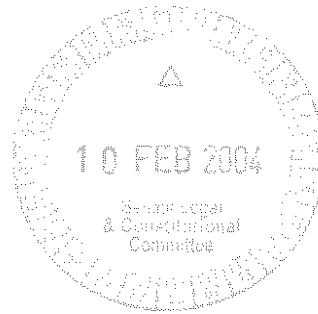




Our Ref: 200318051/DM

Senator the Hon Nick Bolkus
Chair
Senate Legal and Constitutional Committee
Parliament House
CANBERRA ACT 2600



Dear Senator Bolkus

Thank you for your letter of 26 November 2003 inviting me to respond to your Committee's terms of reference and December 2003 Discussion Paper on an Inquiry into an Australian Republic.

In that context, your Committee's terms of reference require it to consider very important issues regarding Australia becoming a Republic. They include the functions and powers of the Head of State, and the method of selection and removal of the Head of State. To assist consideration of these issues, various questions are raised in the Committee's Discussion Paper together with a summary of different models for an Australian Republic, including the McGarvie Model, the Republic Model (which was put to electors at the 1999 referendum) and Direct Election Models.

Any discussion of an Australian Republic must start from the obvious premise that Australia does not have an Australian as Head of State. This is clearly established by several provisions in the Commonwealth Constitution which refer to the Queen (defined in covering clause 2 as including "Her Majesty's heirs and successors in the sovereignty of the United Kingdom"). In particular, section 61 refers to "...the Governor-General as the Queen's representative...". This, together with the other remaining constitutional links between Australia and the United Kingdom, is clearly inappropriate in the 21st century for a modern and independent nation such as Australia. Clearly, Australians do want to have their own Head of State. Therefore, it is necessary to formulate a model for an Australian Republic which will be acceptable to voters at a referendum under section 128 of the Commonwealth Constitution.

In my view, the only model which will be acceptable to voters is a model that contains provisions for the direct election of an Australian Head of State. The fact that the model which was put to electors at the 1999 referendum did not involve such a direct election was the reason for its defeat, rather than the Australian people preferring to remain a constitutional monarchy under the Queen. Such a direct election model must ensure that the people have, and can exercise, a democratic right to choose their own Head of State. As a variation on the Irish model, this could be achieved by having a nomination panel (perhaps comprising Federal, State and Territory Parliamentarians) which would select three candidates (at least one being female and one being male) to be put to the people for their decision as to who should be Australia's Head of State.

As to the powers of an Australian Head of State, I consider that there should be a full and clear codification and limitation of such powers. This would not be a difficult undertaking. Indeed, there are already draft proposals which have been considered by various Conventions and Committees. Of course, that is not incompatible with Australia's current system of parliamentary and responsible government, which ought to be retained. Importantly, such codification and limitation of such powers will overcome objections that a directly elected Head of State will, or could, develop a rival base of political power in opposition to a Prime Minister.

Attached, for the Committee's information, is a copy of my speeches (delivered on 3, 4, 11 and 12 February 1998) to the Constitutional Convention held at the Old Parliament House.

In particular, you will note that the attachments elaborate the arguments and reasons of the above points and conclude that Australia ought to move to a constitutional position of a directly elected non-executive presidency with codification and limitation of the Head of State's powers.

Thank you for inviting me to provide comments on your Committee's Inquiry, and I would appreciate being kept informed of your continuing deliberations on all of these vital issues.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Geoff Gallop', with a long horizontal flourish extending to the right.

DR GEOFF GALLOP MLA
PREMIER

Attachments

15 JAN 2004

Dr GALLOP—I cannot resist the opportunity to commence my small speech today by referring to an incident that occurred in 1982 when the rage was still being maintained in respect of the 1975 crisis. It leads me to conclude that, when we discuss the powers of the Governor-General, the powers of a head of state, it is really all a matter of perception.

In 1982 the rage was being maintained in the University of WA. The speakers were myself, then a lecturer at Murdoch university, John Dawkins, then a member of the federal parliament, and Professor Peter Boyce, who has just recently retired and, I believe, has stood on the ARM ticket in Tasmania.

Unfortunately, the rage had diminished somewhat by 1982 and there were not a lot of people at the meeting but there were three elderly gentlemen at the back of the hall with very distinguishable short back and sides haircuts and very dark, baggy suits. We could not quite work out where they were coming from. We all finished our speeches and one of them finally asked, 'It is all very well to be talking about the powers of the Governor-General but I would like to know when the speakers are going to take up the armed struggle against the British empire,' at which point one of the speakers had a call of nature, another hid under the table and I was left facing 150 years of rabid Irish republicanism.

Can I say that 15 years later I believe that the Irish republican model is a very good model and provides a very good basis upon which we can discuss this topic of the powers of the head of state, the powers of the Governor-General. Let me refer quickly to the opposition arguments about codification, which has been the recommendation of the working group that I was on, reported by Mary Kelly earlier this morning.

Opposition to codification seems to be based upon three propositions: firstly, that the conventions are too complex for ordinary mortals to comprehend; secondly, that the conventions are too controversial for there to be agreement; and, thirdly, that history is constantly marching on and creating new and unforeseen consequences. I could address each of those in turn but I would rather like

to look at the hard version of that group of objections. I think the hard version of that group of objections really takes shape as an ideology which sees political life, in essence, as a mystery, the guidance and occasional intervention into which of non-elected heads of state is necessary if it is to work.

The only restraint that will act upon those heads of state will be tradition and convention. The hard version of that particular view which was put forward earlier today by one of the working groups I believe creates problems for a genuine Constitution. What constitutionalists try to do is anticipate the future, plan for the future and create a framework of certainty for those that participate in the political process.

As we have seen in Australia, occasionally things go wrong. An example is 1975. It exposed a serious flaw in our system where great uncertainty and, indeed, great disagreement resulted about the reserve powers. Of course, the hard version of that ideology I referred to earlier was used to justify the precipitous use of those reserve powers rather than the resolution of a political crisis through the political process and parliamentary negotiation. That, of course, is called responsible and parliamentary government, which ought to be the basis upon which we build our Constitution.

Our present Constitution, as Professor George Winterton has written so often, simply vests the power to appoint and dismiss a Prime Minister and to refuse to dissolve parliament with the Governor-General in extremely generalist terms. It then relies on these conventions to regulate their exercise. There is only an apparent consensus about the use of those powers. As Professor Winterton himself has said in his many written works on this subject, the boundaries are often indistinct.

If we are to accept the existence of such reserve powers, their replication in any case is always going to be subject to question. We need as a people and deserve as a people more certainty about how our political system operates. Different methods have been proposed to handle such situations—most notably, partial codification on areas of general

consensus. The distinction between partial and full codification, I believe, is not as great as it would appear. But, certainly, I think we should seek as full a codification as is practically possible.

There has also been a suggestion that we create an advisory body to help the Governor-General or the head of state in the use of their powers, or the so-called 'bee sting model', which would have it that the head of state would automatically lose office in the event that they use their reserve powers.

Let me give three arguments in favour of full codification for the consideration of this Convention. Firstly, to those who believe we need the basis of experience before we take up any constitutional proposition, I think we can safely say that the experience of other jurisdictions, be they monarchies, such as Japan and Sweden, or republics, such as Ireland and Germany, has shown that it can be done, that we can have responsible parliamentary government and non-executive presidencies or monarchs without political interference. We are not talking here of an untried, untested leap of faith but of a constitutional practice that is proven.

Secondly, to appeal to the republicans in the Convention, codification is part and parcel of the antimonarchical ideal of a republic. There are many parts to a republican ideology. But, as Philip Pettit has written, with respect to the antimonarchical, antihereditary elements of a republican ideal:

This idea is perhaps nothing more than an expression of the deeper idea that republics are meant to be governed by laws, as it used to be put, and not by individuals: that they require the rule of law, in which there is no room for the caprice of the autocrat.

In other words, under a system in which there is reserve power, the potentiality always exists for the application of those powers in ways that reflect the prejudices of those individuals rather than the laws and conventions of the society. I believe that we ought now to move towards a system that goes away from that essentially pre-modern, essentially monarchical view of the world.

Thirdly—and not as important as the first two arguments, but, nevertheless, I believe it

is an important argument—codification of the powers of the head of state may very well pave the way for a much more serious discussion in this Convention, and here I am addressing, in particular, delegates from the republican movement, of the direct election of the head of state in a future republic. This is an aspiration that is deeply held by the people of Australia, an aspiration that we should take seriously, an aspiration which should lead us to provide a workable and practical model for its realisation. We do have a responsibility as delegates to this Convention to heed the voice of the people.

A non-executive presidency with codification of the powers and the limitation of those powers paves the way for a very serious consideration of that direct election. I believe that we have an obligation to place that on the agenda of this Convention and to give it serious consideration.

So, Mr Chairman, I believe the arguments against codification ultimately fall down. They are based on a view of the world which I think might apply to life, in general, that there is mystery for which we need some flexibility and some guidance. Certainly, for life in general we need guidance from our most reverend friends here. But we are talking about politics. We are talking about a human creation for which there should be rules. Those rules should be understood by the people that participate in that political process.

So I believe that the anticodification point of view is simply based upon a view of the world which is now antiquated and out of place. Finally, as I said, if it paves the way for a serious discussion of direct election, I believe it will have played a very useful purpose.

DEPUTY CHAIRMAN—Before I call Peter Beattie, I should advise that names for tomorrow's working groups should be handed into the secretariat by 2 p.m.

Mr BEATTIE—Since 1996, the Union Jack has flown over the Queensland state parliament. We are the only state parliament in Australia which has the Union Jack flying over our deliberations. Our Coat of Arms was changed in the 1970s to include a rampant

the reasons that it gives must be public and open to inspection. There are varieties of alternatives. I know that another group is proposing a similar method, with slightly different content. All that we are proposing is that this proposal be put to the Resolutions Committee for consideration, suggestions and/or amendments.

We are not desperately wedded to any particular model, but I think this model would satisfy many of the unfounded fears that some people in this assembly have expressed. It broadens the process. I believe that we are honour bound to involve the people. It is a step towards greater empowerment of the people. As I have indicated on many occasions here and elsewhere, a republic without greater involvement of the people in the decision making relating to who shall occupy the most powerful and highest office in the land is not a democratic republic. Again, I think it is very important.

I do not know whether this will satisfy everybody, but I think it is a start and we have to make a start. As I indicated, things will have to be reviewed down the track, but it is a beginning. If the people of Australia, our compatriots, choose at some date to remove the filter and to have direct nominations, then I think that should be done. Clem Jones's model, which we have generally supported, has various exclusion clauses relating to serving politicians and the like. We refer to that.

One point I would make—which I wanted included in the proposal but my colleagues did not, although some thought it was a good idea—is that it is my belief that any delegate to this Convention, be he or she elected or nominated, should be excluded from occupying the post of president or head of state of Australia, at least for the first two terms. I think that is necessary to indicate that the delegates here do not have a vested interest in filling the position.

As to dismissal, I think that generally the United States process of impeachment and dismissal has worked effectively. Three alternatives came up before our group. The first was dismissal on a petition of citizens; and that was rejected. The second was by a

two-thirds majority vote of both houses of the parliament. However, by consensus, we finally came down in favour of that idea that a head of state may be impeached for breaches of the Constitution or serious criminal offences, on indictment of the House of Representatives by an absolute majority vote. The Senate would try the case, and proof of criminal activity may be remitted to the High Court for trial. If the head of state is indicted successfully, he or she shall lose their position and be ineligible for any further term of office. That is the principle.

I conclude by saying that, as you know, we are wedded to the empowerment of the people to a direct form of nomination, and we have provided this filter in order to provide some sort of initial means by which community groups and public officials can be involved to satisfy the fears of people here and people in the community about a more direct forum. In the end, the people of Australia would have to decide whether they wanted to move to a direct form of nomination and election or retain this system, or any variation of it.

CHAIRMAN—Mr Bruce Ruxton. Are you a member of that working group?

Mr RUXTON—I want to speak against that diatribe.

CHAIRMAN—You cannot at this stage, I'm afraid. I call Dr Geoff Gallop to present Working Group B's report.

Dr GALLOP—Thank you. I would like to introduce the recommendation that has been made by the second working group from yesterday with a few comments about the context in which we make that proposal. The first is that if we are going to attach significance to the event of moving to a republic it seems to me that one of two conditions has to be met. I am using the word 'significance' in the more profound sense rather than the narrow public relations sense of the word.

The first is that there would have to be either a significant increase in the power and authority of the position of the head of state or indeed a lessening of the powers of the head of state and the codification of those powers. Of course, we discussed that issue yesterday.

In relation to the proposition put forward that there should be a significant increase in the power and authority of the office, it was apparent that there was no great appetite for that proposition. It would appear that there was also no great appetite yesterday for the proposition that there should be less power and more codification and indeed perhaps as much codification as is practically possible.

The general view appears to be for some sort of status quo head of state. The person of course would be Australian but would have no real specific significance to the nation beyond that which has been enjoyed by one or two of our past governors-general. They may gain some notoriety as some governors-general have by exercising the reserve powers that were defended so vigorously yesterday in a controversial way. Such heads of state would do the job—some adequately, some less adequately. It is worth noting that the more power they potentially have the less interesting and the more pedestrian they will need to be in order to be selected by any parliament. I suppose spam was sold for a couple of decades and it might be just possible to sell that definition.

Another way in which we might be able to attach significance to a move to a republic is to look at this issue of the way the head of state is appointed or elected. We could infuse significance into the move to a republic by doing something that is uniquely Australian, something that is different and something that would actually attract the attention of people to the cause that we wish them to follow us on.

It is most important that we remember that this issue has to go to a referendum, that those who advocate change have to engage people in that process, have to win people over to that process. The model for the republic that will be of interest to people, that will attract their genuine attention, will be one that involves them in its operation.

I find it staggering, indeed to the point of frustration, that so many people at the Convention do not seem to take the concept of citizenship very seriously. Indeed, it would appear that the concept of citizenship is alien to the soul of many of the delegates to this

Convention. We have the potential to create the most soulless republic ever created in human history.

In order to look at ways and means by which we might overcome that problem, I think we have to look at this concept of direct election. Direct election is very important to people. It is very important to them that they participate in their system. It is very important to them that they be seen to be wanted as part of that system, that they can have a choice in relationship to the head of state.

So the question then comes down to how you find a model that would make that aspiration work. That was essentially the point of reference for the working group that I chair. The working group accepted that there were many legitimate objections to the direct election model; there were many practical difficulties with the model of directly electing the president. So we considered what might be a model that would meet the aspirations of people, be uniquely Australian, but at the same time overcome some of the problems that have been mentioned.

The first option we considered was really a variation on the so-called Irish model, in which not less than 20 members of parliament and not less than four regional councils in that country can nominate people to stand for the election of the Irish presidency. We saw two problems with that model and therefore did not feel it was worthy of recommendation.

The first problem that was seen with it was that essentially the process would be party nominated and party dominated. Therefore, it was felt that some of the difficulties that have been posed in respect of an elected president would result. But secondly, and more importantly, we saw a real problem with that model because it does not guarantee choice.

As the deputy chairman wrote to me when I first advocated direct election in talking about these issues, he pointed out very correctly there have been contested elections in Ireland only in 1945, 1959, 1966 and 1973, 1990 and of course last year. You do not actually have to have an election with the Irish model if only one candidate is elected. And there was one well known to students of Irish history who was re-elected every year

unopposed for many, many years. So you do not guarantee choice. Our view is that what people are saying is they want choice, they want to be involved in the process. So that model does not meet the test.

We decided to look at a way in which we could do a number of things. The first is to look at what would constitute a panel that would meet the requirements that have been laid down in some of the objections to a republic by the speakers on the first day, a panel that would be seen to be reflective of the nation as a whole and a panel that would have an obligation to select three candidates for the presidency of Australia or, if we choose, a Governor-General. Of course, that would guarantee freedom of choice for the Australian people within a framework that sets down who will do the nominating of the candidates.

The first conclusion we reached was that the states and territories of Australia should play a role in that process. Indeed, one of the objections that was raised in the first day of this Convention was that there did not seem to be a lot of concern taken over the way that our states and territories, which are constituent parts of our political system, could play a role in this process. After all, the head of state in a republic should speak for the whole nation, not just one part of it.

So after looking at various variations on a theme we decided to put forward the proposition that the leaders of government and leaders of opposition in every state and territory in the Commonwealth should form a selection panel. You might note the balance that would automatically result from that in terms of the political parties. Therefore I think it actually incorporates some of the issues that the ARM have raised in respect of their support for a two-thirds majority of parliament. In other words, both sides would have to talk to each other about who would be nominated.

Secondly, and most importantly, we reached the conclusion following a very strong recommendation that came to this Convention from the Women's Constitutional Convention last week—and I read from recommendation No. 5 of their report from last week:

The selection appointment process for the head of state must guarantee that women's chances of occupying the position are substantively equal to those of men. For example, the selection process should address and overcome matters such as women's disadvantaged status in political parties, women's inferior financial power and women's restricted access to the media.

I am not sure whether all those last points are met, but certainly the first one is, because we recommended that at least one of the candidates should be a man and that at least one of the candidates should be a woman. So for the first time we would incorporate into the Australian Constitution a recognition of the true nature of our society.

Of course there are many practical issues that get raised by the process of nomination that we did not incorporate in our specific recommendation. They concern the process that it would operate under. It was the strong view of the working group that to have a very open nomination process to that panel could cause difficulty. There would be arguments about due process and who was going to be considered and who would not that would make it practically awkward and difficult. We felt that the panel ought to operate under its own steam, preferably in camera, announcing its decision about who would be the three candidates for the election when it concludes its proceedings.

One other objection has been raised to direct election that we did consider, which is the role that money would play in the process and how you could avoid the difficulties that might result from people with great financial power being able to influence the process. Although we did not incorporate it into our specific recommendation, it is certainly our view that, if such a process were chosen as the means by which we select the president, there ought to be regulations in place in respect of that election. It is not beyond the wit and wisdom of legislators to set up a framework for that election that would guarantee it focuses on the task at hand, which is to allow the Australian people to select one of three candidates, at least one of whom is a man and one of whom is a woman, to become the president of Australia. Indeed, we know

from various experiences and jurisdictions that the task of looking at how you would elect under different conditions could be regulated to maximise chances of the result coming forward.

We certainly saw this proposal as overcoming some of the objections that have been raised to direct election. We saw the proposal as a practical one. In two important respects, it breaks through; that is, it involves the states and territories in a very real and immediate way. Secondly, it recognises the true nature of our society. I recommend that, should our Convention decide to support the popular election of the head of state, this model for election be given very serious consideration.

CHAIRMAN—Thank you very much, Dr Gallop. I call Mr Don Chipp.

Mr CHIPP—I raise a point of order in a state of confusion, not anger. I suggest for your consideration, not for today's session but for the future, that once a report from a rapporteur of a working group is made you allow about 20 minutes to half an hour for general discussion from the body of the Convention. The detail and emphasis of what Professor O'Brien said 20 minutes ago has gone from my mind. It would be much more productive for a final good result to have a spontaneous and simultaneous discussion of comments from the floor.

CHAIRMAN—We can take that on board, Mr Chipp. As you know, the full detail of the report from Professor O'Brien, as is the full detail of report from Dr Gallop and indeed for each of the working groups, is attached to the *Notice Paper*. There is immediately available for everybody the full detail. It was thought that it would be therefore easier to allow all the reports to be presented so that they could be compared against each other. Your recommendation will be taken on board. I will report back to the Convention in due course. I now call Mr Steve Vizard to make his report on behalf of working party group C.

Mr VIZARD—I am delighted to give the report of Working Group C. We started out as a table, but I am pleased to say that by 8 p.m. we had become a well-oiled machine. We were a large and diverse group, but we canvassed a broad range of issues. Debate

was spirited and we reached a consensus. I am all the more pleased because we are able to put these resolutions before you, which I commend to the Convention.

It is worth noting that, while it was not intended by our working group, all the resolutions that we bring forward today were passed by a special majority of our working group. So seriously did we take our task that the working group convenor was ratified by a special majority of the working group. We unfortunately did not get to test the analogous dismissal provisions.

Our task was to consider the arguments for the model of parliamentary appointment of the head of state by a special majority. The resolutions of the working group which we bring to this Convention in relation to appointment are as follows: firstly, that the head of state be appointed on the nomination of the Prime Minister and the endorsement of a joint sitting of the Commonwealth parliament; secondly, that this endorsement require a special majority, being a two-thirds majority, of the members present at the joint sitting; thirdly, that the Prime Minister nominate only one person; fourthly, that the appointment of the head of state be for a term of five years and that the head of state shall only serve for one term; and, fifthly, that any Australian citizen who is on the electoral roll be eligible to be appointed head of state.

If I can turn to the principles that we examined underlying the notion of the parliamentary election of a president, these included that the parliamentary election underlines the supremacy of parliament. It is parliament which can make and unmake laws and prime ministers. As the supreme law making body, it is appropriate that it appoint the president or head of state. The parliament comprises the democratically elected representatives of the people. The appointment of the head of state by parliament provides for the democratic election of the head of state by the people through their elected representatives. It is the supreme democratic nexus.

The election by parliament is clear, transparent, visible and symbolic. It enables the people to see and understand in a meaningful and visible way the gravity of the appoint-

to contest as a presidential candidate? You have politics brought into it immediately.

Go to the second proposal that has been put up, the two-thirds majority. Does anybody seriously argue that you will keep politics out by bringing it here to the two houses of parliament? I look at the Delphic figure of the leader of Her Majesty's opposition; I sat in this parliament with his distinguished father. I saw the Labor Party caucus one day with a private member's motion of mine. I would be one of the few private members who ever defeated a government, the Menzies government, because some minister treated this parliament in a cavalier fashion, and I resented it. Would my friends give a free vote to the members of the Labor Party to come and to vote for whatever presidential candidate it would be if it were my distinguished and honourable friend the member for Lalor or the one who was at one stage the putative President of the Labor Party, Mr Greg Sword? Would a free vote have been given there? I doubt it very much indeed.

I finish on this note—I ask for no extension; I do not want to subject anyone to the continuation of misery—the dominant feature of the Crown has been the uniting influence in the federation. You cannot disturb that without destroying the federation. Finally, may I invite you to reflect well on this fact: this country is divided by politics and by party. The Crown is of no party, of no division and of no conflict. Reflect on that, and I think you will come with me and walk along the road to support the status quo.

CHAIRMAN—One aspect of the contributions of Sir James Killen and Neville Bonner has demonstrated to us all that there is a life after politics and that life in this old place did have some vitality. Can I now invite Dr Geoffrey Gallop to address us.

Dr GALLOP—Mr Chairman and delegates, ladies and gentlemen, I hope you will make allowances. Having been given the task of following speeches by two great defenders of the status quo—one of whom appealed to your heart and your soul, and I refer to Neville; and one of whom appealed to your mind and your intellect—I have to indicate to those two great defenders of the status quo

that I come here as someone who does want to change our Constitution. But, in so doing, let me begin by saying this: thanks to the founders of the Australian Constitution, we have a unique political system that contains elements not just from the United Kingdom but also from the United States and Switzerland. It is a very complex and a very complicated system in that it brings these elements together. Indeed, it is a very strange system to those who are addicted to either the Westminster or the Washington models.

The creation of this system 100 years ago required genuine intellect and real courage. The founders did not repeat the past; they created the future. In many ways they took our political system into uncharted waters. But this was not seen as a problem; rather, it was seen as a challenge. They wanted to create something new, something different, something better—and they did.

Let me say, delegates, that the test that is being applied in this Convention today by those who support what is known as minimalism or indeed those who support the status quo would have ruled out of court the very Constitution that we celebrate today. Of course, today we face a new challenge. Whereas for the founders it was inconceivable to construct anything but a union under the British Crown, we now look to a republican future with an Australian citizen as head of state.

Australia is an independent country and it is not appropriate to have a head of state who emerges from the political and constitutional processes of another country. Once upon a time such a system was largely a force for unity. In relation to the Australia of today, this can no longer be said. That it is said is more a reflection of the deeply held views of monarchists about their own reality, about their own views, than it is a statement of fact about our nation today. Just as the founders created new political institutions 100 years ago, we too need today to begin the process of creating a new political institution for Australia—the Australian head of state.

In entering this debate, one thing stands out above all else: the consistently expressed desire of a significant majority of the Austral

ian people to elect the head of state, just as they elect their parliaments and, by implication, their governments. It is very interesting that all sorts of commentators have tried to place an interpretation and thereby a qualification on that aspiration. They have said to me, 'People don't really mean what they say. They mean something else.' Well, I say: treat that aspiration at its face value. It reflects a view that the position of head of state should rest upon the ultimate power of people to choose. It is very simple; it is very uncomplicated.

We could move to a republic differently via the so-called McGarvie model or the Republican Advisory Committee model. Both of these miss the fundamental desire of people to be directly involved. They do the job but they fail to meet the challenge. To those of the conservative persuasion in this Convention, I ask them to reflect upon the fact that our institutions and our opinions must work together if we are going to have a successful society.

In one important respect, there is now a division between our institutions and our opinion—and I, of course, refer to the fact that we do not have an Australian as a head of state and we have the remaining links to the British Crown. But, in another important respect, if we were to go forward we have to keep that link between the aspirations of our people and the system that we expect them to support.

The McGarvie model does very little to inspire. The council proposed would be drawn only from former governors-general, governors and judges in orders of retirement. The method of appointing and dismissing governors-general would also resolve around a very narrow group of people—the government of the day.

The ARM model simply takes the logic a little further. It does guarantee support from both sides of politics for any head of state. This gives the office holder significant status but, with partial codification and dismissal by the House of Representatives, the potential for conflict is minimised. Both models would work but only on behalf of a narrow range of individuals, a narrow range of values and a

narrow range of interests in the community. I would put it to delegates that that fact is understood by people. That perception is held by people. That is why despite much argument they still put forward to the tune of about 80 per cent in all of the reliable polling their view that they want to elect.

So the challenge today is to broaden the agenda by incorporating the aspirations of our people into the Constitution and into the equation. We do that only in part by finally breaking the link with the British Crown—an important part, yes, but still only a part. Our role is not to treat these aspirations that people have with cynicism or scorn but to do what responsible democrats have always had to do—knock those aspirations into shape by building a workable system.

We should take the principle and make it work by balancing that principle against other principles and other considerations to produce a durable model. That is the art of constitutionalism. Nor should we forget that this matter must ultimately return to the people for judgment. We are not determining in this Convention the nature of our future Constitution. It is not just an administrative rule making issue; it is a political issue about which there will be a campaign.

I think it has become very clear in the speeches we have had today that the nature of that campaign has been outlined to all. It will be a campaign that will be based upon excessive political effort in three states of Australia: Queensland, Tasmania and Western Australia. Already those who oppose the republic are saying that only if every state in Australia supports the proposition will they support its implementation.

So I say to those who advocate and support a republic: take note of this forthcoming campaign, take note of the targets, take note of the arguments, you will need to arm yourselves well. If you are not armed with a proposition that the people are going to be involved in the future, you are weakening your position significantly. With these preliminary thoughts in mind, I would ask that you consider the following approach.

Step 1 involves the codification and limitations of the powers of a head of state. We

need to acknowledge that we have a system of parliamentary and responsible government—and I have never found any reason in either constitutional logic or public opinion to overthrow it. Codification and limitation overcome the objection that the head of state will develop a rival base of political power, more so probably than would be the case with a head of state armed with reserve powers and a special majority of parliament.

Step 2 involves a process of nomination involving representatives chosen from our federal, our state and our territory parliaments. I might ask: if parliament is suited to the task of selecting a head of state, why could it not select candidates who would stand for election to the position? The involvement of the states and the territories in that process would be a recognition of the federal nature of our system.

In fact, let me make a specific proposal along the lines of the one that we put forward from the working group this morning. A nomination panel should be given the task of selecting three candidates, at least one of whom shall be a man and at least one of whom shall be a woman. This would be a significant statement about our nation's commitment to equality. All processes based on appointment of one person to the job make such an outcome impossible.

There are of course objections to this model, for which I have no answer beyond a simple commitment to the democratic right to choose. Those arguments are these: firstly, that elections are not appropriate vehicles for filling such a job—in other words, people say that you should not have elections for that type of job—and, secondly, that certain individuals would not stand. Well, it comes down to a statement of principle.

However, we could meet some of those objections at least in part by doing a number of things. We could of course design an election process that is specifically created and regulated for the task at hand: electing a head of state. I would ask delegates to refer to the recent election we have had to this very convention. It was a different election; it was not a party political election. Those who participated in that election did so on a basis

that was different from many elections that we have had. Indeed, if delegates are interested in looking at that particular issue, Emeritus Professor Victor Prescott from the Melbourne University has made some very interesting suggestions about how it might be done.

So, delegates, direct election, backed up by codification and limitation of powers and nomination by representatives from federal and state parliaments, would give us a uniquely Australian and contemporary adaptation of the Irish model—different, Australians, but essentially coming from that spirit and that concept. It is different of course in one important respect: an election would be guaranteed whereas in Ireland there may be only one nomination and, therefore, no election.

Let me come to an important issue that I believe is emerging as a key question in this convention: how do we move on with the question of a republic in Australia? If and when we vote on this issue as a nation we would presumably do so under the framework laid down by section 128 of the Constitution. We have heard many people in this chamber even today, say that they support our Constitution and the clauses that are contained therein which emerged as a result of the federal compact of the 1890s and which have a clause which requires a majority of people in a majority of states, as well as an overall majority, to change the Constitution. Yet they come into this chamber and tell us that is not enough. They want a different way of dealing with this particular constitutional change: they want agreement from every state in the Commonwealth.

Where is the respect there for our Constitution? Where is the respect there for the existing Constitution of Australia that brought the people of Australia together as a nation? So to argue the proposition that every state should agree before we move ahead seems to me to take the doctrine of states' sovereignty into very new territory and very uncharted waters—the very thing that the opponents of change or the minimalists tell us we should not do. They come in here and they advocate that very thing.

The matter of how the state based heads of state are to be constituted in a republic is a matter for the people and the parliaments of each of those states, but the question of whether or not we become a republic, Delegates, throughout all of our jurisdictions is a matter of determination under the provisions of section 128 of the Constitution. To do otherwise may be possible but it would invite ridicule and could invite the type of conflict which I am sure the current monarch would wish to avoid.

I conclude by saying that the time has come, firstly, to ensure that our head of state is one of us; secondly, to ensure that the outmoded doctrine of reserve powers is replaced by the rule of law; and, thirdly, to ensure that the Australian people can vote on this matter of national and constitutional identity in a proper and orderly way.

DEPUTY CHAIRMAN—I call the Attorney-General, the Hon. Daryl Williams QC.

Mr WILLIAMS—The question in this plenary session is whether Australia should become a republic. I would prefer that the question be cast in terms of whether Australia should have an Australian head of state. For me, the answer to that is yes. I have not previously expressed my view publicly, although I have held it for some years. The reason I withheld expressing a view was that I thought, both as shadow Attorney-General in opposition and in my current office, that my capacity to be seen to be offering impartial legal advice on the issue might be impaired. In the context of this Convention where votes are being taken the time has come for me to explain my position.

My reasons for holding my view may differ from those of others. The inappropriateness of having the Queen as the Australian head of state increases as time passes. The fact of Australia sharing its legal head of state with a number of other nations is not for me merely a matter of symbolism. The inappropriateness is not to do with the residual functions which the Queen exercises under our constitutional structure. Those functions are essentially only to approve and dismiss

the Governor-General on the advice of the Prime Minister.

I think Australia should have as its head of state a person for whom that office is, and is seen to be, his or her principal office. It is wrong that a head of state should attain that office as a merely secondary incident of being the head of state in the United Kingdom. Australia should have one of its own citizens as head of state. Nothing less is appropriate for an independent nation at the end of the 20th century.

In considering whether change should be made in relation to the head of state, however, it must be acknowledged that some types of changes would overcome the inappropriateness of the current arrangement but would give rise to disadvantages of even greater concern. So the question of the head of state model must be determined before the affirmative answer to the question whether there should be change can be unequivocal.

Since the republican debate took on a high public profile at the end of 1992, my own thinking on the subject has been influenced by the history of constitutional referenda since Federation. That history indicates that the Australian electors take the Constitution very seriously indeed. Constitutional change has not been approved unless there is both broad community support for the proposal and no significant opposition to it. This means at least that there must be bipartisan political support nationally and there must be support within the states. That level of unanimity is not easily attained. Only eight of 42 referenda proposals have been approved and none of the 42 proposals involved anything so fundamental as a change to the head of state.

The lesson for present purposes is that Australian electors will not easily accept a change in the head of state. They will only accept a republican form of government if they are generally comfortable with it. The electors will not accept a republican form of government they are not generally comfortable with. Australians generally recognise that our current constitutional system, in so far as it relates to the relationship of the head of state, the parliament and the executive, has worked well. Support for a change in relation

their political views according to geographic location. In his opening speech, Mr Beazley said:

Any of the models we consider will to some extent rebalance the political process in this country.

He expressly included the McGarvie model. Yet no republican at this Convention has explained how their model would rebalance the separation of powers doctrine. They have either not thought about it or hoped they could easily gloss over it. How can republicans expect to be taken seriously when they do not address the fundamental issues of our Federation? For the last week and a half, the republicans have bleated ignorant slogans and refused to answer the questions of substance. I can only assume that their advertising people have advised them to keep repeating their meaningless and ignorant jingos. Repeating something that is not true will not make it so.

I for one am not seduced by the calls for compromise. Our Constitution with its own Australian head of state, which has delivered one of the most stable democracies in this world, should not be compromised. The Australian people deserve more. The centralists are calling for compromise. What they really mean is that Canberra will decide and, if the states do not follow, too bad.

What they do not appreciate is that we will only have a republic when the majority of people in all the states vote to support a republic. The states, as colonies, came together to form a Federation under the Crown. If republicans want to rip the Crown out of Federation, they need the consent of all the states if the Commonwealth of Australia is to remain intact. This is not some red herring but the opinion of two distinguished lawyers, Mr Harry Gibbs and Dr Colin Howard, both of whom demand greater respect as constitutional experts than does any one else in this chamber.

Republicans have been warned: do not insult the Australian people by throwing a hasty deal of a republic in their face. When you put two completely different republican proposals in one room, you get a mongrel. The people of Australia, will not throw

away their Constitution for a hastily conceived mongrel.

Dr GALLOP—It is clear that questions related to the position of the states have been ever present in this Convention, but indeed they have been unresolved at this Convention. There are both legal issues and political issues that have to be addressed in any move to a republic.

As a republican at this Convention, I will put the following proposition forward: the starting point of any move to a republican future should be to ensure that the ability of a recalcitrant and obstructionist state government, and their monarchist allies, to use taxpayers money and obscure legal argument to hold up a positive decision at a national referendum under section 128 of the Constitution should be avoided at all costs. For that reason, the option put forward by Working Group M is clearly the way forward. Leave the states to their own devices. The option clearly establishes that the states are autonomous, both in respect of the process of change and in respect of the republican forms they may wish to have and, by implication, whether they wish to maintain their current arrangements. This will mean that the political process in each state will determine the outcome.

Within that political process, as a Labor leader and supporter of a republic, I will do all I can to ensure that Western Australia will respond positively to a successful federal referendum. Indeed, I will do all I can to ensure that it is part and parcel of that successful referendum. I have an obligation to do that not just because I am a supporter of the republic but also because I am a supporter of our federal Constitution, which does provide a means for its alteration, including a move to a republic.

Let me now make a point about the republic and our states. The republic will strengthen the federation by removing the Crown from the Constitution. Let me give one very clear example of this to delegates at this Convention. I refer to section 2 of our federal Constitution. Section 2 provides for the Governor-General to be the Queen's representative in

our nation, exercising powers as she 'may be pleased to assign to him'.

Let us imagine a situation. Let us do the sort of thing that all the monarchists have been doing at this Convention by looking at words and probing the implications of them. Just imagine a nasty Prime Minister very keen to get rid of a state Governor. Delegates, it is not beyond the realms of constitutional possibility that a referral of the power to appoint and dismiss state Governors could be shifted to the Governor-General. That would then mean that the Governor-General, acting on the advice of a Prime Minister, could dismiss a state Governor.

I would like everyone in this room today to tell me why that constitutional possibility could not occur, given the nature of our current system of government. By going to a republic we will guarantee that the states will fully in law as well as in fact govern the arrangements by which their Governors are appointed, the powers and functions they have and the way that they are dismissed.

Let me also say that it will be a good thing for our federation if our states have different systems, if only in emphasis and nuance. It will mean that the ways and means of making a republic work better will be subject to continual review and change, just as they have been in respect of electoral systems, upper houses and parliamentary practices. In other words, we should leave the republican future within each state to the political and constitutional devices of those states. That will create a genuine process within our federation of testing new ideas and allowing new ideas to develop.

I am sure that the different states will establish different models for appointing and dismissing state Governors. In my own state, I will be keen to see that the governorship is preserved and that the people of the state have some ownership of the process by which such Governors are appointed. We need a system that will engender pride and that will be linked to the aspirations and desires of our people.

The monarchists make one very important point at this Convention and that is that there is, amongst some of our people, a strong link

with aspirations and desires of the monarchy. We have to replace that with something in which people can have great pride. I believe that in many of the models we have seen so far that cannot be done.

Mr HODGMAN—In the last four days I have been back in the real world. My constituents have given me four messages to bring to this Convention. The first is that objectively, they have reached the conclusion that the constitutional monarchists and those who support our current Constitution are currently winning the debate which is being carried to them by the media. The second thing they have told me to tell you is that they have reached the conclusion that a move to even the most minimalist republic will be constitutionally difficult, indeed prickly. The third thing they have noted is that the republicans at this Convention are hopelessly divided. They are saying to me that, if they are divided, we will not vote for a republic.

The last was not really a message of felicitation, if I can quote Sir James Killen. They said that, with the greatest of respect to this Convention, which refused to have the matter investigated, they, the ordinary people of Australia, the ordinary men and women of Australia, want to know what this republic is going to damn well cost. Whether you believe it or not, out there in the real world they are staggered to hear that the republic could cost the taxpayers of Australia in excess of \$4,000 million in year one and \$1,000 million for every year sequentially for the next seven years.

Like Sir James Killen, I want to put on record my amazement that the republicans have been in this debate now for eight days and most of them have ignored the fact that the Commonwealth of Australia is a federation. I remind you: it is one indissoluble federal Commonwealth under the Crown.

Our federal Attorney-General, for whom I have great regard, addressed us the other day and never once mentioned the fact that we are a federation and never once mentioned the states. My dear friend Professor George Winterton went further today. But, with great respect to that academic of great distinction I have to say, 'Get your facts right.' He said

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and we will cease proceedings while that happens. I propose that, as there is to be voting by paper, to save having to appoint individual scrutineers, the voting be done on the Bar table. That means that everybody will see the votes. The voting will be conducted by the Convention secretariat and the piles will be there for everybody to see. It seems to me to be the most open way by which the process can be conducted.

Shortly before voting starts, delegates will receive envelopes containing ballot papers for the exhaustive ballot and any yes or no ballots that might be necessary. Delegates are to ensure that they are in their correct seats when the envelopes are distributed and during the voting. As I have mentioned, proxies are going to be strictly in accordance with the rules at the commencement of voting at noon today. I do not believe that we can allow there to be any question that any person is voting unless they are fully entitled to vote within the Convention process.

Let me also repeat, for those who were concerned about the outcomes of some of the processes yesterday, that delegates should remember that there was a very strong endorsement given by the Convention to a resolution moved by the Reverend Tim Costello about ongoing constitutional reform. It would be intended that that particular resolution, plus the voting and the very strong support given by the Convention to it, will be included in the Convention communique.

Sir DAVID SMITH—I seek leave to make a personal explanation. Last night, during the debate on the flag and the coat of arms, Gareth Evans and I exchanged epithets about the quality of our respective reports relating to this matter. After the debate had concluded, we discovered that this unpleasantness had been brought about quite inadvertently and through the fault of neither of us. The document which had been passed to the Resolutions Group as a copy of my report on behalf of Working Group K was, in fact, some other document. As a result, the report from the Resolutions Group had been based on a wrong document. In these circumstances, Gareth Evans and I exchanged apologies and shook hands. As *Hansard* quite properly will

have recorded our original altercation on the floor of the chamber, it should also record what took place later behind the Speaker's chair.

Brigadier GARLAND—I wish to make a point of clarification. Yesterday, during the debate on the preamble, I posed the question to the Attorney-General that the leading paragraphs in clauses 1 through 8 would remain and somewhere in clause 9, which would become, say, 1(a), we would get a preamble which covered all the new bits and pieces. I asked whether that was right. I was under the impression that the Attorney-General answered that question, but when I read the *Hansard* this morning there is no record of any answer being given by the Attorney-General or by his colleague Gareth Evans. For the record, I believe it is necessary that an answer to that question be recorded. I ask you to have the Attorney-General answer that question. It was posed on page 793 in the *Hansard*.

CHAIRMAN—I might ask the *Hansard* people to check whether it has been omitted. I think that would be the best way to proceed. If necessary, it not being in the *Hansard*, then I will call on the Attorney at a later stage to respond before voting this afternoon. At the end of proceedings this morning, if there has not been an answer, I will ensure that the Attorney finds an appropriate opportunity to give you the answer. Are there any other questions or matters delegates wish to raise before we proceed to the debate on the proposed republican models? If there are no other matters, then I call on the mover of the first model, Dr Gallop.

MODEL A

Dr GALLOP—I move:

MODEL A

Direct Election Model

ELIGIBILITY:

Every Australian citizen qualified to be a member of the Commonwealth Parliament and who has forsworn any allegiance, obedience or adherence to a foreign power shall be eligible for election and to hold office as the Australian Head of State, provided that he or she is not a member of the Commonwealth Parliament or a State or Territory Parliament at the time of nomination nor is a

member of a political party during the term of office of Head of State.

NOMINATION:

Nominations for the office of Australian Head of State may be made by:

- (a) Any Australian citizen qualified to be a member of the Commonwealth Parliament;
- (b) The Senate or House of Representatives;
- (c) Either House of a State or Territory Parliament;
- (d) Any Local Government.

SHORTLISTING:

A joint sitting of the Senate and House of Representatives shall by at least a two-thirds (2/3) majority choose no fewer than three (3) candidates from eligible nominees for an election of the Head of State by the people of Australia.

ELECTION:

The election of the Head of State shall be by the people of Australia voting directly by secret ballot with preferential voting by means of a single transferable vote. Parliament shall make laws to regulate campaign expenditure by and for candidates contesting an election for Head of State and to provide advertising and campaign support through a single body authorised and funded by the Parliament.

TENURE:

The Head of State shall hold office for two (2) terms of the House of Representatives and shall be ineligible for re-election at the next Head of State election.

DISMISSAL:

The Head of State may be dismissed by an absolute majority of the House of Representatives on the grounds of stated misbehaviour or incapacity or behaviour inconsistent with the terms of his or her appointment.

CASUAL VACANCY:

A casual vacancy in the office of Head of State shall be filled by the appointment of a caretaker by an absolute majority of the House of Representatives who shall hold office until the election of a new Head of State at the next House of Representatives election.

NON-RESERVE POWERS:

The existing practice that non-reserve powers should be exercised only in accordance with the advice of the Government shall be stated in the Constitution.

RESERVE POWERS:

Existing reserve powers shall be partially-codified as generally provided in the Republic Advisory Committee's 1993 report (see attached) where the

Head of State retains appropriate discretion. However, the Head of State shall not dissolve the House of Representatives by reason of the rejection or failure to pass a money bill unless and until the procedures under section 5A of such report have been followed or unless an absolute majority of the House of Representatives has requested such dissolution.

REPUBLIC ADVISORY COMMITTEE 1993:

1A Executive Power of the Commonwealth

- (1) The executive power of the Commonwealth is vested in the Head of State and is exercisable either directly or through Ministers of State (including the Prime Minister) or persons acting with their authority.
- (2) The executive power of the Commonwealth extends to the execution and maintenance of the Constitution, and the laws of the Commonwealth.
- (3) The Head of State shall exercise his or her powers and functions in accordance with the advice tendered to him or her by the Federal Executive Council, the Prime Minister or other such Ministers of State as are authorised to do so by the Prime Minister.
- (4) Subsection (3) does not apply in relation to the exercise of the powers or functions of the Head of State under sections 2A, 3A(4), 4A, 5A and 6A.

2A Appointment of the Prime Minister

- (1) The Head of State shall appoint a person, to be known as the Prime Minister, to be the Head of the Government of the Commonwealth.
- (2) Subject to subsection 3A(4), whenever it is necessary for the Head of State to appoint a Prime Minister, the Head of State shall appoint that person who commands the support of the House of Representatives expressed through a resolution of the House, and in the absence of such a resolution, the person who, in his or her judgment, is the most likely to command the support of that House.
- (3) The Prime Minister shall not hold office for a longer period than 90 days unless he or she is or becomes a member of the House of Representatives.
- (4) The Prime Minister shall be a member of the Federal Executive Council and shall be one of the Ministers of State for the Commonwealth.
- (5) The Prime Minister shall hold office, subject to this Constitution, until he or she dies or

resigns, or the Head of State terminates his or her appointment.

- (6) The exercise of power of the Head of State under subsection (2) shall not be examined in any court.

3A Other Ministers

- (1) Ministers of State shall be appointed by the Head of State acting in accordance with the advice of the Prime Minister.
- (2) One of the Ministers of State may be denominated Deputy Prime Minister.
- (3) Subject to this section, the Head of State shall only remove a Minister from office in accordance with the advice of the Prime Minister.
- (4) Upon the death of the Prime Minister, the Head of State shall appoint the Deputy Prime Minister or, if there is no Deputy Prime Minister, the Minister most senior in rank, to be the Prime Minister.
- (5) In this section, "Minister" does not include the Prime Minister.

4A Dismissal of the Prime Minister—no confidence resolutions

- (1) If the House of Representatives, by an absolute majority of its members, passes a resolution of confidence in a named person as Prime Minister (other than the person already holding office as Prime Minister), and the Prime Minister does not forthwith resign from office, the Head of State shall remove him or her from office.
- (2) If the House of Representatives passes, other than by an absolute majority of its members, a resolution of confidence in a named person as Prime Minister (other than the person already holding office as Prime Minister), and the Prime Minister does not within three days resign from office or secure a reversal of that resolution, the Head of State shall remove him or her from office.
- (3) If the House of Representatives passes a resolution of no confidence in the Prime Minister or the Government by an absolute majority of its members and does not name another person in whom it does have confidence, and the Prime Minister does not, within three days of the passing of that resolution, either resign from office, secure a reversal of that resolution or advise the Head of State to dissolve the Parliament, the Head of State shall remove him or her from the office of Prime Minister.
- (4) If the House of Representatives passes a resolution of no-confidence in the Prime

Minister or the Government other than by an absolute majority of its members and does not name another person in whom it does have confidence, and the Prime Minister does not, within seven days of the passing of that resolution, either resign from office, secure a reversal of that resolution or advise the Head of State to dissolve the Parliament, the Head of State shall remove him or her from the office of Prime Minister.

5A Dismissal of the Prime Minister—constitutional contravention

- (1) If the Head of State believes that the Government of the Commonwealth is contravening a fundamental provision of this Constitution or is not complying with an order of a court, the Head of State may request the Prime Minister to demonstrate that no contravention is occurring or that the Government is complying with the order.
- (2) If, after giving the Prime Minister that opportunity, the Head of State still believes that such a contravention or non-compliance is occurring, the Head of State may apply to the High Court for relief.
- (3) If, on application by the Head of State, the High Court is satisfied that the Government of the Commonwealth is contravening a provision of this Constitution or not complying with the order of a court, the High Court may grant such relief as it sees fit including a declaration to that effect. The High Court shall not decline to hear such application on the ground that it raises non-justiciable issues.
- (4) If on an application by the Head of State, the High Court declares that the Government of the Commonwealth is contravening this Constitution or not complying with the order of a court and the Prime Minister fails to take all reasonable steps to end the contravention or to ensure compliance with the order, the Head of State may dissolve the House of Representatives.
- (5) If the Head of State dissolves the House of Representatives under this section, he or she may also terminate the Prime Minister's commission and appoint as Prime Minister such other person who the Head of State believes will take all reasonable steps to end the contravention and who will maintain the administration of the Commonwealth pending the outcome of the general election following the dissolution referred to in subsection (4) above.

(6) The exercise of the powers of the Head of State under this section shall not be examined by any court.

6A Refusal of dissolution

The Head of State shall not dissolve the House of Representatives—

- (a) on the advice of a Prime Minister in whom, or in whose Government, the House of Representatives has passed a resolution of no-confidence, if the House has, by an absolute majority of its members, also expressed confidence in another named person as Prime Minister;
- (b) on the advice of a Prime Minister in whom, or in whose Government, the House of Representatives has passed a resolution of no-confidence, if the House has, other than by an absolute majority of its members, also expressed confidence in another named person as Prime Minister, unless the House has reversed the resolution;
- (c) while a motion of no confidence in the Prime Minister or the government is pending, or
- (d) before the House of Representatives has met after a general election and considered whether it has confidence in the Prime Minister or the Government, unless the House of Representatives has met and is unable to elect a Speaker.

For the purpose of paragraph (c), a "motion of no-confidence" is one which expresses confidence in another named person as Prime Minister and is to come before the House of Representatives within eight days.

I would like to take this opportunity to say a couple of things about the direct presidential election group model. The first is to indicate that that model emerged from a good deal of discussion amongst people from all parts of the political spectrum with different views on how you would achieve a republic. In the end, we believe that the focus should be placed on a central element of a republic, and that, of course, is the direct election of the people.

We entered into the spirit of this Convention by taking on board many of the arguments that were raised within this chamber and within the working groups about the problems that might result from having a direct election of a president or head of state in a future republic, and we have tried to

overcome the criticism that there would be the creation of two centres of power.

In our model, as you will see, we make it clear that our system is still a system of responsible government, of parliamentary government, and we do that through a couple of devices: the device of codification, inasmuch as this Convention has required us to take that idea; and the device in terms of the dismissal process.

We have also tried to address the criticism that if you have a direct election, of course money will take over the process. We make it absolutely clear that any direct election process should be regulated and, in those regulations, provision should be made to ensure that money will not play a role in the process, that there will be regulation of the election and that public funds will enable candidates to be on an equal playing field.

We looked at the question of supply between the House of Representatives and the Senate. This Convention, of course, argued very clearly that there was only a limited degree to which that issue could be addressed. We took on board the recommendations of the Republican Advisory Committee, as outlined in their report, which make it absolutely clear that the only occasion on which a government would be put at risk would be where there is a clear contravention of the Constitution and a clear, proven illegality involved.

In relation to the criticism of our model that political judgment has it that it is not achievable because of the range of forces in our community, I will leave that to delegates to judge.

Let me conclude my comments today by going to the heart of the issue—by looking very clearly at the case for direct election. You all know what is in our model and the issues concerned. I have canvassed some of them already. My role today, I think, is to make clear to you why we believe that direct election is so important. We need to remind ourselves that in moving to a republic we are creating a new political institution, that is, an Australian head of state. It will need to be an important institution. It will need to be a respected institution. This does not mean that

it will have to possess great decision making political power.

Surely delegates would acknowledge that there are many institutions in our society of great importance which do not possess direct decision making powers in relation to society as a whole. They have authority, they are respected and they are important. At one time, of course, the British monarchy played such a role in our community, and it would seem that it still plays that role in the United Kingdom today. It is a powerful force for unity in that country, but no longer in our own nation because of the social, economic and political changes that have occurred over the last three decades. The fact that it is no longer the case in Australia today is, of course, the very reason we are meeting in this Convention.

I turn now, with those thoughts in mind, to the aspirations of our people. What the opinion polls tell us is what I would hope we would expect: the people want to be directly involved in the republic beyond the vote to establish that republic. They want a vote for who is to be their head of state. This is an aspiration, it is a desire; indeed, I would say that it is a longing of the people to be involved in the election of the head of state. It is a reflection of the deeply held view in our community that the people are the ultimate power in this land—a land which proclaims democratic traditions and credentials to be at the core of its system. It is also a reflection of the view that they want a choice as to who will be the head of state. They want a direct say in this rather than have some other institution make the final decision.

I now return to where I started: the creation of a new Australian institution. If our republic is to work properly by capturing not just the interests and intellect of people but also their hearts and their souls, it will need some connecting threads. It will need a head of state who symbolises and represents the nation and with whom the people can feel a connection. That is where direct election comes in. Take that out of the equation and we risk creating a purely utilitarian republic, a purely soulless republic. By placing a small portion of the monarchical power in each of

us, we ensure a degree of personal ownership of the new system we are creating.

I can hear already the objections to this point of view from those well versed in the daily skulduggery and backstabbing that occurs in the house on the hill behind us. I take those points into account, but reaffirm that we must establish our new system in a way that connects it to the people, to their sentiments, to their desires, to their beliefs and to their aspirations. We need to do that. Let me conclude by saying: take the people out of the system and you take the system out of the people. That is not a republic.

CHAIRMAN—I call on Mr Peter Beattie as the seconder of the motion to speak to it. It is my intention to allow the mover and seconder to speak. I then intend to have each of the models presented before we start to debate them.

Mr BEATTIE—I second the motion. I came to this Convention as a strong supporter of the direct election of the president and I remain a strong supporter of the direct election of the president. This is all about giving the Australian republic heart. It is about empowering Australians in the political process.

I have been associated with a loose group of direct election republicans. It has been an honour and a privilege, because they are committed Australians who came here to represent the will and the wishes of the Australian people. It has been a difficult road, but the wishes and the will of the Australian people are reflected in this model. For those handful of you who have not made up your minds, I urge you in the dying parts of this debate to think about this model, because it reflects the will of the Australian people. That has been demonstrated in poll after poll. I am not going to go through that—but it reflects what Australians want.

To those who have come out and said 'Well, we don't know that Australians fully understand the pitfalls of a direct election', I say that I do not accept that argument. I have faith in the Australian people. I have faith in their intelligence; I have faith in their commitment; and I have faith in the fact that they want to have a direct say.

wear the crown of sovereignty if it is to be taken from the monarch's head? The ACM says that the crown should remain on the monarch's head. The ARM says that the crown of sovereignty should descend upon the Prime Minister's head in parliament, thus increasing his absolute powers. We have just heard Wendy Machin say, 'Yes, the two parties in parliament get on tremendously well together'—thank you, Wendy. And the honourable and lovely Mr Dick McGarvie says that the crown of sovereignty should descend upon the head of a group of wise men.

We argue that the crown of sovereignty should descend upon the head of every Australian citizen; every Australian citizen a sovereign. At the present moment, the Prime Minister, who has just apparently done a terrible thing in relation to our troops about to go off to the gulf—

DELEGATES—Oh!

CHAIRMAN—I suggest that is out of line, Professor O'Brien.

Professor PATRICK O'BRIEN—I withdraw that—the Prime Minister nominates the head of state, and the sovereign authority appoints. We want that system retained with the sovereign people making the appointment. We say, 'Yes, the parliament can help in the nomination process, but the sovereign must appoint'—and that is the sovereign citizens.

In conclusion, and with one change to the last line, I will read these lines from G.K. Chesterton's poem *The Secret People*:

"And a new people takes the land, and still it is not we. They have given us into the hand of new unhappy lords, Lords without anger and honour, who dare not carry their swords.

They fight by shuffling papers; they have bright dead alien eyes;

They look at our labour and laughter as a tired man looks at flies.

And the load of their loveless pity is worse than the ancient wrongs,

Their doors are shut in the evening; and they know no songs.

We hear men speaking for us of new laws strong and sweet, Yet is there no man who speaketh as we speak in the street.

It may be we shall rise the last as Frenchmen rose the first,

Our Wrath come after Russia's wrath and our wrath be the worst.

It may be we are meant to mark with our no and our rest

God's scorn for all men governing. It may be beer is best.

But we are the people of [Australia] and we have not spoken yet.

Smile at us, pay us, pass us. But do not quite forget."

CHAIRMAN—Regrettably, your time is up. To briefly summarise the three models, I call on Dr Gallop, Mr Hayden, Mr McGarvie, and then Mr Malcolm Turnbull. I urge you to contain your remarks within the three minutes allocated before we proceed to the voting.

Dr GALLOP—I will try to address the points that were made with specific reference to the model. George Winterton raised some issues. Some of those were what I would call of a technical nature and, to quote Malcolm, I think they could certainly go off to the drafting committee. It is true, however, that the nomination process was specifically kept open and we left it to the federal parliament to sort out those nominations rather than to build specific details into how they would do that.

It is also true that the House of Representatives election will be on the same day as the presidential election. Our group chose that because we believe that would be an important way, first of all, of dealing with the objection of cost and, secondly, making it absolutely clear that the election for the Prime Minister in the House of Representatives was determining who the government of the day was and the other election would be held in respect of who the head of state would be. By separating the two in fact you had the chance of creating rival power bases.

George Winterton's point in respect of including the word 'express' after 'constitutional contravention' is something that we could certainly have a look at down the track. In respect of Bill Hayden's criticisms of our model, they are somewhat difficult to come to terms with; Bill, because you are the most radical and the most conservative delegate and those two things at the same time, so it becomes a little bit difficult to respond. But

we do have a system of representative democracy in Australia, and we have tried to build that in our model of nomination with the ultimate power of choice and decision being left with the people.

I believe my colleague from Tasmania Jim Bacon dealt very adequately with your proposal for a petition. There have been only four petitions since 1980 with over 120,000 votes and each of those of course has been organised by major bodies, major political parties and organisations. Your model, Bill, will give power to very powerful people in our community who could determine the process.

Adam raised a question in relation to the High Court. We did discuss this matter and the possible implications for the freedom of expression decision. That is why we are saying to put into the Constitution itself a provision that parliament will be required to make laws to regulate the election. We believe that would get around any potential High Court challenge on that issue.

Finally, may I address one issue that has been raised by speakers from the Australian Republican Movement? Might I point out to all of those speakers that the model that they are accepting in this parliament today, which remains virtually silent on the question of reserve powers—indeed, this Convention has really endorsed a much stronger version of reserve powers than I would have expected a Constitutional Convention to do—and has no comment about what may happen in a supply crisis in Australia, is giving more power and more authority to a future head of state to do what happened in 1975 than either the current system that we have or the system that we have advocated in the direct presidential election group.

Delegates, with those comments, I urge you to give serious consideration to our model. It has been well thought out. It has been considered in the context of this Convention by responding to your arguments. I think the one thing that we have done that the other models have not done is give a direct say of the people in Australia as to who their future head of state will be.

CHAIRMAN—Dr Gallop, I have an amendment which has been distributed to

your model. It was moved by Ms Kelly and seconded by Catherine Moore and endorsed by 10 members of your group. It states:

In the "shortlisting" question, after the word "candidate", add: "at least one of whom shall be a woman and one a man"

Dr GALLOP—I accept that.

CHAIRMAN—The particular model when it is considered will have that amendment as part of it.

Dr GALLOP—What that will mean is that there must be at least one man and one woman amongst the three candidates who are running for president.

Mr HAYDEN—Geoffrey Gallop made the observation that I am both radical and conservative at the same time. There has often been some truth in that. For instance, in economic management, when I was Treasurer in the Whitlam Labor government I was both terribly conservative in macro-economic management and sought to be rather radical in micro-economic management in redistributed terms; that is, where it is safe and proper to be radical I am prepared to do so and when it is going to be dangerous then I will be conservative.

If I believe that the changes being proposed are going to be dangerous, then I will be conservative about them but if I can see a break for change, given the fact that the Prime Minister asked us to come up with something, then I will be radical. My radicalness extends to the model before you in my name. It stands against all others. It genuinely respects the role of people in a democracy. The criticism has been made of it that the number required to complete a petition—one per cent of the voting population—is altogether too high. I do not accept that, but if someone wanted to move an amendment one could look at it. I do not accept it because we are talking about a national election for a national leader. If a person cannot get 120,000 votes nationwide, they scarcely have the credentials with the public to be a national leader.

Political parties no doubt would engage in this but do not forget that as a ceremonial head of state with very limited reserve powers the person will be presenting themselves on