

SUBMISSION to the  
Australian Senate  
Legal and Constitutional References Committee  
"INQUIRY INTO AN AUSTRALIAN REPUBLIC"  
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by  
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GOODWOOD  
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## **CONSTRUCTIVE IMPROVEMENTS TO THE AUSTRALIAN CONSTITUTION**

The Australian Constitution should be amended to ensure that all of its clauses operate only with dependence upon Australian persons and Australian institutions and without any dependence on persons or entities that are not Australian or are outside of Australia.

Australia is an independent, sovereign nation and the Australian Constitution should reflect that independence and sovereignty. There should be no ambiguity about the Australian Head of State being an Australian person, one of us, who upholds all aspects of Australian law. Our Australian Head of State should be a person who exemplifies Australian spirit and character. Our Head of State should have no other national allegiance and should represent Australia without any conflict of alternative interests.

However, the Australian Constitution has served the Australian people very well for over a century. Accordingly any amendments that need now to be made must ensure that the Constitution's foundation principles for government are not altered nor impaired. Any proposal for amendment must be examined and determined to ensure there are not unintended consequences which will detract from the structure and principles of the Australian Constitutional practices that have served us so very well.

## **SUMMARY OF THE APPROACH NOW TO BE ADVOCATED**

Accepting as I do, these introductory principles and having been carefully involved in a decade now of debates about Constitutional Reform, I simply now must reject the two extreme poles of the spectrum of debate.

That is, first, I reject the status quo position as advocated by the Monarchists; and, second, I reject the radical republican models, which I believe the people of Australia will continue to reject because they would damage fundamental provisions of our Constitution.

Let me recall that at the Constitutional Convention of February 1998 in Canberra (to which I was elected by the people of South Australia, as the leader of the Australian Republican Movement team) a key resolution, voted on the last day, the 10<sup>th</sup> day of the Convention, was this:

“That this Convention supports in principle Australia becoming a republic.”

This resolution received 59% support (89 delegates) and only 34% (52 delegates) voted against the resolution. The remaining 7% (11 delegates) abstained. The Prime Minister, John Howard, responding to this resolution, declared:

“The only commonsense interpretation of this Convention is, firstly, that a majority of people have voted generically in favour of a republic. In fact, 89 out of 152 voted generically in favour of a republic.”

Moreover, on the preceding day, the 9<sup>th</sup> day of the Convention, there were four votes all carefully recorded to measure the level of support for each of the four major (remaining) constitutional models. These four models described the four alternative approaches to the Australian Constitution, with relative support as follows:

	Monarchists advocated the status quo, no change at all	28%	was the maximum support	(43 delegates)
72% of the Convention were prepared to change the Australian Constitution to ensure an Australian Head of State	Radical Republicans advocated direct election of the President	20%	was the maximum support	(30 delegates)
	The McGarvie Model advocated a Republic with a Constitution Council	21%	was the maximum support	(32 delegates)
	The Australian Republican Movement's "Bipartisan" Model	50%	was the maximum support	(75 delegates)

Even the Referendum result of 1999 has demonstrated that a clear majority of Australian voters support in principle Australia becoming a republic. What failed at that Referendum was the particular, detailed model that was proposed. That particular model was opposed by three of the following four groups of public opinion in 1999:

Voted NO	(a) those, including the Monarchists, who wanted no change at all		probably 30%
	(b) those Radical Republicans who wanted a model that produced greater change than that proposed		probably 10%
	(c) those Australians who could support a Republic but believed the changes proposed went too far or were not viable	<b>THE SCEPTICAL MIDDLE GROUND</b>	probably 15%
Voted YES	(d) those of us who advocated the ARM model and those who were happy to support it		probably 45%
			Total 100%

It is my own assessment (not only after the Convention, but reinforced after the Referendum, and still rationally held now) that groups (a) and (b) above, the two extremes, are not convincing and they are not growing in public support. The strategic approach now is to woo everybody but not to accommodate the views of groups (a) and (b).

Noone seeks to accommodate group (a) in the proposal for the next Referendum. But the significant and strategic point to grasp now is that any accommodation of group (b) will seriously alienate not only group (c) but also up to half of group (d). The strategic alliance for consultation and for victory is for the leaders and members of group (d) together with the leaders and members of group (c) to mutually determine and be committed to the only viable Referendum outcome.

It is also my assessment that group (c) above holds a set of views not very dissimilar to many in group (d). This set of views is "we are sceptical of the

detailed amendments advocated before but we are winnable." Also, "we would support a republic but only if we are convinced there are not unintended consequences in the amendments actually proposed and if these amendments do not damage the system of Australian government we know now and which we wish to retain." The only difference between those with these concerns who ended up in group (c) voting NO and those who ended up in group (d) voting YES was that the latter genuinely had their scepticism reassured and satisfied whilst the former did not.

Zelman Cowen, Malcolm Fraser, Robert Hill and I are typical of that half of group (d) who strongly advocated the YES vote at the last referendum but who would be alienated by any extra radical step now. I believe that Janet Holmes à Court, Ian Tannock and Steve Vizard also belong to this body of opinion.

Richard McGarvie, Peter Costello, Arvi Parbo and Greg Craven are typical of group (c). They all support Australia becoming a republic but have clearly explained their reservations concerning any detailed proposal which may undermine or damage the Australian constitutional and government system which we well know now and which they wish to keep. This group (c) represents the SCEPTICAL MIDDLE GROUND among the Australian people.

To reinforce this assessment, I would observe that if at the Referendum the proposal to be put had more accommodated the radical Republicans then we would have gained some degree of additional radical support but, at the same time we would have lost four times as much by alienating support already won from the sceptical middle ground.

The key growth area now for building a successful Constitutional change is the dialogue and increasing agreement that can emerge between group (d) and group (c).

### **THE SCEPTICAL MIDDLE GROUND**

My general argument as outlined above is based on my observations immediately before, during and after the Constitutional Convention fortnight. There is a great deal that can still be gained by revisiting some of the key speeches and points advocated by delegates at the Constitutional Convention.

The Convention was made up of 76 elected delegates and 76 appointed delegates. Among the latter were 40 Members of Parliament from the Commonwealth, State and Territory Parliaments. It is interesting to observe that in the final votes not one MP voted with the Monarchist extreme and not one MP (out of the 9 who initially voted with the radical republicans) voted with the Radical extreme rather than ultimately support the moderate republic model.

Thus all 40 MP's at the Convention ultimately left the two extremes: 27 MP's supported the moderate Republican outcome and the other 13 MP's supported the McGarvie block.

From the six States, four Premiers and six Opposition Leaders supported all the key Republican resolutions including all Labor State leaders and the Liberal State leaders, John Olsen, Jeff Kennett, Peter Collins and Tony Rundle. Among these State leaders only Richard Court and Rob Borbidge voted with the conservatives, but it was the McGarvieites not the Monarchists.

From the Commonwealth Parliament many Liberals emerged for the first time as public supporters of an Australian Republic including Robert Hill (Senate Leader), Peter Costello (Treasurer), Daryl Williams (Attorney General), Richard Alston (not a delegate) and Peter Reith (not a delegate). However, only Robert Hill from this sceptical middle ground embraced the ARM moderate republic position, later joined by Chris Gallus whose first preference was the Direct Election model. All of the other Coalition MP's, 15 in all, were a part of the McGarvie Block.

It is useful to list in a table all of the 152 delegates at the Constitutional Convention placing each one in groups according to how they actually voted:

(see Tables on pages 5 & 6)

## CONSERVATIVES

### MONARCHISTS

**33**

ACM	OTHER ELECTED	APPOINTED
SUTHERLAND JONES K LEESER FERGUSON C	WEBSTER GARLAND	WADDY KRAMER SMITH
CHIPP PANOPOULOS RAMSAY	RUXTON WILCOX GIFFORD	
KILLEN BONNER BRADLEY	SHEIL B-PETERSEN	JAMES HAYDEN
WITHERS HOURN RODGERS		
BONYTHON HEPWORTH MANETTA FLEMING		MITCHELL R
O'FARRELL CASTLE	MITCHELL D	

#### Notes

CASTLE voted McGARVIE,  
HAYDEN began Full Monty  
MITCHELL R voted ARM but status quo if available

- = Member of Parliament  
(40 MP's were appointed delegates)

### McGARVIEITES

**31**

McG CONSERVATIVES	McG AND NO MORE	McG MODERATES
<ul style="list-style-type: none"> <li>• HOWARD</li> <li>• FISCHER</li> <li>• ANDERSON</li> <li>• BOSWELL</li> <li>• BORBIDGE</li> <li>• BEANLAND</li> </ul>	<ul style="list-style-type: none"> <li>• COURT</li> <li>• COWAN</li> <li>• NEWMAN</li> <li>• ANDREW</li> <li>• FERGUSON A</li> <li>• ROCHER</li> </ul>	<ul style="list-style-type: none"> <li>• COSTELLO P</li> <li>• WILLIAMS</li> <li>• ANDREWS K</li> </ul>
MALONEY BLAINEY MYE	ZWAR JOHNSTON	McGARVIE McGAUCHIE CRAVEN BISHOP PARBO SLOAN BARTLETT MYERS IMLACH KNIGHTS BELL
<b>17</b>		<b>14</b>

#### Notes

MYE only voted McG in round 4  
JOHNSTON voted Full Monty in round 1

The **14** McG Moderates voted at least once, some twice, one three times for a voting position other than the conservative option in the key votes for propositions 5, 6 and 8.

The other **17** McG conservatives supported the McGarvie model but in all other key votes voted always conservatively.

## REPUBLICANS

### AUSTRALIAN REPUBLICAN MOVEMENT and SUPPORTERS

**59**

ARM	OTHERS	MP'S
TURNBULL MACHIN WRAN SOWADA GROGAN GEORGE HAWKE H	LI LYNCH SAMS WINTERTON	<ul style="list-style-type: none"> <li>• FAULKNER</li> <li>• WEST</li> <li>• CARR</li> <li>• SHAW</li> <li>• COLLINS</li> </ul>
MCGUIRE DELAHUNTY VIZARD KING FOX	AXARLIS PELL THOMAS	<ul style="list-style-type: none"> <li>• EVANS</li> <li>• KENNETT</li> <li>• McNAMARA</li> <li>• BRUMBY</li> </ul>
LAVARCH ATKINSON RUSSO	HOLLINGWORTH	
HOLMES a COURT TANNOCK EDWARDS THOMPSON	ANG P-KNEEBONE	<ul style="list-style-type: none"> <li>• BEAZLEY</li> </ul>
TEAGUE KIRK COCCHIARO ANDREWS K	HANDSHIN O'DONOGHUE	<ul style="list-style-type: none"> <li>• HILL</li> <li>• BOLKUS</li> <li>• OLSEN</li> <li>• ELLIOT</li> </ul>
GREEN SCOTT	MOLLER	<ul style="list-style-type: none"> <li>• RUNDLE</li> </ul>
WITHEFORD CASSIDY	KILGARIFF O'BRIEN M DJERRKURA	<ul style="list-style-type: none"> <li>• LUNDY</li> </ul>

### DIRECT ELECTION REPUBLICANS

**29**

MODERATES	RADICALS
<ul style="list-style-type: none"> <li>• GALLOP</li> <li>• RANN</li> <li>• BEATTIE</li> <li>• BACON</li> <li>• GALLUS</li> <li>• CARNELL</li> <li>• STONE</li> <li>• STOTT-DESPOJA</li> <li>• MILNE</li> </ul>	JONES C MUIR BUNNELL  MACK HABER GUNTER O'BRIEN P TULLY O'SHANE CLEARY BULLMORE CURTIS DEVINE KELLY LOCKETT
COSTELLO T RAYNER SCHUBERT	
MOORE	
HEWITT	
<b>14</b>	<b>15</b>

#### **Note**

On the final day of the Convention there were 75 delegates who voted for the ARM "Bipartisan" model – these consisted of the 59 ARM group and supporters plus the 14 moderates from the Direct Election group plus PARBO, BELL and R MITCHELL who were in neither of these groups (CARNELL was absent).

Let me now return to those delegates whom I have termed the SCEPTICAL MIDDLE GROUND. About half of this group were won over to the ARM "Bipartisan" Model by the end of the Convention and about half of this group were not won over.

<b>Sceptical Middle Ground delegates who were won over</b>			
Hill	Li	Ang	Djerrkura
Olsen	Lynch	Kneebone	(Hollingworth)
Elliot	Sams	Handshin	
Rundle	Winterton	O'Donoghue	<b>Partly won over</b>
Kennett	Azarlis	Moller	(Mitchell R)
McNamara	Pell	Kilgariff	(Parbo)
Collins	Thomas	O'Brien M	(Bell)

<b>Sceptical Middle Ground delegates who were NOT won over</b>			
Costello P	McGarvie	Bartlett	(Bell)
Williams	McGauchie	Myers	(Parbo)
Andrews Ke	Craven	Imlach	(Mitchell R)
Court	Bishop	Knight	
Cowan	Sloan		

It is essential, I believe, to reconsider the views expressed by both of these groups. It is worth reading again the Convention record. I believe we need to go on now to respond to the kinds of views they expressed because they are representative of views held in the public that we need to understand and address.

The speeches we need to ponder include those of Ms Dannalee Bell, a Victorian, then 21 and a law student at Bond University; Peter Costello, Deputy Leader of the Federal Liberal Party; the then Federal Attorney-General Daryl Williams; the then Premier of Western Australia, Richard Court and his National Party Deputy Premier, Hendy Cowan; a local government Councillor from Longreach, Ms Joan Moloney, the then managing partner in Perth of the Law firm Clayton Utz, Ms Julie Bishop (now elected to the House of Representatives); a radio announcer in Western Australia Mr Liam Bartlett, the then recently retired Mayor of Albany, Mrs Anne Knight; the Professor of Commerce at Flinders University Ms Judith Sloan; the Hobart commercial lawyer, Ms Mary Imlach; Donald McGauchie, former President of the National Farmers Federation; Sir Arvi Parbo former Chairman of Alcoa and of BHP.

Especially representative of this group and the most articulate in understanding the concerns of the McGarvie group as a whole is Professor Greg Craven, Dean of Law at Notre Dame University in Perth and a former legal advisor to the Victorian Parliament and the Victorian Government.

Well, what are the views of this yet-to-be-won-over group who represent the concerns of the many Australians we need to reassure? This group have three general concerns and three particular concerns.

**Their general concerns** are:

- (1) The new constitutional arrangements must clearly be practical and workable. The detail of the Parliament's proposed legislation will be needed to convince them of that.



- (2) The new constitutional arrangements must avoid any unintended consequences. An expert and logical and sceptical examination of the parliament's legislation will be needed to convince them of that.
- (3) The new constitutional arrangements must not undermine the current constitutional foundations of the Parliament nor of the Australian Westminster-style Government that they believe have served Australia very well. Especially the Head of State must not be able to encroach on the current Government responsibilities of the elected Prime Minister.

**And their particular concerns are:**

- (4) In the new constitutional arrangements, the powers of the Head of State should have no greater codification than is currently the case for the powers of the Governor-General.
- (5) The Preamble to the Constitution that we proposed with all good intentions is, they believe, dangerous because it may enable an activist High Court to use the words of that Preamble to interfere with the substantive sections of the Constitution in quite unintended ways.
- (6) The Committee which is proposed for the Public Nomination of a new Head of State, they believe, is a dangerous complication that may limit or compromise the Prime Minister determining the one final nomination of the Head of State. This sceptical body of opinion would prefer that there be no provision for this Committee. The whole McGarvie block believes that the choice of the Head of State should be, as is the case now, entirely the choice of the elected Prime Minister. Of course the same parallel case currently holds for every State Premier determining each State Governor.

**THE NEXT STEPS POST 2004**

There is no need to hold a plebiscite on the question whether the Australian people support a republic. We know already that a clear majority do support a republic.

The real question is which kind of republic. But here too we know a great deal already, especially from the Constitutional Convention and the outcome of the 1999 Referendum. We also know how that Referendum was conducted, the form of the question, the context for that Referendum and we are able to weigh the likely difference that may flow from different conduct, a different question and a different context.

I think it would be unhelpful and it would be confusing to the public to hold a plebiscite about the two or three different models that have been debated already. If the public are asked which model they prefer then all the details for every alternative would need to be given.

The next step in my view, after the excellent prospect of a useful Senate Inquiry Report in 2004, is for the major political party executives (whether in consultation with each other and the other political parties or not) to actually determine the policy proposal they will in detail pursue at a forthcoming Referendum.

In particular the Government of the day should be in a position to initiate by public announcement what they judge to be the detailed model most likely in their judgement to serve Australia in the best way and most likely to be supported by the people at a referendum. Having made such an announcement it

would be wise to commission a Government Advisory group to receive from the public responding views and suggested modifications. It would also be wise for the Government to have appropriate discussions with other parties. In any event the Government's eventual initiative would need to be put into the form of a Bill and this Bill fully debated by the parliament. Once the Bill is passed, the Referendum is to be put.

It is my view that the outcome will be doomed to failure if it veers to the extremes. What is needed is a sound, responsible proposal that achieves an Australian Head of State with minimal change to all other aspects of our good Constitution.

Accordingly, may I describe such a proposal which springs from my experience in all the debates over the last ten years. At any appropriate occasion I would be happy to elaborate. All groups of delegates at the Constitutional Convention have in various ways contributed to this model.

### **THE TEAGUE MODEL** **The Minimal Change Proposal**

1. **Head of State**  
The Australian Head of State to be titled Governor-General of the Commonwealth of Australia.
2. **Eligibility**  
Citizen of Australia, who meets the qualifications required to be a member of the Commonwealth Parliament, who has taken all reasonable steps to renounce any other nationality, who is not a member of any Australian Parliament at the time of nomination, and who is not while nominated or serving in office a member of any political party.
3. **Nomination**  
Any Australian citizen may at any time nominate any other Australian citizen to be listed for consideration by the Prime Minister when choosing a Governor-General.
4. **Appointment**  
The person chosen by the Prime Minister is to be appointed by the Commonwealth Executive Government.
5. **Term**  
The Governor-General will be appointed for a fixed term, normally five years and no greater than five years, but able to be dismissed by the Commonwealth Executive Government at any time. The succeeding Governor-General will be publicly announced thirty to forty days before the expiry of the term of the preceding Governor-General.
6. **Powers**  
The Governor-General will retain the same powers as now but, except for the reserve powers, they can only be exercised on the advice of the Commonwealth Executive Council. There will be no codification of the current constitutional conventions.

7. **Removal**

The Prime Minister through the Commonwealth Executive Government can dismiss the Governor-General at any time. If such a dismissal was viewed by the Parliament as not justified then that Prime Minister and that Government may lose the confidence of the Parliament. If such a dismissal was viewed by the public as not justified then the people can express that view when they vote at the next Federal Election.

8. **Casual Vacancy**

Any casual vacancy will be filled by the most senior State Governor until a new Governor-General can be appointed.

9. **State Governors**

State Governors will be retained with their current powers. However, each Governor of a State will be chosen by the Premier and appointed by the State Executive Government. The Commonwealth should convene appropriate Premiers Conferences so that consideration can be given for the States to introduce this change at the same time as the change to the Commonwealth Constitution would take effect.

10. **References to the Monarch**

Current references to the Monarch will be removed from the Australian Constitution and replaced with words that achieve the outcomes as defined in the above paragraphs. Wherever possible, consistent with the changes set out in these paragraphs the new wording will ensure minimal change from the current provisions of the Constitution. All amendments proposed to the Australian Constitution will be examined and determined so as to ensure minimal unintended consequences.

To anyone who may object to any of these provisions, my answer would be "well, that is how we do it now". It is very close to how the Australian Constitution has worked for over a century. The one key innovation is the achievement of an Australian republic, the achievement of an unambiguously Australian Head of State.

It is not, I believe, necessary to have the McGarvie Council. After all, the Justices of the High Court are all appointed on the nomination of the Prime Minister by the Commonwealth Executive Government. No one seriously asserts that we should change to a popular election for Justices. Our Australian Democracy, in both the Commonwealth and in the States, is embodied in elected Governments being accountable to Parliament and periodically and totally elected by the people.

The Teague Model could be debated and adopted by the Parliament in 2005 and put to the Australian people by Referendum in 2006. I believe it would be successful. The vital step first is for the Government of the day to announce such a detailed policy and then to consult with all parties, the States and all levels of opinion to determine modifications that will maximise support for minimal change.

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30 March 2004