

CHAPTER 6

SELECTION AND REMOVAL OF HEAD OF STATE

Introduction

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

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

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

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

Qualifications

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

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

6.5 Some of the disqualifications suggested included:

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

- former and/or current politicians.

Qualifications

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

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

Australian citizenship

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

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

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

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

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

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

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

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

6 *Submission 482*, p. 3.

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

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

Eligibility to vote

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

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

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

8 RAC Report, Volume 1, p. 57.

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

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

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

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

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

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

Age limits

6.12 Many submissions also suggested age limits for eligibility for a republic head of state. Some submissions proposed that the head of state should be at least 35¹⁵ or 40¹⁶ years of age. Others felt that a minimum age of 18 was sufficient.¹⁷ As noted above, a requirement of eligibility to vote would effectively require a minimum age of 18.¹⁸ A maximum age limit was also suggested in some evidence, for example, of 75,¹⁹ 70²⁰ or even 60.²¹ However, others objected to the idea of an upper age limit.²² Mr Jack Hammond QC and Ms Juliette Brodsky endorsed Richard McGarvie's observation that:

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

Gender-based requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.15 However, Ms Clare Thompson disagreed with this proposal:

A woman would be great but it is not a prerequisite obviously ... I think alternating it is a little unnecessary. It would be: "Wow! This time it's a girl's turn, so let's look around for a girl." Then next time, it would be the boy's turn and we would say, "Last time we had a white boy; this time we're going to have an Asian boy," or something of that nature. It is just silly.²⁶

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

Disqualifications

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

24 *Submission 484*, p. 4.

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

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

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

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

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

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

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

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

Political or apolitical head of state?

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

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

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

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

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

31 *Submission 512*, p. 13.

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

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

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

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

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

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

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

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

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

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

35 Ibid.

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

37 *Submission 334*, p. 5.

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

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

40 RAC Report, Volume 1, p. 56.

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

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

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

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

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

6.28 Similarly, the ARM submitted that:

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

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

41 *Submission 319*, p. 4.

42 *Ibid.*

43 RAC Report, Volume 1, p. 56.

44 *Submission 471*, p. 15.

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

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

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

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

Timing of political involvement

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

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

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

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

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

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

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

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

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

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

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

Selection of head of state

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

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

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

Nomination and short listing

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

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

6.38 However, it is clear that some of the key issues to be considered in this context include:

- who should be eligible to put forward nominations?
- in the case of nomination by petition, what should be the minimum number of nominators?

53 ARM, *Submission 471*, p. 21.

54 Of course, our current head of state, the Queen, is not appointed, but rather is a hereditary position.

55 See, for example, ARM Model One or Two, ARM, *Submission 471*, Appendix A, pp. 3-6; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 27; Dr Baden Teague, *Submission 538*, pp. 9-10; Professor Greg Craven, *Submission 167*, p. 5.

56 *Committee Hansard*, 14 April 2004, p. 24.

- should there be a minimum or maximum number of candidates – and if so, what are the appropriate numbers?

6.39 In terms of who should be able to put forward nominations, proposals received by the Committee included nomination:

- by the Prime Minister;⁵⁷
- by a nominations committee established by Federal Parliament (including parliamentary and community representatives),⁵⁸
- by the Senate or the House of Representatives, or either house of a state or territory parliament; or any local government followed by short listing by a joint sitting of the Senate and House of Representatives;⁵⁹
- nominations by state or territory governments;⁶⁰
- by a petition of voters with a minimum number of signatures, perhaps with Parliament to select a short list;⁶¹ and
- by open nomination – that is, any Australian citizen.⁶²

6.40 Some suggested more than one avenue for nomination should be used.⁶³ For example, Dr Barry Gardner submitted that nomination by petition could be used as a supplementary process for a main nomination process.⁶⁴ Others suggested a combination of methods, such as open nomination, followed by short listing by some form of nominations committee,⁶⁵ or by Federal Parliament.⁶⁶

57 See, for example, Mr Andrew Cole, *Submission 41*, p. 17; ARM (Model One), *Submission 471*, Appendix A, pp. 3-4; Dr Baden Teague, *Submission 538*, pp. 9-10; Mr Jack Hammond and Ms Juliette Brodsky, *Submission 719*, pp. 11-12.

58 See, for example, Professor George Winterton, *Submission 319*, p. 3; ARM (Model Two), *Submission 471*, Appendix A, pp. 5-6.

59 See, for example, A Just Republic, *Submission 281*, pp. 4-5; ARM (Model Five), *Submission 471*, Appendix A, pp. 13-14.

60 See, for example, Professor George Winterton, *Submission 319*, p. 3; Mr John Pyke, *Submission 512*, p. 11; Mr Allan Patterson, *Submission 205*, p. 1.

61 See, for example, Professor George Winterton, *Submission 319*, p. 3; Republican Party of Australia, *Submission 495A*, p. 2; Mr John Pyke, *Submission 512*, p. 11; ARM (Model Four), *Submission 471*, Appendix A, pp. 10-12.

62 See, for example, Women for an Australian Republic, *Submission 476*, p. 5; ARM (Model Five), *Submission 471*, Appendix A, pp. 13-14; A Just Republic, *Submission 281*, pp. 4-5.

63 Professor George Winterton, *Submission 319*, p. 4; Mr John Pyke, *Submission 512*, p. 11; ARM (Model Five), *Submission 471*, Appendix A, p. 13; A Just Republic, *Submission 281*, pp. 4-5.

64 *Submission 482*, p. 2.

65 See, for example, Women for an Australian Republic, *Submission 476*, p. 5.

66 ARM (Model Five), *Submission 471*, Appendix A, pp. 13-14; A Just Republic, *Submission 281*, pp. 4-5.

6.41 While these were some of the main proposals suggested, the Committee received many variations on each of these particular options. This was particularly the case in relation to nomination by petition, where suggestions for the minimum number of signatures ranged from as low as 100⁶⁷ to up to 50,000⁶⁸ or 100,000⁶⁹ or more. The "Hayden model", which was discussed at the 1998 Constitutional Convention, suggested one per cent of the electorate.⁷⁰ It was suggested to the Committee that this would require 125,000 electors, which was considered "rather large".⁷¹ It was clear that, if nomination by petition were chosen as an option, an appropriate balance would be required to ensure that the number were low enough to allow genuine nominations to succeed, while restricting frivolous nominations. As Dr Bede Harris (who suggested a minimum of 500 nominators) stated:

It was a difficult figure to choose. I was trying to balance the need for the process to be as accessible as possible to potential candidates against the danger of having thousands of candidates with eccentric platforms ... I think one would have to be guided in that by expert evidence from the Electoral Commission as to what an appropriate number would be.⁷²

6.42 It was also suggested that nomination by petition should comprise minimum numbers from each state, to ensure adequate involvement and representation of every state, particularly smaller states.⁷³

6.43 Other interesting proposals were also put forward. For example, Mr Ross Garrad suggested that, following an open nomination procedure, "citizen's juries" could shortlist candidates prior to an election:

If we are to have a reasonably open nomination procedure, then how is a potentially large field of nominees going to be cut down to a manageable short list to go to an election? If the short-listing is not to be done by the parliament, the parties or by a government appointed committee—and I believe all of these approaches are fatally flawed—then one obvious approach is to use a representative sample of the population. I suggest the use of citizen juries of 12 randomly chosen electors in each federal electorate—a total of about 1,800 people meeting in their electorates for one full day, sifting through the nominees and then voting as individuals to produce a short list of six candidates.⁷⁴

67 Mr Ross Garrad, *Submission 533*, p. 4.

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

69 Dr Bruce Hartley, *Submission 330*, p. 6.

70 *Final Report of the Constitutional Convention*, 1998, Volume 1, Attachment E.

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

72 *Committee Hansard*, 29 July 2004, p. 35.

73 Mr David Latimer, *Submission 519*, p. 42; ARM (Model Four), *Submission 471*, Appendix A, p. 10; Professor George Winterton, *Submission 319*, p. 4.

74 *Committee Hansard*, 29 June 2004, p. 31.

6.44 In terms of whether there should be minimum or maximum numbers of actual candidates, some submissions considered that there should be no minimum or maximum number.⁷⁵ Others suggested restrictions of somewhere between 3-10 candidates⁷⁶ or even up to 50 candidates.⁷⁷ Women for an Australian Republic proposed that half the candidates should be women, and at least one an Indigenous person.⁷⁸

6.45 Of course, as several submissions noted, the nomination process would be heavily dependent on the final method of selection (such as appointment or election) of the head of state.⁷⁹ For example, the models put forward by the ARM provided for the different nomination processes relating to the particular method of selection.⁸⁰ Similarly, nomination by petition was obviously more likely to be suggested by supporters of direct election.⁸¹

Appointment or election processes

6.46 The next crucial step in the selection process involves the actual appointment or election of the head of state. As will be discussed further in the next chapter, the Committee received a considerable amount of evidence which suggested that the chances of becoming a republic hinged on this very issue.⁸²

6.47 The Committee received some original suggestions for methods for selecting the head of state. For example, Mr Michael Pepperday proposed a "popular appointment" model for the head of state, whereby the people would approve (or reject) the Prime Minister's candidate for head of state via a postal vote.⁸³ Some of the other suggestions included:

- randomly selecting the head of state from the Federal electoral roll;⁸⁴

75 Professor George Winterton, *Submission 319*, p. 4; Dr Ken Coghill, *Submission 536*, p. 4.

76 Republic Now!, *Submission 466*, p. 14.

77 Mr Peter Crayson, *Submission 322*, p. 3.

78 *Submission 476*, p. 8.

79 ARM, *Submission 471*, p. 20; Professor George Winterton, *Submission 319*, p. 3.

80 *Submission 471*, p. 20.

81 ARM (Model Four), *Submission 471*, Appendix A, p. 10; Mr Ross Garrad, *Submission 533*. See also the direct election models outlined in the next Chapter.

82 See for example, Mr Andrew Newman-Martin, *Submission 107*, pp. 18-22; Mr Peter Consandine, *Committee Hansard*, 13 April 2004, p. 79; Mr Howard Teems, *Submission 100*, p. 8; Mr Don Willis, *Submission 474*, p. 4.

83 *Submission 621*, pp. 11-12. A similar suggestion was put forward by Mr Phill Chadwick, *Submission 81*, p. 1, except that the people would approve or reject a candidate endorsed by a two-thirds majority of Parliament.

84 Mr Chris Borthwick, *Submission 695*, p. 1.

- rotating the head of state on an annual basis, with each state governor serving a one-year term, followed by a directly elected head of state for one year;⁸⁵ or
- allowing each state in-turn to appoint a head of state for a term of five years using their own preferred selection process.⁸⁶

6.48 However, most of the evidence received by the Committee related to the following options for the final stage of the selection of a head of state:

- appointment by the Prime Minister;
- appointment by Federal Parliament (for example, by a two-thirds majority of both Houses);
- appointment by an elected "presidential assembly" or "electoral college";
- direct election with parliamentary involvement; or
- direct election.

6.49 Given that the method of selection is one of the key differences in the various republican models, the issues relating to these methods of selection will be discussed in further detail in the next chapter. However, it is noted here that, in the case of selection by direct election, some additional factors would need to be considered. These include:

- voting methods and systems; and
- campaign assistance and financing issues.

Direct election: voting methods and systems

6.50 The Committee's discussion paper sought views on potential methods of voting in the case of a directly elected head of state. Submissions and evidence overwhelmingly supported a preferential voting system, with which Australians are already accustomed.⁸⁷ One submitter who originally supported other voting methods was persuaded by the arguments of other submissions in favour of a preferential voting system:

At first I was thinking that a run-off gives a clear view to the public about who the last two remaining candidates are, and they get a second chance to make a decision between those two. I think I am convinced by a number of your submitters who say that the preferential voting system is really well accepted in Australia, and it is less costly because you have only one ballot. ... I do think, however, that the preferential system should be an optional

85 Mr Robert Sadleir, *Submission 508*, pp. 1-2.

86 Mr Yogi Marriott, *Submission 17*, p. 1.

87 ARM, *Submission 471*, p. 17; Women for an Australian Republic, *Submission 476*, p. 9; Mr Bill Peach, *Submission 36*, p. 8; Republic Now!, *Submission 466*, p. 12; Mr John Kelly, *Submission 142*, p. 13; Dr Ken Coghill, *Submission 536*, p. 4.

preferential system so that people do not have to put preferences next to everybody.⁸⁸

6.51 The Committee did not receive a great deal of evidence on the issue of whether voting for a directly elected head of state should be compulsory or voluntary. Perhaps it was assumed that voting should be compulsory, as for other Australian elections. However, Women for an Australian Republic suggested that voting for the head of state should be voluntary as this would remove "any perception that the head of state has a political mandate to threaten the elected government of the day".⁸⁹ Some submissions also proposed that the election for the head of state could be conducted by a postal ballot.⁹⁰ It was also suggested to the Committee that the voting system could be prescribed by legislation, not by the Constitution.⁹¹

Direction election: campaign assistance and financing

6.52 The Committee's discussion paper also sought views on campaign and financing issues associated with a directly elected head of state, and in particular:

- whether campaign assistance should be available to nominees;
- whether and how political parties should or could be prevented from assisting or campaigning on behalf of nominees; and
- who should administer any campaign assistance provided.

6.53 Varying opinions were put forward on whether campaign assistance should be available to candidates. Many supported some form of campaign assistance, including public financial assistance.⁹² For example, the ARM argued that:

Public funding of election candidates is now accepted in Australia as a way to encourage political participation on an equitable basis in a democracy. In this spirit, some form of campaign assistance should be available to nominees if an election is held.⁹³

6.54 The ARM proposed that a "reasonable level of assistance" could be provided to all nominees prior to the election, supplemented by post-election assistance:

88 The Hon Michael Beahan, *Committee Hansard*, 14 April 2004, p. 2

89 *Submission 476*, p. 8; see also Ms Sarah Brasch, Women for an Australian Republic, *Committee Hansard*, 29 July 2004, p. 20.

90 See, for example, Major Edward Ruston, *Committee Hansard*, 14 April 2004, p. 30.

91 Professor George Winterton, *Submission 319*, pp. 2-3.

92 Republic Now!, *Submission 466*, p. 12; Republican Party of Australia, *Submission 495A*, p. 2; Mr Andrew Newman-Martin, *Submission 107*, p. 39; Professor George Winterton, *Submission 319*, p. 2; A Just Republic, *Submission 281*, p. 5; Women for an Australian Republic, *Submission 476*, p. 6; Mr James Stack, *Submission 404*, p. 4; Dr Ken Coghill, *Submission 536*, p. 3; ARM, *Submission 471*, p. 14.

93 *Submission 471*, p. 14.

This should be supplemented by post-election assistance, the level of which could be related to the proportion of the vote achieved by a candidate over and above a minimum of 4% of the vote (or as otherwise determined).⁹⁴

6.55 Several submissions suggested that restrictions should be imposed on presidential campaigns,⁹⁵ such as limits on commercial advertising⁹⁶ and a limit on the amount of money that candidates could spend on their presidential campaigns.⁹⁷ For example, the Hon. Michael Beahan suggested that "strict conditions be placed on the nature of campaigns which candidates can run with a view to placing a strong emphasis on the conveying of information rather than on emotive advertising".⁹⁸ He suggested, for example, limited government-funded "information" be provided, such as an official information booklet, and information in newspapers, and on TV and radio.⁹⁹ He acknowledged that this would require constitutional amendments to ensure that such regulation is not held invalid as a constraint on freedom of political communication.¹⁰⁰

6.56 There were similarly diverse opinions on whether political parties should be prevented from assisting or campaigning on behalf of candidates. Some felt that political parties should be prevented from assisting, campaigning and officially endorsing any particular candidate.¹⁰¹ On the other hand, many felt that political parties should not be prevented from assisting or campaigning on behalf of candidates, although some of these submitters suggested restrictions on campaigning as outlined above.¹⁰² For example, the ARM felt that:

Any attempt to prevent the participation of political parties would be undemocratic and likely to fail in any case. The parties would be very tempted to form "political action groups" in support of their preferred candidates; these would be to all intents and purposes front organisations for the parties themselves. It would be unusual, to say the least, to legally

94 Ibid.

95 See, for example, Mr John Kelly, *Submission 142*, pp. 13-14; Dr Barry Gardner, *Submission 482*, p. 1; The Hon Michael Beahan, *Submission 334A*, pp. 1-2; Professor George Winterton, *Submission 319*, p. 2; Mr Ross Garrad, *Submission 533*, p. 3.

96 See, for example, Mr David Latimer, *Submission 519*, p. 39; Women for an Australian Republic, *Submission 476*, p. 6.

97 Mr Andrew Newman-Martin, *Submission 107*, p. 39.

98 *Submission 334A*, p. 1.

99 Ibid.

100 Ibid, p. 2.

101 Republic Now!, *Submission 466*, p. 13; Mr John Morris, *Submission 449*, p. 2; Mr Ross Garrad, *Submission 533*, p. 4.

102 Mr John Pyke, *Submission 512*, p. 10; Professor George Winterton, *Submission 319*, p. 2; The Hon Michael Beahan, *Submission 334*, p. 5; Dr Bede Harris, *Submission 93A*, p. 1; Women for an Australian Republic, *Submission 476*, p. 7.

proscribe specific institutions like political parties from taking part in a democratic process, but not others.¹⁰³

6.57 Similarly, Professor George Winterton expressed his view that:

Political parties probably cannot effectively be prevented completely from providing assistance, which can always be directed through surrogates, as American campaign funding reform demonstrates. Nor should they be, since freedom of expression is desirable. However, legislation should impose funding limitations on parties and other groups. The Constitution should expressly authorize Parliament to pass such legislation to ensure that it is not held invalid as a constraint on freedom of political communication.¹⁰⁴

6.58 The Hon. Michael Beahan also argued that:

I see no reason why political parties should not be involved in such open, direct election. Political parties are an integral part of the community and have a right to be involved. If their involvement were proscribed, a number of other institutions would also have to be considered for similar treatment. It would be difficult to agree on the criteria for such proscription.¹⁰⁵

6.59 The ARM further commented that "... objections to having political parties involved in a campaign often arise from a desire to keep the office of Head of State non-partisan and positioned above party politics".¹⁰⁶ The ARM then noted, as discussed previously, that there may be other mechanisms for encouraging a non-party political head of state.¹⁰⁷

6.60 There appeared to be a general consensus that the Australian Electoral Commission would be the most appropriate and suitable body to administer and/or regulate issues relating to campaign assistance.¹⁰⁸

6.61 Another issue for selection using direct election related to the timing of elections, and whether it should be held in conjunction with elections for the House of Representatives. This issue overlaps with the issue of the tenure of the head of state, and is therefore considered below.

103 *Submission 471*, p. 15.

104 *Submission 319*, p. 2.

105 *Submission 334*, p. 5.

106 *Submission 471*, p. 15.

107 *Ibid.*

108 See, for example, ARM, *Submission 471*, p. 16; Professor George Winterton, *Submission 319*, p. 2; Mr Bill Peach, *Submission 36*, p. 8; The Hon Michael Beahan, *Submission 334*, p. 5; Major Edward Ruston, *Submission 100*, p. 2; Mr James Stack, *Submission 404*, p. 4; Dr Ken Coghill, *Submission 536*, p. 4.

Tenure

Length of term

6.62 Under the current arrangements, the Constitution does not currently specify a fixed term for the Governor-General. However, by convention and informal arrangements between the Prime Minister and the Governor-General the term is usually five years. By convention, this term can be extended.¹⁰⁹

6.63 The 1993 Republic Advisory Committee considered that the term of office of a republican head of state should be specified, and anywhere from four to seven years was considered "reasonable".¹¹⁰

6.64 A few submissions suggested that a term of six years¹¹¹ or four years¹¹² might be appropriate for a republican head of state. However, consistent with the current practice for Governors-General, there was general support for a five year term for a republican head of state.¹¹³ In his support for a five year term, Professor George Winterton proposed that the term:

... should be long enough to provide some stability, but not so long as to diminish legitimacy.¹¹⁴

6.65 Professor Winterton also pointed out that five years is the term of office of the heads of state in the republics of Germany, India, Israel and Portugal.¹¹⁵

6.66 Other submissions suggested that the term should be linked to parliamentary terms.¹¹⁶ In particular, it was suggested that if the head of state is to be directly

109 See ARM, *Submission 471*, p. 25.

110 RAC Report, Volume 1, pp. 2 & 59-60.

111 Mr Bill Peach, *Submission 37*, p. 10; Mr Peter Crayson, *Submission 322*, p. 4; Mr David Latimer, *Submission 519*, p. 43; Women for an Australian Republic, *Submission 476*, p. 9.

112 Republican Party of Australia, *Submission 495A*, p. 1; Mr Stephen Souter, *Submission 526*, p. 300; Mr Mark Collins, *Submission 138*, p. 3.

113 Professor George Winterton, *Submission 319*, p. 4; Republic Now!, *Submission 466*, p. 14; ARM, *Submission 471*, p. 25; Mr Andrew Cole, *Submission 41*, p. 18; Dr Baden Teague, *Submission 538*, p. 10; Dr Bede Harris, *Submission 93*, p. 18; Mr Andrew Newman-Martin, *Submission 107*, p. 40; Mr Dominic Pellegrino, *Submission 461*, p. 16; Mr John Flower, *Submission 447*, p. 4. This was also the term of office contained in the 1999 republic proposal.

114 *Submission 319*, p. 4.

115 Ibid.

116 See, for example, Dr Ken Coghill, *Submission 536*, p. 5; Women for an Australian Republic, *Submission 476*, p. 9.

elected, the election should be held conjointly with a federal election, in order to minimise election costs.¹¹⁷ Others disagreed, such as the ARM, who argued that:

... the term of office should not be tied to the term of the parliament, as this may present the head of state with a conflict of interest when given advice to dissolve parliament.¹¹⁸

6.67 Similarly, Professor George Winterton reasoned that:

The term should not be the same as that of the House of Representatives (to facilitate differentiation between the head of state and the Government).¹¹⁹

Restrictions on re-appointment or re-election

6.68 Many republics also restrict the number of consecutive terms that a head of state can serve.¹²⁰ On this issue, there appeared to be general support for the head of state to be eligible for re-election or re-appointment for one further term (that is, a total maximum of two terms).¹²¹ It was also suggested that a two term limitation would be more appropriate in the case of a directly elected head of state, to prevent the head of state becoming too powerful.¹²²

6.69 Others suggested that there should be no provision for re-appointment or re-election.¹²³ However, Mr Howard Teems did recognise that there may be an "opposing opinion" that a good head of state should not be barred from seeking another term in office".¹²⁴ The ARM noted that, while it might be appropriate to allow for a second term for a successful head of state, heads of state "that are limited to a single term cannot be improperly influenced by offers to renew their term".¹²⁵

6.70 This issue was considered in the context of the 1999 republic model, which simply provided that "a person may serve more than one term as President", with no

117 See, for example, Mr Bill Peach, *Submission 37*, p. 10; A Just Republic, *Submission 281*, p. 5; Mr Christopher Wolfs, *Submission 96*, p. 5; Ms Sarah Brasch, Women for an Australian Republic, *Committee Hansard*, 29 July 2004, p. 21.

118 *Submission 471*, p. 25; see also Women for an Australian Republic, *Submission 476*, p. 2.

119 *Submission 319*, p. 4.

120 RAC Report, Volume 1, p. 60.

121 See, for example, Professor George Winterton, *Submission 319*, p. 4; Republic Now, *Submission 466*, p. 14; Mr Bill Peach, *Submission 37*, p. 10; Mr Peter Crayson, *Submission 322*, p. 4; Andrew Cole, *Submission 41*, p. 18; Mr Stephen Souter, *Submission 526*, p. 300.

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

123 For example, Republican Party of Australia, *Submission 495A*, p. 1; Mr David Latimer, *Submission 519*, p. 43; Dr Ken Coghill, *Submission 536*, p. 5; Mr Howard Teems, *Submission 100*, p. 5; Women for an Australian Republic, *Submission 476*, p. 9.

124 *Submission 100*, p. 5.

125 *Submission 471*, p. 26.

apparent limits on the number of terms.¹²⁶ However, any reappointment had to be made through the normal appointment process. The Advisory Report of the Joint Select Committee on the Republic Referendum (Republic Referendum Committee) noted concerns that the "possibility of reappointment might lead to bias in favour of the Government in an incumbent President who wanted to serve another term", but concluded that there were "good policy reasons for permitting a person to serve more than one term as President".¹²⁷

6.71 The ARM suggested that this was an issue that should be resolved by an elected constitutional convention, but acknowledged that "it may be appropriate to allow for a second term for a successful head of state".¹²⁸

Removal of head of state

6.72 Another controversial area relates to the possible processes for the removal of the head of state. The Committee's discussion paper sought views on who or what body should have authority to remove the head of state from office, and whether any grounds for removal should be specified.

Process for removal

6.73 Under the current system, the Governor-General holds office "during the Queen's pleasure" under section 2 of the Constitution. By convention, the Governor-General is therefore subject to removal by the Queen, acting on the advice of the Prime Minister, at any time.¹²⁹ It is perhaps worth noting that no Governor-General has ever been removed.¹³⁰ For this reason, several submissions suggested to the Committee that the removal of a head of state was not a particularly urgent or important issue to be addressed in the context of a republic.¹³¹ On the other hand, several submissions noted that this was quite a controversial issue in the context of the

126 Constitution Alteration (Establishment of Republic) 1999, clause 61.

127 Joint Select Committee on the Republic Referendum, *Advisory Report on the Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee Bill 1999*, August 1999, p. 37.

128 *Submission 471*, p. 26.

129 See RAC Report, Volume 1, p. 77; and Joint Select Committee on the Republic Referendum, *Advisory Report on the Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee Bill 1999*, August 1999, p. 63.

130 Although some have resigned: see for example Mr Michael Pepperday, *Submission 476*, p. 15

131 For example, Mr Michael Pepperday, *Submission 476*, p. 15 and *Committee Hansard*, 29 July 2004, p. 30.

1999 republic referendum.¹³² Some submissions even suggested that the current system for removal should be changed regardless of whether we become a republic.¹³³

6.74 A few submissions suggested that the Prime Minister should have the power to remove a republican head of state.¹³⁴ In the 1999 Republic Bill, the Prime Minister was empowered to remove the President, but it was proposed that the Prime Minister would be required to seek the approval of the House of Representatives within 30 days.¹³⁵ Although this removal mechanism was considered to be an improvement on the existing situation in relation to the Governor-General,¹³⁶ it was a feature of the 1999 republic model which attracted considerable debate and criticism – both in 1999 and during this inquiry.¹³⁷ For example, Professor Greg Craven observed during the Committee's hearing in Perth:

... the dismissal mechanism in the last model was always a problem. It was cobbled together too quickly ... You have to find something better than that. My own view, from halfway through the convention, was that we should have tacked on the McGarvie dismissal mechanism. McGarvie was always unattractive at the appointment level but, in dismissal, the idea of the Prime Minister having to move through a council of impartial people has some attractions.¹³⁸

6.75 The "McGarvie model" mentioned by Professor Craven is discussed further in the next chapter. Essentially, the model proposes that the head of state would be dismissed on the advice of the Prime Minister, by a constitutional council of three appropriately experienced Australians.¹³⁹

6.76 Some submissions suggested that the removal process should depend on the particular model and, in particular, the selection process for the head of state. For

132 Mr John Kelly, *Submission 142*, p. 17; ARM, *Submission 471*, p. 28; Professor George Winterton, *Submission 319*, p. 5; Professor Greg Craven, *Committee Hansard*, 18 May 2004, p. 3; Dr Bede Harris, *Submission 93*, pp. 16-17.

133 Professor George Williams, *Submission 152*, p. 2.

134 For example, Dr Baden Teague, *Submission 538*, p. 10. The ARM noted it as an option in its Model One (where the Prime Minister appoints the head of state): *Submission 471*, p. 28; see also Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 14.

135 Note that the appointment mechanism was a two-thirds majority of a joint sitting of both Houses of Parliament approving a single nomination by the Prime Minister.

136 Joint Select Committee on the Republic Referendum, *Advisory Report on the Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee Bill 1999*, August 1999, p. 65.

137 Ibid, p. 63; see also Mr John Kelly, *Submission 142*, p.17; ARM, *Submission 471*, p. 28; Professor George Winterton, *Submission 319*, p. 5; Professor Greg Craven, *Committee Hansard*, 18 May 2004, p. 3; Dr Bede Harris, *Submission 93*, pp. 16-17.

138 *Committee Hansard*, 18 May 2004, p. 3.

139 See Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 21.

example, the removal mechanisms proposed by the ARM varied depending on the particular republic model:

In the case of Model One (Prime Minister Appoints the President), it is recommended that the Prime Minister have the authority to dismiss the Head of State, mirroring the current practice with the Governor-General ...

Model Two (People nominate, Parliament appoints the President) provides for the removal of the Head of State by an ordinary resolution of the House of Representatives.¹⁴⁰

6.77 Under its direct election and electoral college models, the ARM recognised that:

... an elected Head of State would have a greater democratic legitimacy than one appointed by the parliament or the Prime Minister. Here we suggest that the Head of State may be removed from office by a resolution of both the House of Representatives and the Senate, in the same session.¹⁴¹

6.78 However, many submissions supported a role for parliament in the removal of the head of state, regardless of the method of selection.¹⁴² For example, Professor George Winterton argued:

Enjoying legitimacy derived from direct [ie direct election] or indirect popular choice [ie approval by a parliamentary super-majority], the process for removing the head of state must, likewise, be based upon popular authority. The appropriate body to remove the head of state is the Commonwealth Parliament.¹⁴³

6.79 Submissions which supported dismissal by Parliament varied as to the level of majority that should be required, and whether it should be a decision made by a single House, or both Houses of Parliament. Some considered that an ordinary resolution of the House of Representatives would be sufficient,¹⁴⁴ while others argued that this was equivalent to dismissal by the Prime Minister.¹⁴⁵ Another proposal was that the Prime Minister should be able to dismiss the head of state only with the concurrence of the Senate.¹⁴⁶ Overwhelmingly, submissions supported dismissal by a resolution of a joint

140 *Submission 471*, p. 28.

141 *Ibid.*

142 See, for example, Professor George Winterton, *Submission 319*, p. 5.

143 *Ibid.*

144 See, for example, ARM (Model Two), *Submission 471*, p. 2.

145 Mr Howard Teems, *Committee Hansard*, 19 May 2004, p. 5.

146 Mr Andrew Cole, *Submission 41*, p. 19.

sitting of both Houses of Parliament with a two-thirds majority.¹⁴⁷ Others considered that an absolute majority of each House of Parliament would be sufficient.¹⁴⁸

6.80 Dr Bede Harris supported a role for the High Court in the removal of the head of state, arguing that:

... removal by the legislature would be "undesirable" because there might well be circumstances in which the question of whether or not the Governor-General should be removed could become politicised. For that reason, I think it should be in the hands of the courts. Secondly, I think the standing to bring an application, obviously with evidence of misbehaviour or incapacity, should be as wide as possible and, basically, any enrolled voter should have that standing to bring an action ... the key thing is that it must be on legal rather than political grounds that the application is brought.¹⁴⁹

6.81 In response to questioning from the Committee as to whether this might politicise the role of the High Court, Dr Harris responded:

No, I think they are capable of dealing with it as a purely legal question. In fact, in most countries questions of impeachment are addressed that way — by a constitutional court or by the ordinary court system.¹⁵⁰

6.82 Mr Michael Pepperday, who supported a popular appointment model, suggested that the removal of the head of state should also be put to a vote of the Australian people.¹⁵¹

Grounds for removal

6.83 Another issue to be considered is whether grounds should be specified for removal of a republican head of state. At present no grounds for removal of the Governor-General are specified in the Constitution.

147 For example, Mr Bill Peach, *Submission 73*, p. 10; Mr Peter Crayson, *Submission 322*, p. 4; Republic Now!, *Submission 466*, p. 15; Mr John Kelly, *Submission 142*, p. 18; Republican Party of Australia, *Submission 495B*, p. 2; The Hon Michael Beahan, *Submission 334*, p. 5; Dr Barry Gardner, *Submission 483*, p. 2; Mr Howard Teems, *Submission 100*, p. 6; Sir Gerard Brennan, *Submission 49*, p. 22; Mr Andrew Nguyen, *Submission 256*, p. 12; Dr Bruce Hartley, *Submission 330*, p. 7; Dr Clem Jones, *Submission 492*, p. 8; Dr Ken Coghill, *Submission 536*, p. 5; see also Sir Gerard Brennan, *Committee Hansard*, 13 April 2004, p. 21, in which Sir Brennan also noted that 'the German or the Irish solutions have certain advantages'; Mr Andrew Newman-Martin, *Submission 107*, p. 43. Mr Ross Garrad suggested a three-quarters majority should be required: *Submission 533*, p. 10.

148 For example, Professor George Winterton, *Submission 319*, p. 5. Note that absolute majority is a majority of those eligible to vote, whether or not actually voting. A simple majority is a majority (half plus one) of the Senators present and voting.

149 *Submission 93*, p. 17 and *Committee Hansard*, 29 July 2004, p. 37.

150 *Committee Hansard*, 29 July 2004, p. 38.

151 *Submission 621*, p. 15 and *Committee Hansard*, 29 July 2004, p. 30.

6.84 In the models submitted by the ARM, the grounds for dismissal were "adjusted according to the democratic mandate of the office of the head of state".¹⁵² Where the head of state was proposed to be appointed by the Prime Minister, or Parliament, as with the current situation, no grounds or guidelines were set out (as at present).¹⁵³ In the case of direct election, the ARM suggested that the head of state may be removed on the grounds of "proven misbehaviour or incapacity" — that is, the same formula that applies to the removal of High Court judges.¹⁵⁴

6.85 Some submissions suggested that no grounds for removal were required,¹⁵⁵ particularly if the removal process itself were sufficiently rigorous.¹⁵⁶ For example, Mr Bill Peach suggested that the head of state should only be removed by a two-thirds majority of a joint sitting of Commonwealth Parliament, and this would be sufficient in itself.¹⁵⁷

6.86 However, many submissions and models appeared to support the grounds for removal being specified, regardless of the appointment method. A considerable number of these submissions supported the use of the same process and grounds for removal of High Court judges under section 72 of the Constitution — that is, in circumstances of "proven misbehaviour or incapacity".¹⁵⁸ For example, Professor George Winterton suggested that:

Since the head of state will possess reserve powers enabling him or her to act as "ultimate constitutional guardian", the head of state should enjoy greater security of tenure than the Governor General... the head of state should not be removable on purely political grounds, but solely for misconduct or incapacity...¹⁵⁹

6.87 Professor Winterton argued that this formula:

... is appropriate because it enjoys long-standing recognition in our constitutional tradition, and because it has been the subject of considerable informed commentary...¹⁶⁰

152 ARM, *Submission 471*, p. 29; see also RAC Report, Volume 1, p. 5.

153 ARM, *Submission 471*, p. 29; see also Mr Bill Peach, *Submission 37*, p. 10.

154 *Submission 471*, p. 29.

155 For example, Dr Ken Coghill, *Submission 536*, p. 5.

156 For example, Mr Ross Garrad, *Committee Hansard*, 29 June 2004, p. 34.

157 *Submission 37*, p. 10; see also the Hon Michael Beahan, *Submission 334*, p. 5.

158 See, for example, Sir Gerard Brennan, *Submission 497*, p. 22 and also *Committee Hansard*, 13 April 2004, p. 21; Professor George Winterton, *Submission 319*, p. 5; Mr Peter Crayson, *Submission 322*, p. 4; Mr John Pyke, *Submission 512*, p. 12; Women for an Australian Republic, *Submission 476*, p. 9; Dr Bede Harris, *Submission 93*, p. 18; Mr Andrew Newman-Martin, *Submission 107*, p. 43; Mr Stephen Souter, *Submission 526*, p. 303.

159 *Submission 319*, p. 5.

160 *Ibid.*

6.88 Some other proposals for specific grounds for removal included:

- "misdemeanour, neglect of duties, ill health, abusing his or her functions constitutionally";¹⁶¹
- activity in a political party or an improper exercise of powers;¹⁶²
- "ill health, incompetency, malversation or any criminal activity";¹⁶³ and
- "acting unconstitutionally, persistent behaviour in a manner unbecoming for the head of state of Australia or being physically, medically or mentally incompetent".¹⁶⁴

6.89 However, specifying grounds for removal raises an issue of whether the person or body making the removal decision should be able, or even required, to obtain advice on the matter. Professor George Winterton suggested that:

Whether conduct constitutes "proved misbehaviour" should be judged dispassionately by persons with experience in evaluating evidence. Parliament should, therefore, be assisted by a Commission of retired judges...¹⁶⁵

6.90 In the case where the Prime Minister alone could dismiss the head of state, it was suggested that advice should be sought from a panel of three "constitutional advisors" drawn from either the High Court, academic constitutional lawyers and/or the Solicitor-General.¹⁶⁶

6.91 Finally, it was suggested that there should be a provision for a republican head of state to be "suspended" if necessary — for example, pending an inquiry into alleged misconduct.¹⁶⁷

Casual vacancies

6.92 Provision would also need to be made for situations where the office of head of state is vacated before the end of a term. The ARM recommended that casual vacancies should be filled by the most senior republican state governor (or

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

162 Mr David Latimer, *Submission 519*, p. 19; see also *Committee Hansard*, 13 April 2004, pp. 18-19.

163 Dr Bruce Hartley, *Submission 330*, p. 7.

164 Mr John Kelly, *Submission 142*, p. 17.

165 Professor George Winterton, *Submission 319*, p. 5.

166 Mr John Kelly, *Submission 142*, p. 18.

167 Professor George Winterton, *Submission 319*, p. 6; Mr John Kelly, *Submission 142*, p. 17; Mr Ross Garrad, *Submission 533*, p. 10.

equivalent).¹⁶⁸ This would be consistent with the current convention that where the office of Governor-General is vacated,¹⁶⁹ the most senior state governor is appointed as Administrator. This was also the solution proposed in the 1999 Republic Bill.¹⁷⁰

6.93 Another option suggested was that a vice-president could be appointed or elected, and this vice-president (or equivalent) could fill any casual vacancies.¹⁷¹ The current practice where the Governor-General is in Australia but is temporarily unavailable, is for the Governor-General to appoint a deputy to exercise specified powers or functions (although deputies are rarely called on to exercise powers or perform functions).¹⁷² Again, the 1999 Republic Bill reproduced this arrangement by providing for the President to appoint a deputy President.¹⁷³

6.94 Another suggestion for filling casual vacancies included a High Court judge.¹⁷⁴

6.95 It was also suggested that the method for filling vacancies in the office of head of state should reflect the method of selection of the head of state.¹⁷⁵ For example, it was suggested that if Parliament appoints the head of state, it may be appropriate for Parliament to appoint a caretaker.¹⁷⁶ Similarly, in the context of a direct election, another suggestion for filling casual vacancies was the person who obtained the next highest vote from the list of candidates at the previous election.¹⁷⁷

6.96 Submissions also pointed out that a new head of state should be selected as soon as practical after a vacancy occurs.¹⁷⁸

168 *Submission 471*, p. 30; see also, for example: Andrew Cole, *Submission 41*, p. 18; Dr Baden Teague, *Submission 538*, p. 10; Professor George Winterton, *Submission 319*, p. 6; The Hon Michael Beahan, *Submission 334*, p. 5; Mr John Kelly, *Submission 142*, p. 17; Dr Bede Harris, *Submission 93*, p. 18; Mr Dominic Pellegrino, *Submission 461*, p. 16.

169 That is, the Governor-General is absent from Australia, or if he or she were to die in office or become incapacitated or be removed from office.

170 See Constitution Alteration (Establishment of Republic) 1999, clause 63.

171 This was suggested to be a particularly relevant consideration in the context of a 'direct election model': ARM, *Submission 471*, p. 30; Mr Peter Crayson, *Submission 322*, p. 4; Mr David Latimer, *Submission 519*, p. 44; Mr Howard Teems, *Submission 100*, p. 6; Mr John Pyke, *Submission 512*, pp. 12-13; Mr Andrew Nguyen, *Submission 256*, p. 12; Republican Party of Australia, *Submission 495*, p. 1; Mr Stephen Souter, *Submission 526*, p. 317.

172 Constitution Alteration (Establishment of Republic) 1999, *Explanatory Memorandum*, p. 22.

173 See Constitution Alteration (Establishment of Republic) 1999, clause 63.

174 Republic Now!, *Submission 466*, p. 15; Dr Barry Gardner, *Submission 482*, p. 2.

175 Sir Gerard Brennan, *Submission 497*, p. 23.

176 Mr Bill Peach, *Submission 37*, p. 10.

177 Women for an Australian Republic, *Submission 476*, p. 4.

178 Dr Barry Gardner, *Submission 482*, p. 2; Mr John Pyke, *Submission 512*, p. 13.