it has the most change to the role of the parliament and prime ministers—the whole nature of government.

**Mr Cole**—Yes.

**CHAIR**—There seems to be a contradiction there. You might make it easier in terms of the Governor-General, but there are a whole range and basket of issues which could be rationally discussed and which also—which is more likely, given recent experience—could form the basis of a very strong fear campaign.

**Mr Cole**—That is true, and that has been the experience over the last five years. You are right: the structure of focusing on a direct election mechanism for the Prime Minister, and moving the cabinet out of parliament, is a significant change to the way the institutions are structured now. A comment on the practices or the operation of government on a day-to-day basis is how different it would be to today—that is, the domination of the government over the House of Representatives and the interaction with the Senate as a second house—where the Senate would not simply be a house of review but an integral part of the parliament and how it works.

**CHAIR**—There is also a concern, I think, that what we have had so far in the republican debate are legal issues and niceties driving the politics, rather than people and politics actually driving the outcome in terms of models and so on. Does your model complicate the road to a republic? Is it another computation of or an alternative to the models that are being developed and slowly, in an evolutionary way, being refined and defined?

**Mr Cole**—No. I understand your point of here is yet something different, and how you move forward. I think the second stage that has already been discussed is to look at models. There is already extensive material put out by the republican movement on different models. I think it is acknowledged that a reasonable second stage would look at different models. If this one falls by the wayside, it falls by the wayside. It is not coming up with some sense of saying, ‘This is right or correct.’ I think in politics there is no right and wrong answer. It is different forms and different structures that you put in place. I think it is just an option that forms part of the process that is seen within a longer time frame of looking at an initial plebiscite to get that information or confirmation to move forward, and then to go through that education process of what models are being offered, what models are supported, and to go from there.

**CHAIR**—The other point you made earlier was that you had something to say in your capacity as a councillor. Do you want to say that now?

**Mr Cole**—All right. Reading through some of the *Hansard* proofs from Melbourne and Sydney, there were comments in these terms: could local government be used as an avenue of disseminating information or run forums as an integral part in the process of any education program? The experience we had at Marion last year in July and August was an issue related to a portrait of the Queen—a motion was passed to remove the portrait, only unless required by law, such as citizenship ceremonies. It was rescinded the following month but one of the many comments was why is the council being involved in issues like that, and I think that is going to be a difficult thing if local government is then seen running and supporting community forums or open forums, that it is not seen by the community as an appropriate role for local government to be involved in. It is seen as a federal government/state government area as far as a body that moves those programs through. I think you would find the comments from ratepayers will be: why is local government involved when it is really not their area of operations and what are we paying our rates for? That is certainly some strong feedback that we experienced within Marion last year.

**CHAIR**—Thank you. Senator Payne.

**Senator PAYNE**—Mr Cole, thank you for your, might I say, quite extraordinary submission in terms of detail and its comprehensive approach to the question. May I ask, is this what you do professionally?

**Mr Cole**—No.

**Senator PAYNE**—Well, I am even more impressed.

**Mr Cole**—No. It came out of a research degree that I completed just before this process came along, so I took what I completed and changed it round a bit and put in the various questions that

were in the discussion paper. The same thrust is there, but more tailored to the references you were looking at.

**Senator PAYNE**—I think that is to our good fortune then. The model that you propose is an interesting one, and Senator Bolkus has touched on this. As you say, it preserves essentially the nature of the Governor-General as it currently stands but makes very comprehensive changes to the executive administration of government. I wonder whether you canvassed that at all broadly and whether you think it is something to which Australians would be receptive.

**Mr Cole**—Me personally canvassed? No. It came from a view of looking at how you handle the conflict between a head of state and head of government, when most of the debate has been around either directly electing a head of state and then how you handle the power rivalry between the two or, in relation to an appointment model, how you handle an appointment by parliament with again the interaction with government. How do you come up with either barriers or checks or safety mechanisms so that you do not get interference or you do not get manipulation going on either way? It is not looking at that from a one-way point of view. The argument of direct election is a political mechanism. It confers a political mandate, and really should be focused on appointment to a political office. If you are wanting a head of state who is above politics, why complicate it with political means or political legitimacy that direct election would confer on that person?

Given again the overall view of looking at the issue of an Australian republic having constitutional positions that are based on consent of the people or consent of the government, how do you then arrange that? If there is a strong desire for a direct election mechanism for people to be more involved, it would make sense to focus that more within the office of the Prime Minister.

**Senator PAYNE**—I gather from your submission that you are comfortable with the campaign for the office of Prime Minister having a party political nature as well.

**Mr Cole**—Again, that is the same sense. It is a political process so it would it probably unreasonable to expect it not to have political parties involved, and I guess the focus has been, if you are wanting to look at preserving an above-politics head of state within a republic, how do you do that? You sort of come from saying, if you then focus the mechanism of direct election on a Prime Minister so that people can be involved with the direct choice of who the head of government is, how do you arrange parliament and the relationships then between executive government and parliament whilst having an above-politics head of state?

**Senator PAYNE**—I am interested with how you arrange government in the way you have drafted this. I understand that you have the Prime Minister appointing the cabinet but that being subject to the will of the Senate.

**Mr Cole**—Or ratification by the Senate, yes.

**Senator PAYNE**—Well, that is subject to the will of the Senate.

**Mr Cole**—Yes.

**Senator PAYNE**—And if it is subject to ratification, it is also subject to veto.

**Mr Cole**—Yes. Again, it is protection: how do you stop a directly elected Prime Minister appointing his mates or appointing business associates? There has to be a check and balance in there to stop that. As far as what we have now, it is election by the people in parliamentary elections and then the government is drawn from sitting members of parliament, whether it is in the Senate or the House of Representatives. That is a check, if you like, on who can be cabinet ministers or within the executive government, so again it is just a logical extension. If you then take the cabinet out of parliament and leave parliament as the legislative body, you still need something to stop misuse or abuse, so that is where that link back to the Senate is and why it is there.

**Senator PAYNE**—Can you draw out for me a little more what you mean when you are talking about the Senate also taking on the function of the monarchy and how you believe that would operate?

**Mr Cole**—I guess the meaning of what I was trying to say is that from a constitutional process point of view, the Prime Minister nominates the Governor-General, and that Governor-General is appointed by the British monarchy, so John Howard does not go to someone else. The Prime Minister does not appoint the Governor-General personally without reference to another body, so he takes a nomination to the monarch to get appointed, and it is the monarch that does the appointing. So, if you are wanting to move away or repatriate that function to Australia, the issue then is where does that function go. Much of the debate over the parliamentary election process is that the appointment is then made by a two-thirds vote of parliament. That is the nature of the bipartisan appointment model. So, if you are going to preserve the Prime Minister nominating a person for the office of Governor-General, who then does the appointing. Again, if you are trying not to have the nomination and the appointment process being held in the same hands, where is that then removed to or brought back to within the context of the Australian government? That is where I looked at it then being the Australian Senate.

**Senator PAYNE**—What about assent to legislation?

**Mr Cole**—It is still within the role of the Governor-General to give assent.

**Senator PAYNE**—I see. So it is only a limited monarchical function that you would be giving to the Senate?

**Mr Cole**—Yes.

**Senator PAYNE**—Okay.

**Senator STOTT DESPOJA**—In fact I had a similar question, Mr Cole, to Senator Payne in relation to repatriating of the monarchy's powers to the Senate. I was wondering exactly what you had in mind for senators actually. Are there any other powers that you would change in relation to the Senate in order to bring about this model?

**Mr Cole**—Within the context of repatriating the role?



**Senator STOTT DESPOJA**—Or more generally, as part of your Madisonian model.

**Mr Cole**—I guess what it does do is increase the profile of the Senate within the system of Australian government. That has already happened to a degree anyway, as far as you have treaty committees now that review treaties through a process. Essentially what this submission or adjustment would do would mean that appointments to cabinet would come before the Senate as a whole. That is obviously a change in operation or process of how things are now. You have the role of the Senate in appointing the head of state. That is no different to what has been proposed before, as far as a parliamentary appointment, other than it is not involving the House of Representatives.

The Senate, within this submission, has a higher role as a review and perhaps control check on positions of government and still preserves the same role within a legislative capacity in the process of debating and deliberating on bills and preserving the same context as far as money bills go. It is already there now, so it is not proposing to change that. In that sense it is wanting to provide a parliament to be more a legislative body than it necessarily is now, which then would free a lot more time up for the debate and deliberation of legislation. But in order to then resolve coming back to the original issue of how you have a head of state that is above politics and within the context of a republic, if you have these institutional adjustments made, how do you then fit parliament into that, or what then flows from that, from a form or design criteria or perspective?

**Senator STOTT DESPOJA**—What you have done is very interesting. You are advocating a radical shake-up in some respects of our representative democracy, but in other respects you are taking the proposal for the representative democracy or representative parliamentary role in appointing an Australian head of state. So you are taking that aspect of it and instead dealing with direct election in relation to our Prime Minister.

I am a little worried, though—notice how I am not worried about the additional powers for the Senate—about the additional powers for a Prime Minister. If you argue that there is a natural mandate by virtue of national and popular election for a Prime Minister and you are talking, as Senator Payne has outlined, of a Prime Minister who can select his or her cabinet, you have already made the point to us that you know there have to be checks and balances or some form of accountability. I am not sure exactly how you are achieving that. The Prime Minister seems to be extraordinarily powerful under this model. Or are the checks and balances those through the Senate and the parliament as a whole? How does it work exactly?

**Mr Cole**—I guess the perception is in a way how the current US President appoints a cabinet. You have hearings in the Senate and, given the scrutiny that goes through those hearings, that is what I would envisage. So you cannot have the Prime Minister just deciding to appoint who he likes and there is some token process that goes via the Senate. It is quite a serious process, a serious overseeing of those appointments and confirmation of those appointments, so there is the confidence in the people being put in those positions of ministers. That is the aspect of a check and balance being involved.

**Senator STOTT DESPOJA**—Yes.

**Mr Cole**—It is not seen to be an easy or shallow process at all but seen to be a process of detailed review of those people being proposed to be ministers.

**Senator STOTT DESPOJA**—You mentioned that this would involve an increased profile for the Senate. I just think of a question Senator Payne asked you: have you canvassed popular opinion on some of these issues? Do you think people or the community would view this with suspicion, if you were seen to be arguably elevating one house—almost elevating one house above the other, or indeed, giving greater powers to our upper house on a federal level?

**Mr Cole**—My perception of the way the two houses are viewed is that nowadays the Senate is seen as more representative. It is seen as expressing wider views, because of the nature of the different bases of representation, than necessarily the House of Representatives which, from an outsider's view, tends to express a government's view. We do not see what goes on in background with backbenchers or the other processes that are out of public view, to necessarily see how detailed that is or what depth or how much impact that has. But if you take a simplistic view of asking, 'Would the Senate be seen to be more representative within Australia?' my answer is yes. Again, that might be a simplistic, outsider's view, but that is the view I have taken of what is the institution that best represents the Commonwealth as a whole? That is why it is focused on the Senate in that aspect. Given the nature of proportional representation, I guess that is the flow on from that.

**Senator STOTT DESPOJA**—I would have to agree with you on that point. Mr Cole, in your nomination process for Prime Minister you suggest restricting it to one nominee per political party.

**Mr Cole**—Yes.

**Senator STOTT DESPOJA**—Would there be any restrictions on the political parties?

**Mr Cole**—No, what I was trying to provide was a process where candidates come from political parties so that you do not have the celebrities or the TV hosts or whatever. But, again, it is a political process focused on a political mechanism involved with political parties. It is from that basis that candidates are to come. How political parties handle that process should be left up to the political parties themselves. I am not against political parties at all, or anything like that. I think there are good reasons—as far as qualifications for head of state—to say if they are going to be above politics they should be at arm's length from that. But political parties do play a role and that aspect should be supported.

**Senator STOTT DESPOJA**—I am warming to your model all the time, Mr Cole—the idea that the Democrats could run for Prime Minister is very attractive. Thank you very much for your submission today.

**Senator KIRK**—Thank you for your submission, Mr Cole. I am just having some difficulty getting my mind around exactly how this model would work. Let us just say we have an election this year and a particular party is elected as they gain a majority in the House of Representatives, which normally would lead to forming government under our current system. With your system would it not be the case that it is quite possible, even likely, that the Prime Minister who is popularly elected is perhaps chosen from a different political party? So you could well have a

situation where you have got the Prime Minister with his or her own mandate from the popular election in the position of Prime Minister and then you have the parliament, the majority in the House of Representatives from another party. I just cannot really see how that would function in practice, where you have a Prime Minister who will see that he or she has their own mandate and then you have the parliament with quite a different idea. Also, from the public's perception they have elected a particular party to form a majority in the House of Representatives. They would then be expecting that whatever policies or mandate on which they went to the election would be carried through, but then you would have the situation where the Prime Minister has a separate mandate.

**Mr Cole**—In answer to that I would ask, how do you as senators operate with the government in the House of Representatives, where the Prime Minister does not hold a majority of senators from his own party, so he has a minority of senators in the Senate but forms a government? Aren't they exactly the same issues that are involved where you have a Prime Minister that says he has a mandate for one type of legislative process but then has to work to advance that through a Senate that may be hostile because he does not have a majority in the Senate? I see the issues being the same there.

**Senator KIRK**—I do not. You are right, at the moment the government does not have a majority of senators in the Senate and the Prime Minister or the government has to work with the senators in order to pass their legislation. But of course there is a mechanism in place that, if the legislation is not passed at the end of the day, there can be a dissolution of the parliament and it can be dealt with that way. Under your model, quite possibly there might not be a majority in either house, which reflects the views of the Prime Minister. How then do we govern? How is government to be carried out? It seems to me there could quite often be, even eternal, conflict.

**Mr Cole**—I see the way that voting occurs, predominantly party voting, is still anywhere from 80 per cent to 90 per cent mainly voting partywise, reflected in a Senate vote where 90 per cent vote above the line rather than going through individual preferences below the line. In that sense, I would still see a close correlation between the electoral results within the House of Representatives or the two-party preferred vote with the result that you would get in a direct election mechanism. With a properly elected Prime Minister being from an existing registered political party, I would still see a similar vote. I would not expect to see a candidate from one party getting 70 per cent but only 30 per cent of that party attracting votes within parliament. The expectation is that you would get a fairly consistent vote through those two processes, whether it is a direct election mechanism or parliamentary mechanism.

**Senator KIRK**—It perhaps begs the question, why would you bother going to a popular election for the Prime Minister, if you are going to end up with a similar kind of outcome in any event?

**Mr Cole**—It increases the participation of people to feel, 'We have a direct say in who our head of government is.' Again, the context is, within the issue of Australian republic: how do you handle a model that has an above-politics head of state, with still—I think reasonably—an aspiration of people wanting to be more involved? Give them the direct election mechanism of a Prime Minister. Let them have a say.

**Senator KIRK**—The Prime Minister is inevitably going to be a politician.

**Mr Cole**—That is right. I do not think we should argue that it should not be. It is a political office. It is a political process. The Prime Minister should be a politician. That is generally people's expectation.

**Senator BUCKLAND**—Let me say I am stunned by the detail you have gone into with your submission. I appreciate that, except I had to read it.

**Mr Cole**—I apologise.

**Senator BUCKLAND**—It is extremely interesting reading and it reminds me why I am not an academic. I do appreciate people who put that effort in. The only question I have to ask you arises out of something that was said at our hearing in Perth yesterday. It was suggested to us that if you have an elected head of state—in your terms, the Prime Minister or whoever—perhaps Australia will not get the best person as head of state or the most popular person for head of state. That referred to Sir William Deane who has been the best head of state that certainly I can remember, but I think Australia has ever had. That person would never nominate, or people like that would never nominate for elected office and Australia could be worse off for not having such a compassionate and wonderful person. What are your views on that, given what you have written?

**Mr Cole**—Within the submission is that the office of head of state is preserved as the Governor-General and should be nominated by the Prime Minister and the Prime Minister having the sole responsibility for nomination. I think that gives the ability to have a high-quality candidate as Governor-General, such as Sir William Deane, that does not have to go through the rigours of any election process. You are right that, if the head of state were to be directly elected, many people would take a step back, not wanting to be thrust within that kind of process.

Given that any kind of election does generate passions, criticisms, would you want to subject yourself to that? In existing election processes we see that happen. If that were to be conferred on the head of state, most high-capacity people that might be considered as a Governor-General would look at it and think, 'Why do I want to put myself through that process?' That is why it is probably the best outcome to have a head of state who is above politics, who is still nominated by the Prime Minister as the current mechanism is now, but where that desire for a direct election mechanism is to refocus that onto the position of Prime Minister rather than the head of state or the Governor-General.

**Senator BUCKLAND**—The other thing that struck me during the questioning by Senator Payne was that you are suggesting one nomination from each party. You could, in fact, have a range of independent nominations, could you not?

**Mr Cole**—Again, within the election mechanism of looking at it being a critical process, you are right. You could have a mechanism for Independents, but at the moment I have looked at it as being registered political parties, given it is to be focused towards the office of Prime Minister being the political office. If you want to run as an Independent—the answer to that is to get 500 people and create a registered party, to be within that process—you would need a national profile to attract sufficient votes within that kind of process.

**Senator BUCKLAND**—Or a very deep pocket.

**Mr Cole**—Or a very deep pocket, but within the constraints of being a registered party within the electoral commission. It is trying to then come up with what is a reasonable balance to ensure that, if you have an election mechanism focused on a political office, how do you then keep it within a political realm? That is why I had that link within registered parties.

**CHAIR**—Mr Cole, thank you. Can I repeat Senator Buckland's words of thanks. We appreciate what was a very lengthy submission but one obviously well thought out. I think there are some points in it that would resonate with the public as well.

[10.59 a.m.]

**TEAGUE, Dr Baden, (Private capacity)**

**CHAIR**—Dr Teague, you have lodged a submission, which was numbered 538, with the committee. Do you have any amendments or alterations to make to it?

**Dr Teague**—No.

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

**Dr Teague**—Thank you. It is a pleasure for me to appear before this inquiry on a topic which is very close to my heart, as it is to members of the Senate committee. Having participated in several hundred hearings on your side, this is probably the first time that I have appeared on this side as a witness to an inquiry. Three of you, with me, were members of the Constitutional Convention. Happily, those of us here who were involved all supported the same outcome.

What I have addressed in my submission is the considerable thought and discussion on my own part in the five years that have followed the Constitutional Convention and the referendum. We only gained 45 per cent support for the referendum proposal in 1999, which means 55 per cent voted against us. It is essential that the second time we put a referendum to achieve the goal we have—and that is an Australian republic—it be estimable as a success. The next step, in my view, is for all parties to put their republican policy to the people of Australia before the next federal election. I hope that this inquiry's report will be in good time to enable parties to take it all into account.

There are three ways to go relative to 1999. We could put up a similar proposal as the bipartisan parliamentary model, so-called, which the ARM was largely defining but which came out of the Constitutional Convention as the majority model. I would argue, if that was the case, that modifications should include omitting the preamble and omitting the committee. In the debates at the Constitutional Convention these were two much contested elements. You get into all sorts of complications with a committee and you get into complications with a proactive High Court if you have a preamble.

I mention for the record—I do not think it has been publicly said—that three additions were made at the eleventh hour, just before the Constitutional Convention, to the ARM model. One was a proposal that we change the way the head of state can be dismissed. I was largely involved in that initiative, and we ended up with the one which is in the model. Before that, it was quite different. Secondly, right on the eve of the Constitutional Convention was the committee idea—a last-minute attempt to try to include a wider nomination input to what would still be the Prime Minister's initiative. We had good intentions, but I do not think that that should stick because it led to more losses. Thirdly, the preamble was, of course, something that came out of the Constitutional Convention itself. I believe it is flawed, for reasons that are well set out in the Constitutional Convention discussion.

The second way of going ahead is to have a radical republic—an elected head of state—and I do not believe that is viable. I do not believe it would get past a referendum, because of what I call the sceptical middle ground views, which I have outlined very carefully in the submission. I regard about 30 per cent of those who voted at the last referendum as sceptical middle ground. They included 15 per cent who voted in the 45 per cent ‘yes’, including people like me and Zelman Cowan, and another 15 per cent, including people like Peter Costello, Richard McGarvie and Greg Craven, who voted ‘no’ but who were quite willing to be republicans if their concerns were met. The third approach, which is the one I am advocating, is to adopt a minimal change model, and that model I have set out in 10 points towards the end of the submission.

In relation to an elected head of state, if there is a contest in which the public vote, that person will automatically be a politician. I agree with the discussion with the last witness that some of the best people, including the best exemplar of head of state—or Governor-General anyway—Sir William Deane, may not become available. I very much believe, after thinking about it for the last five years, that the model that we would put best is this minimum change model.

Let me mention the concerns of the sceptical middle ground, summarise the model and then I will complete these introductory remarks. The concerns of the sceptical middle ground—and they are in much more detail in the submission—are that the referendum reforms must be practical and workable; the reforms must avoid unintended consequences; the new constitutional arrangements must not undermine the current responsibilities of the elected parliament, the elected government and the elected Prime Minister; no greater codification should be given to the continuing powers of the Governor-General; the earlier proposed preamble should now be omitted; and the earlier proposed committee to vet public nominations should be omitted.

I thought the last referendum proposal was workable, was practical, was responsible and was best for Australia, but we did not get more than 45 per cent of Australians agreeing with us. Therefore, I believe we should be more careful, if we are to ensure we gain the goal of an Australian republic, to stick very closely to the Constitution as it is now, and this is the model that I now am proposing. It is a summary, and there are a couple of pages outlining it in the submission.

The head of state should be titled Governor-General of the Commonwealth of Australia. The person to be appointed would be chosen by the Prime Minister and appointed by the Commonwealth executive government. Instead of Buckingham Palace being a post office box, the Prime Minister’s choice would go straight to the executive government. This process is similar to the appointment of High Court judges. Australia is nonetheless a democracy, despite the people not electing our judges.

The Governor-General will retain the same powers as now, including the reserve powers, but without any new codification. The Governor-General could be dismissed by the Prime Minister through the Commonwealth executive government at any time—no need to send a letter off to Buckingham Palace, as was necessary not so long ago with Archbishop Hollingworth needing to be dismissed. He was dismissed on the decision of the Prime Minister. If such dismissal were viewed as not justified by the parliament—the check and balance—then there would be a vote of no confidence. If such dismissal were viewed as not justified by the public, they would vote accordingly at the next federal election.

Casual vacancies would be filled by an administrator, as now—that is, the most senior available Governor of one of the states, as we did recently with the Governor of Tasmania. The states would also be encouraged to make parallel changes, but as each state may itself determine, to coincide with the Commonwealth changes—that is, the Premier through the state government. The Premier would not need to write to Buckingham Palace. The Premier in each state would, through his own government, announce and appoint the Governor and, if necessary, through the same process dismiss the Governor. Each Governor would exercise the same powers and responsibilities as is currently the case, and all references to the monarch would be removed from the Constitution consistent with all of these provisions.

If anyone were to ask me, ‘How do you justify such a model?’ I would say, ‘That is how we do it now,’ and that the Constitution of Australia has, in these respects, served us very well for over 100 years. Thank you.

**CHAIR**—Thank you, Dr Teague. You raised the concerns of the so-called sceptical middle ground. Maybe there was another force that was on a collision course with the sceptical middle ground. The sceptical middle ground was concerned about too much change, but isn’t what you are proposing today a greater concentration of power? You say it is the same as what happens now, but can’t it be seen as a greater concentration of power in the hands of the established political machine, as opposed to the previous republican model, whereas a lot of the public are seeking more ownership of the process and of the outcome, either by way of direct election or by opening up other parts of the process for public engagement? How do we reconcile that?

**Dr Teague**—Senator Bolkus, I think that that is ‘the’ question.

**CHAIR**—It is for the moment.

**Dr Teague**—It is. I think that the committee has to weigh the kind of view that I am putting forward against the kind of view which is a mixture of idealism—‘Let’s get absolutely the right position,’ and, ‘Let’s involve the public to the utmost.’ If you ask the public whether they are in favour of their determining Australia’s head of state, any self-respecting public will say, ‘Of course, yes.’ If you ask the public whether they are in favour of lower taxes, they will say, ‘Yes.’ If you say, ‘Do you want better health and education services?’ they will say, ‘Yes.’ I think we have to look beyond populism; nevertheless a judgment has to be made.

I am only talking about—and I am trying to be reasonable—a 30 per cent middle ground sector of the whole of the Australian public, and I say that they are hugely driven, very articulate, and highly conscious of their views. But of course there are radical republicans, and radical republicans will say no, that we have to go on that second alternative that I put in my introductory remarks. I think the judgment has to be made by the political parties on the basis of your report—that is, the Senate report.

Which way do we go? It is not just a question of what are my personal preferences and aspirations but what will win and what is sound in terms of the constitutional outcome, and I have to leave that judgment with you. My view is that about 10 per cent of the Australian public are diehard radical republicans—that is, they took their ball and went home when it was not a radical model that we put up in 1999. In the Constitutional Convention there were very clear exponents of it—a tiny minority, about 15 of them, by the way, out of 160. I acknowledge there



is 10 per cent diehard radical republicans and there is 30 per cent diehard monarchist conservatives, but they are going down as every year goes by; it is just a question of age. But I believe that, if this 30 per cent were reassured, you would gain a majority at the next referendum.

**Senator PAYNE**—Thank you very much, Dr Teague, for your submission. In some ways it is Cravenesque, if you do not mind the description. We spoke to Professor Craven yesterday and he has some similar concerns. I can identify with a number of those, and with reference to some of the specific individuals that you single out in your submission. I think when you talk about the next steps post 2004, it is very neat and it is very tidy and it is attractive to the political mind, but I am with Senator Bolkus, as it were. What we are told overwhelmingly, both through this process and in my other activities in this area, is that there is a very significant keenness for public engagement, for starters, and then public involvement in the process, to follow that.

I am reluctant to say, ‘Yes, okay, this is really neat and tidy. Let’s do it that way,’ because I think it is kind of cheating the Australian people. At Federation certainly women were not engaged in the process at all. Catherine Helen Spence, who was the only female delegate to the convention—from this state, in fact—was the only woman really engaged in that process. If we are going to reform our Constitution, I think it is incumbent upon us to have a degree of public engagement and public involvement—a large degree, in fact. If you can take my premise, just to do me a favour, how might we progress that and still deal with your concerns?

**Dr Teague**—Thank you, Senator Payne. Greg Craven was one of the most articulate speakers at the Constitutional Convention for what I will call the sceptical middle ground. He was the actual leader of the McGarvie model, in my mind, and I think that you do have to weigh that block of Australians whom he represents. If the four of us who voted for the last referendum who are here today in this discussion could come to some sound agreement with speakers like Greg Craven, I believe that we would get the solution. To come to your second point, of course we all wish to maximise the involvement of the Australian public. The way to do that, in my view, is through consultation. I am not opposed to a plebiscite or two plebiscites.

**Senator PAYNE**—But you say there is no need to hold one.

**Dr Teague**—There is no need to hold one because we know already that a majority of Australians are in favour of a republic. Any poll would tell you that.

**CHAIR**—The monarchists dispute that. The Flintstones in the debate do not agree that that is the case.

**Dr Teague**—As I say, I have the view that it is not necessary to have a plebiscite but, if that is the view of the parliament or of the government of the day, by all means go ahead with it. The trouble with a plebiscite, for example, of the second kind, which would put up, say, five models and say, ‘Which of these five do you support?’, is that you have to give a huge amount of detail—the same kind of detail that was given in the 1999 referendum. Therefore, you will have buckets of pages setting out the three, four, five models that the plebiscite would be all about.

**CHAIR**—That is not necessarily so. You can actually describe each model in simple language, as I said before.

**Dr Teague**—I agree you can do it. The difficulty with oversimplifying each model is the ability to get up to the tricks that John Howard did when he composed the question that was put at the last referendum. You can put simplifications to the public in a plebiscite and half-cook the outcome by the way you put the models or describe the models in that brief form. I believe that the public are best served by a careful consultation on the basis of, say, a white paper or a set of documents. You go around and you have a proper consultation process. It could be done as early as the first year of the next government period. The public are to be consulted by all means, and, of course, the parliament is to be fully involved in the debate.

My notion of democracy is, of course, that every adult Australian is a participant in the vote. However, it is not one in which every bill is put out for a referendum or some popular determination. It is for mature political parties to be always rivals and to be put forward as options before the public. This is the kind of democracy that I would urge as the answer to your main question about involving the public. I think that it is the parliamentary debate that is important and I believe that it is an estimate by the political parties, in dialogue with the public, as to what that precise model should be.

**Senator PAYNE**—I feel better about your propositions to a degree, although I do support an initial plebiscite most certainly. We even got Professor Craven halfway down that road yesterday. He did actually say he could almost manage to stomach an initial plebiscite. The aspect of half-cooking the question, as you put it, is a very telling one. Some of the observations in relation to 1999 are precisely on that point.

**Senator STOTT DESPOJA**—Thank you, Dr Teague. As a point of order, may I just place on record that Dr Hollingworth resigned, he was not dismissed, just so that we are not dealing with any responses in that respect. Dr Teague, I want to go with the half-cooking analogy as well. The elements to which you refer, whether it is Constitutional Convention, an advisory committee, consultation, discussion through the parliament, legislation et cetera: we could argue that all of those aspects indeed were a feature of the 1998 Constitutional Convention and 1999 referendum process.

I am wondering if you can reflect on the process in between because where a lot of that cooking happened, in my opinion, was between the Constitutional Convention and the referendum, the very process that you put a great deal of your faith in—that is, the representative democracy, parliamentary discussion process. As you would recall, we had a select committee, a joint committee, we toured the country, we examined the legislation, we debated it in both houses of parliament. And of course there was much debate about not only the content and the specifics but the wording of the title of the bill, which of course becomes the title of the referendum. Wasn't that part of the process where some of this cooking or these changes took place, and indeed it was not necessarily the public involvement at either end that was necessarily the difficulty for us?

**Dr Teague**—Yes. You have given an apt description of all of that 1998-99 period. I think when we talk about consultation we have to be genuine. This inquiry is a good illustration of what is genuine: you have received many submissions and you are conducting this in a bona fide way. I think a government has the ability to do that as well. The bottom line of my discussion is that the parliamentary parties, in putting forward their policies, should remain sufficiently flexible that, when they discuss that with one another and again with the public, they can

actually come to an agreement. If you had preferably all the parties through their leaders supporting the proposal that is going forward, I think then you have every chance of success. There has to be give and take in that discussion and all of this must be then in dialogue with or under the scrutiny of the public.

In answer to that question, can I come back to what is going on with the popular election. A popular election is a contest between politicians. They have to differentiate themselves—or the people supporting them, whether parties or someone else, or their money—from the other persons who are in the contest, and they have to go out there and get votes. That is not consistent with the kind of integrity we are looking for in the head of state. Secondly, I do not believe you would get the kind of excellent person, such as Sir William Deane. I do not think it is just a question of whether we prefer a popular election or not. We have to find an outcome that is sound, and I do not believe that it would be sound.

**Senator STOTT DESPOJA**—You mentioned the role of the Prime Minister in the process previously, and I have to say it was enlightening to look at the tables you have provided for us, where you actually listed how everybody voted at the Constitutional Convention, and I must admit I had forgotten that our Prime Minister did not vote for a constitutional monarchy.

**Dr Teague**—That is right.

**Senator STOTT DESPOJA**—He actually voted for the McGarvie model.

**Dr Teague**—And not only was that John Howard's vote, but there were 15 coalition members who voted the same as he did. Not one coalition member of parliament was in the 30 votes that are for the monarchist model. They all lined up with the McGarvie model, and the McGarvie model is the Greg Craven model, is the Peter Costello model. That is the point I am making. While some of them, including John Howard, said, 'I am not a republican,' most of them are actually able to be republicans and would be if they thought the outcome was constitutionally sound, and of course since then one of them, Tim Fischer, is no longer Deputy Prime Minister and he has come out of the closet and said—as some of us had intimations of earlier in very careful conversations, for instance, with me—that he wants a republic. I think that you would gain not just the minority of the coalition members of parliament behind the 1999 referendum—people who thought like me—but many more. You could even get wholesale orthodoxy in the Liberal and National parties, and that is why I believe you can get a virtually unanimous republican model if there is this give and take and this flexibility.

**Senator STOTT DESPOJA**—I have one final question, Dr Teague. I know that Senator Payne and Senator Bolkus have asked you about the role for the public, and I guess I am with Marise in the sense that one of the criticisms of not even the last campaign but any kind of constitutional reform process is the desire for increased public ownership, involvement, education and information about that process. Would you see some legitimacy in another Constitutional Convention? Bearing in mind your earlier comments about the role of the parliament in this process—the Prime Minister or others? Do you think that that Constitutional Convention process of 1998 was worthwhile and would you consider it again?

**Dr Teague**—The Constitutional Convention in 1998 was certainly worthwhile. It was what broke the logjam that the Prime Minister, John Howard, had otherwise very firmly in place. I

think it was, from his point of view, a considerable concession to those of us who argued that there should be a Constitutional Convention, to say, 'All right, let's see what the people want. Let them elect half the delegates and let the Constitutional Convention determine it.' He was bona fide in the way he summed up the conclusion at the end. He said, 'Clearly, 59 per cent of these delegates have voted in favour of a republic, and clearly the model which has been supported, the ARM model, is the one that we'll put, and we will have the referendum.' So it broke the logjam.

I have a very similar view to any second convention as I would to a plebiscite. It might be useful but I am yet to be convinced that we need that. What is absolutely vital as the next step is for the political parties to come out with a republican policy which is sufficiently flexible that there can be then a unanimity coming before the parliamentary debate that follows in the 12 months thereafter, and we all need to listen to each other. We all need to work out—because we are all politicians—what estimate have we of what will serve this country best in terms of the constitutional outcome and what will get through in the very difficult contest of any referendum, and I think that that judgment is before you as a committee.

**Senator KIRK**—Thank you, Dr Teague, for your submission. I agree with Senator Payne that your model is very clean and simple, and I think that it is very attractive. The point that you just made a moment ago about the need for that bipartisan support I think is essential, and perhaps I can say until we do have a Prime Minister who is willing and able to support a move to a republic, and also a sympathetic opposition leader, then I think we are always going to be up against it.

I want to ask you one question about your Teague model, as you describe it. You have in the nomination process that any Australian citizen may nominate any other Australian citizen to be listed for consideration by the Prime Minister. I can understand your reasons for putting that in there, because it does put some component of public participation in it. But criticism of that may well be that, because at the end of the day it is the Prime Minister who gets to choose who the person is, really it is just window-dressing and not a substantive addition to the process. Perhaps you can comment on that.

**Dr Teague**—Senator Kirk, I very much welcome your introductory remarks in your question. I have to make it abundantly clear that I am not trying to gain the support of a Prime Minister. I genuinely believe that what I have described in this model is as we do it now. The Prime Minister has the initiative. The Prime Minister is not even bound to consult his own colleagues. He should, in my view, and he will have to. Therefore, there is a bit of an improvement in the model because it has to be an appointment made by the executive government and the cabinet has to agree to it. I am not seeking to curry favour with any Prime Minister. I am pointing out that that is how we have done it for over 100 years and it works. The checks and balances that we were trying to put in place through the bipartisan two-thirds majority model fall down because some people failed to vote yes to that, because they did not think it was workable; they did not think it was practical. 'What happens if the Leader of the Opposition disagrees?' they said. 'What happens if you are just short of two-thirds, for some fortuitous reason?' I genuinely believe that this is workable. I believe it is sound and it is as we do it now.

**Senator KIRK**—But can you comment on the listing process of the nomination by an Australian citizen of another Australian citizen?

**Dr Teague**—That is saying there should be a mechanism for any Australian citizen to write to the Prime Minister—or write an application or use a nomination form, if that is seen to be more official; but in whatever manner any one of us at any time should be able to write to the Prime Minister—saying, ‘I nominate this person, and for these reasons and with this degree of support.’

**Senator KIRK**—You would not really see it as a formal part of the process then?

**Dr Teague**—No, it is not a formal part of the process.

**Senator KIRK**—I understand.

**Senator BUCKLAND**—I like the way you go about it, but I have to disagree with you on the question of whether we need a plebiscite. We would be up a creek without a paddle if we went that way and did not have a plebiscite. Having said that, I did want to ask you a question that came out of Mr Cole’s submission this morning that sparked something in me. We previously had spoken about consultation with the public, educating them and making them aware. There has been a tendency for folk to lean towards local government doing that. Having heard Mr Cole’s view on that this morning, I am going to have to rethink my position, because I think he could well be right. I wonder if you have a view on using local government to facilitate education. I am not sure you were here, so it might be an unfair question.

**Dr Teague**—Thank you, Senator Buckland. On the first point about plebiscite, I leave that entirely with you and the government of the day. As to the other question, I was not here for all of Mr Cole’s discussion and I am not familiar with what you are talking about.

**Senator BUCKLAND**—I appreciate that.

**CHAIR**—Thank you, Dr Teague. It is good to have someone before us who has a bit of history in the process and who is drawing on that history and engagement, particularly of the Constitutional Convention. Hopefully, we will be able to get to the end of a process some time soon.

**Dr Teague**—I wish you and all the committee every best wish as you determine the outcome of the inquiry.

**CHAIR**—Thank you very much.

[11.34 a.m.]

**POTTS, Mr William Douglass Ridley, Director, Australian Technology Pty Ltd**

**CHAIR**—Welcome, Mr Potts. Do you have any comments to make on the capacity in which you appear?

**Mr Potts**—Yes. As well as being the Director of Australian Technology Pty Ltd, I am also the Principal Consulting Engineer. If I may, it is probably more efficient if I just read these short notes.

**CHAIR**—Sure. I was going to ask you if you had any amendments to make to your submission but, if you do not, go to the notes.

**Mr Potts**—Thank you. I thank the honourable senators for this opportunity to give evidence on these constitutional issues. Usually within the adversarial process I give evidence in courts and to government departments on matters relating to the interaction between technology, people and government regulations. I experience the Crown in the significance of its 1,000-year history and its relevance to how Australia is the economic, constitutional and cultural success that it is. I witness two great paradigms in the art of governance: the first is reason and knowledge in statute law; the second is reason and parable in common law.

The Australian Crown is the Crown of St Edward the Confessor, passed from generation to generation in an orderly manner. The lively Crown links all the pillars of civilisation, not just the temporal and the epistemological. The future is already evoking a steeply upward rising ramp in our productivity and wealth. Modernity was the proud offspring of knowledge and interpretive sociology, but the pillars of modernity crumbled when Marxian states could not feed their populations and Keynesian economic theory could not withstand the fast flow of information about markets. The future is a post-modern future, demanding recourse to profound knowledge.

In modernity the individual is seen as the product of social relationships. In post-modernity the individual has returned as the subject and the author of social relationships. The sovereign is the embodiment of the binding contract between the state and the subject. Those in public service are bound by that contract but too often, out of misguided modernist thinking, honour it in the breach. The Speaker of the House of Assembly recently issued a paper on the relevance of St Edward's Crown to our constitutional life. To my relief I find I am not alone in my realisation and witness.

The Crown seals the validity of respect for cultural diversity, freedom of expression and respect for minorities. Lest the honourable senators are unaware of our Queen's commitments made at her coronation in 1953, I will provide as evidence a transcript of her coronation speech. I hope that in their constitutional pilgrimage the honourable senators will discover the vital advantage of constitutional monarchy, where under the Crown there is liberty without chaos and administration without totalitarian bureaucracy. I hope that the honourable senators may reverse their enthusiasm for deposing our constitutional monarch and embrace the concept in the light of failed alternatives and the poverty of substantive options.

I hope the senators will work to restore the concept of an Australian as a citizen of the state within the deeper meaning of being a subject of the Crown. This is a dual advantage, reflecting the two vital paradigms of governance. I urge the honourable senators to desist from taking us down a pathway that can incite nothing but the most schismatic disunity and ultimate loss of liberty.

Most of us seek to be quietly governed. We trust to government those whom we elect. History has shown that we may still trust those who do not receive our vote. The multidimensional Crown representing our contract with the sovereign is our safeguard. Lest the senators doubt the post-modern credentials of the lively Crown, I will submit as evidence, from over 30 years, some speeches of His Royal Highness The Prince of Wales. I will be surprised if they do not resonate with the deeper ambitions of the senators, but currently in the world only The Prince of Wales is in a position to make these reflections.

I submit that the Crown must be defended, because it is the lively embodiment of the contract of liberty already won for every Australian. Its overthrow will spell the demise of public service and let in unfettered totalitarian bureaucratic control that will make puppets out of parliamentarians and puppets out of judges. I urge the honourable senators not to follow the paths that have been so disastrous to others. I urge the honourable senators to defend the Crown.

**CHAIR**—Thank you.

**Senator PAYNE**—Thank you very much, Mr Potts, for your particularly evocative submission. I have a couple of questions. I assume you regard us as currently operating under the constitutional monarchy.

**Mr Potts**—In my world—

**Senator PAYNE**—Is your world different from mine?

**Mr Potts**—I live at the point where regulations are enforced, not enacted. You live where they are enacted; I live where they are enforced.

**Senator PAYNE**—We both have to observe them.

**Mr Potts**—I do not believe currently, when regulations come before parliament, that those that enact them truly understand what is being enacted.

**Senator PAYNE**—You should spend some time on the Standing Committee on Regulations and Ordinances of the Senate! That would give you a bird's-eye view of the process. But you did not really answer my question. Are we currently, in Australia, living under the constitutional monarchy?

**Mr Potts**—The constitutional monarchy is my only resource when I attend a court to give evidence with respect to a regulation.

**Senator PAYNE**—Does that mean we are living under the constitutional monarchy or we are not?

**Mr Potts**—Just.

**Senator PAYNE**—We are?

**Mr Potts**—Just.

**Senator PAYNE**—If we are living under the constitutional monarchy and you make the observation that ‘not a week goes by without finding regulations based on sophistry, enforcements based upon ignorance and public policy based upon manipulation of evidence’, how is the constitutional monarchy under which we are living protecting you and those who find these offensive in that process?

**Mr Potts**—Because a regulation is written increasingly referencing a standard. A group of people sit on a standards committee and they decide to make a limit. The limit will be set to, for instance, 900—900 is the limit. Forget the unit; it does not matter. What then happens is that becomes an immutable law because it has been enacted. Some poor soul has a dimension of 910. Not a person on the planet is inconvenienced by that but this poor soul will be utterly ruined. When that goes to a court the barrister will say, ‘Mr Potts, what was the limit?’ ‘900.’ ‘And what was the dimension?’ ‘Oh, 910.’ ‘Well, Mr Potts, surely this means that your client has disobeyed the law,’ at which point I will turn to the judge and say, ‘Your Honour,’ and go through the story. The only point of reference that I have to His Honour in the court is to say, ‘Let’s go back to the first principles of this situation. This person will be utterly ruined for a matter in which there is not a single detriment to any other person on the planet.’ When I say that ‘a day doesn’t go by’, I do not believe people understand how technology is being moved out of the abilities of ordinary people in the street to participate in making their living.

**Senator PAYNE**—I see the point that you are making, but I am confused as to how you suggest the preservation of the constitutional monarchy is going to prevent what you, I think, referred to as ‘schismatic disunity and ultimate loss of liberty’ if we are apparently currently walking down that perilous path at a great pace already under the constitutional monarchy.

**Mr Potts**—If you look at government departments of, say, 30 years ago, it was common to pick up a document from, say, the department of agriculture. On the top of that document was the Crown and elsewhere on the document might have been the symbol of state, the piping shrike. With the abolition of the Crown the state has become the dominant emblem. It then means that there is no recourse to a deeper argument than the state. The state, because it is running on a contemporaneous model, is whatever is fashionable. A few years ago it was worker participation. That locks into a different level of argument and a different level of permanency than an obligation under the Crown.

Under the Crown an individual will be treated as the subject and public service remains that—public service. I have seen the progressive dismantling of the concept of public service to a concept of public sector, and an increasing dismantling of those agents in public service actually helping people and they are, instead, controlling people—right down to the fact that 10 years ago the document in South Australia on the rehabilitation of the South Australian economy made the point that the public sector should set the agenda. I live at that interface where that is a serious impediment to every individual.



**Senator PAYNE**—Thank you. I have just one other question. You say in point 4.19:

Under the thousand year old King Edward's Crown there is a system that Australians support with overwhelming delight ...

I just wondered what your evidence for the 'overwhelming delight' of Australians was.

**Mr Potts**—Every time I see figures, right down to a recent survey done by one of the radio stations—

**Senator PAYNE**—Not Margaret Throsby, I imagine, given your observations about Ms Throsby.

**Mr Potts**—Absolutely not hers. Every time I see statistics on this referendum issue, I find people that either think it is an irrelevancy or people who do not want to see change. In the constitutional referendum, after the enormous media campaign that was against monarchy, to find that only 45 per cent of the population wanted it and, apart from Canberra, not a single state supported it I think was a monstrous indication that people do not want to see change.

**Senator PAYNE**—I can also reassure you that in relation to your point at 5.3, having had him before the committee recently on another matter, it is not the case that Mr Whitlam has ceased referring to people in his old age as 'comrade'. I can assure you he is continuing to so do. Thank you, Chair.

**Senator STOTT DESPOJA**—I have one brief question, Mr Potts, which relates to your comments in 4.12 in relation to what you refer to as the 'removal of symbolic representation of the Crown,' specifically in relation to the public institutions. You say:

... I regularly witness bureaucrats failing to honour individuals as subjects ...

I want to know: are we as Australian citizens individuals or are we subjects?

**Mr Potts**—We are subjects. Citizenship has the concept of being bound in a collectivity. I have referred to it as a modernist idea that that the individual is not the author of the social relationships but the social relationships confine the individual. What I see coming out of that is the concept of 'Who's responsible for earning a living? Well, the government is responsible for giving people a living.' The alternative, as the subject, is that the subject is responsible for making his or her own way in life. That then leads to the concept of a public service as being an agency that assists people to make their own way in life. I would not be here if that was what I experienced. I experience the increasing dictatorship of a bureaucratic control, with all of those concepts of what I have talked about in there—that Weberian concept that, in a bureaucracy, the right people are appointed to the right tasks. As a result of that, unless you are the ideal type for the situation, people are not given the opportunity to participate, and that is where I earn my income. That is how I come to be in courts with individuals.

**Senator STOTT DESPOJA**—I understand the concept of public service or community good. I am just wondering: am I a subject of the Queen?

**Mr Potts**—You are a subject of the Queen.

**Senator BUCKLAND**—I want to look at one area that no-one has taken up with you, Mr Potts. You talk about the importance of a Christian coronation, and I remind you that this morning you gave us a brief history lesson, so I would have to do that same. I am not a historian; I like to focus on the future. But just to have a little bit of history, wasn't it in fact the British Crown that did the greatest disservice to the Christian church, and that is at the time when they broke away and formed the Anglican Church or the Church of England? The Crown could not get its own way, so it broke away from the broad Christian church. I wonder what your views are on that, because that follows through until today. If you are a Roman Catholic, a Presbyterian, someone from the Uniting Church, or a Greek Orthodox, you are out of the question.

**Mr Potts**—I think you have to see that in the context of governance as two paradigms. One paradigm is where everything is going to be based on what is being classified today as knowledge, and the reason I have used Keynesian economics is that I predict that every one of us here studied and learnt Keynesian economics. The other paradigm is the paradigm that comes from what can be considered those elements that are outside the development by human reason.

What comes from the Christian heritage is a set of parables. What comes from Magna Carta is a set of parables. Magna Carta was not the manifesto. As soon as there is a manifesto, we are in terrible trouble. While there is a set of parables and a set of examples, they are infinitely variable, they are infinitely applicable to different situations. Human beings have schisms. Human beings have conflicts. Human beings form parties one way or the other. I think that what came out of that Reformation was that the concept of sovereignty was enforced. The split between the Anglican and the Catholic was a split in allegiance.

**Senator BUCKLAND**—A king who could not get his own way.

**Mr Potts**—Well, a country that did not want to be subservient to another jurisdiction.

**Senator BUCKLAND**—I think the history books that you are reading are different to the history books I have read.

**Mr Potts**—The concept of Europe at that stage, as I understand it, was that the Pope was a supreme commander and leader of that whole area, and that was not consistent with the political ambitions of the British Isles. The religious base of Anglican and Catholic was unchanged. That was why Cranmer was so successful in writing the Book of Common Prayer: he did not change the doctrine.

**Senator BUCKLAND**—As a Christian, I find it extremely offensive. That is why I find a little bit of intrigue in your reliance on that. I can assure you that I can start a conversation at this table where I would be dining alone, because I firmly believe—unlike many of my colleagues—that the church has a very important role in politics. I do not want to start a further debate here, but that is my belief, and what you are suggesting to me is offensive. You are saying we have to re-endorse ourselves to royalty, or to the Crown as you put it. What you are suggesting to me when you say 'a Christian coronation' is offensive to me. And what relevance does it have to me as an Australian? What relevance does it have to me as a Roman Catholic?

**Mr Potts**—The relevance is that there is a different paradigm at play in the concept of governance, and that different paradigm is one that has been taken out of the context of a day to day administrative matter and has become purely a symbolic preserver of liberty, because when that has been taken away, as it was in the Cromwellian revolution, the only alternative then becomes the single paradigm and it becomes a paradigm in which control is made by statute and not by the common law.

**CHAIR**—But some are more equal than others. Thank you, Mr Potts, and thank you very much for your submission.

[11.57 a.m.]

**HOUSTON, Ms Sally-Louise Elizabeth, (Private capacity)**

**ACTING CHAIR (Senator Payne)**—Good morning, Ms Houston. You have lodged a submission with the committee, which we have numbered 522. Do you need to make any amendments or alterations to that submission?

**Ms Houston**—No, I do not.

**ACTING CHAIR**—Would you like to make a brief opening statement, and at the conclusion of that we will go to questions from members of the committee?

**Ms Houston**—Sure. I grew up in a family that was not overly political. My parents did not really discuss current affairs or news items with me as I was growing up, and I do not bring to this discussion any academic credentials in this area, but I hope that I can make a contribution as an ordinary Australian leading an ordinary life.

In the lead-up to the 1999 referendum I was utterly confused as to how I was going to vote. I was not swayed by either the yes voice or the no voice and I felt that the level of information that was provided to the general public was appalling. I actually made my decision as to how I was going to vote as I walked into that voting room, and I voted yes. I did so because I believed the arguments to vote no were driven by tradition and sentimentality. I do not consider that they are good enough reasons to ask my generation and my children's generation to live under a reign that has little connection with modern day Australian society. I voted yes because I am a fiercely patriotic Australian and I realised that it was no longer appropriate for the Queen to be the head of my nation.

Australian history is vibrant and colourful, and at times shameful, but I never seek to rewrite it and I will fight against being beholden to it. This debate is not about our past; it is about our future, and we have moved on. I believe that the British monarchy no longer represents the Australia in which we now live.

**ACTING CHAIR**—Thank you very much for those remarks.

**Senator BUCKLAND**—I do have one or two questions, but let me say, as a non-academic, I agree with you. I was pretty confused during that last run-up to the vote, although I knew very early on how I was going to vote. In relation to education, what method of educating the general public, people like you and me—perhaps not me now but certainly then—do you think would be best?

**Ms Houston**—Schools obviously have a large role to play. I appreciate that in 1999 I was not at school so it was a little bit late for me, but schools have a role to play in our youth. Media has a significant role to play for adults—television campaigns and newspaper reports. Even the members of parliament have a role in spreading information. Information should be spread from both camps, from both the yes voice and the no voice, because people have a right to make up

their own mind, but it is imperative that people have information to be able to do that. A lot of people that you speak to seem to say, 'I'm voting no because you haven't convinced me to vote otherwise.' That indicates that there is not enough information.

**Senator BUCKLAND**—It has been suggested to us that perhaps local government could take a role in that. Then it was put to us this morning that perhaps that is not the right forum because that is not their role. What do you think about local government taking on that role in the form of holding public forums and the like?

**Ms Houston**—I do not consider that is traditionally the role of local government but there is no logical reason why local government could not work with federal parliament to enable such a forum to exist. As to the success of that, that is another issue. To answer your direct question, I do not consider that it is the role of local government to be responsible for that.

**Senator BUCKLAND**—School is a great area and it is starting to be discussed in schools now. I know that, and I think all of us here know that. You get asked questions about it, so you have to know yourself. But there is an older generation. Schools are no good if you are in a nursing home, but those people will vote. Schools are no good if you are in other community groups. The best way of educating the population as to how to vote is something we might struggle with. I appreciate any thoughts you have on that.

**Ms Houston**—Australians are inherently sceptical about information that is provided to them. The best way of getting information around to the community is people talking to each other, so it is about visiting community groups or spreading the word throughout your own individual community, then those people go and talk to other people. In terms of how you achieve that as a committee, I do not have any answers for you.

**Senator BUCKLAND**—We do not either.

**Ms Houston**—Speaking at political forums or community groups, being available to talk to people, is a very good start.

**Senator BUCKLAND**—I do not know how much you saw, but I found that the material that was out last time—and I was not in the Senate during the lead-up to the vote—was too complicated and not sufficiently flexible to take to different groups. I was involved with the union movement and I found with some sections of the work force that I dealt with they did not have a clue—probably never did—what I was talking about. They did not understand the material that we had available, whereas at other levels of the work force they did understand it. There was no flexibility for someone like myself to adjust it.

**Ms Houston**—In 1999 the level of knowledge about this issue was far less than it is today. A lot more people today have a lot more information and know a lot more about the issues involved. Attaching the preamble issue was a big mistake, because I do not think people understood the questions, the issues, or how to differentiate them. Today, people have a lot more knowledge and they are much more comfortable with this issue.

**Senator BUCKLAND**—I have to thank you for your very professional, as you say, non-professional presentation this morning. I was very impressed. Thank you very much.

**Senator STOTT DESPOJA**—You are spot on in terms of the level of knowledge. The 1999 campaign in itself added to the level of awareness in the population and people know more about our Constitution and the fact that we even have a Constitution, post 1999, which leads on to some of my other colleagues' comments, and that is the importance of having this debate in order to increase education. Do you think part of that next process then would be a plebiscite, so the opportunity then for people to say one way or the other, 'I would like an Australian head of state, yes or no.' Do you think that would be a worthwhile question to put to the Australian people?

**Ms Houston**—Absolutely.

**Senator STOTT DESPOJA**—Do you have a view as to when? Taking into account that it is not necessarily deciding on a model—and I know a lot of people would say, 'Look, I don't want to make a decision on whether or not I become a republican or we move to an Australian head of state until I know a model'—do you have a sense of a time line in terms of what is sufficient for information to get out there so that people could make a choice and hopefully an informed one?

**Ms Houston**—It is very difficult, I think, to put these sorts of things to a time line. I would be very hesitant to set boundaries as such by creating time lines. There is still a level of information that needs to be given to people. I am not sure that we are quite ready but I would not like to see it wait too long. The process of the preamble itself would get out that information as you said with regard to the referendum. That is when the information was provided so the process of putting the question to the Australian people would provide the information. I would like to see it happen within the next couple of years but I also understand that there are a lot of other issues that go along with that in terms of education.

**Senator STOTT DESPOJA**—Do you think it is easier or harder to have that kind of question at an election campaign, when we are actually going to the polls as a matter of course? Does that add to voter awareness, interest, or maybe confusion because you have to weigh up a whole range of other political issues at the same time?

**Ms Houston**—In my experience Australian people do not particularly like the political process and they do not particularly like going to the polls. However, I would be hesitant to see it happen at an election for fear that issues would be confused. This is too important an issue to have it shrouded with other things that are going on and other concerns people might have. I would not like to see this become party political and if you had that an election time you make it too political.

**Senator PAYNE**—Ms Houston, do you have a model that you prefer?

**Ms Houston**—I supported the model that was proposed in the 1999 referendum. I would argue very strongly against a direct elect. I have serious concerns about that model. We have a very strong and very stable democracy and I would like to see a model that changes that in as few ways as possible.

**Senator PAYNE**—I am interested in the observations that you make in the latter half of your submission, about the demographic changes in Australia. To some extent you talk about the number of first-generation Australians, migrants from non-English-speaking backgrounds and

the addition of their culture and traditions to the Australian way of life. One of our earlier witnesses was also very eloquent on those issues. I wonder how you think we can add to the engagement of the diversity of Australians in this process, in terms of education, in terms of information. How can we make sure that as we progress we involve Australians from all walks of life and end up with a system that is representative of the diversity of Australians?

**Ms Houston**—I am not sure if you are asking me how we would go about achieving that.

**Senator PAYNE**—In some ways it is a question about the process of adding to your views already about education and information, how we can make sure that that is accessible to the broad of Australians, not just a narrow cast, if you like.

**Ms Houston**—Sure. I guess we need to make sure we send a very public message of inclusion that we want to create an Australia that is welcoming and that has a place for everybody. I think sometimes community groups do not always feel like they have a role to play in Australia. By embracing community groups and by sharing the knowledge with those groups and encouraging them to participate in this debate and the experience and knowledge they can bring, we will end up with a system and a wealth of knowledge that has encompassed the broad range of groups and the broad range of people we have in Australia.

**Senator PAYNE**—Thank you very much.

**CHAIR**—Just on that, the previous witness to whom Senator Payne alluded talked about the networks that are available through non-English media, radio, TV and whatever. They would be available for any future campaign. I do not think they were utilised all that well last time. But do we have a problem in that the republican movement last time might have suffered what the political process is suffering? That is, there was an attempt to, I suppose top-down, try and persuade people to support the idea of a republic with the national characters and identities and so on. Should we be looking at a community base sort of approach where you may very well have your street corner discussions, or your community based discussions? It seems to me that people are losing confidence in that top base. The more they are locked into mass communication, the more they seem to want direct communication from people they trust in the community setting, to develop their views. Is that something you are concerned about?

**Ms Houston**—For sure. Community groups in Australia, in my experience, are quite strong. We do not utilise those enough. Those groups are the best way to have access to those people because they are the trusted voice.

**CHAIR**—Slightly contradicting that, I suppose, we do now have new communication mediums. We have the Web. Is there capacity you may have thought of for an education campaign, either without a referendum, or the process of a referendum for information to be disseminated through that medium?

**Ms Houston**—I think the Internet is brilliant and I think it should be used as widely as possible. It provides fantastic opportunities to enable people to access information in different languages and it is a medium that is often underutilised in marketing campaigns. That is basically what we are talking about, a marketing campaign to sell this message.

**CHAIR**—Marketing campaigns and also, I suppose, drawing on some of the experience from the states where you can use the Web to try and develop community based networks and organisations for discussions with a political purpose, without one.

**Ms Houston**—Sure.

**CHAIR**—The Howard Deane campaign to a certain extent, I think, is an example where you can actually bring people and communities together by using a broader mechanism.

**Ms Houston**—I do not have any personal experience about that.

**Senator KIRK**—I have just one quick question of you, Ms Houston. I was interested in your opening remarks when you said that when you went into the polling booth you did not know whether or not you would vote yes or no and you decided to vote yes. It seems that since that time you have had time to consider your view and you now say that you do in fact support the model that was proposed at the referendum. I just wonder what it was that brought you around. Was it your own research, or talking to people? I think it is interesting because it reflects how people can come to change their mind over a period of time.

**Ms Houston**—Yes. I stood there and thought, ‘I can’t make a decision that holds Australia from advancing.’ I felt that the right choice was the choice for our country. As I said, I did not think that the arguments to vote no were at all compelling. I felt that, whilst I did not necessarily understand or have a full knowledge of the arguments I heard to vote yes, it was important that I make a stand and that I make a decision to move forward and to represent where I want Australia to be.

**CHAIR**—Thank you. In closing, I thank all here for taking the interest to either give evidence this morning or be with us for the hearing. Thank you very much.

**Committee adjourned at 12.16 p.m.**