

# CHAPTER 4

## THE PROCESS: COMPONENTS AND PROPOSALS

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

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

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

### Plebiscites

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

A direct vote of the whole of the electors of a state to decide a question of public importance.<sup>1</sup>

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

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

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

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

3 Constitutional Centre of Western Australia website, [www.ccentre.wa.gov.au/html/referednum/exh\\_ref2.php](http://www.ccentre.wa.gov.au/html/referednum/exh_ref2.php) accessed 6/07/2004.

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

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

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

4.8 This section looks at:

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

### *The value of plebiscites*

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

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

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

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

5 *Ibid*, p. 42.

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

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

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

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

... there should not be a government-paid legislated plebiscite to vote on whether to change the Constitution except by a referendum.<sup>9</sup>

and that:

A plebiscite would be like a very expensive opinion poll except that it would be given official sanction.<sup>10</sup>

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

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

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

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6 Ibid, p. 42.

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

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

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

10 Ibid, p. 71.

11 *Submission 455*, p. 4.

12 *Submission 42*, p. 4.

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

### *A threshold plebiscite question?*

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

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

4.16 Professor George Winterton supported this view, stating:

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

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

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

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

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

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

14 *Ibid*, p. 31.

15 *Submission 319*, p. 7.

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

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

18 *Submission 107*, p. 34.

want a republic?" was not appropriate, given the "vague and sometimes negative impressions the word 'republic' conveys".<sup>19</sup>

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

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

and:

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

and:

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

and:

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

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

Should Australia become a republic with a republican Head of State or should it remain a constitutional monarchy?<sup>25</sup>

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

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

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

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

23 *Submission 471*, p. 32.

24 *Submission 201*, p. 2.

25 *Ibid.*

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

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

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

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

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

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

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

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

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

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

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

28 *Submission 720*, p. 1.

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

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

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

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

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

The reason for that is that a plebiscite on four or five models produces a shallow, divided, conflicted assessment of a republic. In that contest the model with the shallowest surface appeal will win, its problems, if any, hidden. That plebiscite model will therefore favour a model with shallow surface appeal with problems that will surface later. That model is a direct election. Direct election will win a plebiscite.<sup>32</sup>

### ***Other plebiscite questions?***

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

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

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29 *Submission 308*, p. 1.

30 *Submission 471*, p. 41.

31 *Submission 319*, p. 8.

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

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

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

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

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

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

### ***Separate or concurrent plebiscite questions?***

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

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

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

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

34 *Submission 107*, p. 28.

35 *Submission 201*, p. 2.

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

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

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

4.35 Former Senator Michael Beahan agreed, saying:

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

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

It is somewhat artificial to state whether one prefers a republic in abstract, since the true response must be that it all depends on what sort of republic is being referred to. As was seen in 1999, many direct-election republicans preferred the status quo to the 1999 model. Voting simultaneously on a particular republican model sets the context for, and gives specificity to, the initial general question.

Some electors may fear that the Government will treat an affirmative answer to the initial question as a "blank cheque" and decline to consult the electors further. The electors must, of course, vote in a referendum before any constitutional alteration is made, but some electors may not realize this.<sup>39</sup>

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

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

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37 Ibid, p. 47.

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

39 *Submission 319*, p. 7.

40 *Submission 201*, p. 2.

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

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

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

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

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

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

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

42 *Ibid*, p. 27.

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

44 *Ibid*, p. 19.

45 *Ibid*, p. 18.

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

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

4.43 The option of legislative guarantees of future voting opportunities, with dates specified, was also put forward by the ARM.<sup>48</sup>

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

The plebiscites held together makes ... sure that every conservative republican must oppose the first plebiscite as well, because the first plebiscite will be inextricably attached to and involved with the second plebiscite, which any bright conservative republican will know will produce direct election.<sup>49</sup>

4.45 Professor Craven also put forward that holding concurrent plebiscites is:

... an attempt to harness what I would see as the relative pristine virtue of the proposition that Australia should become a republic and instantly attach that to a model that I would regard as pernicious.<sup>50</sup>

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

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

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

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47 *Submission 456*, p. 2.

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

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

50 *Ibid*, p. 5.

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

52 *Submission 447*, p. 1.

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

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

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

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

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

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

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

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

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

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53 *Submission 107*, p. 33.

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

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

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

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

58 *Submission 219*, p. 1.

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

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

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

### ***Plebiscites: method of voting?***

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

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

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

### **A constitutional convention?**

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

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59 *Submission 107*, p. 33.

60 *Ibid*, p. 34.

61 *Submission 319*, p. 8.

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

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

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

... deny anyone the opportunity of saying that the people have been kept at arms length from the decision-making process.<sup>65</sup>

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

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

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

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

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62 *Submission 471*, p. 41.

63 *Submission 201*, p. 3.

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

65 *Submission 201*, p. 3.

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

67 *Submission 167*, p. 14.

68 *Ibid*

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

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

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

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

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

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

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

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

70 *Submission 167*, p. 14.

71 *Submission 107*, p. 35.

72 *Submission 471*, p. 41.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80 *Submission 476*, p.12.

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

could be left to the government of the day.<sup>82</sup> The Committee notes that compulsory voting would require legislative approval.

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

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

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

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

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

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

## **A parliamentary committee**

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

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

83 *Submission 512*, p. 9.

84 *Ibid*, p. 9.

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

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

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

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

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

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

87 *Submission 471*, p. 42.

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

89 *Ibid*

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

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

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## Section 128 referendum

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

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

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

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

## Other proposals

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

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

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

93 *Submission 451*, p. 2.

94 *Submission 107*, p. 38.

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

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

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

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

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

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

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95 *Submission 152*, p. 2.

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

97 *Submission 152*, p. 2.

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

99 *Submission 330*, p. 2.

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

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

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notes that the method of appointment proposed is by Parliament and by the Governor-General,<sup>102</sup> and that this may be an inherently political method of appointment.

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

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

### **The Corowa Conference adopted model**

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

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

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

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

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102 *Submission 330*, p. 2.

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

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

105 *Submission 621*, p. 1.

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

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

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

It does not assist a successful outcome if we have an elaborate obstacle course of committees, plebiscites and Conventions if the voters still do not get to see the actual details until the referendum.

The detailed republic model put to a referendum might still wilt under the pressure and fail the only test that really matters.<sup>108</sup>

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

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

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

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

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

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107 *Submission 167*, p. 13.

108 *Submission 107*, p. 27.

109 *Ibid.*

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

111 *Ibid*, p. 3.

monarchy for the states. We would eventually get over it but it sounds like a poor beginning to our new republic.<sup>112</sup>

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112 Ibid

