

CONSTITUTIONAL CONVENTION

[2nd to 13th FEBRUARY 1998]

TRANSCRIPT OF PROCEEDINGS

Monday, 2 February 1998



Old Parliament House, Canberra

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CONSTITUTIONAL CONVENTION

Old Parliament House, Canberra

2nd to 13th February 1998

Chairman—The Rt Hon. Ian McCahon Sinclair MP

The Deputy Chairman—The Hon. Barry Owen Jones AO, MP

ELECTED DELEGATES

New South Wales

Mr Malcolm Turnbull (Australian Republican Movement)
Mr Doug Sutherland AM (No Republic—ACM)
Mr Ted Mack (Ted Mack)
Ms Wendy Machin (Australian Republican Movement)
Mrs Kerry Jones (No Republic—ACM)
Mr Ed Haber (Ted Mack)
The Hon Neville Wran AC QC (Australian Republican Movement)
Cr Julian Leeser (No Republic—ACM)
Ms Karin Sowada (Australian Republican Movement)
Mr Peter Grogan (Australian Republican Movement)
Ms Jennie George (Australian Republican Movement)
Ms Christine Ferguson (No Republic—ACM)
Mr Alasdair P Webster (Christian Democratic Party (Fred Nile Group))
Ms Glenda Hewitt (ungrouped—I Care About Australia's Future)
Dr Pat O'Shane AM (A Just Republic)
Brigadier Alf Garland AM (Australian Monarchist League)
Mr Andrew Gunter (Ethos—Elect the Head of State)
Ms Hazel Hawke (Australian Republican Movement)
Mr Jason Yat-Sen Li (ungrouped—A Multi-Cultural Voice)
Ms Catherine Moore (Greens, Bill of Rights, Indigenous Peoples)

Victoria

Mr Eddie McGuire (Australian Republican Movement)
The Hon Don Chipp AO (No Republic—ACM)
The Reverend Tim Costello (Real Republic)
Mr Bruce Ruxton AM OBE (Safeguard the People)
Ms Mary Delahunty (Australian Republican Movement)

Ms Sophie Panopoulos (No Republic—ACM)
Mr Steve Vizard AM (Australian Republican Movement)
Ms Poppy King (Australian Republican Movement)
Mr Lindsay Fox AO (Australian Republican Movement)
The Hon Vernon Wilcox CBE QC (Safeguard the People)
Ms Moira Rayner (Real Republic)
Ms Misha Schubert (Republic4U—The Youth Ticket)
The Hon Jim Ramsay (No Republic—ACM)
Mr Kenneth Gifford QC (Australian Monarchist League)
Mr Phil Cleary (ungrouped—Phil Cleary—Independent Australia)
Mr Eric G Bullmore (Shooters Party)

Queensland

The Hon Sir James Killen KCMG (No Republic—ACM)
Dr Clem Jones AO (Clem Jones Queensland Constitutional Republic Team)
The Hon Michael Lavarch (Australian Republican Movement)
Dr Glen Sheil (Constitutional Monarchists)
Mr Neville Thomas Bonner AO (No Republic—ACM)
Mr David Alexander Muir (Clem Jones Queensland Constitutional Republic Team)
Ms Sallyanne Atkinson AO (Australian Republican Movement)
Mr Thomas Bradley (No Republic—ACM)
Lady Florence Isabel Bjelke-Petersen (Constitutional Monarchists)
Ms Mary Kelly (Women for a Just Republic)
Ms Sarina Russo (Australian Republican Movement)
Cr Paul Gregory Tully (Queenslanders for a Republic)
Cr Ann Bunnell (Clem Jones Queensland Constitutional Republic Team)

Western Australia

Ms Janet Holmes a Court AO (Australian Republican Movement)
The Rt Hon Reg Withers (No Republic—ACM)
Professor Peter Tannock (Australian Republican Movement)
Mr Geoff Hourn (No Republic—ACM)
Mr Graham Edwards (Australian Republican Movement)
Ms Clare Thompson (Australian Republican Movement)
Mrs Marylyn Rodgers (No Republic—ACM)
Mr Liam Bartlett (ungrouped—An Open Mind for the Future)
Professor Patrick O'Brien (Elect the President)

South Australia

Mr Kym Bonython (No Republic—ACM)
Dr Baden Teague (Australian Republican Movement)

The Right Reverend John Hepworth (No Republic—ACM)
Ms Linda Kirk (Australian Republican Movement)
Ms Victoria Manetta (No Republic—ACM)
Dr Tony Cocchiaro (Australian Republican Movement)
Father John Fleming (No Republic—ACM)
Ms Kirsten Andrews (Australian Republican Movement)

Tasmania

Mr Edward O'Farrell CVO CBE (No Republic—ACM)
Mr Julian Ormond Green (Australian Republican Movement)
Mr Michael Anthony Castle (No Republic—ACM)
Ms Marguerite Scott (Australian Republican Movement)
Dr David Charles Mitchell (The Australian Monarchist League)
Mr Eric Lockett (ungrouped—Voice of Ordinary, Fair-Minded, Thinking Citizens)

Australian Capital Territory

Ms Anne Witheford (Australian Republican Movement)
Mr Frank Cassidy (Australian Republican Movement)

Northern Territory

Mr David Curtis (A Just Republic)
Mr Michael John Kilgariff (ungrouped—Territory Republican)

APPOINTED DELEGATES—NON-PARLIAMENTARY

Ms Andrea Ang (Western Australia)
Ms Stella Axarlis (Victoria)
Ms Dannalee Bell (Victoria)
Ms Julie Bishop (Western Australia)
Professor Geoffrey Blainey AO (Victoria)
Professor Greg Craven (Western Australia)
Ms Miranda Devine (New South Wales)
Mr Gatjil Djerrkura OAM (Northern Territory)
Ms Mia Handshin (South Australia)
The Hon Bill Hayden AC (Queensland)
The Most Reverend Peter Hollingworth AO, OBE (Queensland)
Ms Mary Imlach (Tasmania)
Major General James AC MBE (Queensland)
Mr Adam Johnston (New South Wales)
Mrs Annette Knight AM (Western Australia)
Dame Leonie Kramer AC (New South Wales)
Ms Helen Lynch AM (New South Wales)
The Hon Richard McGarvie AC (Victoria)
Mr Donald McGauchie (Victoria)
The Hon Dame Roma Mitchell AC (South Australia)
Mr Carl Moller (Tasmania)
Councillor Joan Moloney (Queensland)
Mr George Mye MBE, AM (Queensland/TSI)
Mr Ben Myers (Queensland)
Ms Moira O'Brien (Northern Territory)
Dr Lois O'Donoghue CBE, AM (South Australia)
Sir Arvi Parbo AC (Victoria)
The Most Reverend George Pell (Victoria)
Ms Nova Peris-Kneebone OAM (Northern Territory/Western Australia)
Mr Peter Sams (New South Wales)
Professor Judith Sloan (South Australia)
Sir David Smith KCVO, AO (Australian Capital Territory)
Professor Trang Thomas AM (Victoria)
Mr Lloyd Waddy RFD, QC (New South Wales)
Professor George Winterton (New South Wales)
Ms Heidi Zwar (Australian Capital Territory)

APPOINTED DELEGATES—PARLIAMENTARY

Commonwealth

Government

The Hon John Howard MP (Prime Minister)

The Hon Peter Costello MP (Treasurer)

The Hon Daryl Williams AM QC MP (Attorney-General)

Senator the Hon Robert Hill (Minister for the Environment)

Senator the Hon Jocelyn Newman (Minister for Social Security)

Mr Neil Andrew MP

Mrs Chris Gallus MP

Mr Kevin Andrews MP

Senator Alan Ferguson

The Hon Tim Fischer MP (Deputy Prime Minister)

The Hon John Anderson MP (Minister for Primary Industries and Energy)

Senator Ron Boswell (Leader of the National Party of Australia in the Senate)

Australian Labor Party

The Hon Kim Beazley MP (Leader of the Opposition)

The Hon Gareth Evans QC MP

Senator Sue West (Deputy President of the Senate)

Senator the Hon Nick Bolkus

Senator Kate Lundy

Australian Democrats

Senator Natasha Stott Despoja

Independent/Green

Mr Allan Rocher MP

State/Territory

New South Wales

The Hon Bob Carr MP (Premier)

The Hon Peter Collins QC MP (Leader of the Opposition)

The Hon Jeff Shaw QC MLC (Attorney-General and Minister for Industrial Relations)

Victoria

The Hon Jeff Kennett MLA (Premier)

Mr John Brumby MLA (Leader of the Opposition)

The Hon Pat McNamara MLA (Deputy Premier and Minister for Agriculture)

Queensland

The Hon Rob Borbridge MLA (Premier)

Mr Peter Beattie MLA (Leader of the Opposition)

The Hon Denver Beanland MLA (Attorney-General and Minister for Justice)

Western Australia

The Hon Richard Court MLA (Premier)

Dr Geoffrey Gallop MLA (Leader of the Opposition)

The Hon Hendy Cowan MLA (Deputy Premier)

South Australia

The Hon John Olsen FNIA MP (Premier)

The Hon Michael Rann MP (Leader of the Opposition)

Mr Mike Elliott MLC (Leader of the Australian Democrats)

Tasmania

The Hon Tony Rundle MHA (Premier)

Mr Jim Bacon MHA (Leader of the Opposition)

Mrs Christine Milne MHA (Leader of the Tasmanian Greens)

Territories

Mrs Kate Carnell MLA (Chief Minister, Australian Capital Territory)

The Hon Shane Stone MLA QC (Chief Minister, Northern Territory)

COMMONWEALTH OF AUSTRALIA

CONSTITUTIONAL CONVENTION

Hansard

1998

OLD PARLIAMENT HOUSE, CANBERRA

2nd to 13th FEBRUARY 1998

Monday, 2 February 1998

The CHAIRMAN (Rt Hon I. McC. Sinclair) took the chair at 9.33 a.m.

CHAIRMAN—Delegates, distinguished visitors, fellow Australians, I welcome you all to this historic Convention in this old House of Representatives chamber, where for 61 of the years since Federation those elected to this chamber formed the governments which determined our growth from being a colony of the United Kingdom to being the young, vigorous, vibrant nation that we are today. We acknowledge that we are meeting today on country of which the people of the Ngunnawal tribe have been custodians for many centuries and on which the members of that tribe performed age-old ceremonies of celebration, initiation and renewal. We acknowledge today their living culture and the unique role that they and other members of the Koori people play in the life of this region.

The purpose of the Convention was laid down by the Prime Minister, the Hon. John Howard, in his second reading speech to the House of Representatives chamber on the hill on 26 March last year. In that second reading speech, he said:

The convention will provide a forum for discussion about whether or not our present constitution should be changed to a republican one. In particular:

- whether or not Australia should become a republic;

- which republic model should be put to the electorate to consider against the status quo; and
- in what time frame and under what circumstances might any change be considered.

I now propose on behalf of the Deputy Chairman and me to formally identify the composition of the Convention and to table relevant documents. The Prime Minister has written to me, attaching a copy of a media release of 10 June 1997 announcing the appointment of Mr Jones and me to be Deputy Chairman and Chairman. I attach to that letter a copy of a media release of 31 August 1997 in which the Prime Minister identified the appointment of 36 non-parliamentary delegates. I also attach a copy of a media release of 21 November 1997 announcing the appointment of 40 parliamentary delegates. Other delegates were elected pursuant to the provisions of the Constitutional Convention (Election) Act 1997.

The Electoral Commissioner has written providing me with copies of the notices of resolutions of the election of delegates to the Convention and of his determination, in accordance with section 119 of that act, of the election of a delegate following the resignation of an elected delegate. Pursuant to my powers as Chairman under the act, I also appointed by letter of 21 January 1998 a delegate to replace an elected delegate who resigned.

The Convention will be assisted by Mr Bill Blick of the Department of the Prime Minister and Cabinet, Mr Lyn Barlin, the distinguished former Clerk of the House of Representatives,

and other members of the Convention secretariat. In tabling documents, I would suggest that we table them with them, and I now hand to Mr Blick those documents which I identified in my opening remarks.

The order of proceedings for this morning has been varied to a degree so that following the speech by the Prime Minister and the Leader of the Opposition, the Hon. Kim Beazley, there will be a speech by the leader of the group, Mr Malcolm Turnbull, with the largest number of delegates here. He will speak on behalf of the Australian Republican Movement and will be followed by Mr Lloyd Waddy QC representing Australians for Constitutional Monarchy. The Convention will then break for morning tea at 10.40 and after our resumption at 11.30 we will have an opportunity to debate the rules of debate and the order of proceedings, to both of which there is notice of motion of several amendments which delegates wish to move.

Prior to our recommencing proceedings, there has been a request from the media to take photographs from the floor of the chamber, following which there will be an official photograph. The Convention will commence its proceedings this morning with a speech by the Prime Minister of Australia. I invite the Prime Minister, Mr John Howard, to address the Convention.

Mr HOWARD—Mr Chairman, my fellow Australians, 100 years ago exactly, the last of the original constitutional conventions was meeting in Melbourne. In an unusually hot summer it could not have been very pleasant for them. There were bushfires blazing around the city, and on one occasion the chamber was filled with smoke. Not surprisingly, the proceedings were less than good tempered. But out of that convention emerged the document which was, in most respects, to be our Constitution.

The founders' work has served us remarkably well; it has endured. More than that, it was outstandingly successful in binding together those disparate colonies, scattered over a huge continent, into a nation. It has brought us together with a remarkable absence of rancour and dissent and provided the rules for governing the nation with both certainty

and stability. After nearly a century of dramatic political and economic events, two world wars, a major depression and unforeseeable technological and social change, that is a considerable achievement.

Never before has this historic chamber received such a wonderfully diverse group of Australians. Our moment in history is privileged. Our responsibility is great. Our common bond is Australia's future. It is a vastly different gathering from one of 100 years ago. There were no indigenous Australians at the convention of 1898; it was an all male gathering; the names were overwhelmingly Anglo-Celtic; and I am sure that no delegate was aged under 25.

This Convention has been established in fulfilment of a promise I made to the Australian people before the last election. Whatever may be our views on the threshold issue of whether or not Australia should become a republic and whatever form we might believe any such republic should take, we owe it to ourselves and to the rest of the Australian people to conduct this Convention in an open, positive and constructive fashion. The issues before us do not involve a debate as to who is the better Australian. Nor do they involve a debate about whether Australia is a truly independent nation. There are passionate Australians on both sides of the argument. We need the permission of no-one to remake our constitutional future. This Convention is a time for plain speaking. Those who oppose change should say why. Those who want change should not only say why but also articulate the kind of republic they want.

During the past 40 years, Australia's emotional ties to the Crown have diminished and our relationship with the United Kingdom has been transformed. This is not to denigrate the sense of duty and commitment of the present monarch, who remains in the esteem of many Australians whatever may be their views about the republic. Equally, this nation, whatever its future constitutional arrangements, will forever be in debt to Britain for her gifts of law, language, literature and political institutions. Paradoxically, the developments of the past 40 years are both the main reason that this issue is now under debate and not

yet necessarily a conclusive argument for change.

In my view, the only argument of substance in favour of an Australian republic is that the symbolism of Australia sharing its legal head of state with a number of other nations is no longer appropriate. As a matter of law, Elizabeth II is Queen of Australia. As a matter of undisputed constitutional convention, the Governor-General has become Australia's effective head of state. Ultimately, it will be for the Australian people alone in their wisdom to resolve this theoretical conflict between our history and present-day constitutional reality—to decide whether removing the symbolism which many see as inappropriate in the present arrangement counts more than the stability and inherent strength of the existing order.

I oppose Australia becoming a republic, because I do not believe that the alternatives so far canvassed will deliver a better system of government than the one we have at present. I go further: some will gravely weaken our system of government. I believe that modern government is most workable where the essentially ceremonial functions of government are separated from the day-to-day executive responsibilities.

This finds its best expression in the basically Westminster system of parliamentary government which has prevailed in Australia, with effective executive power being exercised by the cabinet headed by the Prime Minister, who are all drawn from and responsible to a democratically elected parliament.

A fundamental characteristic of that system is not only the separation of the ceremonial and executive functions but also that the person discharging the formal functions is so politically neutral both in reality and perception that he or she can act as the ultimate defender of the constitutional integrity of the nation.

I do not believe that any of the republican alternatives is as effective as present arrangements in delivering that outcome. The major goal of this Convention should be to reach a clear view on which republican model ought to be pitted against present arrangements at a constitutional referendum.

I inform the Convention that if clear support for a particular republican model emerges from this Convention my government will, if returned at the next election, put that model to a referendum of the Australian people before the end of 1999. If the people then decide to change our present Constitution, the new arrangements will be in place for the centenary of the inauguration of the Australian nation and the opening of the new millennium on 1 January 2001.

If this Convention does not express a clear view on a preferred republican alternative, then after the next election the people will be asked to vote in a plebiscite which presents them with all the reasonable alternatives. A formal constitutional referendum, offering a choice between the present system and the republican alternative receiving most support in the plebiscite, would then follow. It is the hope of my government that this Convention will speak with sufficient clarity to obviate the need for a plebiscite.

I also inform the Convention that, although on all issues of substance—either dealing with the threshold proposition or republican alternatives, both here at the Convention and subsequently, including in any plebiscite or referendum—members of the Liberal Party of Australia will be free to speak and vote according to their own personal convictions. The only caveat is that any necessary legislation to establish the machinery for a plebiscite or referendum, being itself a matter of government policy, will not enjoy a free vote.

Let me now comment briefly on the various republican alternatives. If one believes in the retention of the Australian version of Westminster, then it is hard to see how such a system, given the Australian political culture, can be reconciled with the direct popular election of a president. Such a process would inevitably create a rival power centre—and I mean a political power centre—to that of the Prime Minister, and thus serve to weaken the parliamentary system itself.

The published opinion polls tell us that there is overwhelming public support for the popular election of a president. That may well be so. It is likely that it is due to the mistaken belief on the part of many people that the

popular election of a president would deliver an impeccably neutral, non-party-political head of state who would impartially soar above the whole political firmament. Nothing could be further from reality.

An elected presidency seems to me to be a sure way of politicising the office and creating unparalleled tensions. In an elected presidency, political parties would run candidates. That is certain. It is not idle to think that we could have a Liberal Prime Minister, a Labor President—or vice versa, for the sake of balance—and a minority group or Independents holding the balance of power in the Senate.

A person delivered the office of President of Australia by popular vote, following a party-political campaign—which itself would have been almost certainly preceded by party preselection processes—would feel infinitely more greatly in debt to his or her party than, say, a former Labor or Liberal minister appointed Governor-General under the present arrangements.

Since World War II, Australia has had four Governors-General who have been former politicians: two Labor, McKell and Hayden; and two Liberal, Casey and Hasluck. All behaved with complete neutrality; each was subsumed by the conventions and impartial traditions of the office. With an elected presidency, the conventions and traditions would be quite uncertain at the very least.

The answer advanced by proponents of an elected presidency is that the powers of the president could be codified. This is a more intricate and challenging task than many imagine. Given the almost unique power enjoyed by the Australian Senate, a process of codification would, amongst other things, involve expressly providing in the Constitution that an elected president would have the power to do what Sir John Kerr did in 1975. Some people would retort to that suggestion, 'Then don't include the power of dismissal.' However, that would challenge the present role of the Senate, whose essentially coextensive power with that of the House of Representatives is one of the reasons why the Governor-General's reserve powers include that of dismissal.

The proposal of the former Governor of Victoria, Mr Richard McGarvie, a delegate to this Convention, most closely reflects the strengths of our present system without continuing the symbolism of that system, which those who want a republic no longer find acceptable. Under the McGarvie model, a council of distinguished Australians takes the place of the Queen in exercising the only function under the Australian Constitution left to her, and that is to appoint the Governor-General on the recommendation of the Prime Minister.

The third frequently canvassed alternative is that put forward by the Australian Republican Movement and recommended by the former government's Republic Advisory Committee. Under it, the president would be chosen by a vote of two-thirds of the members of the Commonwealth parliament. This approach is far less likely to weaken the parliamentary system than would a popularly elected president. Under this approach it may be less necessary to codify the powers of the head of state, although that would very much depend on the conditions for removal of a head of state under any such model.

Perversely, and contrary to current popular belief, this method of choosing a head of state would be far more likely to yield a non-political figure than would a direct election for president. However, the two-thirds approach is not without risks. A head of state chosen by two-thirds of the entire Commonwealth parliament, dealing with a Prime Minister with a small majority in the House of Representatives and not controlling the Senate, could easily be emboldened to believe that he or she were performing more than formal or ceremonial functions.

In parting, I return to the original convention—to the deliberations of the founders. At one stage in the proceedings of the Adelaide Convention in 1897, Edmund Barton, exasperated by the continuing technical discussion, asked, 'How are we to do our work if we debate matters of this kind?' to which Isaac Isaacs replied, 'It is work which is to stand for all time and we ought to do it properly.' Perhaps Isaacs was being a little ambitious, but the thought is a proper one and it is one

which I hope you will all keep uppermost in your minds over the coming days. I wish you all well in our collective deliberations. Thank you.

CHAIRMAN—Thank you, Prime Minister. I now invite the Leader of the Opposition, the Hon. Kim Beazley, to address the Convention.

Mr BEAZLEY—Thank you, Mr Chairman. I join with the Prime Minister in welcoming delegates to this Constitutional Convention. You have no idea what joy it brings me to see you sitting here and properly using this chamber—a chamber which I loved so much and which I deeply regret leaving. There must be a sense of excitement among us here today as, a century on, to some extent we stand in the shoes of the founders of our nation.

We cannot claim to be writing on a canvas as large as theirs. We cannot claim their erudition. Nobody who reads those proceedings can be anything other than amazed by the capacity of such a large number of people to consider so well such complex issues. And we cannot match the sense that they were creating a nation.

Their meeting followed a more intense and extensive public debate than ours does, but we can claim to be dealing with their unfinished business: their having created a nation, our meeting reflects the maturing of that nation—not least in the fact that there are women, young people, indigenous Australians and many people from a non Anglo-Celtic background at this Convention. Most importantly, we are reflecting our nation's recognition of its identity in a much changed world.

The evolutionary process that the founders of our nation were engaged in naturally reflected the sentiment of the day. In a period in which we were essentially Australian Britons, with a deep sense of being part of an empire, ambiguity was inevitable in our Constitution where the ties to our polity of origin were considered. The surprising feature of our Constitution, given this background, is not in its manifestation of those ties but in the hints of a republican direction. Much in it reflects attention to the republican benchmark of the day, the constitution of the United States.

Further, as Queen Victoria thoroughly understood at the time, the Commonwealth of Australia is an unambiguously republican title. When those of us who served on the last government's cabinet subcommittee started tinkering with the names 'Republic of Australia' or 'Federal Republic of Australia', we rapidly concluded: why bother.

The opposition's view is that we should now complete the founders' agenda. We have always believed that the things which unite us in this debate are greater than the things which divide us. All of us here, I think, believe in the small 'r' republican view that the Australian people should participate actively in the civic life of the nation. In other words, we share a view of citizenship—essentially a republican concept.

We are all citizens of an independent, self-governing nation in which government is carried out through the people's elected representatives. Our nation is a republic in all but name. We argue that we as a nation should recognise the reality of our small 'r' republican arrangements by making the necessary adjustments to place the capping stone on the structure: a head of state who is unambiguously Australian; a head of state who is one of us.

As I look around this chamber here today, I see the clearest message that the Australian people—those who voted—could give about their feelings on the issue of a republic. Standing here today, it is impossible to ignore the clear preference expressed in the votes for this Convention for the move to an Australian republic. The Australian people did not vote for a train wreck at this Convention, and they must not get one.

I believe Australians voted for republican candidates because they recognise that Australia approaching the 21st century makes its own way in our region and in the world and our institutions must reflect that fact. We are recognised by other countries for our distinctive achievements in fields as disparate as sport, the arts, political institutions, and science and technology. Those same countries that have learned to prize a vibrant, confident, outward looking Australia find it strange and anachronistic—as many Australians now

clearly do—that our head of state is not an Australian.

Australians elected a majority republican convention because, far from seeing dangers in the move to a republic, they see potential problems with a system of government with which, increasingly, Australians cannot wholly identify. They see the danger inherent in a system which does not enjoy the confidence of its people—confidence that it represents their vision of their own future—and that confidence is part of political stability.

What greater proof of relevance to the lives and aspirations of ordinary Australians could our system of government have than the knowledge that any Australian child could one day become Australia's head of state. For us in the ALP, this is a moment of some satisfaction. This Convention is not our idea, and we think its methods of election and appointment flawed. We do not resile from our views that things should have been done a different way.

However, we knew that, when we placed the republican motion in our platform under Bill Hayden's leadership in 1982, if the objective was to be achieved it could never be done on the basis that we owned the process.

Mr HAYDEN—They couldn't win them all.

Mr BEAZLEY—When Prime Minister Paul Keating courageously and firmly placed the issue on the Australian political agenda a decade later, he reiterated that conviction. However, he and his government believed that a workable model should be put into play as well as just simply canvassing the issue. The model was subsequently unveiled in June 1995, and it remains our preferred model.

We advocated, and the Federal Parliamentary Labor Party continues to advocate, this minimalist model. It contains an important feature which I want to raise in the context of our deliberations this week. Labor's model provides for the election of an Australian president on the nomination of the Prime Minister and the cabinet by a two-thirds majority of a joint sitting of both houses of parliament.

Our view is that this method of election causes the minimum possible disruption to our current constitutional arrangements. It is the model most likely to produce a nonpartisan figure and, as such, the breadth of public support a head of state must enjoy. It does not remove the head of state from accountability to an elected, essentially partisan process—the parliament of Australia. However, there would be substantial checks against the virulent exercise of partisanship should a clash between the head of state and parliament's majority occur.

We still think appointment by parliament balances a desire to have an Australian head of state above the political process, with accountability to the elected aspects of it. Others don't agree. We recognise that there are other views and other models. In particular, we recognise that when asked Australians express a clear preference for a president directly elected by the people. Some weeks ago our highest policy making body, the National Conference, took note of that fact. Clearly, such a model demands significant constitutional change. In particular, as our National Conference noted, it would require the codification and limitation of the powers of the head of state and attention to the respective powers of the House of Representatives and the Senate.

Our concern when we were in government was articulated many times by Paul Keating. He argued, correctly I believe, that a president so elected would have greater political legitimacy and greater powers than the current Governor-General, and those to the detriment of the House of Representatives and of the cabinet. Such a president could scarcely be 'above politics' as Governor-Generals have been almost exclusively in our history. The paradox for so many people who oppose election by parliament is of course that a popularly elected president would almost inevitably be a politician, and one from the major parties at that. Yet it is to avoid such an outcome that many arrive at that position.

But this is just one element in the convictions of many who advocate this model. A deeper view stems from the sentiment that, having decided to change, many want to feel

personal ownership of that change. For those of us who lead a daily life in politics like I, we tend to forget that the point of identification of our citizens or the process is not the institutions in which we sit and their personalities but the act of voting. If such views are not to be adopted, then great care and rigour in argument will need to be exercised.

Similarly, we recognise the presence of proposals for absolutely minimal change such as the so-called 'McGarvie model' in which the head of state has, in effect, exactly the same powers as the present Governor-General and is appointed or dismissed on the Prime Minister's advice. We believe the most significant difficulty with such a model is that it allows insufficient participation by the Australian people—either directly in an election or indirectly via their parliamentary representatives—to have a say in the election of their president.

In comparing all these models, as we are charged with doing over the coming days, there is one thing of which we will all need to be aware and should factor into our thinking: the balances in our political system have their unwritten subtleties. They go beyond simply the conventions that the Governor-General acts on the advice of the Prime Minister and cabinet, but they are related to it. Any of the models we consider will to some extent rebalance the political process in this country. Even the McGarvie model, with its presiding panel of notables, does this. The events of 1975 probably started this debate, but they were exceptional. The clear reality of political life is one in which the government of the day exercises great power in relation to the Governor-General, with the capacity to appoint and remove him or her.

The expectation in all areas of the political system is that, whatever else is going on in the legislature, the most crucial decisions by the Governor-General on any matter will be based on the advice of the government. Any process that changes that appointment and removal procedure—placing it in the hands of a panel, the legislature or the electorate—produces a subtle rebalancing which will be apparent to Prime Ministers immediately, but will ultimately permeate all other elements of

the political process—particularly the legislature, particularly the Senate.

As we move from a constitutional monarchy reliant on unwritten convention, is it possible for a republican constitution to be similarly based when a central underpinning of that unwritten convention, the basis of the tenure of the Governor-General, is substantially changed? If this is the case, is it possible after all under any model to avoid the need to codify other powers and the relations between the various political institutions? In answering these questions, we must understand convention itself as a great Australian republican tradition. In the final analysis, it is the beliefs of the Australian people as to how government should be run that constrain the exercise of power under our Constitution.

Labor believes it is the task of this Convention to resolve these issues. We do not seek to pretend that these debates are simple or that such matters do not require careful thought and deliberation. The stability of our democratic system of government is one of our greatest achievements as a nation and not one we would ever want to see endangered. Equally, we believe that Australians and their special representatives gathered here this week are capable of the thought, the deliberation and the great wisdom required to make this change a reality.

We put our faith in the great traditions of Australian democratic innovation. We are skilled democrats. Not many people know that around the world the secret ballot is known as the Australian ballot. We are among the pioneers in women's suffrage and preferential voting. This great tradition of innovation is also a central support of our stable Australian democracy. We have created great political institutions, both official and unofficial, and have produced a system that places an emphasis on honesty, fairness and stability. We can conclude the final steps to an Australian head of state proud of our record and with faith in our capacity to handle this debate.

The next step after this Convention must be a direct appeal to the people who put some of us here this week. By that time, this issue will have been discussed long enough. In my view, Australians have long understood most

of the issues. We can take this opportunity to give those issues a final push forward. Then we must give Australians their say.

Because Australia faces great challenges, establishing an Australian republic is an important part of meeting those challenges, though we must always remember not the foremost among them. It will help us project a new identity, but one which, in reality, we have felt for a long time now—an identity as a strong, confident and independent young nation, engaged with the world around it and excited by the opportunities attaching to its place in the world.

The questions we must face should make the next fortnight an intellectual treat for us all as well as a challenge. This Convention is an experiment in so far as it stands outside the processes the founders considered the basis for future constitutional change. It does, however, have the chance to enshrine itself as a useful adjunct to those processes if we can deal with the complex issues with the breadth of mind that has thus far eluded the institutions formally charged with the task of constitutional change.

No matter what we do here in these two weeks we will all create history. The challenge is to ensure that when it is written its judges will be able to say that we tackled the issues with intelligence and gave a genuine reflection of an independent Australian nation. Thank you.

CHAIRMAN—Thank you, Mr Beazley. I now call on the Leader of the ARM, Mr Malcolm Turnbull, to address the Convention.

Mr TURNBULL—Thank you, Mr Chairman. Friends, I am proud to stand here today as the Leader of the Australian Republican Movement. I and my 26 colleagues are here because 1.6 million Australians cast their first preference vote for us. We are here because thousands of Australians, most of whom cannot be here today, have worked tirelessly in the cause of an Australian republic. We republicans have come from all walks of life and all sides of politics. Our cause has truly been a source of unity in our diversity. I thank them all, especially that little band who held the first ARM banner at Sydney Cove on a cold winter's morning in 1991.

It was also at Sydney Cove 10 years ago that, together with a million other fellow Australians, I witnessed the celebration of our bicentenary. It was said to be the celebration of a nation, yet—the star turn—the principal speech was given not by an Australian but by Prince Charles. Throughout that year, as every great public ceremony came around, we imported another member of the British royal family to preside. Rather than celebrating our nationhood, we denied it. When the world looked to Australia, we showed them what they knew was the monarchy of another country. What was so deficient about us, we asked, that we could not celebrate our nationhood, our achievements, without an endless stream of British royals? Was there no Australian who could safely handle a pair of scissors?

There was nothing wrong with our nation. Australia had become a proud and independent country years ago, but there was something wrong with our Constitution. It still provides that our great Commonwealth is presided over by the Crown of the United Kingdom, of Great Britain and Ireland. Our goal is a simple one. Australia's head of state should be an Australian citizen representing Australian values living in Australia chosen by and answerable to Australians. That is the goal for which we have fought. The Australian people clearly, overwhelmingly, support this change. Our task is to offer them the means of doing it. Our job is to get on with it. The Australian people expect us to present them with the best republican alternative so they can vote on it. Our role is to frame the question. Only they can give us the answer. So we cannot bring about a republic in these two weeks, but if we fail to agree on a model we can certainly delay it by denying the people the opportunity to vote in the referendum before the turn of the century.

To those of the republican persuasion, and I do not spare myself or the ARM in this regard, I would say: keep an open mind. The people of this country will not be entertained by squabbles; they are entitled to expect frank discussion followed by agreement born out of goodwill. There is no monopoly on constitutional wisdom. To those who are unconvinced

of the need for change, I have a different challenge. This, Prime Minister, is a time for constructive conservatism. Remember that two things are clear: most Australians want an Australian as head of state and an even larger percentage of them want to vote on it. You will recognise that the duty of responsible conservatives is to ensure that the republican model presented is the best that all of us can agree upon. Your task and the task of all conservatives is to ensure that the best of the old is preserved as we bring in the new. But remember: by failing positively to support the best republican model, you may contribute to the model you regard as least acceptable being approved in a referendum. You cannot win the contest if you stay out of the ring.

There are two big issues at this convention: firstly, what the powers of the new head of state should be and, secondly, how the head of state should be elected. They are intertwined. We believe the new Australian president should have essentially the same and certainly no greater powers and duties as the Governor-General does today and should conduct the new office in accordance with the existing constitutional conventions. We believe the powers of the president should be spelt out in the Constitution. We believe the president should continue to have reserve powers to act as a constitutional umpire in times of constitutional crisis. While we do not believe complete codification is necessary, we believe there are important but non-controversial principles of our democracy which can be usefully incorporated in the Constitution without derogating from the existing conventions.

Our Constitution read in isolation provides a most misleading and inadequate description of our system of government. Is it too much to ask that our most important law should be written in a manner that makes sense to people who are not lawyers or politicians? But we do not propose a change to the substance of our constitutional arrangements. We believe the best method for choosing the president is by a two-thirds majority of a joint sitting of the federal parliament. This would mean the president would need the support of both sides of politics. It would mean the

president would have the effective support of almost all Australians.

We do not seek to deny the people a say. By requiring two-thirds of the people's directly elected representatives to endorse the president, we will reinforce the bipartisan nature of the office. Direct election will mean the president has, at best, the support of 51 per cent of the Australian people. If there are more than two candidates running, it could be a figure much lower than that. Our mode of appointment will ensure the president has the support of the directly elected representatives of almost all Australians.

Friends, there is more to democracy than a bare majority. If you want to imagine the effect of this, consider what the public reaction would be if an Australian Prime Minister announced that, before recommending the next appointee for Governor-General, he would consult with the Leader of the Opposition and secure his or her concurrence. Such a move would be hailed as statesmanship, and that is, in effect, all we are recommending.

As to direct election, we believe this can be sensibly considered in two circumstances: where the president has the full power of the chief executive or where the president has none. The two best examples are the United States and Ireland. In the United States, the President is the chief executive and head of government and combines in effect the role of our head of state and Prime Minister. While the American Constitution has many admirers in Australia, we do not believe there is any real support for a move to such a system.

In Ireland, there is a system of parliamentary government not unlike our own, but the upper house has no power to reject money bills. The President has virtually none of the powers of the Australian Governor-General. She is directly elected, but she is an entirely ceremonial figure. To effect this in Australia would require an extensive rewrite of the Constitution. It would certainly remove some of the checks and balances in our system. Most importantly, it would impact directly on the relationship between the House and the Senate.

We must bear in mind that our Constitution allows the Senate equal power to the House.

This means there is always the potential for a constitutional impasse to be created. The Senate has the right in the Constitution to cut off the government's money and force it to an election, force it out of office. That power is a fact. At the moment, the consequence of the Senate blocking Supply is a constitutional crisis. That is seen by many as a disincentive to the Senate taking such an action. Perhaps that is why it has only happened once, in 1975.

But, as long as we have the potential for a constitutional crisis, we have the requirement for a constitutional umpire. An umpire must be, by definition, impartial and, therefore, cannot credibly be directly elected. It follows that, to have a directly elected president, you must either remove the Senate's right to block Supply or provide a clear set of guidelines to cover the consequences of such a blockage.

In a nutshell, to have a directly elected president in our parliamentary system, you remove the Senate's power or you facilitate and legitimise it. Either course of action is possible and, what is more, as readers of the Republic Advisory Committee report will know, we have done the exercise; but it poses a political problem, not a legal one. Does any proponent of direct election believe that either removing the Senate's right to block Supply or facilitating it is both achievable and desirable?

We have noted and considered the concerns expressed that, if no codification or only limited codification of the conventions can be achieved, there should be no change to the present method of appointing and dismissing the Governor-General. A Constitutional Council has been proposed as a substitute for the Queen, with the Prime Minister retaining the substantive power to appoint and dismiss. This is by any test the least popular republican model. It would allow the continued instalment of former politicians at Yarralumla. One thing is very, very clear: the Australian people do not want to have a politician as their head of state.

The ARM's method of appointment is the best option for guaranteeing there will be no more politicians rewarded with a stay at Government House. I do not query whether

they may have deserved it or not or whether they performed well in their task, but we all know what the people want in that regard.

Mr HAYDEN—A former Governor-General was prepared to invite you to Government House.

Mr TURNBULL—There is merit considering coupling our bipartisan method of appointment with dismissal being effected by a simple majority of the House of Representatives. This would, I believe, address almost all of the concerns raised by the Prime Minister and Mr McGarvie.

We believe that the preamble should be amended. If it is to remain a statement of history, then it should pay appropriate regard and respect to the Aboriginal history of this country. We are all Australians now, and our civic rights do not depend on how long our families have lived here. Nonetheless, the Aboriginal people were the first Australians and they should be overlooked no longer. The preamble should also affirm our commitment to those core political values which define our nation.

In the 97 years of our federation, there has been far too little public involvement in the Constitution and its reform. We believe that the principal obstacle to constitutional change in Australia has been ignorance and a lack of popular involvement. The republican cause is, apart from the 1967 amendments, the first occasion when there has been a genuine popular movement for constitutional change. We feel that there is considerable merit in considering methods of continuing the popular involvement in constitutional reform which this debate has initiated. This could take the form of future conventions. But we do not support the agenda of this Convention being expanded to consider issues beyond those directly related to the republic debate. The Australian people are entitled to receive and consider a proposal which relates solely to the head of state and does not seek to bundle up with it other, no doubt worth while, proposals for change.

A republic will affirm that this is Australia, a nation not defined by race, religion, colour or cultural background. Our nationhood is defined by our commitment to each other and

our commitment to those uniquely Australian political values of freedom, tolerance and a fair go. Is it unreasonable or presumptuous for us to say as proud Australians, confident of our future and committed to each other, that our head of state should be an Australian citizen living in Australia and that our national symbols and institutions should be unequivocally Australian? To those who say that it does not matter, I can only say that patriotism is beyond price. The destiny of our nation transcends any issue of the moment. If we are to make a prouder, stronger nation from our diverse community, we need to have symbols and institutions that reinforce the one thing we all have in common: Australia. The Queen of England, good and great lady though she is, cannot do that.

We respect the patriotism of all the delegates here today, but we cannot agree with those who claim to respect an Australia and its Constitution so very much but nonetheless respect its people so very little that they regard not one of them, not even the best, good enough to be our head of state. We do not accept that Australians are so singularly deficient that, unlike almost every other nation in the world, we are incapable of managing our affairs without a foreign monarch. Some of our critics have said that it is all too hard or that it is not worth the trouble. To them I simply ask what is worse: a nation that thinks so little of its people that not one of them is good enough to be its head of state; or a nation which is so incompetent or so timid that it is incapable of changing its Constitution?

This chamber has its share of ghosts, and one who is certainly watching us today is that most committed monarchist, our longest serving Prime Minister, Robert Menzies. Forty-five years ago, in this very chamber, he spoke more sense about the Crown than many of its defenders do today. He was not persuaded by any suggestion that the monarchy was an Australian institution or that the Governor-General was our head of state. The plain truth, he said, is that her majesty, Queen Elizabeth II, sits on the throne not because of some law of Australia but because of the law of the United Kingdom. The Crown, he said,

was the sign and proof that, wherever we are in the world, we are one people. His political opponent, Labor opposition leader Dr H.V. Evatt, endorsed the Prime Minister's remarks.

Menzies was not speaking of the Australian people but of the British people, of which he believed most Australians were proud to be part. Only 10 years before, also in this chamber, Dr Evatt quoted with pride the remark made to him by Winston Churchill: 'I have always found this about you Australians: the better an Australian a man is, the better a Britisher.'

At least those two great leaders were men of their times. They saw the Queen the way that the whole world saw her then and sees her today: as a magnificent embodiment of the British nation. But we are not a British people today. We are not part of Britain. Those days have passed. We are on our own. The apron string is cut.

British people brought to this country a love of freedom and a right to choose their own leaders. It is a great legacy. Our relationship with Britain is built on history, kinship and shared values. It will be stronger, not weaker, when Australia's president and Britain's Queen meet as equals. Australia will remain a member of the Commonwealth. Most Commonwealth countries are already republics.

We do not honour our history by saying that it has stopped. The founders of our federation did not write in stone. They knew that our Constitution, our democracy, was a work in progress. They gave us a constitution to be not only maintained and defended but also changed to meet the changing circumstances of the time.

We love this nation too much to share its head of state with another country. If patriotism is a fault, then we admit it gladly. There is no honour this country can bestow which is nobler than its citizenship. I will never have a prouder boast than to say that I am an Australian. Our head of state should say the same. We know what the people want. Our job is to deliver it. Our head of state should be one of us.

DEPUTY CHAIRMAN—I now give the call to Mr Lloyd Waddy QC from Australians for Constitutional Monarchy.

Mr WADDY—Mr Deputy Chairman, Prime Minister, Leader of the Opposition, Mr Turnbull and fellow Australians: ‘Enough’ I quote with pride my fellow delegate and co-founder of Australians for Constitutional Monarchy, Aboriginal elder and former senator, Neville Bonner, speaking in Queensland on this topic several years ago, when he said, ‘Enough’. Enough of the talking and hand-wringing about symbols and national identity. Enough of the diversion of money, time and energy into this sterile debate. Only 41 per cent of eligible voters chose to cast valid votes for candidates to this Convention. Almost two million of them voted for anti-republican candidates. The latest opinion poll shows that, after six years campaigning and millions of dollars spent supporting republicanism, support for republicanism in all its forms has fallen back to only 51 per cent. Thus, currently 49 per cent of Australians do not want to change their Constitution.

Australians are still uneasy with the very idea of a republic, and might I say that they are right. We are here to represent vigorously Australia’s anti-republican cause. So I say to all those who oppose a republic, wherever you are: ‘keep the faith’. Take heart that there are millions upon millions of Australians like us who love their country the way that it is with its Constitution, its anthem, its flag and its traditions.

May I say at the outset of this Convention that we anti-republicans respect the aspirations of every delegate here. We do not doubt that all delegates seek what they think will be best for Australia. We hope to participate fully in the proceedings with tolerance, empathy, rigour and, I trust, with humour, but, above all, with success in defending what we hold dear. As you have heard already from three distinguished speakers speaking from their hearts, constitutional change is no easy matter. Those of us who have spent over six years taking part in this debate know that to remove the so-called symbolism of the Crown would be to remove and strike at the

very basis of our present constitutional principles.

In 1891, at the then Constitutional Convention considering federation, Sir John Downer identified the cardinal principle of our Constitution, and it is this: that the nominal heads of our executive governments—that is, our Governor-General and the six state governors—are not themselves political players. That principle is over a century old. They are not themselves political players. They occupy a politician free zone. They are impartial umpires. They do not play for any political team. In all but emergencies, they act only on advice given to them by responsible ministers. Those ministers must themselves be answerable to our representatives that we elect to parliament.

This is well illustrated by Mr Keating’s statement in 1994 that ‘Her Majesty would continue to act in Australian affairs as she always has, on the advice of her Australian ministers, and will abide by the wishes of her Australian people.’ That perfectly describes the role of constitutional monarchy. Our governors and Governor-General must act in the same way. Just as Her Majesty herself has been the perfection of modern constitutional monarchs, so she is the standard by which all viceroys are judged.

Our founders relied on, and freely chose at the time of Federation from, the accumulated wisdom of 1,000 years of evolution of the British monarchy, the second oldest institution in Europe after the papacy. They chose that system of constitutional monarchy, although they knew that Queen Victoria could never ever come here to the other side of the world. It was a system of government. Ours was to be an absentee monarchy. All Crown powers had to be exercised by the local head of state, the Governor-General, whom Mr Whitlam rightly called—and I regret his absence—‘My viceroy, comrades.’ Well, he had to get in here somehow, didn’t he?

Indeed, when with modern transport a reigning Queen did come here after 54 years, it was rediscovered that even when she was present our Australian Constitution denied the Queen the exercise of any of the Crown powers vested by it in the Governor-General.

The Governor-General continued to administer the government in all its fullness in her presence. He was not her agent. He was not subject to any direction by her. His powers, the powers of the Governor-General, derive from the terms of the Australian Constitution, the Constitution that Australians themselves had voted to adopt.

The Governor-General remains above politics. Politics is where the real power lies. He acts on advice without any reference to the Queen in any circumstances. Whilst ever our Senate retains its virtually co-equal powers with the lower House, it is even more essential that anyone wielding that umpire's power both remains above the political fray and is free to uphold the Constitution against those whose actions would subvert it to their own ends.

So successful has our Australian system of government been that Australia is now one of the six oldest continuous democracies in the world. No wonder that we who are anti-republicans are proud to stand up to celebrate our country and defend our Constitution the way it is. It has 98 years on the clock and is hardly run in—'still going strong', as they say.

As a constitutional monarchy, Australia is in good company in the other nations of world. Other constitutional monarchies include countries as diverse as Japan, Thailand, Malaysia, Cambodia, Spain, Sweden, Norway, Belgium and Holland. Our Pacific neighbour, Fiji, after trying republicanism, is moving to reinstate the Queen, who of course is also head of the multicultural Commonwealth of Nations of 1.6 billion people; that is, Fiji is moving to restore a constitutional monarchy.

Other Pacific Rim countries which independently have Elizabeth II as their Queen include Canada, New Zealand, New Guinea and Australia. So Australia is far from alone in cherishing its system of constitutional monarchy—and it works well wherever it is. But, of course, Australia is totally independent of every other nation and, let me stress, especially totally independent of the United Kingdom.

No-one has explained better than the Queen herself the completely separate, independent

role she undertakes in relation to Australia. In 1986 Her Majesty said, 'I can see a growing sense of identity and fierce pride in being Australian. So it is right that the Australia Act has finally severed the last of the constitutional links between Australia and Britain. And,' said the Queen, 'I was glad to play a dual role in this.' She continued: 'My last official action as Queen of the United Kingdom before leaving London last month was to give my assent to the Australia Act from the Westminster Parliament. My first official act on arriving in Australia yesterday was to proclaim the identical act but from the Australian parliament, which I did,' the Queen said, 'as Queen of Australia. Surely no two independent countries could bring to an end their constitutional relationship in a more civilised way.' Allow me to repeat that. The Queen said, 'Surely no two independent countries could bring to an end their constitutional relationship in a more civilised way.'

As republican delegate Professor George Winterton has conceded, there is no doubt that the Queen of Australia is a distinct legal personality. It cannot be stated too emphatically that Australia has absolutely no constitutional links with any other country. The fact that Elizabeth II is our Queen no more links us to, say, Canada or the United Kingdom than does the holding by any citizen of different directorships of different public companies link them together.

It is thus my profound belief that Australia is utterly independent. I repeat: Australia is utterly independent. I have never owed allegiance to the Queen of anywhere but Australia and never wish to. Australia is a totally sovereign nation. Its sovereignty resides, as the High Court has held, only in us, the people. As the Queen stressed at the time of her Golden Wedding last year, an hereditary constitutional monarchy 'exists only with the support and the consent of the people'. It is always our choice, just as it was in 1901 when we chose our unique Australian system of federation under the Crown. It may be useful to keep these facts in mind in the coming debates.

As to the furphy of the head of state red herring on which so many republicans rest

their cases, I hope that soon this Convention will hear from the Hon. Bill Hayden, distinguished former Governor-General, who claims he was then our head of state and will say so. So too, the former Official Secretary, Sir David Smith, will I hope describe the dozens of official overseas state visits made by seven governor-generals as head of state of Australia. But, if you choose not to believe them or me, as the phrase 'head of state' is only a diplomatic term and does not appear anywhere in our constitution, it can be defined without reference to the Constitution. The matter can be put beyond any argument without altering the Constitution in any way by a simple act of parliament leaving the status, powers and role of the Queen as they are and all the checks and balances of our seven constitutions, federal and state, absolutely unaltered.

Republicans do not want only that; they want to get rid of the Queen. But the republican models they offer are irreconcilable with each other. They are irreconcilable in practice and in principle, as you have heard the previous speakers say today. They cannot agree on a model, but when they do agree on a model that model must be put to the Australian people.

I believe it is inconceivable that Australians, if properly informed, are ever going to vote for a republic which will have the consequences of altering and distorting the federal balance very much to the disadvantage of the smaller states. The choice of a president by any form of election will always come from the Melbourne-Sydney-Canberra triangle, which can, in parliament or at the electorate, outvote the rest.

Since Federation in 1901, the Australian people have considered some 42 constitutional proposals and accepted only eight. None of those six has given more power to politicians. Any republican model will give more power to politicians—if not a politician when elected, a president will certainly be a politician the day after.

As to symbolism, many of us like having a personal link through the Queen with like-minded friendly nations and races throughout the globe who cherish liberty and freedom as

we do. I, for one, do not see anything at all inappropriate about the symbolism of having a monarch shared with such robust democracies as Canada, New Zealand and other defenders of liberty, as well as a local independent head of state. But I try to respect, Mr Turnbull, the opinions of those who do.

Of republicans I inquire: what price are you republicans prepared to ask the nation to pay so that you can be relaxed about what you think is appropriate symbolism? Is not the price too high already? It will go far beyond the first deposit of \$50 million every five years to directly elect a president.

It is now five years since I first called for a referendum on this matter. It is our belief that it is high time the republicans chose the least worst of their schemes and put that chosen model to the Convention.

Our Constitution has allowed this nation, in the words of its preamble, 'humbly relying on the blessing of Almighty God' to be strong, stable, flexible and effective, with democratic responsible government guaranteeing our freedoms and our liberty'. Long may it continue to do so. It will, if it is left unaltered. Choose your model, republicans, and let the people decide. We say, 'Hands off our Constitution!' In fact, we say, 'Enough!'

DEPUTY CHAIRMAN—The sitting is suspended. Please return promptly at 11.30 a.m.

Proceedings suspended from 10.44 to 11.34 a.m.

CHAIRMAN—The Convention will now commence consideration of proposed rules of debate. In drafting the rules, we have sought to provide the minimum of formality consistent with the need to have a structured and sensible debate on the issues, but the Deputy Chairman and I will of course at all times be subject to a majority view of the members of the Convention. In particular, we have tried to maximise the scope for delegates to have their say within reasonable limits without the intrusion of procedural issues which do not go to the substance of the important matters prescribed for us to debate.

In the first instance and simply for the purposes of our discussion of endorsement of

the rules, I propose we operate under the following arrangements. Motions proposing amendment to the rules should be in writing and seconded. I have already a number of those. If anybody else has further amendments, I would suggest they put them in writing and give them to the secretariat so we can distribute them amongst all delegates.

Secondly, in view of the limited time available, I suggest that the mover and seconder of each motion of which I will advise as we come to them might come down to the speaking position. To avoid delays, it would be more convenient to speak from the podium here than it would be from your own places. So prior to proceeding, if you do not mind, would you come down when you are called.

In view of the limited time, too, I suggest that we have a strict time limit of three minutes on speeches. Delegates wishing to speak should raise a hand and I will call them then to the lectern. Voting will be by show of hands. There being no objection, can I have a motion that the rules as distributed be adopted?

Mr TURNBULL—I move:

That the rules as distributed be adopted.

Mr WADDY—I second the motion.

Mr MUIR—Mr Chairman, I would like to raise a point of order. As I understand, proper meeting procedure is that the first item of business is the election of the Chairman and Deputy Chairman. Previous Constitutional Conventions have followed that precedent. I think that we should move to elect you as Chairman and Mr Barry Jones as Deputy Chairman. I foreshadow that we should, to have a proper gender balance, also elect an additional deputy chair who is a woman.

CHAIRMAN—Mr Muir, the reason that I did not proceed to that initially was that there has already been tabled advice from the Prime Minister of the appointment of the Chairman and the Deputy Chairman. We are not delegates in the normal sense: neither of us has a vote. I felt that as a result we are in a different position and that we should therefore accept your motion as an amendment to the rules of debate where the actual position of the Chairman and the Deputy Chairman and

their roles are defined. For that reason, I rule against your point of order at this stage and will consider your amendment at a later stage. Could I have a proposer and seconder for the first motion, of which I understand notice has been given by Ron Boswell and which will be seconded by the Reverend Tim Costello.

Senator BOSWELL—I move:

1. That this Convention adopts the prayer as said in both houses of Parliament each sitting day;
2. that the Chairman Mr Ian Sinclair say the prayer at the start of each day; and
3. that the word 'Parliament' be replaced by 'Constitutional Convention'.

Ladies and gentlemen, the reason I have moved this motion is that every day, in both houses of parliament, we seek God's help to make the most important decisions for the nation. I view this Convention as very important for Australia. I know that there are many people here from all over Australia from all walks of life—the young and the old, people with ethnic backgrounds and the first Australians. It is going to be a very important Convention that is going to have to come up with an outcome that is in the best interests of Australia. So I have proposed that we have a similar prayer to the one that we have in parliament, removing the word 'Parliament' and placing in 'Constitutional Convention,' to be said by the Chairman, Mr Ian Sinclair, every morning at the start of proceedings. I would like the support of the Convention and call on the Reverend Tim Costello to second this motion.

Reverend TIM COSTELLO—At the risk of a minister seeming to engage in special pleading, I have supported this. But I should say that it seems that most of my friends, even my best friends, are atheists. So to all the atheists here who wish to vote against it: you will remain my best friends. I think, at least, the assembly can test its mind on this. Therefore, I am happy to second the motion.

Motion carried.

CHAIRMAN—The second motion is one proposed by the Leader of the Opposition in Queensland, Mr Beattie. However, there has since been advice that the Prime Minister and the government have agreed with the opposition that proxies for opposition leaders should

be allowed and, similarly, those other delegates to whom any special circumstances might apply or from whom there might be an application for a proxy on compassionate grounds might be given such a proxy by the chair. On that basis I understand Mr Beattie intends to withdraw the motion that he has proposed. Is that correct?

Mr BEATTIE—This proposition was designed to assist the efficient running of this Convention. We appreciate we are here for two weeks. There are 152 delegates. Much as I would hate to see it happen, it may well be that, through illness or other circumstances, delegates need to leave this Convention for a brief period of time. I am happy to accept your ruling, but I would hope that there would be a compassionate approach in the way you handle this matter when delegates do seek to use a proxy for a plenary session.

CHAIRMAN—Is there any speaker against that proposal? If there is not, we accept that modification to the rules of debate. The next amendment I have is one of which Mr David Muir gave notice in his earlier intervention in the proceedings. I call on Mr Muir to move his proposition.

Mr MUIR—I move, as the first order of business:

1. That the Convention elect Mr Ian Sinclair as Chairman.
2. The the Convention elect Mr Jones as Deputy Chairman.

I understand that I have a seconder in Mr Clem Jones.

Dr CLEM JONES—I second the motion.

CHAIRMAN—Do you wish to speak to it, Mr Muir?

Mr MUIR—I think it is self-evident. The reason that it has been moved is that it is proper meeting procedure at the start of every meeting to elect a chair and a deputy chair. I think that we should be seen to be following proper procedure. There is plenty of precedent. I think it goes without saying.

CHAIRMAN—Mr Jones, do you wish to speak as seconder?

Professor PATRICK O'BRIEN—Mr Chairman, on a point of order: I presume that

the chair and deputy chair will be non-voting—that although you are democratically elected, you will still be non-voting?

CHAIRMAN—The conditions of our appointment have been laid down in the letters of appointment which were tabled earlier today. Neither Mr Jones nor I have a vote, nor will we be exercising one.

Mr RAMSAY—On a point of order, Mr Chairman. I suggest that we should be confirming the appointment of the Chairman and the Deputy Chairman because you, sir, have already been appointed by the people who organised and called for this Convention. For us to take over your appointment from that earlier appointment seems to me to be inappropriate. I am perfectly happy for the Convention to confirm your appointment, but not for it to make it.

CHAIRMAN—Are you happy with that amendment, Mr Muir?

Mr MUIR—I will not accept that as a friendly amendment. I ask that my motion be put.

CHAIRMAN—In those circumstances we could take it as a further amendment that the word be 'confirm' instead of 'elect'. We could take it as an amendment now.

Mr RAMSAY—I move as an amendment: Delete 'elect', substitute 'confirm'.

Mr TIM FISCHER—I second the amendment.

CHAIRMAN—It is seconded by Mr Tim Fischer. The question before the Convention is that the word 'elect' be deleted in the respective appointments of me as Chair and Mr Jones as deputy and be replaced with the word 'confirm'. The question now is that the Convention confirm me as Chairman and Mr Jones as Deputy Chairman.

Amendment carried.

Motion, as amended, carried.

Mr MUIR—I move a motion to reflect proper gender balance. I move:

That the Convention elect a woman as a further deputy chairperson.

CHAIRMAN—Thank you, Mr Muir. Mr Jones, do you second the motion? Are there any speakers to that proposition?

Mr RUXTON—Mr Chairman, what does ‘gender balance’ mean?

CHAIRMAN—The amendment is that the Convention elect a woman as a further deputy chairperson. Are there any further speakers?

Councillor TULLY—I think we need to clarify clause 24 of the standing orders, which says that neither the chairman nor the deputy chairman is entitled to vote, to make provision in relation to this motion that the additional appointed deputy delegate, if that is carried by this meeting, is in fact entitled to vote. The way in which that is worded could have the unintended consequence of denying that person the right to vote. I believe that that should be clarified in that amending motion.

CHAIRMAN—Mr Muir, I will give you a right of reply directly.

Ms HEWITT—That was the point I was going to make—as to whether that delegate would have the right to vote.

Mrs RODGERS—While I am not a proponent of affirmative action, I would suggest that gender balance would mean two women and two men.

Mr JOHNSTON—I wish to speak against this motion, because instantly I can see this Convention moving away from the questions it was proposed that it handle: that is, whether Australia becomes a republic. We are not here to debate who is or is not chairman. I would tend to believe that, seeing that that has already been stated by the government, as you yourself have said, we as delegates have no power to alter or to add to the chairman’s roles.

CHAIRMAN—Thank you, Mr Johnston. There being no further speakers, I call on Mr Muir to exercise his right of reply.

Mr MUIR—The appointment of chairman or chairpersons is a matter of substance. Under the rules of debate the chairpersons have a very material role in this Convention. If we are serious about any form of gender balance—and I am sure Mr Ruxton now understands what that means—we should ensure that a woman is appointed in that role. As you can see from the rules of debate, that

is clear. I certainly accept the amendment proposed by Councillor Paul Tully.

CHAIRMAN—Thank you, Mr Muir. The question is that the Convention elect a woman as a further deputy chairperson. I am not sure whether you added any qualification about voting or not. I presume you accept that she should have no vote.

Mr MUIR—I accept what Councillor Tully moved.

CHAIRMAN—I do not think Councillor Tully moved it technically. He just suggested that it created a dilemma and it was for you to resolve it.

Mr RAMSAY—I raise a point of order. I am sorry to interrupt again, sir, but I see this creating quite—

CHAIRMAN—I am afraid the speaker who moved the motion has responded; therefore, there is no further debate—

Mr RAMSAY—There is a point of order.

CHAIRMAN—Right. Do it that way.

Mr RAMSAY—By this motion we are going to provide one delegate with the right to vote and put a requirement on the chairman under the rules of debate to consult with that voting delegate as far as possible on the whole management of the meeting. That seems to me to be inappropriate and upsetting the gender balance completely.

CHAIRMAN—I think you are now debating the issue rather than speaking to a point of order. I put the motion moved by Mr Muir and seconded by Dr Jones that the Convention elect a woman as further deputy chairperson.

Motion lost.

CHAIRMAN—The next notice of motion with respect to rules of debate is one of which I have received notice from Delegate Mary Kelly, to be seconded by delegate Catherine Moore. I call on Delegate Mary Kelly.

Ms MARY KELLY—Thank you, Chairperson. Can I move this in a slightly amended form from the printed version. After the words ‘That in the running of the Convention the following steps be pursued’, I wish to add the words ‘to ensure as far as possible’. The only other change is in the second dot point.

I wish to delete the first three words 'working groups and'. Slightly further along in that same line I wish to delete 'where possible'. I move:

That in the running of the Convention, the following steps be pursued as far as possible:

- * the Resolutions Committee be gender-balanced 50/50;
- * speakers be gender-balanced 50/50 but no less than 33%, consistent with female representation at the Convention;
- * the cohort of Convenors should be gender-balanced over the duration of the Convention, as above;
- * working groups to consider gender balance in their choice of reporters.

In moving this I acknowledge that these ideas were previously submitted to the chairs and I received their answer last night. In that answer the chairs said that, to the extent that it was within the power of the chair, they would do what they could to encourage gender balance in participation by the delegates. I accept that view and believe them, and thank them for that response. The reason for moving it here to is to bring this issue to the attention of all delegates, to talk about why it is important and how it might be pursued not just by the chairs but by us all.

Women's representation here is a huge improvement on the conventions of 100 years ago when no women attended. We have about one-third here, and that is very pleasing. The highest share is amongst the appointed non-parliamentarians, the next highest amongst the elected and the lowest amongst the appointed parliament—in fact, only seven of those 40 being women. So we have a goodly number of women here.

But it is a documented experience of women in public life that, unless you pursue steps to prevent it, in speaking time and positions of influence men will be overrepresented and this will feel normal to most delegates. There are many reasons for this. Some of them are about cultural socialisation, some are about habit, some are about confidence levels. Whatever the reasons, I am sure we all agree that such an outcome is undesirable.

So what does the motion ask us to do? It asks to take steps, firstly, on the Resolutions Committee—probably one of the most influential groups here. It asks for the balance to be 50:50 in that case if we can achieve that. That, you will understand, is more than women's representation inside this House but about right for the women in this country. That will require some effort, I guess, on the part of the chairs, to perhaps solicit nominees where necessary and so on.

The second point asks us to look at speakers. I understand that in informal sessions where people are speaking ex-officio such as this morning this not possible, and every one accepts that, but in many other cases it is possible to encourage people to step aside to do the things that will make the outcomes reasonable for us all. The convenors and working group reporters are really in the hands of us all.

CHAIRMAN—I am sorry, your time has expired.

Ms MARY KELLY—Can I have a last sentence?

CHAIRMAN—Please.

Ms MARY KELLY—I want to say in the last sentence that these are not binding numbers but targets to which we should commit as a collaborative endeavour to achieve.

Ms MOORE—I will be brief. I would like to reiterate what Mary said. Last week hundreds of women gathered in New Parliament House for the Women's Convention. The overwhelming message was that we are here, we want to be included and, if we are committed to establishing a representative democracy, it is essential that we are given the opportunity to properly participate in decision making processes.

CHAIRMAN—Thank you very much. Any other speakers?

Ms THOMPSON—On behalf of the Australian Republican Movement, we are delighted to support this motion. In doing so, we point out that we are the only group here today that has more women than men amongst our numbers. That is something which we are intensely proud of and, in doing so, we went out of our way consciously to

ensure that that would happen. We as a group regard gender equity as an important thing. We are delighted to support Delegate Kelly's motion and we commend it to this Convention.

CHAIRMAN—Any further comments?

Mr JOHNSTON—I speak against this motion. Delegates should be permitted to engage in working groups regarding their interests and what they can contribute to them. They should not be seconded to working groups on the basis of gender. They should be able to move in whatever working groups they choose in consultation with the chair. This Convention is about Australia's political stability, Australia's political future; it is not about an exercise in political correctness.

CHAIRMAN—I should point out to Mr Johnston that there have been deletions in respect of working groups in that second dot point.

Ms CHRISTINE FERGUSON—I speak against this motion. The women's convention held here in Canberra last week I do not think really speaks for all women. I have great faith in the chair and I am sure that he and his deputy will be very fair in their assessment of who goes on where and who speaks. I oppose the motion.

CHAIRMAN—There being no further speakers, I give Delegate Mary Kelly a right of reply.

Ms MARY KELLY—In reply, it is important to point out that the support of women at the last week's convention is drawn to your attention simply for what it is—300 interested women expressing that view—and that this motion binds us all in a collaborative endeavour to try to reach those targets. It does not prohibit anything proceeding if those targets are not reached. I would hope we would all do that anyway, and it would be non-contentious. The opposition suggests that this is not so. So in that spirit of collaborative endeavour I urge your support.

CHAIRMAN—The amendment that we are considering reads as follows:

That in the running of the Convention, the following steps be pursued:

* the Resolutions Committee be gender-balanced 50/50;

* working groups and speakers be gender-balanced 50/50 where possible, but no less than 33%, consistent with female representation at the Convention;

* the cohort of Convenors should be gender-balanced over the duration of the Convention, as above;

* working groups to consider gender-balance in their choice of reporters.

Motion carried.

CHAIRMAN—The next amendment is one from Councillor Paul Tully.

Councillor TULLY—I formally move:

That Constitutional Convention—Rules of Debate Clause 30 be amended to read:

Delegates are to comply promptly with any direction of the Chairman. A ruling by the Chairman on any matter is final *subject to a motion of dissent, with the Chair and the mover of such a motion being the only speakers to the motion and limited to three (3) minutes duration each.*

CHAIRMAN—Is the motion seconded?

Ms MARY KELLY—I second the motion.

CHAIRMAN—Do you wish to speak to it, Councillor Tully?

Councillor TULLY—Yes, please. I will be brief. I believe it is fundamental to the right of any group of delegates in any organisation to have the right of dissent. I would trust that that power will not need to be exercised by delegates over the next 10 days. However, situations could arise that, under the current provisions of rule 30, there would be no procedure or provision for any dissent or for delegates to take any action other than to accept the rulings of the chair. I believe it is a simple proposition. It is a provision which occurs in constitutions and rules of debate of just about every organisation in Australia. I would ask delegates to endorse this simple but fundamental amendment.

CHAIRMAN—Delegate Kelly, first of all, do you wish to speak to second the motion?

Ms MARY KELLY—Yes, briefly. This does not signal an intention to wantonly dissent from the chair at every opportunity. It simply signals and anticipates the almost certainty that, at some point, someone will

want to dissent. We may as well, dare I say, codify a brief and efficient way of dealing with that which I hope will be as infrequent as the chairs do.

CHAIRMAN—I call on Delegate Vernon Wilcox.

Mr WILCOX—Mr Chairman and delegates, I oppose this motion for the reason that I think the appointment of this Convention, particularly the appointment of the Chairman and the Deputy Chairman, was very well done. Both are experienced people. Both, I think, are retiring from public life at the end of the term of this parliament. I think they are very good choices.

Mr Chairman, you will recall possibly that I wrote to you and said in my letter in relation to the rules of procedure that I thought you had taken the whole of the authority unto yourself—and you have, to an extent—but I also said, with no disrespect to my fellow delegates, that it is a hotchpotch of representation here and I do not see how we could have any chance at all of getting through the legitimate business of this Convention unless we did have the ruling that a ruling by the chairman on any matter is final. I, therefore, oppose the motion.

Dr O'SHANE—I wish to speak in support of the motion. The motion does not imply in any way any disrespect to the chairpersons, Mr Sinclair and Mr Jones. Indeed, we have just been through the process of endorsing, I suppose, that they be the chairpersons. There was no expression of dissent in that, and nor is there in this particular motion. There is absolutely no disrespect intended.

One of the words that I have heard quite a bit in the presentation of addresses this morning is democracy. There has been a great emphasis on the necessity for us to abide by democratic principles and to continue to build a democratic society here in Australia, and I doubt that there is any person within this gathering or beyond it who would cavil with those propositions. This motion is really about broadening the practice of democracy within this Convention. It is for that reason that I support the motion.

Mr TURNBULL—The Australian Republican Movement will support the motion. We do so in the belief that there will not be any need for the majority to dissent from the chair. In that respect, the power of the majority to so dissent could be regarded as a reserve power, and this a small example of codification.

CHAIRMAN—Does the mover wish to respond?

Councillor TULLY—Very briefly, I think it is fundamental, as I said before, that this motion be adopted. Without it, 152 delegates would have less power than the chairperson or the deputy chairperson. I would simply ask delegates to endorse something which is both fair and reasonable.

CHAIRMAN—The question is that words be added to the rules of debate, clause 30, relating to a motion of dissent.

Motion carried.

CHAIRMAN—The rules of debate, as submitted, have been amended, therefore, in three propositions. The first is that, with respect to proxies, a new sentence in rules of debate clause 27 be added—that is, leaders of the opposition will have the right to appoint a proxy and, on the discretion of the chair, proxies may be given to other delegates on compassionate grounds.

The second amendment is that the running of the Convention be done with respect to gender balance, moved by Delegate Mary Kelly. The third is the amendment moved by Councillor Paul Tully with respect to a motion of dissent. Do you wish to speak to the motion, Mr Turnbull?

Mr TURNBULL—No.

CHAIRMAN—Does the seconder, Mr Waddy, wish to speak?

Mr WADDY—No, Mr Chairman.

CHAIRMAN—There being no further speakers, I put the rules of debate, as amended.

Motion carried.

Mr TIM FISCHER—I put forward two practical suggestions to assist the working of the Convention. As per what we have now just adopted and the program laid out, most

of the voting will be between 4 and 5 p.m. on the nominated days. I have spoken with Kerry Jones, Malcolm Turnbull and others: as things could suddenly arise during each day's plenary session, that there be an understanding that, in addition to that being the allotted formal times for voting on provisional resolutions, there be a goodwill amongst all of us to deal with voting between 4 and 5 p.m. each day so that all of you who are very busy people, including the many of you elected from elsewhere right around Australia who have to keep in touch with your business or your other activities, will know that it is going to be, in a sense, all hands on deck between 4 and 5 p.m.

I put it to you, Mr Chairman, that, those discussions having taken place, we could all work towards that end. Secondly, to assist us all and you, Mr Chairman, is there a chance that you might consider putting the nameplates on the wall behind delegates in the back row at the right height? That might help facilitate the proceedings.

CHAIRMAN—Technically, that intervention relates to the order of the proceedings, which we are about to address. Before doing so, I want to table proxies that have been received. Proxies have been received from the following people: the Prime Minister, Mr Howard, has nominated Senator Nick Minchin as his proxy; the Premier of New South Wales has nominated Mr Morris Iemma MP as his proxy; Mr Rob Borbidge has nominated Mr Tony FitzGerald MLA as his proxy; Mr John Olsen has nominated the Hon. K. Trevor Griffin MLC; Mr Tony Rundle, the Premier of Tasmania, has nominated the Hon. Michael Hodgman QC, MP as his proxy; Shane Stone has nominated the Hon. Denis Burke MLA as his proxy; and, Kate Carnell, Chief Minister of the ACT, has nominated Ms Linda Webb as her proxy. Any other proxies will be reported from the chair as they are received. I table those documents for the purposes of the proceedings.

We will then move to consider the order of proceedings, taking note of the intervention by the Deputy Prime Minister. Can I have a motion for their adoption please? Moved by Brigadier Garland; seconded by Ms Wendy

Machin. There are now a series of amendments to the order of proceedings. The first is the notice of motion that has been received by Delegate Clem Jones that the order of business be changed so that question one—namely, whether Australia should become a republic—be determined at the end of day three rather than the end of day 10.

Dr CLEM JONES—I move:

That the order of business be changed so that question 1, namely, 'Whether Australia should become a Republic', be determined at the end of day 3 rather than at the end of day 10.

I will be very brief because I think everybody in the room probably has an idea on this question and will probably have made up his or her mind already. As far as I am concerned, I believe the question of whether we become a republic or whether we retain the status quo is a threshold question, and the sooner it is dealt with the better. Certainly, we should have some debate on it, but several arguments have been put forward that we cannot vote on this matter until we know the alternatives. I think that is just an unacceptable argument as it would be if we were to say that we cannot proceed with determining the nature of a republic until we decide whether we are going to retain the monarchy. If we thought that that would be carried, perhaps we should have that motion dealt with immediately in that context.

So far as I am concerned, there are two aspects to this. The first will extend the time of debate for delegates on the vital question of the nature of our republic. Basically, I think that is what most of us are all about today. Most of us believe that we are going to have a republic. Most of us want to know the nature of it. All the necessary issues should be debated and we should come up with a conclusion—or with several conclusions, as I deem might happen from what I have heard already today.

The second important issue is that there are in this room a number of people who are dedicated monarchists but who are great Australians. That is why they are here. If there is an overwhelming majority here who believe we should have a republic, we should decide that question and then free those

people from 10 days of debate on the republican versus monarchist issue and allow those who wish to do so to join in the very important debate on the issues involved in the establishment of a republic. I believe there are people who may not agree with me on this—for example, Sir James Killen—but who would have a great contribution to make, if the issue of whether or not we are going to retain the status quo was decided, on the form that the republic might take.

I do not think there is any need to say anything further, except perhaps to say that it is vital that we should get on with the job of deciding what sort of republic we are going to have, the matter of the head of state and the codification or otherwise. These are things that are going to take a lot of time and a lot of thought and we should all be involved in them, not debating two issues at the same time.

Mr MUIR—I second the motion.

CHAIRMAN—Thank you, Mr Jones. Mr David Muir, do you wish to speak to your seconding?

Mr MUIR—The debate vis-a-vis the monarchy and the republic has been going since Federation. It is important that this Convention focus on the models of the republic. The Prime Minister has indicated that the major part of the business of this Convention is to focus on the models. We do not need the distraction of the monarchy vis-a-vis the republic debate. We need to focus on the models. We need to give our delegates here the incentive to focus on the models and we need to make the most valuable use of our time.

Mrs KERRY JONES—Mr Chairman, this motion calls for a decision before there is a discussion. It asks you to say yes to emotional republicanism and yes to a blank cheque. We say: 'Let the debate begin. Let the discussion against republican models occur and be measured against the current constitutional arrangements.' Everyone sitting here today knows that a number of republicans will vote against many of the republican models as they are put up and, indeed, will cross the floor and vote anti-republican with us as those models are debated. Let the debate begin.

CHAIRMAN—Mr Garland, are you for or against the motion?

Brigadier GARLAND—I am against the motion.

CHAIRMAN—Is there a speaker for the motion?

Dr O'SHANE—In speaking in favour of the motion, I endorse the comments of both the mover and the seconder. I have to say in response to the comments of Mrs Jones that, as Mr Muir stated, if this motion were carried, it would free up the agenda for more detailed discussion about the more crucial issues of the terms in which the changes to the Constitution are made. The proposition is that we use our time more efficiently to get down to the really serious issues that confront us. It is my view, as I am sure it is Mr Muir's, that if this motion were passed we would be better served ourselves. Indeed, we would serve the Australian people better if we devoted the time that we have available to us to those more critical discussions.

Brigadier GARLAND—I oppose this motion on the grounds that there are many people at this Convention who are interested and determined to speak on the major issue. The major issue at this Convention is not all of the bits and pieces, the extraneous issues, but whether Australia will become a republic or remain a constitutional monarchy. I believe that to cut that discussion off halfway through will deny the delegates who are here their opportunity to speak on this issue which is going to affect Australia very much into the future. I oppose the motion.

CHAIRMAN—The Most Reverend Peter Hollingworth, are you for or against the motion?

The Most Reverend PETER HOLLINGWORTH—I am against the motion.

CHAIRMAN—Mr Neville Wran, are you for or against the motion?

Mr WRAN—I am against the motion.

CHAIRMAN—Is there any speaker for the motion? If there is no speaker for the motion, I call on the Most Reverend Peter Hollingworth.

The Most Reverend PETER HOLLINGWORTH—Far be it from me to say that the devil is in the detail. I would prefer to put it positively and say that the solution is in the detail and that the debate that has to take place over the next 10 days is really to look at two options: either the status quo or an alternative. I believe that is the function of us as a group of delegates. It is not our task to determine whether this is going to be a republic or not. That is a task that I understand is to be put before the Australian people at a referendum.

Therefore, the most critical thing we must ensure is that we can help the government formulate two effective questions that are crystal clear and on which the Australian people can then cast a decisive vote. There is a major amount of work to be done. I would support fully all the particular questions that are before us. There is a lot of work in it and a great deal of detail. I think if we are not mindful of that detail we will not serve the Australian people properly.

Mr WRAN—I am against it because I believe that shutting down the discussion on whether Australia should become a republic will rob those of us who support an Australian republic of quite a number of votes here. Just looking at Sir James and other notables—

Sir JAMES KILLEN—I've got you in mind.

Mr WRAN—Bruce Ruxton—I know that there is ample room for persuasion from their preconceived views. But I also believe that everybody should have a fair go to say their piece on the vital issue. We are not frightened of our position and we would prefer the debate to proceed.

CHAIRMAN—Having had two speakers against the motion, I call on Mr Jones to conclude the debate on that item. I am sorry, Professor O'Brien, but we have already had two speakers against.

Dr CLEM JONES—I think Mr Waddy said earlier today that this could become a sterile debate. I believe that all the delegates here have a very full knowledge of all the arguments one way or the other. They have been canvassed at great length and I believe

that it is simply a red herring to say that we are going to be convinced by argument. I doubt if anybody is going to be convinced by argument. I guess I am not going to be. I believe that the object of this motion is to do two things, and that is to involve the monarchists in the important threshold debate, which will follow this threshold debate, dealing with the issues of establishing a republic, and to shorten the time that will be taken in continuing a debate of which we already know the result.

Motion lost.

CHAIRMAN—The next amendment to the order of proceedings is one of which I have had notice from Delegate Moira Rayner. I understand it is to be seconded by Mr David Curtis.

Ms RAYNER—I move:

That in order to meet the legitimate expectations of the Australian people the Convention allocate two days for discussion of the issues of Constitutional change other than those related to the Head of State including but not limited to a new preamble, a charter of rights, freedoms and responsibilities, the recognition and honouring of the original peoples of the land and accountability of government to the people and that the Convention establish working groups to make recommendations for the consideration of the delegates.

I would like to speak in favour of this motion. The reason this motion has been put is that of the apparent tension between the government process of establishing this Convention, which is half elected and half appointed, and the mandate of those of us who were elected by the people to speak about precisely these issues.

The Real Republic ticket, on which I was No. 2, is one of the only groups I think that bothered to ask the people what they thought was so important that should be included in a new Constitution or a Constitution that was under review. We got a 90 per cent return rate saying that they wanted to talk about their rights and the government's rights towards them.

We believe that an outcome of this Convention is possible only if these issues are discussed, and they must be discussed fully in a disciplined way and in a way which would allow this Convention to determine whether

constitutional change—and we are talking about constitutional change—can possibly occur without both some inspiration and some review about what our rights and responsibilities are and, at the end of the day, if these issues are debated between those of us who have the good of our country at heart and have different ideas about how the model of our Constitution should be established.

What kind of society we want is exactly what this issue is about. We are not talking about open slather or an advocacy position for every right claimed by every group. We are saying that, unless we discuss what sorts of rights, responsibilities and freedoms we hold dear and what the principles of democracy require, this Convention will come to no realistically achievable outcome whatever.

Mr CURTIS—The reason this motion should be supported is simple: many Australians voted delegates to this Convention on the basis that these delegates will raise various matters to be covered in the Constitution. The people of Australia have thereby asked delegates to this Convention to discuss in good faith these issues. This raises a tension with the agenda set by the Prime Minister. The purpose of the motion is to resolve this tension and to meet legitimate expectations of the Australian people. Therefore, I commend this motion to the Convention.

CHAIRMAN—I have notice of a further motion—that a further working group be established to discuss the preamble and transitional clauses of the Constitution and that time be set aside on Friday, 6 February to discuss these issues.

Mr TURNBULL—That was an ARM proposal. It is to be moved by Wendy Machin and seconded by Mary Delahunty.

CHAIRMAN—Would you like to move that as an amendment, Ms Machin?

Ms MACHIN—I want to move it as a separate motion.

CHAIRMAN—That is foreshadowed then. I call Father John Fleming on the motion moved by delegate Moira Rayner.

Father JOHN FLEMING—Mr Chairman, I believe that I was selected here to do a job to fulfil the agenda set down for the Conven-

tion. All of the issues in the motion are very important ones in their own right and there will no doubt be proper fora in which they can be considered.

However, I think that, in the context of this Convention, what I have been asked to do, what I put my hand up to do, and what I said I would do, does not cover the range of issues. I think that many South Australians might well feel that it was somehow improper that I should be part of discussions on matters for which they have given me no particular mandate. Therefore, I think we are in danger of hijacking the Convention away from its essential task.

The essential task of the Convention is to consider the benefits of a constitutional monarchy, to measure that against the benefits of a proposed republic, to look at possible models, and so on. My fear is that if we spend our time on this quite extensive range of important issues we will dilute the Convention and find it extremely difficult to come to conclusions on the matter for which we were asked to come to conclusions. If that is the case, then future constitutional conventions which might be called to deal with some of these issues might be more problematic. In other words, if you cannot trust conventions to do the business for which they are entrusted, then perhaps they are too dangerous an invention in the first place.

CHAIRMAN—Christine Milne, are you in favour of or against the motion?

Mrs MILNE—In favour.

Father JOHN FLEMING—In the light of your suggestion and consultation with other delegates, we will move our motion that a working group be established to discuss the preamble and transitional clauses to the Constitution, and that time be set aside on Friday, 6 February, as an amendment to the substantive motion that is before the chair.

Mrs MILNE—Point of order, Mr Chairman.

CHAIRMAN—Having called Mrs Milne—

Father JOHN FLEMING—I am sorry, I thought you had called me.

CHAIRMAN—I did, but that was to allow you to advise the Convention that you were going to move that as an amendment. I will call you after we have heard from Delegate Christine Milne.

Mrs MILNE—I want to speak strongly in favour of this motion to the Convention. Something has been said of the fact that the Prime Minister determined what the agenda should be and that that is why we are here. However, we are here on behalf of the people of Australia. We are here to talk about whether we want to move to a republic and what sort of republic we would want for a democratic republic of Australia. In talking about what sort of republic we want, we cannot ignore issues of indigenous Australians. We cannot ignore issues of rights to clean air and clean water, or rights to equality in our Constitution.

People want ownership of the Australian Constitution. As we go into the new millennium, that is exactly what we ought to be giving people. It is a farce to suggest that if it is not raised here it will somehow be raised in the future. We have to stake some ground for the people's issues. When you go out into the community and talk to people about the republic the issues that they wish to speak about are the sort of preamble, the recording of our history, the sorts of rights and responsibilities that Australians want to have as they proudly declare themselves to be part of a democratic republic.

That is why I think it's imperative that we expand the agenda. It is not enough to just set aside a couple of hours for issues that thousands of Australians put a 'yes' vote next to people's names when voting for them in this Convention. They wanted the people's issues raised here, and not just the Prime Minister's issues.

CHAIRMAN—Thank you. There is a foreshadowed amendment which I call Mr Malcolm Turnbull to propose.

Mr JOHNSTON—I raise a point of order on legality. The Convention election bill and the Prime Minister's second reading speech are matters of law. These were quite specific on what the Convention was designed to do. I call you to rule the motion out of order.

CHAIRMAN—I rule against the point of order. I call Mr Turnbull.

Mr TURNBULL—Nobody is more committed than the Australian Republican Movement to a proper consideration of the preamble, to a proper consideration of its language with respect to our rights and freedoms, and to a proper recognition of our Aboriginal history and Aboriginal prior ownership of this country. As I said in my opening remarks, we believe that those issues should be addressed in the preamble, and that the preamble must be addressed by this Convention. You cannot become a republic without changing the preamble.

With respect to our colleagues here, a charter of rights, freedoms and responsibilities and the whole issue of a constitutional bill of rights is a gigantic issue. You do it little respect by suggesting that it can be dealt with in a few days in this Convention. I remind delegates that, while some of us were elected on wider platforms, the vast majority of delegates here were elected to consider a position on the head of state issue, one important aspect of which certainly is the preamble. A bill of rights is something which should be considered at a future convention. It is an important issue and I hope it will be considered, but we do not have the time to do it justice today. We do not play fair with the Australian people to pretend that it can be jammed into the cracks between a discussion on direct election and parliamentary appointment of a head of state.

CHAIRMAN—As I understand it, the original motion moved by Moira Rayner is now subject to an amendment proposed by Malcolm Turnbull that 'A further working group be established to discuss the preamble and transitional clauses to the Constitution and that time be set aside on Friday, 6 February to discuss these issues.' Is there a seconder to the amendment proposed by Mr Turnbull?

Ms RAYNER—On a point of order, Mr Chairman: this is not an amendment to my motion. It is a motion of an entirely different nature which was foreshadowed before discussion on this matter began. It would be proper, if a vote on my motion is taken and lost, for

the ARM then to put its own motion up, which is entirely different from that put up by me. It makes nonsense of the rules of procedure to allow someone to intervene in a debate and then allow them to speak against my motion and put up an entirely new motion.

CHAIRMAN—We did receive notice of both motions. I must admit I felt that the proposition advanced by Mr Turnbull could be taken as an amendment, but in view of your objection I think technically it probably is not permissible, although it would have facilitated proceedings were it to have been so accepted. So I rule in favour Moira Rayner, the proposer of the original motion, but I suggest we keep the debate on that original motion limited so that we do not spend all day on it.

Mr CLEARY—It was interesting to hear our cleric over here actually going against the will of the people. I thought clerics were supposed to look after the will of the people. There has been a bit of that talked about this afternoon. Moira Rayner is talking about the fact that we need to discuss, in a preamble, serious things about the Constitution. Gareth Evans is I think to foreshadow a motion later talking about codifying the powers of the head of state. How can you have codified powers if you do not even know what might be in the Constitution? The preamble has some legal veracity. We do not want a mickey mouse preamble—and I use ‘mickey mouse’ advisable—from the Malcolm Turnbull-US imperialist side of politics. I know there will be a few references to vegemites and eucalypts, but it will not be protecting the eucalypts from invasion; it will just be waffling under them to make out that this is the new Australia. We want a real Australia.

When we get to that preamble, let us put a real Australia and, Bruce, let us respect your history, as well as respecting our black history. We will say a few things about what we believe in and have a few rights and responsibilities in there, and we will give economic rationalism a big flick, Prime Minister. In the process we will work out whether we have a cabal down on these front benches. Always remember the people elected us.

Kerry Jones says that we want to come here and have a debate. Kerry Jones said unequivocally, ‘I love queens. No matter which palace they are in, I love them. I don’t want to argue anything about a republic.’ We wanted to push that debate, but you did not want to do it. The preamble, Moira, is a great idea. We need a few days to talk about a really independent and just Australia.

CHAIRMAN—I suggest that delegates keep their remarks to the minimum. We seem to be spending an inordinate amount of time talking about procedures.

Mr RUXTON—Mr Chairman, couldn’t you imagine Mr Cleary at half time in a football pavilion. For some time now I have been saying that, for a lot of people, the republic debate is just a vehicle to massacre the Australian Constitution. Last year around April in the *Melbourne Age*, then Senator Sid Spindler said, ‘This is our chance.’

Mr Chairman, the Prime Minister laid down three issues. You set them out in your letter of about 8 January. I have been elected to safeguard the people and the Constitution and to argue for no republic. These other issues have not come into it at all. I warn those republicans here today that, if they go along with this motion, they are going to lose the referendum. People will vote no. It will be close now. If these issues come into it, the Australian people will not wear it. Finally, I am always suspicious of anything Moira Rayner comes out with. Thank you very much.

CHAIRMAN—I have had foreshadowed a further amendment in the name of Chris Gallus, who is suggesting that the words ‘two days’ be omitted and that in their stead the words ‘evenings not otherwise allocated’ be inserted. Professor Patrick O’Brien, are you in favour of the motion, or are you against it?

Professor PATRICK O’BRIEN—I am for the motion.

CHAIRMAN—Then I call you.

Professor PATRICK O’BRIEN—Before disagreeing with Bruce Ruxton, I must say that I think he is a very great Australian, because he ensured that when my widowed sister had no help from either Liberal or

Labor governments and was widowed with five children—her husband had served in the war, developed a terrible cancer as a consequence of war service and had been thrown out of a repatriation hospital because the doctors refused to accept responsibility—Bruce fought and moved heaven and hell to get my sister a war widow's pension. For that I have nothing but admiration for him. I know that he has done that for many other Australians. So he does believe in the rights of people, because he fights for them.

Even people who disagree with Bruce very strongly on other matters all agree that Bruce does fight for the rights of individuals. Bruce, that is the point of this amendment. The people who support the present system and those who want variations to it or total change or any form of change support rights.

Malcolm Turnbull is totally wrong. A republic is about citizenship. We are moving from a constitutional monarchy to a constitutional republic. The centre of that has to be a new authority, which is the people to replace the Crown as the source of all authority. If we are going to do that, the essence of republicanism is the right of its citizens. It is the absolute essence. You cannot divorce the two. The headship of state is only one small issue. The real issue is this, and I will quote John Howard: what type of republic?

We are saying that we have to look at the matter of rights. Some people want to define rights in one way and others in another way. We must discuss that, because that will fashion our attitudes towards other matters, such as the sort of head of state we want. If we do not have rights, we hand over our rights to the entity called the state.

I am arguing that central to democratic constitutionalism, be it of the constitutional monarchist type or a republican type, is the matter of rights. The constitutional monarchists, traditionalists and others are fond of quoting the Magna Carta. They are fond of quoting the Bill of Rights of 1688-89 and other charters, such as the United Nations charter of human rights.

Let us transcend for a moment our own backyard. We know that the history of the 20th century, whilst progressive in some

respects, has been one of the most awful histories of the deprivation of human rights to whole populations, as we sit here. Some people are thinking of rejecting the idea of having a debate on rights, which is far more important than debating whether we have honour systems or what type of honour systems. There are people languishing in gaols and having their brains bashed out for the opportunity to have rights. That is the essence of it. If you support democratic constitutionalism, support rights.

CHAIRMAN—Your time has expired. Are you for or against the motion, Mr McGarvie?

Mr McGARVIE—Against it. The Australian people are looking to us to point the way for them in resolving the republic issue. It will be a very great achievement if we do, and I am confident that we will. We should remember the importance of this. Something that goes to the heart of our constitutional system cannot be allowed to remain unresolved for years. It tears apart a federal democracy.

We should all learn from what has happened in Canada, since they started their unresolved debates in the late 1970s. All those who have spoken, at least all those from Victoria—old friends of mine whom I greatly respect—raise important points. They should be considered by a convention fairly soon, but not this Convention. I thoroughly agree with what Mr Turnbull has said. We have to satisfy what the Australian people are relying on us to do. If we do not do that, we will have totally failed. For myself, I commend the great wisdom that the Chairman and Deputy Chairman have put into fashioning this. Without in any way disagreeing with the importance of the additional topics, I will only agree with the point that Mr Turnbull has raised. We must mention our original inhabitants in our preamble. Beyond that, I am against it.

Dr O'SHANE—I am in favour of this motion. In speaking to it, first of all, I endorse the remarks of Christine Milne in their entirety. I want to go further. At the time when the Prime Minister endorsed the promise to hold this Convention, he stated that it would be a people's convention. In saying

that, he was quite clearly making a distinction between the people of Australia and their elected representatives, politicians, who sit in either state or federal houses.

I take it as an insult, as I am sure many of my fellow Australians do, that the Prime Minister then presumes to set a narrow agenda for discussion at this Convention, having announced that it would be a people's convention. In the time since it was announced, and more particularly in the time since the ballot was conducted and resolved, we have heard the expression of many, many points of view from our fellow Australians that this Convention must address some of those democratic principles of equality and justice, fairness, mutual respect and so forth which are encompassed in the terms of the motion that is now before us.

If we are to hold faith with our fellow Australians, who are relying upon us to take this society of Australians forward into the next millennium, we absolutely have to broaden the terms of debate. One thing that has concerned me this morning in listening to the debate we have had, most particularly in the presentation of the addresses, is that, whilst lip-service has been paid to democracy and the history of Australia, most particularly to the indigenous people, little has been said about the cultural diversity that we now enjoy. There has been no recognition in the proposals that have been put forward for the debates to take place over this next 10 days on those very issues.

Moira Rayner's proposal encompasses all of those issues. I believe that they are essential to shaping a truly democratic republic of Australia. That is why I support this motion and I urge my fellow delegates to do the same.

CHAIRMAN—I call Chris Gallus.

Brigadier GARLAND—I move:

That the question be put.

CHAIRMAN—I have foreshadowed that there is an amendment to be made to the motion by Chris Gallus, and I will accept that amendment before I accept the motion that the question be put. Mrs Gallus, would you like to speak?

Mrs GALLUS—Can I comment first of all on the motion. Those who have spoken in favour of it feel very strongly that there is a need to discuss these issues, and in this Convention it is appropriate that they should have some opportunity to do so. However, the timetable as it is presented does not allow for that. We have some very serious questions which we will have trouble covering in the 10 days that are allocated to us. So I suggest an amendment to the motion, which would mean that the words 'two days' would be removed and in their place we would substitute the words 'evenings not otherwise allocated'. That would not interfere with the current schedule but would provide opportunities for the discussions that are suggested in the motion.

CHAIRMAN—Is there a seconder for Mrs Gallus's amendment? As there is no seconder, I declare the amendment lapsed. There being no further speakers on this motion, I ask Delegate Moira Rayner to respond.

Ms RAYNER—I am surprised and somewhat disappointed that the ARM does not wish the question of the rights of citizens vis-a-vis their government and amongst themselves to be discussed. The Constitutional Centenary Foundation, which has been conducting consultations around Australia with ordinary people, has found overwhelmingly that people do wish to discuss this and they wish to discuss this at the time they are asked to consider a constitutional change and the issue of the republic.

The fact of the matter is that the people do not trust politicians. The fact of the matter is that this is one opportunity for that trust to be renewed—that is, when they are given the opportunity to hear our debate about how rights should be reflected in our Constitution when we are effecting such fundamental change. It may not be a minimalist change we are talking about. It is a change to our Constitution—the first major change in 100 years, quite apart from that significant first time in 1967 when we started to count Aboriginal people as other than indigenous fauna.

It appears to me timely for this group of people who are both called together and have been called together by the people to discuss

that issue. Without that—and I repeat my first comment—it seems to me that we will not be talking about what sort of a republic we will have; we will be talking about an instrument of administration, convenient to important and powerful institutions which have benefited from past privilege.

CHAIRMAN—Thank you. The motion before the Convention is that moved by Moira Rayner, which is that the Convention allocate ‘two days for discussion of issues of Constitutional change’ which she has specified in her motion.

Motion lost.

CHAIRMAN—We now move to an amendment which Mr Turnbull has given notice of. Mr Turnbull, would you like to move that motion or is somebody else going to?

Mr Turnbull—Wendy Machin is going to do that.

CHAIRMAN—I call Wendy Machin.

Ms MACHIN—I would like to move a separate motion, not an amendment. I move:

That a further working group be established to discuss the Preamble and

Transitional Clauses to the Constitution and that time be set aside on

Friday 6th February to discuss these issues.

I would also like to foreshadow the fact that we have another motion that more directly deals with the issues just raised in the last debate.

I think it is clear from the discussion we have just had and the time that it has taken that there are many issues related to this debate but perhaps not entirely central to why most of us have been elected to come here that we would certainly like to air. The question is not one of if but more one of how. We will address some of these issues. I, for one, do not believe that a committee of 152 is very good at drafting the sorts of words that many of us would like to see in the preamble.

The preamble to our constitution obviously has to be changed; it has three paragraphs and three references to the Crown or the Queen. So, clearly, if we choose to become a republic,

that has to be drastically altered. I think many of us see it as a wonderful opportunity to write a new preamble that expresses all sorts of things that will come out in this debate about our system of democracy and about what it means to be an Australian. As I said, I do not think it is possible for us to do that as a group of 152. For that reason we are suggesting that it be added to the list of topics to be addressed by a working group, which we feel is much more practical. We can workshop that through in a smaller forum and then bring that back here as we have with the other proposals for further debate during this convention.

CHAIRMAN—The motion before the Convention is that the order of proceedings be debated, to which Delegate Machin has moved the amendment in her name. Can I have a seconder for that amendment, please?

Professor WINTERTON—I second the amendment.

CHAIRMAN—Professor Winterton, do you wish to speak to the amendment? Are there any speakers against that amendment?

Professor CRAVEN—The preamble of the Constitution might not seem a particularly important issue. I think that a lot of delegates will regret it if they vote for this motion. The reason for that is simple. It is being suggested that the preamble is the place to put the values that we are not prepared to debate here and put in the Constitution proper and that we will be able to go and harmlessly put away any number of rag bags of values and declarations of faith in that particular place. That will have a disastrous effect for this reason: the preamble is effectively the lymph gland of the Constitution. It pumps things throughout the whole Constitution.

If we put things in the preamble that we are not prepared to have anywhere else, then in time we will be coming back and wondering how it is that we got those High Court decisions or, before that, those of us who favour a republic will be facing a potent case against it based not on what we have done but on what we have carelessly put in the preamble, which will be exploited for every point of uncertainty and what it may mean. I urge every delegate, and I think something upon

which one may make common cause across the issue of the republic, not to make this fatal error now.

Mr TURNBULL—I am speaking in favour of the motion and really addressing Professor Craven's remarks. There is a legitimate issue as to the manner in which the High Court may rely on the preamble. The example is the case called *Leeth v R*. Many of us are familiar with it. But that is really what the working group should discuss. There is no point chopping off discussion on the preamble before you even start. So, with respect to Professor Craven, I think that the most constructive thing he could do is participate in the working group. We clearly do have to change the preamble. There are issues as to the manner in which the High Court would rely on it. Those should be discussed in the working group, otherwise you are foreclosing any discussion and indeed any considered appreciation and consideration of Professor Craven's views.

Mr WADDY—I rise to support Professor Craven. I suggest to delegates: aren't we lucky that the people who wrote our Constitution did not put in the preamble what they then believed in? Gender issues would not have arisen nor would have many others: the rights to vote for women and White Australia. Go back and read the nationalist fervour of the time. Had that been in the preamble, we would not be discussing this today.

CHAIRMAN—Is there a speaker in favour of the amendment?

Ms AXARLIS—As a person of non-English speaking background, for indigenous people and their rights, I ask: what is the problem with having a working group look at it? What is the problem with articulating what we wish to have in the preamble? What is the problem with bringing this to a democratic vote, to cast a vote against it if necessary?

This is a very important issue. The preamble really is important. I suggest that Professor Craver, whom I greatly respect, should be on it and should make sure that the lay people—the appointees who are not as strong, articulate and politically secure as the rest—have an opportunity to speak our minds

and to bring it to this very honoured group to vote against if necessary.

CHAIRMAN—Is there a speaker against the amendment?

Professor PATRICK O'BRIEN—I am opposed to it because it is simply a sop. It is a sop simply because the previous motion was on substantial rights and, after all, a democratic constitution is a bill of rights in its own right. Therefore, further rights have to be discussed. If we are going to discuss the preamble as a serious issue, it cannot just be this little tiddly sop that says, 'We'll allocate some time to a working group.'

We either have to do it in the manner in which Moira Rayner wanted to do it, substantially looking at the Constitution seriously as a bill of rights for all, or not, rather than these little sops thrown our way or other people's way to try to buy off votes. It is for that reason that I am proposing that this is a Machiavellian, Jesuitical attempt to cynically buy people off.

CHAIRMAN—Mr Beazley, are you for it or against it?

Mr BEAZLEY—I support the amendment that has been moved. As you go through the preamble to the Constitution, you cannot conceivably sit down and work out the structure of the republic that you are going to go through without addressing it. Right through the preamble it makes reference to the Queen and the colonies and the rights that she has in relation to them. To leave that in place, extant, and at the same time to put forward a set of propositions for a republic, would be illogical nonsense.

The preamble has to be considered in relation to the republic, but it only ought to be considered in relation to the republic. I oppose the previous proposition that was put forward as a matter that ought appropriately to be discussed at this Convention. This Convention was called to discuss a republic. The opposition had serious problems with the constitution of this Convention. We would certainly not accept it as an appropriate convention for the consideration of wider constitutional issues.

Were that to be the case, then we would have proposed a convention elected on a different basis, quite frankly. However, in these circumstances we do not want to see a train wreck here, but we want the republican issue considered in its complexity and completely. We cannot do that without looking at the preamble.

CHAIRMAN—Ms Machin, do you want to insist on your right of reply?

Ms MACHIN—I think a couple of the speakers have missed the point. This is not an attempt to stifle debate, but rather an attempt to facilitate debate. This morning we have seen just how difficult it is to draft propositions and motions for the standing orders in a forum such as this. I remind Professor Craven and other delegates that anything that is discussed in a working group must come back here for full discussion on the floor and for a vote. It certainly comes back to this entire forum. I do not think it is practical for us to address these issues in a forum this large in the time we have got.

CHAIRMAN—We have an amendment to the motion that the order of proceedings be adopted, moved by Ms Machin, which reads:

That a further working group be established to discuss the preamble and transitional clauses to the Constitution and that time be set aside on Friday, 6 February, to discuss these issues.

Motion carried.

CHAIRMAN—Although there are at least two more amendments to the order of proceedings to be discussed, we will now adjourn for lunch.

Proceedings suspended from 1.00 p.m. to 2.00 p.m.

CHAIRMAN—There were two amendments relating to procedures. I call Ms Sowada.

Ms SOWADA—We had discussions with Tim Costello over lunch. He has moved a similar motion and he will be moving his motion with our amendment.

CHAIRMAN—I call Tim Costello.

The Reverend TIM COSTELLO—I move:

That the agenda includes discussion about the process and procedures for ongoing debate on Constitutional reform which is properly resourced by governments to ensure inclusive community participation and that a working group be established to make recommendations for the consideration of the delegates.

This motion, as you see, asks that in the agenda we discuss the processes and procedures for ongoing debate and constitutional reform that is properly resourced by governments to ensure inclusive community participation, that a working group be established to make recommendations for the consideration of delegates and that appropriate time be set aside for these issues on Monday, 9 February and debate at the plenary session on Tuesday, 10 February.

I hope this will be supported right across the floor. It has already been such a colourful start that I hope you will say that I want to come back to another one and hear Phil Cleary's three-quarter time address and be involved in some of the issues that everybody agreed are important issues to connect particularly younger people and ordinary Australians with their Constitution, which I think the floor clearly said cannot be fitted into the timetable now. This is a serious mechanism to allow us to timetable it and therefore to treat it with seriousness and not to marginalise those concerns which some of us were elected to represent, and we have already made those speeches. I am very pleased to move this motion.

Mrs MILNE—Mr Chairman, it gives me great pleasure to second this motion. As I said earlier in the day, I think it is critically important going into the new millennium that all Australians have ownership of their Constitution. The only way they are going to have ownership of the Constitution and the changes that need to be made to that Constitution to reflect the hopes and aspirations of the broader community is going to be when governments resource a process that allows for real inclusive community participation and education.

I think that is terribly important because, in many ways, what we are doing now is, to a degree, elitist. There has not been much material, if any, produced in community

languages. One of the messages from the Women's Convention, in particular, was that they want an ongoing process so that women and men, indigenous people and ethnic diversity in Australia are represented in discussing what the Constitution for the next 100 years is going to be. I strongly support this motion.

CHAIRMAN—Is there a speaker against the motion?

Mr RUXTON—I am speaking against the motion. We have been all through this. This is just another way of getting around it again. As far as this Convention is concerned, we are discussing those three issues that you sent out to all delegates in that letter of 8 January. I will not go along with this one.

Ms SOWADA—The Australian Republican Movement does support this motion. It is quite clear that the establishment of this convention has resulted in a great deal of wider debate about other changes to the Constitution. While we may agree or disagree on the nature of those changes, it is a good opportunity we think to consider how these public aspirations may be dealt with by an ongoing process of debate. We are not proposing any particular amendments that might be made through a subsequent process but simply setting up a mechanism by which further debate can take place, at least setting up a process to discuss how further debate might take place.

Many of you would have received a letter in the mail over the last couple of weeks from the Australian Local Government Association, which has encouraged us to consider establishing an ongoing mechanism to allow other important constitutional reform matters to be adequately addressed. I believe this is a very worthwhile proposal. We are not in the business of actually proposing any fresh amendments to the Constitution but looking at how we can set up a mechanism to ensure that ongoing debate does take place. I agree with everything that Tim Costello has said and would hope that the amendment receives the support of delegates.

The Most Reverend PETER HOLLINGWORTH—I rise to support this motion firmly in the way that I could not support the

previous one before lunch largely because I think it would have made very serious inroads into the business of this Convention. I do not think it does this in this instance—and here I would have to disagree with my friend Mr Ruxton—because the motion does say that a 'working group be established to make recommendations for the consideration of the delegates'.

I think that is one of things I came to this Convention with very strongly in my own mind. There does need to be a great deal more discussion and debate. There is widespread ignorance in areas where you would not expect it. People simply do not know enough about our Constitution, about our governance. It is a big issue which has been on the agenda of the Centenary of Federation Council, which I am proud to serve on. It seems to me that this is one of the great things that this Convention can do in making some quite practical recommendations about how we proceed from here. The notion of community participation is absolutely critical.

I think we are all influenced by our sons and daughters. One of the great things I heard over the weekend from my own daughter, who is a legal officer in a western suburbs city council, was that the council convened their own constitutional convention a couple of weeks ago. They got the advice of an expert constitutional lawyer and academic. They had an excellent discussion. I am sure that such things have happened in other places. I believe that if that were part of an ongoing process throughout the nation we would have a far better informed people.

I think the whole critical question of participating in our national future and destiny is of the greatest importance. I would hope that in tackling it this way those who had proposed the previous motion before lunch and who are probably disappointed by the outcome might feel some sense of fulfilment in that.

Brigadier GARLAND—I speak against the motion on the basis that when this Convention was set up it was designed to look at three questions. What we have in the motion that has been put forward is something which is extraneous to those three questions. Today we have already wasted nearly an hour talking

on extraneous issues. We have not got down to the meat of the subject. We have already had three speakers who have been postponed in the 45 minutes prior to lunch. This sort of issue is an issue to be decided by the government, not by these delegates. If Delegate Milne and Delegate Tim Costello want to go outside, set up a soapbox and shout to everybody around the place, including the media, that is fine. But I do not believe we should be wasting our time in this particular forum discussing this issue. It is not part of agenda.

Mr MOLLER—I rise in support of this motion. We have all agreed that this Convention is history making. Some of us in this chamber have more history before us than others. It seems to me that the Convention has the opportunity to start the ball rolling in the real education of the Australian people as to their forms of government and their constitutional systems. A number of people here are concerned with safeguarding the people. It seems to me that the more the people can be involved and educated about their constitutional systems the more they will be able to safeguard themselves. That is all I have to say.

CHAIRMAN—Thank you, Mr Moller. I think we might try to put the question. Otherwise, we will lose more time. Reverend Costello, do you wish to sum up the debate?

The Reverend TIM COSTELLO—I want to make one very quick comment. I do not think the founding fathers when they wrote our present Constitution believed for a moment that it was the last word. I think they certainly believed that changes would be necessary at different times. This motion simply gives a mechanism for us to go on thinking about that. I believe very strongly in conventions. I congratulate the Prime Minister on calling a convention rather than it just going to a referendum. I think this is a very Australian way to get together and talk about the future. I hope that future mechanisms will include far more people. That is why I have moved this motion.

CHAIRMAN—Thank you, Reverend Costello. The amendment to the adoption of the order of proceedings moved by Reverend Tim Costello reads ‘That the agenda includes

discussion about the process and procedures for ongoing debate on Constitutional reform’.

Motion carried.

CHAIRMAN—The order of proceedings has been so amended. I now submit to the Convention the motion for the amendment of the order of proceedings.

Order of proceedings carried.

CHAIRMAN—In order to accelerate deliberations this afternoon and so that not too many speakers will be cut off, I advise that we will continue session 3 until 3.30 p.m. We will get in at least one more speaker that way. At 3.30 p.m., the working groups will commence their deliberations. Those working groups will consider options to develop provisional resolutions for debate on day 2. Those who are members of the working groups will be announced in this Convention in probably about one hour. Those of you who wish to have your names considered for working groups for tomorrow should make sure that they are tended to the Convention secretariat. We will now resume debate on the principal question of whether Australia should become a republic. I invite the Hon. Bob Carr, the Premier of New South Wales, to now address the Convention.

Mr CARR—Mr Chairman, the essential truth is that nothing which emerges from this Convention can have any meaning or relevance until and unless it is approved by the people. In Australia, that term ‘approved by the people’ has a more precise, exact and demanding meaning than in any other country in the world, including other federal systems with written constitutions like the United States and Canada.

Since Federation, history shows that ours is the hardest of all constitutions to change. For that reason, the deliberations of this Convention must focus on proposals which have a realistic prospect of being carried at referendum under the stringent conditions laid down by section 128 of the Constitution.

Until now, the great advances in our march to independent nationhood have been made without formal amendment to the Australian Constitution. But Australia has now outgrown the imperial principle enshrined in that docu-

ment and we require a constitutional rewriting. In saying that, I follow exactly the standard authority on the Australian Constitution, which is the book by Quick and Garran published in 1901 entitled *The Annotated Constitution*. It states at page 94:

The principle which pervades the whole scheme of government is harmony with the British Constitution and loyalty to the Queen.

These are the authorities on our Constitution. This is the document which sums it up and interprets it. It says that the principle which pervades the whole scheme of government is harmony with the British Constitution and loyalty to the Queen.

But we who are republicans assert that power derives not from the Queen but indivisibly from the people of Australia and that their allegiance and loyalty belongs indivisibly to Australia. A specific example of a constitutional anachronism is the key provision of section 61, which defines the executive power. It does not refer to the government, the cabinet or the Prime Minister. Instead, it provides that:

The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative . . .

This must be incomprehensible to most Australians and misleading to the rest of the world. In form, however, under the Constitution, the monarchy still reigns over Australia. It is time to take the final step to independence and revise the Constitution so that it reflects the reality of Australian government and Australian life. At the moment it reflects a different age when a monarch ruled in her colony through her representative. Was the repository of all executive power and could veto colonial legislation.

The sacrifices that Australia willingly made in two world wars as part of the British Empire form some of the proudest pages in Australian history. The empire had its splendour. The empire had real achievements, not the least those of law, government, language and literature. I speak as an Anglophile republican. But the empire has passed into history. We still have, however, an imperial constitution. It is time to have an Australian Constitution.

It is remarkable evidence of the momentum towards a republic that the focus of the debate has gone beyond the fundamental question of having an Australian head of state. The focus of debate has shifted to the method of appointment. That is all to the good, not least because I am convinced that the superficial attraction of a directly elected presidency will dissipate as soon as it is subjected to detailed scrutiny. Those who advocate this position very often do so because they do not want to see the process or the position controlled by an active politician. They want a head of state who is above party politics and who can represent the nation to itself and the world. They want a head of state who is a symbol of unity to all Australians, who can congratulate, thank, mourn and comfort on behalf of Australians, that a directly elected head of state would never be able to fulfil this role.

It is inevitable that direct election would result in active politicians being heads of state. Moreover, the political divisiveness of the election would most likely undermine any hope for the head of state being a symbol of unity to those who voted against the winner.

We want a republic which is a natural development of our current system of government. The great virtue of Australia's system of responsible government is that the executive, comprised of the Prime Minister and the ministry, is chosen from the parliament and is responsible to it. A Prime Minister cannot govern without the support of the House of Representatives. In our history, there have been a number of cases where a Prime Minister has lost the confidence of the House and then gone to the people in an election. It happened on the floor of this room in 1929 when the Bruce government lost the confidence of the House. It happened again in 1932 to the Scullin government.

More significantly, the government can change on the floor of the parliament itself. The transition to the Curtin government in 1941 is a good example. This means that the executive is ultimately subjected to the parliament and avoids damaging conflicts between the parliament and an independent or separate executive. The Governor-General is appointed on the advice of the Prime Minister and may

be removed upon the advice of the Prime Minister. This makes the Governor-General and his or her actions ultimately subject to the approval of a majority in the House of Representatives. The Governor-General can have no rival power base.

A means of preserving this system would be to institute the McGarvie proposal. This would substitute a constitutional council comprised of former governors-general and judges for the position of the Queen. The council would act on the advice of the Prime Minister in appointing and removing the Governor-General. This would be the simplest and most natural transformation from the current system to a republic.

I recognise, however, that the public demands greater involvement in the choice of its head of state. I also agree that the head of state should receive bipartisan acceptance and that this may be achieved through the formal recognition of a two-thirds majority of the Commonwealth parliament. Accordingly, I consider that the best compromise is for the head of state to be elected by a two-thirds majority of both houses of the Commonwealth parliament sitting together. This involves the people through their elected representatives but does not entail the same dangers as the direct popular election of a head of state.

The houses should vote upon a single candidate proposed by the Prime Minister, which in part reflects the present system. This would ensure that there was not a divisive political contest between different candidates, avoiding the problems involved in popular elections. More importantly, the required two-thirds majority would mean that the candidate would need bipartisan support and would, therefore, be more likely to be acceptable to Australians across the spectrum and be truly able to represent and to symbolise the nation as a whole.

It is appropriate that the head of state holds the position by virtue of the parliament, and that is the essence of the position that I am arguing for—that is, the head of state holds that position by virtue of the parliament, to which the Prime Minister and other ministers are also responsible. It emphasises the predominant role of parliament in our system of

government. It does not undermine what I think is a virtue of our system—prime ministerial government or the Westminster system, if you want to use that term.

An Australian head of state chosen by the parliament would be an integral and harmonious part of our system of parliamentary government. That, after all, is what the Australian republic is all about—advancing the Australian democracy of which we are all so justly proud.

Mr OLSEN—An Australian republic is our future. How we approach that republic, how we develop its structure, how we construct its operation will be a symbol of our maturity. Make no mistake, not only Australia but also the world are making a judgment on us. There are four points that I wish to cover: firstly, whether we have a republic; secondly, the timing of any such change; thirdly, the method of appointment and dismissal; and, fourthly, the role of the states.

To ensure that Australia is best served as a republic of the 21st century, we first have to accept that the existing system has worked well for us. It is simply and inevitably time to move on as a proud nation capable of standing alone, a proud nation which has a solid foundation on which to build our independence. The monarchy is not, therefore, being discarded because it is useless but, essentially, because we have come of age as an increasingly unBritish nation of many races, creeds and religions. We are a nation with increasingly different values and different economic perspectives from that of Great Britain. It is basically time we are seen to have left home for good.

However, the absence of animosity on either side of our relationship with Great Britain means we have the unusual luxury of having no reason to rush at change until we are positive we are delivering a perfect model for a republic as is possible. We can deliver an excellent model if we do not give way to extravagant, populist notions such as the popularly elected head of state and truly ridiculous notions such as some states remaining part of a monarchy while others join a republic.

Clearly, we must be sure that we know thoroughly the ramifications of every aspect of what we are planning. There is no room for unintended consequences. It is time for considered thought that goes well past elections and past generations. Clearly, we get only one opportunity at this, and it is somewhat of an awesome responsibility on the delegates of this Convention. So let this conference be remembered as much for being a symbol of mature, constructive debate on an exciting future for a country we have great faith and pride in as it will be for its conclusions.

In South Australia we have put some considerable effort into researching what sort of republic would be the most welcomed by future generations, which would be the most sensible in which to manage the business of running a state within an Australian republic, and which would be the most durable and most unlikely to show the ravages of time.

Working through all that, we have come to a strong conclusion that, although a minimalist republic is achievable, a popularly elected president is not. History proves that constitutional change is not effected unless there is broad public and political support, including that of the states. The more controversial, the more complex the proposal, the less likely it is that any change will be achieved.

If the president were popularly elected, this would be a major change to the structure of the Australian system of government: the president would have their own mandate, a mandate under our system that properly belongs to the Prime Minister. That situation would necessitate the codification of all the president's powers. That codification would be so contentious it would have, in my view, absolutely no prospect of success within any reasonable period of time. It is an unacceptable way forward. It is a way forward which would thwart a republic through controversy rather than delivering it smooth passage. I believe it is time for a republic to have smooth passage. It is essential that it does.

For those reasons I much prefer that the president still be appointed by the Prime Minister. However, if this model is not

achievable, then clearly the next best alternative to that is a majority of the parliament. Even so, it is critical that we distinguish between appointment and dismissal of a president. Dismissal could not be subject to a vote of two-thirds of majority of the parliament; it just simply would not happen.

How then is dismissal to be effected? Could we adopt the McGarvie model of a constitutional council? It is an issue we must consider with care. I have also reached the conclusion that the model to be used in any referendum should be: one in, all in. That is, the same referendum which decides whether Australia should be a monarchy or a republic should also decide the same question for the states.

This means that if a referendum in favour of a republic is passed by a majority of voters and a majority of states then even those states which voted no would move to the republic. We have reached that conclusion because it would be constitutional nonsense, in our view, for any part of the Australian federation to have a form of government that is inconsistent with the other parts of government within Australia.

Realistically, it would undo the Australia Act 1986 which stressed constitutional consistency. Therefore, South Australia would oppose any proposal to change the head of state in part only. Every state must be included in that change. The Commonwealth and the state constitutions can be amended by a referendum under section 128 of the Commonwealth Constitution. We would propose that the drafting of amendments and procedures for achieving such constitutional amendments be referred to the standing committees of attorneys-general. It is also our view that any changes made by referendum should not affect the sovereignty of the states within the federation.

As a republic, it would still be necessary for each state to have a head of state. I suggest that the head of state should be independent and that the mechanism for appointment and dismissal be determined individually by each state. As such, South Australia does not believe state governors are a matter for discussion at this Convention. But I would like here to mention process.

There has been much debate about the method to be used in order to achieve a republic. Most seem to have concluded that an ordinary referendum is appropriate, but some are arguing that a referendum under section 128 of the Constitution would not work. Others are arguing that a referendum would require the approval of voters from every state. Care must be taken to ensure that the process is as clear and effective as can be. The debate about a change to a republic should not be confused and muddled by questions about the effectiveness of procedure. For this reason, there may be considerable value in combining the processes under section 15 of the Australia Act with those under 51(38) of the Constitution Act. These provisions enable constitutional change by the joint actions of the Commonwealth and state parliaments, although there must be a referendum so as to reflect the will of the people. Whilst all state parliaments would need to be involved, this would give certainty and clarity to the resolution of the referendum, and we must have clarity and certainty if this is to work effectively.

It is an exceptionally important time in our history. We are all honoured to be part of it today. I trust and hope that the next 10 days will ensure that we research those questions to ensure that the referenda, the conclusion and the processes deliver the will of the majority of Australians.

DEPUTY CHAIRMAN—I will not be giving an endorsement to candidates generally; I simply point out that Ms Schubert is the only delegate to have been elected on a youth ticket. We would be grateful if you would address us.

Ms SCHUBERT—When a group of young Victorians met in April 1997 to discuss the Constitutional Convention legislation, few of us knew that we would be making history. But the formation of an independent youth ticket for the Convention was a novel development. In an era when young people are characterised as cynical slackers, a team of their cohorts set out to ensure that young Australia participated in the debate about the future of our nation. We saw the significance of this civic conversation and were deter-

mined that a generation asked to own political change would also shape it. With up to half a million 18- to 24-year-olds not registered to vote, a generational involvement campaign was essential.

There are many barriers to the political participation of the young. Alienation stems from our lack of clout—economically, socially and politically. A political culture of public disdain cements scepticism. But many young people saw a rare opportunity. In the electoral experiment for delegates to the Convention, the effective exclusion of partisan candidates and a proportional representation system might give young Australians a no strings attached seat at the table. The electoral conditions demonstrated that new forms of campaign politics are possible beyond the standard battles of partisan interest. The commitment, passion and energy of those many young people secured my place here today. This speech is their victory.

The opportunity to present the views of many young Australians is a great honour. I do so as the only delegate to be elected on a youth ticket but mindful that generational diversity is strong. No doubt later in the Convention you will hear converse views from other young delegates. I welcome that exchange as a hallmark of political maturity, and I hope that our collective involvement sparks further generational interest in the debate.

Diversity notwithstanding, a majority of young Australians do support the move to a republic, seeing it as symbolic recognition of our nation's practical independence. You do not have to hate your parents to know that it is time to move out of home. A younger generation of republicans know that it is time to move out. We have been living independently for years anyway, spending far more time with our regional friends than with our folks. We have been earning our own income, occasionally even in competition with the olds, and we have our own lives to pursue. We will continue to keep in touch of course, but the old childlike dependence is not a reflection of our reality.

Our Australia is an independent, modern nation. We have moved beyond the white

settlers' modest beginnings as an outpost of empire. In 1961 the *Penguin Dictionary of Politics* described our nation as a 'dominion of the British Commonwealth'. It is a far cry from the view we have of ourselves today. We have evolved our independence socially, politically and economically. We are responsible for our own place in the world and must forge our alliances regionally and economically rather than historically.

Clearly—and by prime ministerial concession—we need our own head of state who will champion Australia's interests first. As younger republicans our aspirations are bolder, less tempered by the reduced sense of possibility which is the common hallmark of lifetimes in politics. We believe that the Australian people are capable of determining a new constitutional framework for their tomorrows rather than being solely reliant on the experience of yesterdays.

Young Australians have a special claim on this debate. It is our future under discussion. In a sense we have the greatest stake in the future. We, more than most, need a republican system to renew public ownership of our governance. Young Australians are a political underclass. With many too young to vote or too cynical to bother, we need to ask: who will own our system of government in the decades to come? A generation whose contempt of political paternalism is well evidenced needs a reason to rekindle faith. My generation sees the failings of our current system as well as its much lauded stability. Give us the credit not to pretend that we cannot do better.

We must restore public ownership of our democracy, or we weaken it. As it is, we must face up to the reality of a politically disaffected generation. The resilience of the system depends on the goodwill of the people. They have signalled their wish for involvement in selecting their head of state. It is time the constitutional insiders started listening.

The republican debate goes to the heart of our democracy. It is not engendered in a substitution of the monarch for a non-elected appointee. Philosophically, republicanism promotes democracy over political insidership.

Ben Saul, the Sydney University President of the Australian Republican Movement, writes:

Most Australians do not want to simply substitute a foreigner they cannot elect for an Australian they cannot elect . . . (rather) the spirit of republicanism . . . seeks to elaborate upon the nature and meaning of civic participation, citizenship sovereignty and equality.

The reason the Australian people want to elect their president is not that we are ignorant; precisely the opposite. The instinct for involvement is rife. It is the real spirit of republicanism and democracy.

We will not buy the paternalistic fears of presidential competition with parliament or the election of another politician. An Australian presidency will have its own cultural role. Neither will we choose Kerri-Anne Kennerley nor Ray Martin for the office—so someone might like to ring them now and tell them the bad news. It will be our challenge to create a new form of statesperson. Our figurehead shall be a potent combination of profile and principle, opinion and discretion, leadership and consultation.

The naysayers and the vested interests warn of dangers in public election. Such dangers are the product of dull minds. In these camps there is little imagination about the electoral conditions we might create. Yesterday's men will tell us that there is no system like the old system. Today's men will tell us that we want a slightly more democratic approximation. But tomorrow's women question slothful assumptions and the dismissive view of public manipulability.

What is the common thread between the advocates of appointment? Fear—fear that the sovereignty of the people might jeopardise the remote and dilute brand of representative democracy we know today, fear that the indirect mandate of prime ministers might be open for comparison and fear that the downside of strong partisan discipline might actually face greater public scrutiny.

Liberal MP Christine Gallus last week displayed breathtaking integrity. Her call for direct election highlighted the conflict of interest in parliamentarians' opposition. She asked: is an elected president a threat to democracy or a threat to the status quo? The

self-interest of her contemporaries loomed a great deal larger.

Australians want a political system that they can own. Many young Australians see a new constitutional preamble as a vehicle for ownership. We seek to record the history, values and aspirations that underpin our nation: the prior sovereignty of indigenous Australians, the value of our cultural pluralism, our commitment to protecting the physical environment and a guarantee of the rights and responsibilities of citizens.

Recognition of our nation's indigenous history must be a central consideration for this Convention. The social climate demands it. We must honestly assess our past in order to forge our future. Australians need an agreed record of history. We must acknowledge injustice and build unity, recognise difference and guarantee equality, apologise for error and pledge a fair go for all in future. Reconciling our communities is no optional part of republicanism; it is a foundation. A nation divided cannot fulfil its potential. Our leadership must heal the present breach. They must forge conditions for our coexistence. The politics of deprivation, extinguishment and 'winner takes all' tear at the soul of a nation.

A renewed commitment to fairness will be the foundation for a new republic. The development of a bill of freedoms and responsibilities would guarantee the democratic rights we currently assume. Our current Constitution's provisions on state rights highlight the near absence of explicit rights for citizens. One of the few rights acknowledged by our current Constitution is that of state electors to vote in Commonwealth elections. Although the High Court has ended the power in section 41, viewing it as transitional, it was the guarantee which preserved the voting rights of women in South Australia and Western Australia prior to the granting of the federal vote to all white women in 1902.

Our suffragist foremothers would probably be cranky. Nearly 100 years after they won the vote for women, we still only comprise one-third of this century's nation shaping forum. Amongst the parliamentary appointees to this Convention, there are not even enough women to form a decent queue for the toilets.

It is telling that only five of the 20 delegates to speak on this agenda setting day will be women and, even then, clustered toward the end of the agenda. Indeed the 'Premiers League' might almost be a footy competition, given its lack of women.

Many of you would have seen the weekend newspapers' cover photo of delegates to last week's women's constitutional convention. In the wake of its publication, many have asked why women would hold their own event. Today's speaking list and the composition of this convention illustrate that we still have a long way to go before women have equal air time and equal billing. The women's convention called for a republic which ensured women an equal say and an equal share of power. Their call to this gathering is to guarantee agenda equality in the composition of any nominating group for an Australian head of state. I encourage delegates to read the convention outcomes which have been distributed via the secretariat.

Those who argue the case for tradition support the inherent sexism of monarchical succession. The precedence of male heirs over their female siblings encapsulates the outmoded social hierarchies on which royal tradition rests. Monarchists claim to be unconvinced by the republican detail. As I read the histories of the 1890s conventions, I particularly sought out the views of Federation's opponents. They too were men and women of great conviction and concern for their country's future. Many of them feared the worst of significant constitutional change, seeing it as a source of political instability or inequality. Time has shown their fears to be unfounded, as I believe will be the fate of those held by today's traditionalists.

One hundred years on we review the stability of our federation and attempt to identify its source. My view is that political stability flows from the temperament and culture of a people and is supported by the structure of government, rather than the reverse.

Australians want a republic to affirm their sovereignty. In a genuine republic, power comes from the people, not from the Crown, the parliament or the retired ranks of those who once held office. Agreeing on the source

of authority, we must design our institutions to accord, rather than fudging sovereignty to preserve the status quo. It would be patronising and arrogant to do otherwise.

The move to a republic provides a unique opportunity to review conventional political wisdom—no pun intended—without prejudice. I hope that this gathering takes up the opportunity, rather than squandering it in shallow conservatism. Listen to the political gatekeepers and we will lose a remarkable process of civic reformation; listen to the people and we will have a greatly strengthened democratic culture and a citizens' republic.

In our deliberations this fortnight we need to have as large a vision for our nation's future as that of the federators. By definition, that involves thinking outside the realms of what has been to ask what might be.

DEPUTY CHAIRMAN—You are well within time. I point out to delegates that the clocks on either side of the chamber indicate how many minutes are left. I say that for the fraction of delegates who were not members here in the old chamber.

Mr McGARVIE—Mr Deputy Chairman, we meet in this historic house to fulfil a need of this community. We do not meet as contestants. We meet more as a jury of 152. From us is expected the courage and integrity which we expect from our juries. I side neither with republicans nor monarchists. I side with our democracy, which Australians have built into one of the best democracies in the world and which we hold on trust for future generations. Those we should be considering at all times are the next and following generations.

Constitutional changes typically last for a century or centuries. Walter Bagehot pointed out over a century ago that the full effect of constitutional change is not felt for a generation, until new people come in who did not learn their constitutional practice under the old system. This nation needs to resolve the republic issue fairly, effectively and promptly. We need to remember that a constitution is a structure that we adopt by virtual consensus within which to resolve our future political differences. Unresolved dispute about the Constitution, the rules of the game, has a

most corrosive effect on a federal democracy, and I made mention this morning of what has occurred in the Canadian federation.

Our task is to point out to the community the way of resolving this issue. There are three important requirements for doing that. A decision has ultimately to be made by the Australian people and they must be able to choose between the present system, which has given us our excellent democracy, and a republic model that will equally maintain the strengths and safeguards of that democracy. The method for making the decision and the constitutional amendment must be valid beyond credible argument and that method must be one which does not strain our federation.

Unless we resolve the issue in that way it will not be a resolution because opinion will not properly have been taken. Australians are a wise constitutional people. Australians will not vote for a change that would put at risk our democracy or our Federation. Were we to seek to change it without satisfying those three conditions, there would be numerous Australians who at heart desired to change to a republic who, rather than put our democracy and Federation at risk, would vote against the proposal for change.

I think we need to commence this task realising how difficult it will be. It is achievable, but it is achievable only if we commence with a proper appreciation of its difficulties. I am speaking not of the law as much as the practicality of having a referendum decision made between the present system and a model republican system which will be a fair test of community opinion. I suggest that the practicalities of referendums and their campaigns are such that it will be essential to rely on section 15(1) of the Australia Acts, to which Mr Olsen made reference, that it will be necessary to have a referendum passed by every state in Australia as well as by the total population and a request from every state parliament.

Of those three requirements, our main task is to point to a model which will maintain the strengths and safeguards of our democracy. There is a great tendency in us all with our enormous scientific knowledge—so much

greater than the scientific knowledge of earlier generations—to think that we also know more about government than they did. That is not a valid assumption. We would be very unwise if we did not pay regard to the wise words of a very experienced parliamentarian and a very deep thinker, Edmund Burke:

We are members for a free country; and surely we all know that the machine of a free constitution is no simple thing, but as intricate and as delicate as it is valuable.

Later he added:

A constitution made up of balanced powers must ever be a critical thing.

He also said:

I feel an insuperable reluctance to give my hand to destroy any established institution of government upon a theory, however plausible it may be.

We are an Australian version of the Westminster system with other features incorporated. It is worth looking at those who thought of the Westminster system. Another who has words that we should not forget for one moment during this Convention was Walter Bagehot who, in 1867, wrote:

Whatever is unnecessary in Government is pernicious. Human life makes so much complexity necessary that an artificial addition is sure to harm: you cannot tell where the needless bit of machinery will catch and clog the hundred needful wheels; but the chances are conclusive that it will impede them somewhere, so nice are they and so delicate.

We should look at the reality of this country we love and which has done so much for us. We must look at the political culture in Australia, which Bagehot described as harsh, merciless realism. We must bear in mind the fact that we have one of the most tightly disciplined, political party systems of any democracy. That is not to contradict the extent of our achievement, but we must be realistic. We must achieve and continue to achieve in that background. No-one informs us or captures the mood better than that outstanding Australian, Geoffrey Sawer—who unfortunately died not so long ago—particularly in his classic publication, *Federation Under Strain*.

Mr Deputy Chairman, when I was asked by the Republic Advisory Committee to put my views to them as to a viable way of going to a republic which would maintain the effect of

our existing conventions and principles of government, I thought about Australian achievement and I did no more than look at the evolutionary approach—since 1788 when Governor Phillip arrived here a total autocrat, to Australian achievement where the Governor-General and the governors are now the foremost to serve our democracy. The resulting model, as you know, would transfer the Queen's remaining powers to the Governor-General, who would become an actual instead of de facto head of state. The Queen's one active duty—appointing or dismissing the Governor-General—would be done on the advice of the Prime Minister by a constitutional council of three who are automatically selected by constitutional formula from amongst retired governors-general, governors, High Court judges and Federal Court judges. The same change would be made at the state level, with the governors becoming actual heads of state within that state. That would leave us totally a republic but totally a safe democracy at the same time.

It will not destroy existing institutions. It will not destroy the governor-generalship and the governorship that Australians have built in this country so differently from the way they have been built in other federations, such as Canada and India. It relies on evolution, not by destroying what we have and starting again, by clobbering together a lot of exotic, imported parts. It will not add unnecessary elections by the population or by parliament or unnecessary changes to the dismissal procedures which have worked so well and which create such a sense of balance. Mr Deputy Chairman, when I was privileged to be Governor, I came to respect enormously the subtle balances that Australians have built into relationships—relationships between the Governor and Premier and between the Governor-General and Prime Minister.

As a jury in our special situation we must lead. We must have that courage and integrity of a jury that we all take for granted. We must have courage to say things that the polls do not support. We must have the courage and the integrity to speak out to Australians.

The republic debate has been an unmitigated disaster. It has operated in a way that has

treated the public like couch potatoes who were not to be told or brought into contact with the risks that are involved in it. We have no justification for doing that. We must have faith in Australians. My 71 years have taught me that Australians are much smarter on constitutional issues than many people seem to think. They can understand these issues. They are practical people. The proposals that I put universally appeal to practical people and not to theorists.

If I may I will close with another quotation from Walter Bagehot, because this is what we have got to be prepared to do. (*Extension of time granted*). Bagehot said—and I suggest we adopt this perception:

A statesman ought to show his own nature, and talk in a palpable way what is to him important truth. And so he will both guide and benefit the nation. But if, especially at a time when great ignorance has an unusual power in public affairs, he chooses to accept and reiterate the decisions of that ignorance, he is only the hireling of the nation and does little save hurt it.

DEPUTY CHAIRMAN—As we will be continuing in plenary session after the working groups meet, I should say that the next speakers are Ted Mack, Gatjil Djerrkura, Richard Court, Rob Borbidge and Tony Rundle.

Mr MACK—The question of whether Australia is to become a republic is over. Even monarchists must recognise that, with the vast changes that have occurred in both England and Australia since Federation, we are now at a turning point in our history. An independent, democratic Australia cannot continue with the sovereign of England, her heirs and successors, and her representative, the Governor-General, entrenched as the executive government in our constitution.

The British monarchy is resident in and represents England. Its succession is based on unacceptable religious and gender rules and the laws of another country. But, more fundamentally, the monarchy is based on the hereditary principle. This principle is incompatible with democracy where any citizen should be able to aspire to the highest office in the land. We have moved away from the concept of subjects loyal to a monarch. In a

democracy it is our leaders who should bear exclusive allegiance to the people.

The people are sovereign, not the monarch and not the parliament. That is the definition of a republic and that is what should be entrenched in our constitution. Nevertheless, it should not be forgotten that many Australians have strong emotional ties to the monarchy, particularly the generation that lived through the Great Depression and the Second World War and who were born in Australia before 1949 as British subjects—the generation that made this country with all its faults a very desirable place to live, a country which has largely provided a better way of life for millions of people from less desirable societies in the last 50 years.

In an Australia which prides itself on tolerance of cultural values and a fair go, the values of this older generation and their inheritors should not be trampled, but should be respected. Our inheritance from England: a relatively stable society, liberal democratic values, the foundations of our basic institutions, the technical infrastructure, our education systems, a rich 1,000-year literature—these are just a few of the legacies.

British constitutional ties to Australia are not ending as a result of war or with recriminations or bitterness. On the contrary, England has responsibly devolved power to Australia virtually since 1788. The British government at a zenith of imperial power in 1901 remarkably approved a constitution which only the Australian people could change. Now Australia has reached maturity and Britain has a new direction in Europe. There should be none of the mean spiritedness which has characterised the final departure of Britain from many other of its colonies.

Now that we are finally emerging to the world as a fully independent democracy, it would be a generous and mature gesture for a formal farewell to be held to thank Britain for its legacy to this country. An appropriate occasion would be to invite the Queen, both for this purpose and as her final act as head of state, to open the Olympic Games. We now have the opportunity to begin work on a new constitution that truly reflects our independence and the values of the liberal democratic

society that we have become, a constitution which can address many of the problems of our current political administrative structure. This is the more important reason why Australia should become a republic.

Throughout history those who hold power have generally used every available means and every sophistry imaginable to resist relinquishing that power. It is no surprise, therefore, that the Prime Minister has joined with Paul Keating and many other courtiers in the elite in rejecting both the people's right to vote for the Governor-General and the need for wider constitutional reform. They pretend that directly electing the Governor-General would somehow be detrimental to the public good, but it is only their own interests which would be threatened. The age-old plea that giving more people say in government will cause instability and the cliché 'if it ain't broke don't fix it' merely underline self-interest. At best they show how isolated those in government have become.

In the real world, contrary to the Prime Minister's and Keating's plea to protect our parliamentary democracy, Australians view their governments and bureaucracies with disillusionment and even contempt. As Bob Ellicott, a former Attorney-General, stated in 1991:

Political parties and the institutions they run are becoming increasingly irrelevant and unresponsive to the need of the country and to the silent majority of Australians who have long supported them.

He goes on to say 'that almost every difficult question needing resolution has become a seemingly impenetrable barrier. Education, health, mining, urban sprawl, airports, rural support, immigration, et cetera have raised questions which are either too difficult or too politically charged for our politicians to resolve. Indeed, Australia is like a great Gulliver tied down by 1,000 Lilliputians. Ravaging business tycoons, takeover merchants, union leaders, special interests, remote bureaucracies, complex regulations, indecisive and sometimes inept and even corrupt and lying politicians and many others have combined in an unwitting conspiracy to tie down the body and debilitate it. Ordinary people have been forced to listen in embar-

assed silence while government ministers obviously attempt to con them that basically everything is in good shape and that the fault for any deficiency lies elsewhere'. Such a staunch monarchist as Sir David Smith wrote in 1992:

There is much that is wrong with the way this nation is governed and administered. Never before have we had so many Royal Commissions, so many other inquiries into our processes of government and the public administration. Never before have we had so many public office holders and other public figures in, or facing the prospect of, prison. Never before have the electors registered dissatisfaction with a political process by returning so many independent and minor party candidates to parliament. Never before has Australia had so many citizens who are hurting because of what has been done to them by our governments and by their fellow Australians.

The Clerk of the House of Representatives J.A. Pettifer said in 1979:

The party system has overwhelmed the Westminster system and destroyed its original checks and balances.

That view has been echoed by the current Clerk of the Senate, Harry Evans, and virtually every serious observer of the Australian political scene. International political scientists rate our political structures as barely democratic. Our level of over-government, with 842 MPs for 18 million people, is grotesque by world standards. Even former Prime Minister Bob Hawke said in his 1979 Boyer lectures that our political system was 'an anachronistic lunacy which all political parties had a vested interest in preserving'.

There is almost universal distrust in government and its bureaucracies. Without trust, government is ineffective even when it is trying genuinely to act in the public good. It is not just a case of a few bad apples. The truth is that the constitution vehicle is at the heart of many of these problems. It is a 19th century model. Changing the royal insignia on the grille to a locally made one will not make it roadworthy. A new constitution is required—one that contains not only a reform framework for the government administration of this country but also an embodiment of community values.

However, those who think that a constitution is a place to impose minority views on

the community or to indulge in social engineering are doomed to failure. Likewise, those with fantasies of a unitary centralised state are also doomed. There are national, regional and local issues and each must be represented. People everywhere now believe in the ethic of participation and the right to have a direct say in all issues that affect them. We must tailor our system of government towards that goal. The functions of government need to be decentralised to the lowest appropriate level.

The Australian Constitution tried to maintain the doctrine of separation of powers, with the checks and balances fundamental to a democracy—the executive government, the legislature and the judiciary. It was compromised at the start by the grafting on of the monarchy and later almost totally destroyed by the growth of the party system.

The separation of powers can be restored, and the accountability of the three arms improved by the people directly electing the Governor-General as both head of state and head of government. Powers which largely remain are set out in the Constitution, but the requirement of ministers being members of parliament are omitted. Governments would then be directly responsible to the people and not to political parties, governments where members were free to think in terms of public good and not partisan advantage—something which is now almost impossible. The House of Representatives could then pursue its fundamental roles of legislating and being a check on executive government. Cabinet appointments would be open to a wide array of talent from the private world, federal and state bureaucracies, universities and even state governments.

Our current system has a limited talent pool for ministerial appointment, with all respect to those present. The ability to become a minister has nothing to do with the ability to be a minister. Ministers are largely incapable of running a large department, hence the triumph of Sir Humphrey. They cannot even fulfil their duties as parliamentarians, let alone those of a local member. This full separation of powers would go a long way to removing the corrosive personal ambition from members of parliament, which takes up a high percent-

age of all political activity and which corrupts our public decision making. Witness such political history as the McMahon-Gorton, Fraser-Snedden, Peacock-Howard or Calwell-Whitlam, Hayden-Hawke, Hawke-Keating struggles. That infighting is replicated in the myriad of similar intrigues for ministerial and shadow ministerial positions.

Direct election of governments with fixed terms of office is hardly a radical proposal. It follows the best feature of the American constitution, which has given that country stability through a civil war, assassinations and crooked presidents for over 200 years. It has not prevented a nation of four million people from becoming the dominant power of the world, but we should also learn from the negative features of the American system which have all but destroyed its democracy—the ever increasing quantities of money which have given America the best democracy that money can buy. Limits on campaign spending and elimination of major private donations, which are nothing more than bribery, are already threatening this country.

A second major flaw in the American system as well as the Australian system is the electoral procedure. A fair electoral system is fundamental to democracy. Ours limits choice and rarely reflects the will of the people. It is subject to manipulation by almost every government. Ironically, Tasmania in 1907 adopted the most democratic system in the world—the Hare-Clarke system of proportional voting. This, in my view, should be constitutionally entrenched for all Australian parliaments. Many other features need to be entrenched in our Constitution: fixed four-year terms, term limits for all representatives and minimum sizes for electorates. We need entrenched independent mechanisms to prevent bipartisan empire building and runaway perks, lurks and rorts, to prevent political parties financing themselves from the public purse. With a full separation of powers and a lower house genuinely representative with the capacity to be a check on executive government, together with a further check by giving the states and the public the right to initiate referenda, then and only then a house of review is superfluous.

A constitution based on the above would restore public trust, provide better and more efficient government, and reduce the number of MPs in the total Australian scene by well over 450. So that is why it will never happen. Many other reforms are also needed and should not be shirked, including reconciliation, the role of the High Court, the foreign affairs power, fiscal imbalance, new states or regions and a bill of rights. After decades of demands for restructuring almost every aspect of Australian society in the name of globalisation and efficiency, it is irrational to expect our political administrative structures to remain quarantined.

We cannot put our heads in the sand by attempting to graft on a local substitute for the monarchy to a patently obsolete, already hybrid constitution that has produced an undemocratic, massively expensive, moribund political administrative structure. It is a constitution which encourages continuing careerism, cronyism and corruption, a constitution resulting in an endless balkanised legal and bureaucratic Commonwealth-state war, where public policy is constantly distorted and accountability avoided, a constitution that has permitted the growth of a parasitic, adversarial political legal elite where truth and fairness are irrelevant.

This self-serving system held in public contempt has rendered the community almost powerless to change it. At this first even partly democratic Constitutional Convention in a century, we have to take this opportunity to equip future generations to face a globalised highly competitive future. The case for a new constitution is overwhelming. It can be defeated only by timidity, ignorance and partisan politics.

Mr DJERRKURA—Mr Chairman, heads of government and fellow delegates, I wish to acknowledge the Ngunnawal people on whose traditional land this important meeting is being held. Before I begin I want to say some words to you in my own language:

Mangu-watjin ngaya gathura nhumalingu. Ngalma dhangu ngarru nhama rom malany banghna dharrpal ngalmalingu.

Ngalma ngarru wangany manapi bukmak bitjuwanginy Australians. Rrambangi ngalma ngarru djama bukmaku.

Nhuma ngarra nhama nganapiliny yolngu bitjuwanginy rrambangi Australians ga nganapilingu rom malany.

[Translation: Welcome. This is a very important time for all Australians. Here in this place, decisions will be made which will shape the future of our country for many years to come. We must try to make the right decisions. I ask you to think about the place indigenous Australians have in our past and in our future. Now is the time to right the wrongs of the past.]

It is ATSIC's view that Australia should now, with pride, recognise and acknowledge the cultural diversity of its people. We are a very different country today than we were when the Australian Constitution was drawn up. Yes, in many respects it has served the nation well. That is not to suggest that it is, or was, flawless.

When it was first drawn up, the Constitution did not even represent all Australians. It was discriminatory. For example, indigenous people were mentioned in the Constitution only in terms of what we could not expect. Section 51(xxvi) of the Constitution gave the Commonwealth the power to make laws for any race except Aboriginal and Torres Strait Islander people. Section 127 said that indigenous people were not to be counted as part of the Australian population.

The total effect was to make Aborigines and Torres Strait Islanders almost invisible in terms of the laws of the country. Nevertheless, 30 years ago the wisdom of the Australian people prevailed when over 90 per cent of voters in the 1967 referendum supported the removal of those negative references from our national Constitution. As a result, the Commonwealth now has the power to take a leading role in indigenous affairs, and it has increasingly picked up this responsibility over the past 30 years.

The Commonwealth government's leadership role remains vital. Despite the positive changes 30 years ago, there is still some unfinished business. We have been given this

opportunity to say what our Constitution should contain. In terms of existing provisions, section 25, for example, is surely a spent provision in modern Australia as, indeed, is the reference to 'A subject of the Queen' in section 117.

The Australian Constitution should now refer to us as citizens and, therefore, define our rights and responsibilities as citizens. Aboriginal and Torres Strait Islander people would certainly like to see changes to the Constitution that affirm our rights as citizens. We believe that, while the Constitution once helped to conceal Aboriginal and Torres Strait Islander people from view, it should now confirm our existence.

The ATSIC Board of Commissioners has adopted a number of broad goals for constitutional change. These changes should be taken as a contribution to the shaping of the constitutional vision of Australia. Firstly, the board supports the adoption of a new preamble to the Constitution that sets down principles for representative and responsible government that is inclusive of all its people. A new preamble should acknowledge the diversity of its people and recognise the status of Aboriginal and Torres Strait Islander peoples as the indigenous people of Australia. It should indicate a respect for the land and indigenous cultural heritage, and a commitment to justice and equity for all.

We believe that there is a need for a general Australian bill of rights that specifically includes the recognition of the rights of indigenous Australians, as exists in a number of other countries. The ATSIC board also sees the need for constitutional protection against adverse discrimination on the grounds of race. The wording of section 51(xxvi), known as the race power, should now be changed to make it an affirmative power. This will guard against detrimental acts by governments. In fact, this should have been done in 1967.

The board also supports amendments to the Constitution to create reserved seats in parliament for indigenous Australians, as found in a number of other Commonwealth countries. I ask the delegates who hear the views of indigenous people to take them on board and,

most importantly, to act on them in the spirit of reconciliation.

Chairman and delegates, I have outlined to you a range of areas for change to our national Constitution from the perspective of indigenous Australians. It is not presented as our final position as we believe the process of the constitutional review needs time, sustained effort and the support of the Australian people. I urge all delegates to agree on the course that will provide the greatest opportunities for the entire Australian community.

In closing, let me say that ATSIC believes that a republic is inevitable. It will happen as and when Australian people want it and that is how it must be. My final proposal is that the first day we become the Republic of Australia, that day be declared and celebrated as Australia's national day. Thank you.

DEPUTY CHAIRMAN—Before I call the Hon. Richard Court, papers are being circulated now with the details of the working groups. There will be a further announcement after we have heard from Mr Court, the Premier of Western Australia.

Mr COURT—Thank you, Deputy Chairman and delegates for the opportunity to address you today. Western Australians have always taken a very keen interest in how our federation is working. Western Australians were reluctant starters to join the federation in first place. In fact, we were last state to agree to join. Those tensions remained and they reached a head in the early 1930s, in 1933, when there was an overwhelming two-thirds vote for secession. In the 1990s we are working in a constructive way to strengthen the federation, and our concerns have been trends towards centralising more power, including financial powers, in Canberra.

In Western Australia, we established in 1994 a Western Australian Constitutional Committee which held well-attended public meetings around the state. They provided a report to the government on a number of issues, including the balance of power within the federation and the effect on Western Australia of a move to a republic, if it took place. I have available here copies of that particular report if any delegates are keen to read what they came up with.

Incidentally, after this Convention we start a series of public constitutional forums again which will be running around the state for the balance of this year to cover this subject and a number of other subjects. That particular report was interesting in that it found that the main concerns that the people of Western Australia had were not so much with who was going to be our head of state but the need to strengthen our federation, which they had seen had been weakened.

In relation to this Convention, over the next fortnight I would like to briefly address some of the issues that I see as important. The first is the need for the support of all the states if there is to be change to our Constitution. If there is to be change, I believe that there must be a strongly supported consensus position in all of the states and agreed to by all of the states. It is being presumed by some that a majority of votes in a majority of states will enable change to occur. I believe that should not be the case.

As a matter of principle, I believe that all states must agree to a change. That means that as a group we must work together to bring all states on side with that consensus position. Whether that means a separate referendum being held in each state and then a referendum at the federal level or not, some states will have to have a referendum to change their own systems under their current constitutions. I believe that, if one state did not agree and was forced into acceptance of a change, it would severely weaken our nation, and there would be ongoing resentment that would be to the detriment of our nation. Certainly, I know from Western Australia's perspective that Western Australians will be suspicious of any change that denies them an equal voice in the federation.

In relation to the position and the role of state governors, I believe that the future of state governors and their roles as constitutional arbiters, their status and their method of appointment are entirely the responsibility of the parliaments of the states and the electors of these parliaments. This Convention must ensure, therefore, that state governors or heads of state at state and territory level are not somehow made subordinate in their appoint-

ment and functions to a new Commonwealth head of state.

In relation to the titles that are being used, the term 'president' is one that we have heard a lot of today. Again, I strongly believe that we should stay with the current titles that we use, that is, of Governor-General and governor. The terminology of 'president' is not something that we are familiar with in this country. We do not use it in the corporate world and people accept that the position of Governor-General and governor are roles and they know what those roles are in the community. I do not see any need for that to change.

I did just briefly mention the need for strong support of all of the states. History shows that, for example, since 1960 the only four referendums to be carried out of 18 had the support of all states and the votes were something like 91 per cent, 73 per cent, 78 per cent and 80 per cent. I think that is the challenge of this particular Convention. If there is to be a model for change agreed to, it has to be one that is going to win that overwhelming strong support.

That aside, there are two very basic questions that must be decided. They are: the powers of a republican head of state, if we are to go down that path, and the method of appointment, and the two are closely linked. It does not, for example, make much sense to have Australians elect a head of state and then discover that this person has a purely ceremonial role because the current powers of the Governor-General have been removed. The head of state must be neither a player nor a spectator but an umpire, and we must neither overturn our parliamentary system nor short-change the people of Australia through a powerless head of state. The same principle should apply to parliamentary democracy at the state level.

The last thing I would want to see is another elected politician—an elected head of state who would very quickly, I believe, be in competition with the Prime Minister but answerable to no-one. I do not believe that is acceptable. Similarly, in relation to codifying the powers of a head of state, I do not believe that you can codify powers to cover all of the

circumstances that you might want to try to cover. For that reason, I have been strongly of the view that the changes that we look at need to be minimal. It needs to be a system that evolves.

The Western Australian Constitutional Committee I referred to was firmly of the view that the full powers of the Governor-General should devolve upon a republican head of state and that discretionary powers should not be subject to judicial challenge. I am saying that if there were to be a change we should basically keep our current system with the Governor-General operating under the accepted conventions and we should look for an alternative mechanism to replace the role of the Queen, similar to the proposals that have been put forward by Mr McGarvie today.

The issue of a popularly elected head of state is one that would concern a state like Western Australia because the numbers would lie in New South Wales and Victoria. We would not want to just sit back and watch states like Western Australia not being able to have a proper say in those particular elections.

I just want to conclude my comments by saying that we should not lose sight of the fact that our current system is one that works, and it does work well, but our system should also evolve. But, when we talk of change, I think we need to be careful and we need to use the next two weeks to look at all of the aspects of the different models being put forward because some that might look appealing on the surface, when we look into the detail, in practice could well lead us into some major constitutional issues. Thank you.

Mr BORBIDGE—Mr Deputy Chairman and fellow delegates, there can be no man or woman present here today who doubts this country's full, unequivocal independence. It is a long established fact. It is a constitutional fact. Even if Federation in 1901 failed to confer the full measure and quality of independence we enjoy today, subsequent acts of the British parliament and the several legislatures of Australia remedied that condition.

It was Robert Menzies who made the sovereign Queen of Australia. He did that in 1953, her coronation year. Time passes.

People and nations change. This is recognised and welcomed everywhere. The Australia about to enter the second century of its magnificent Federation is a country the founders of Federation would hardly recognise, but we are not unique in that sweep of change, only in the measure of it and our responses to it. Where we are unique is in being Australian, in the world view that we have developed and in our many relationships in the region and throughout the world. We are unique in having created our own way of dealing with life and with events.

It is the monarchical case in the debate about a republic that the monarchy retains a rightful place as the symbol at the head of our nation. The monarchy is no more an anachronism than are many other elements of our national life. The monarchical cause in Australia is neither against reform nor to the contrary.

The National Party carries the flag—and, to be quite sure, it is the Australian flag—for monarchy. It is party policy. There has been no referendum. There has been merely a voluntary postal ballot for the elected portion of the delegates to this Convention. There is no fait accompli. Neither the new republic nor a crownless Canberra will automatically materialise from the dust of the next two weeks of debate and caucusing. What there is, however, is an immensely difficult and, I believe, eventually unmanageable dichotomy between what we have been asked to come here to resolve—a manufactured crisis of conscience—and what in practice it will be possible to achieve.

We are here to discuss what sort of republic we should have, what actual proposal should be put to the Australian people. Some of us are opposed to the very principle of retreat from distant—and I mean distant in the sense of it being uninvolved with Australia's day-to-day governance—constitutional monarchy. Others—count me in this group too—believe that there are more important things to do at this time in the story of our nation than argue about how to replace an eminently workable system with an untried and, indeed at this stage, unknown alternative. Sovereign power already resides with the people. What aspects

of the republican platforms up for discussion claim to be capable of improving an absolute?

There is a further difficulty presented by this Convention and the perimeters within which it is to operate. We are a federation, a compact of constitutional entities with established powers and independent legislatures. The states are sovereign. It is a stark demonstration of the ill-conceived nature of much republican meandering if the constitutional position of the states is left largely alone except as an embarrassment to those who seek to centralise political power. The people will be properly wary on that score. Beware of activists bearing gifts!

Australians have inherited and developed their own version of British parliamentary democracy and representative government. Here, as in Britain, the clear dangers of dualism, of rival political mandates, have been eliminated by constitutional barriers to monarchical power. The Queen today exercises no power except that of moral force and constitutional propriety. Reject dualism.

The process of government we enjoy began with the Magna Carta. Republicans might want to tell us that this was an incident nearly 800 years ago on a small island a very long way from here. So it was. But it was also the seed that eventually grew into the democracy and civil rights we enjoy today. If history is an accident, as some post-modernist navel gazers assert by way of argument against bothering with it, this one was a happy accident. It might be argued that representative democracy still has not got us very far in terms of response to popular will. Everything can be improved. But I would argue strongly against the theory that Australia is ill served in terms of effective popular power because of the presence of monarchy.

In fact, the reverse is true. That this is so is to our distinct and direct advantage. It might be argued—indeed, it is, to distraction—that Australia is somehow less than fully independent because our Queen is also someone else's. But cutting the link to the monarch would not advance one inch the cause of Australia's continued independence or recognition of the fact—which, by the way, is generally well known by everyone around the

world who needs to know or cares to. Making it possible for the Australian head of state, the Governor-General, to be greeted with a 21-gun salute on arrival in foreign parts instead of the 19 to which the holder of that office is today entitled is giving a very high priority indeed to the symbols of the past. Better perhaps that those who seek cosmetic change lobby the world to expend less ammunition.

We are asked at this Convention essentially to choose between three models for a republican system: the mini, the medi and the maxi. Of these three models, the minimalist position is the most attractive, albeit of an ugly bunch. It would do least damage to the system of government which has served us so well. It would effectively entrench within the existing parliamentary system the practice by which a nominee for Governor-General has been recommended to the Queen. It would broaden it only slightly. It would neither unduly upset the delicate balance of Australia's federated constitutional position nor destabilise parliamentary government. It would retain the symbolic nature of the head of state and continue the vital separation of that office from the practice of politics.

The second option is for a larger but still collegiate selection process for a head of state. This increases the danger of popular politics entering the equation. It risks marginalising the parliament and blocking the executive.

The third option is popular election of the head of state. Australian democracy is combative and intrusive. It is highly partisan. All this is good at the parliamentary level and on the hustings but, in my view, it would be disastrous and constitutionally dangerous to engage in a popular election process for a president.

I acknowledge that this is the system which is reported to have attracted popular favour. I cannot believe that this preferred position is well thought out. A vote of all the people for a president would inevitably and immediately plunge the country into the whirlpool of rival popular mandates between the President and the Prime Minister. Forget the promises that a president's powers would be constitutionally limited and heavily codified under a system

of popular election. A political mandate is a dynamic creature. Its cause can be promoted by many more people than just the winner of the election.

What's more, a president elected by popular vote would in practice mean the holder of the office would always come from Sydney or Melbourne. There would almost be no opportunity for an eminent Queenslander—or, for that matter, Western Australian, South Australian or Tasmanian—to be elected. Under such a system, Australia would most likely have been denied the public service of Bill Hayden at Yarralumla.

I believe that we should reject popular election. We must keep intact the balances that have kept Australia stable. In particular—and I make this point with considerable force—the several and separate positions of the states cannot be ignored in any model for a republic. It would be totally unacceptable for non-Queenslanders to dictate changes to the state constitution. Further, much more in the Queensland constitution is entrenched than is the case in other states. Our parliament has delegated to the people the duty of deciding many constitutional questions. Any attempt to force change in Queensland on matters relating to these delegations to the people would be, I submit, a threat to the Federation. These and other difficulties are substantial.

Sir Harry Gibbs, former Commonwealth Chief Justice, lit a warning light recently in his Christmas message to members of the Samuel Griffiths Society. It is worth repeating here. Sir Harry wrote:

The proponents of a republic now are facing the difficult questions that have to be resolved before a republic constitution could be drawn—particularly, how should a President be appointed or dismissed, what powers should a President have, and whether these powers should be codified or justiciable, and what should be the position of the States.

He goes on:

The Honourable Richard McGarvie, QC, who recognised more clearly than most the disadvantages of the selection of a President either by popular election or by parliamentary choice, would place appointment and dismissal in the hands of a committee of eminent retirees.

This proposal raises further questions, particularly in regard to dismissal. Is the committee to have a discretion? Must it afford natural justice to a President faced with dismissal? Must it act immediately, or within reasonable time, or when it thinks fit?

Can it act by a majority, and if so is the minority view to be made public? The answers to these questions would have to be made clear in the Constitution if this proposal were accepted.

He ended his message by noting that 1998 should be an interesting year. The power of judicial understatement has always been tremendous.

This Constitutional Convention has a difficult task. We shall follow its proceedings with close attention. Our delegates will have more to say during those proceedings, but the bottom line surely is this: it is the Convention's job to come up with something that works better than the present system, that is safer for the welfare and democratic health of the nation, that is more protective of these things and that more completely serves the people of Australia, a proposal that represents an actual advance on all of these fronts instead of just another out of body experience. If it does this, then we can debate the substantive question.

DEPUTY CHAIRMAN—Before I call Tony Rundle—and I hope you won't be embarrassed if you lose some of your audience—those delegates who have nominated themselves for working groups should now adjourn to Kings Hall to assemble with the committee's designated convenor and a member of the Convention staff will guide them to the designated meeting room. The membership of the working groups is as follows:

Meeting in Committee Room 2

1. Same range of powers with the existing constraints on their use; no express provision to be made about the conventions that guide the use of the reserve powers.

Greg Craven*

Annette Knight

Richard McGarvie

Michael Kilgariff

Liam Bartlett

Ben Myers
Heidi Zwar
Peter Hollingworth
Clare Thompson
*convenor

Meeting in Committee Room 7

2. Same range of powers with an express provision to incorporate by reference the conventions governing the use of the reserve powers.

Eric Lockett
Sue West
Julie Bishop*
Christine Milne
Jocelyn Newman
Mary Imlach
Paul Tully
Linda Kirk
*convenor

Meeting in Committee Room 8

3. Same powers with a written statement of the conventions governing the use of the reserve powers as a non-binding guide.

Mia Handshin
Dannalee Bell
Catherine Moore
Mary Delahunty*
Kate Lundy
*convenor

Meeting in Committee Room 6

4. Same powers with codification of the conventions governing the use of the reserve powers as binding rules.

Gareth Evans
Steve Vizard
Misha Schubert
Nick Bolkus
Glenda Hewitt
Carl Moller
George Pell
Mike Elliott
Tim Costello

Peter Beattie
Geoff Gallop
Judith Sloan
George Winterton*
Stella Axarlis
Baden Teague
Kirstin Andrews
Anne Witheford
Neville Wran
Malcolm Turnbull
*convenor

Meeting in Committee Room 5

5. The present powers of the head of state and the defects of the known republican alternatives.

Joan Moloney
Moirra Rayner
Moirra O'Brien
Edward O'Farrell
John Fleming
Reg Withers*
Christine Ferguson
Kym Bonython
John Hepworth
Digger James
Geoff Hourn
Julian Leeser
Doug Sutherland
Lindsay Fox
Sarina Russo
Poppy King
*convenor

Meeting in Serviced Office Area Conference Room

6. Broader powers for a new head of state.

Eric Bullmore
Ted Mack*
Patrick O'Brien
Ed Haber
Andrew Gunter
*convenor

Meeting in Delegates Lounge South

7. Lesser powers of the head of state with codification.

(*New working group proposed by Clem Jones, on 2 February 1998)

Clem Jones

David Muir

Ann Bunnell

Phil Cleary

Gareth Evans

Peter Beattie

Paul Tully

Moria Rayner

Mary Kelly*

Marguerite Scott

Eddie McGuire

Jennie George

Michael Lavarch

Peter Grogan

*convenor

DEPUTY CHAIRMAN—Each working group is responsible first to elect a chair and then to elect a rapporteur. The findings of the working groups should be given, with recommended resolutions, to the convention secretariat by 6.30 tonight so that they can be printed in tomorrow's *Notice Paper*. The Convention debate in the plenary will continue on the principal issue until 6.15 p.m.

Mr RUNDLE—Thank you, Deputy Chairman and delegates. I am very pleased to be here today noting that, when the original Constitution was drafted, Tasmanians played a very important role in that exercise. It is my firmly held belief that Australia should move to establish itself as a republic. In my view, having our own head of state is the next logical step in the development of this great nation of ours. I think it is a step that we should take now and not put it in the too-hard basket for the next generation.

In the time since Federation, our nation has developed its own unique character, and we have heard a lot about that this afternoon from a lot of the speakers. It has developed its own particular way of doing things, its

own place in the world and in our region and its own set of national values, such as our belief in the right to a fair go. We have also become a very diverse society with people from nations all over the world having come here in their millions since the Second World War.

The thing that most strongly binds all those different elements of our society together, irrespective of where people come from, their background or their traditions, is this one simple thing of being Australian. I really see the move to an Australian head of state and an Australian republic as a matter of acknowledging and developing our unique national identity. In saying that, of course I put firmly on the record that moving to a republic is not a gesture of disrespect to Her Majesty the Queen and in no way diminishes or fails to acknowledge what Britain has contributed to this nation of ours, nor to those many Australians who believe that we should maintain a constitutional monarchy.

Some of my own ministerial colleagues and others in the Liberal Party in Tasmania and nationally believe very firmly that a republic is the wrong way for Australia to go. They are intelligent, thoughtful people who are concerned about both the principles and the obvious practical difficulties involved in making the change. I say quite clearly, I respect their views, but I believe we should first, and now, make the decision to change and then set about overcoming the problems of making the new arrangements work. I do not believe it is beyond the wit of Australians to do that.

As I have indicated, for me the move to a republic is, at heart, a matter of strengthening our national identity. It is not because the system of government that we have here and have enjoyed since Federation has failed. Indeed, the system of government in itself is very much part of our national identity. Having made an in-principle decision to change, we next face a number of questions: what kind of republic? We have heard a lot of that posed here today. What changes to the Constitution should we make? These matters are going to be dealt with ad infinitum and ad nauseam in the next 10 days. They will be the

subject of a lot of deep thought and discussion during this convention.

I also want to put clearly on the record that my position is not for a republic at any cost. We need to keep at the forefront of our minds those features of our present system of government that are fundamental to ensuring that it remains strong and united as a federation. Obviously, we need to remain a parliamentary democracy and a strong federation. The republic must be based on consent from all parts of Australian society in all states. It does not mean that every individual must agree with it in all its details. We know that that cannot happen but, at a minimum, every state must be happy with the proposed changes if a new republic is to work. To bring that about will be no easy task, I admit.

People living outside the Melbourne-Sydney-Canberra triangle will need to have confidence that their interests will be well and truly protected in the process of change, in the new republic itself, in the financial arrangements and in the way we deal with those less popular states. If it seemed that the position of the states—especially the smaller one that I represent—would be weakened under a new set of arrangements, then I could not support them.

The aim must be to create an Australian republic without damaging or destroying the fundamental underpinnings of the federation in the process. Unlike some, I believe that this goal is completely achievable. What is required is that we take a practical, sensible approach to the questions to be considered here at the Convention and not get distracted by side issues which really are not central to the issue at hand, which is whether or not we become a republic. That is the fundamental issue. These discussions, to some extent, need to be ring fenced or there will be no end to them and we will leave this forum in 10 days time no closer to a resolution.

This is not a Convention about how we would change the Constitution if we had a free hand. We have not got time to deal with that and we had discussion about that this morning. It is about the issues surrounding whether or not we become a republic. It includes how we should choose, obviously,

the head of state, what should be done about the reserve powers, et cetera. That needs to be the focus of the next 10 days.

I think as we move towards the next century, the time has come to give Tasmanians, Australians, everyone, an opportunity to make that choice, to let them have a direct say on whether or not we become a republic. I support a republic because I believe as a nation we have changed, we have matured, we have moved on and it is now time to go independently, our own way. Frankly, I also think a republic is inevitable because, if we do not make the change, our children will. We have heard those views from younger Australians here already today.

I want to conclude by noting that the Tasmanian House of Assembly last December passed by a majority of 25 to six a very simple motion. That motion was:

That this House supports Australia becoming a republic with an Australian citizen as head of state.

That is the position that I am advocating, not as a representative of that parliament but as an individual who believes that the future of this country is as a republic, but only as a republic which preserves the essential features of our parliamentary democracy and our federation. I know that all of the people taking part in this Convention have without exception the interests of this nation at heart. The views that are held on both sides are held sincerely and passionately. The motive for all of us is to develop or retain the set of constitutional arrangements which best meets the needs and aspirations of the Australian people. I believe that those needs are best served by a move to a republic with as minimal change as practical to our present constitutional arrangements. That, delegates, is the position that I will be supporting.

CHAIRMAN—I call Sophie Panopoulos from the ACM.

Ms PANOPOULOS—A few perceive today as an important day in Australia's history. I will ask all of you to think for a minute what today is like for so many ordinary Australians. For them, it is a day just like any other. For some, it is another day of work or a day to look for work. For others, it is another day to make ends meet for the sake

of their families. For other Australians, it may be coping with floods or fires. Today, we should not think about ourselves, of this Convention with its generous dinners and receptions. We should think of them—the real Australians living their daily lives—and we should think about what is really in need of fixing in this country. There is another thing we should remember—that nothing we do or decide in Canberra can change Australia. That is what is so great about the Constitution we have. Only the Australian people can determine their future, and the sooner they can have their say the better.

Every day we spend here navel gazing about Australia's constitutional arrangements is a day less spent fixing the real problems of providing jobs for young people, giving the elderly the security they have earned and deserve, making life easier for families in both the city and the bush, getting rid of foreign debt, fixing the wharves, and getting government off the back of business. They are the real issues facing Australia, and not one of them will be fixed at this Convention.

What I have to say now will probably surprise some people. I am here to say that I am a convert from a republic. My youthful folly was to be a republican. I meant well, but I was debating theory, knew little about Australia's Constitution and, like some here today, would not listen to anyone else, let alone learn from them.

Then I thought about it. I thought about my family and their friends who had come to Australia. I thought about the new opportunities that were offered to them by this country. I thought about how they were welcomed and were encouraged to prosper. I asked myself, as a young woman, what sort of Australia I wanted to leave for the next generation. Where I had been blinded by ignorance, I became enriched by knowledge. So I changed my mind and became a monarchist. I am still a monarchist.

A lot of people will tell you how dependent Australia is as a nation, but I am living proof of the independence of this country. I look around and see great Australians from all corners of the nation. I see people with diverse views, young people, older people,

republicans and monarchists. The one thing we all have in common is a tremendous independence of spirit. Each delegate should be independent, just as every Australian is independent, and no delegate should be taken for granted.

I am not one of those people who always looks for the worst in others. Instead of harping on about what is wrong, why not look at what is right about Australia? What about the freedom we have as Australians? We have the freedom to live where we like, to speak our minds, to throw out governments when they cease to serve the country well, to worship our own God, to be innocent until proven guilty, to raise our families according to our own values, to set up business, to risk everything, and to succeed beyond our imagination. That is the sort of Australia we have built in 97 years of federated nationhood under a democratic constitutional monarchy. It is not the sort of Australia I, for one, am prepared to put at risk.

I am proud of my country and proud of our achievements. I am particularly grateful to those great men, our founding fathers, who gave us a constitutional system the calibre of which no republican alternative has equalled, let alone surpassed. At a time when we should be celebrating the centenary of Australian nationhood, some want to tear up its birth certificate.

Some 97 years ago they said we were a young nation with a bright future. The same is true today. A republic would put it all up for grabs. We know what it is like to live in a democratic constitutional monarchy. We wake up to it every day. We know what it is like to stand united beneath our flag. We know what it is like to have a deep sense of obligation to our families, to our work, and to our local communities. We know what it is like to elect a government. We know what it is like within a federal system of government, with states and territories and separated powers. The very certainty is a solace to many of us.

We also know that thousands of immigrants have fled from republics to the stability of a new home in Australia. None of us knows what life in an Australian republic would

really be like. No-one in this chamber can provide any guarantees that life in an Australian republic would be better. The only thing we can be sure of is that once it is changed, it will be changed for at least another century.

What republicans will never understand is that many Australians fear what change may bring. Nothing republicans have said so far has allayed such fears. To determine whether this has been an exercise in change for change's sake, the touchstone is a very simple one. Over the next fortnight, as we discuss various proposals, those of us content with the current system will ask one question: will this proposal give us a better system of democratic government?

So far, the various suggestions that have been promoted by one or other of the republican groups, from the McGarvie model to a real republic, have failed the test. They have failed to answer the question because they have at least one thing in common: they have been unable to identify any flaw in our system of government that becoming a republic would cure.

The contrast with the ACM position is stark and real. We have been able to point to plenty of things wrong with changing to a republic—least of all, the sheer triviality of the main reason given for doing it. Maybe the failure of the republicans up to now to produce a single sensible reason for junking a system that has worked perfectly well up until now is that nearly all of them clearly have no idea how it does work and the few of them who do simply evade or ignore the question.

Republicans refer to the Constitution in terms which suggest that either they have never read it or, if they have at least made that much of an effort, they have not understood a thing. What they do not understand is that the written Constitution is only part of the story and that the monarch can do nothing in Australia except on the advice of the Australian government—meaning in practice, the Prime Minister. This is the heart of our system of government.

Because the monarch can act only on advice means that all her apparently great powers under the written Constitution are so much wastepaper so far as she is concerned

because she would never be advised to exercise them. This is part of the unwritten constitution. If any monarch attempted to disregard it—for example, by acting on the advice of British ministers—the effect in Australia would be nil.

The only thing the monarch does on behalf of Australia is make the formal appointment of governors-general when the Prime Minister asks her to. This not only harmless, it is useful. It is useful because it ensures that the person who actually has the lawful authority to act as the Australian head of state is the Governor-General, and always has been. 'Yes,' say the republicans, 'but the Constitution says that the Governor-General is the representative of the monarch.' This is another prime example of simply not understanding. All it means is that the Governor-General is the person in Australia who does for us the sorts of things that the monarch does for the British.

While I am on this topic there is another point worth making which almost every republican gets wrong. The Constitution does not even mention the very thing that most of them get so excited about—the head of state. There is no such office. Owing to the utter superficiality of the republican approach to this matter, we are in grave danger of becoming an international laughing stock by seeking to change the occupant of an office that does not exist. If we finish up with a president, we will not have a head of state; we will have an unnecessary, powerful and quite possibly dangerous extra politician.

One of the best known techniques of evading the question, 'Would a republic give us a better form of democratic government?' is the illusion of a minimalist change promulgated by the Australian Republican Movement and in a different way by Mr McGarvie. I call this an illusion because the concept of constitutional monarchy is not, as the republicans seem to think, an irrelevant ornament perched at the top of our constitutional structure; the concept of constitutional monarchy lies at the very heart of our present Constitution, as anyone who takes the trouble of looking at it will see. So essential is that concept to our structure of government that we should not be

conducting a useless debate about an office that does not exist and drafting a second-rate copy of what we already have. We ought to be looking at whether we should aim to design an altogether new Constitution. That is why I regard the so-called minimalist options as irrelevant and a waste of time, money and effort.

The republicans have for years failed to address the hardest issue confronting a change to a republic—that is, what powers and restraints would apply to the exercise of presidential power? Years of posturing serve only to produce uncertainty. Even republicans within the ARM camp who have bothered to discuss a president's powers cannot agree amongst themselves. George Winterton has argued that a president should have exactly the same powers as a Governor-General. This ignores the reality that a president will have absolutely no connection with our 800 years of parliamentary inheritance and no motivation to exercise restraint. Indeed, Professor Winterton's position has even been rejected by his fellow republican John Hirst, who stated:

The drawbacks of this approach is that it surrounds in uncertainty the one new office—the Presidency—which we are creating under a Republic. This proposal has to be put to the Australian people at referendum. They are entitled to know what kind of President they are getting.

I could not agree more with Mr Hirst, but I would go a step further. Australians have a right to know much more. They have a right to know how any proposed change to our Constitution could make them any more patriotic or unified or free or tolerant or stable or indeed any more Australian than they already are. Such rights are not enshrined in a bill of rights; they are guaranteed by the fact that republicans will need to answer these questions if they are to win the support of the Australian people in a referendum to change our Constitution.

I am proud to be an Australian and have great faith in our people. Unlike some republicans, I do not believe that we are still in chains nor that we suffer an identity crisis or that we are second-class Europeans. Contrary to what some republicans and some political opportunists may think, Australia is not an

island of sheep. We will not destroy the foundations of one of the oldest democracies on earth. We will not accept a hash of a republic.

The Prime Minister is right to say this debate is also about symbolism. Undeniably, symbols are important to a people. Is it not interesting that the debate has already moved away from the symbolism contained in our Constitution towards the greatest symbol of all, our Australian flag? Labor's Doc Evatt in simple eloquence described it as the most beautiful flag in the world. Tampering with our symbols means tampering with our national identity.

The most potent representation of our nationhood is jealously guarded by Australians, and this demonstrates the depth of feeling about preserving what we have got. To this day, no-one has been able to design an Australian flag which can unite Australians more than the existing flag can. I had a look at the recent designs and I would not choose any of them, even for a business card.

Nor is it intellectually consistent for the republican movement on the one hand to sponsor an exhibition of alternative flag designs, then on the other hand to argue that they do not wish to change the flag. No-one can really doubt that by accepting an Australian republic we make a new Australian flag more rather than less likely.

Much has been said and done about the republic to bring us to this Convention. The campaign for a republic began well over a century ago. Many arguments have been explored and, contrary to Mr Beazley's understanding of the issues debated in those conventions last century, the proposal to elect a Governor-General was actually considered, debated and categorically rejected. Many other models have been proposed, and much will be said over the next fortnight both in favour and against the various proposals.

For more than 100 years of argument, where are we now? The more republicans try to simplify the case for change, the more it becomes complex and confusing, and the more it threatens the very freedoms those who quite sincerely advocate change are trying to enshrine. The more they argue for an inde-

pendent nation, the more one realises that we have been independent all along. The more they seek an Australian head of state, the more it becomes clear that we have had one for years. The more republicans seek to empower the Australian people, the more one understands that we are already one of the most sovereign human beings on earth. The more they seek to radically change this country, the more we appreciate that we love Australia the way it is.

DEPUTY CHAIRMAN—I have received a proxy:

Kennett to Dean. Please accept this as authority whereby Dr R. Dean has been appointed proxy for the Hon. J. Kennett. Signed, Dr R. Dean.

It is dated 3 February 1997, but I assume that it really means this year. I call Mrs Janet Holmes a Court.

Mr GIFFORD—Mr Deputy Chairman, I raise a point of order. This is developing into a farce. We have here a situation where two-thirds of the people entitled to be here have gone off to these working groups. We had an excellent paper just a moment ago and most people were not able to hear it.

DEPUTY CHAIRMAN—I am not sure that it is a point of order, Mr Gifford. We are in an awkward situation. We are trying to get the working groups established. I would have to say that, compared to the normal situation of parliamentary proceedings, this is a top-hole quorum. I understand that point of view, and I express some sympathy for the previous speaker and for Mrs Holmes a Court. But I see that we do not have any alternative if we are to get the resolutions up that are going to be discussed in tomorrow's agenda. That is the difficulty that we have. I appreciate the difficulty, but I do not think it is technically a point of order. But your concern is noted.

Mr GIFFORD—It means that every day until we get to the 10th day we will have this disgraceful situation where excellent papers are presented but the majority does not hear them.

DEPUTY CHAIRMAN—If you can think of an alternative, I am sure that the Chairman would be delighted to talk about it with you.

Mr GIFFORD—I have sounded the warning. I cannot do more than that.

DEPUTY CHAIRMAN—I understand that. We understand the nature of the difficulty. We are really trying to do several things at once.

Mr GIFFORD—Too many.

Mr EDWARDS—Mr Deputy Chairman, I raise a point of order. You have given the gentleman a fair consideration in his point of order.

DEPUTY CHAIRMAN—I have said that I do not think it is a point of order. But your view is noted. I call Ms Holmes a Court.

Ms HOLMES a COURT—Thank you, Deputy Chairman, delegates and fellow Australians. We have heard many times today that this Convention is an extremely significant event. I am privileged, deeply moved and honoured to be here with 151 others, both appointed and elected, to participate in the process of building a nation.

Australia has produced many great writers, but because the people of Western Australia have chosen me, amongst others, to represent them here, I choose to quote from one of our great authors. Tim Winton, in his acclaimed novel *Cloud Street* has this to say about a group of ordinary Australians on the beach going prawning, not building a nation but lighting a lamp:

You've never seen people relish the lighting of a lamp like this, the way they crouch together, cradle the glass piece in their hands, wide eyes caught in the flame of a match, the gentle murmurs and the pumping and the sighs as the light grows and turns footprints on the river beach into long shadowed moon craters. Let your light so shine.

Ladies and gentlemen, let our 152 lights so shine, and let the lights of 17 million other Australians so shine over the next two weeks as we deliberate on the question of whether Australia should become a republic. It is a question of national maturity and national identity.

I will explain to you why I believe that we should answer this question with a resounding yes. Becoming a republic will give us a head of state who is an Australian. The head of state of a nation must surely be a citizen of

that nation. Becoming a republic will make the head of state of Australia a citizen of Australia.

The creation of an Australian republic is not an act of rejection; it is an act of recognition. It is to recognise that our deepest respect is for our Australian heritage, our deepest affection is for Australia and our deepest responsibility is to Australia's future. Three recent experiences have more than convinced me, if I needed more convincing, of this.

At the National Gallery of Victoria there is a major exhibition of the work of Russell Drysdale. There are rooms full of luscious paintings of such evenness of quality, such luminescence and such Australianness. Being in their midst was, for me, a spiritual experience. I saw these paintings and I recognised that this is a unique land with a unique people. I believe that no Australian seeing these pictures could not have the feeling as I did, that this is where I belong, this is what holds me, this is what I love, this is me.

Last Friday, I visited the new Sydney showground at Homebush Bay. The facilities here will be used not only for the Easter show this year but also for many events at the Olympic Games in the year 2000. Here, in record time, 8,000 Australians, architects, engineers, craftsmen, draftsmen, clerks, safety officers, gardeners and landscape architects—up to 1,500 at a time—with birthplaces and backgrounds as numerous and diverse as the countries on the globe, have come together, proud to be Australian and thrilled to be constructing this complex to welcome the world in the year 2000. No other country in modern history has been as prepared to host the Olympic Games as far in advance of the event as we are. I saw this and I marvelled at what Australians can achieve when we work together. I knew that no-one could fail to be proud of this.

Recently, I sat in a shed on the wharf on Sydney harbour to watch a stage adaptation of Tim Winton's novel *Cloud Street*, the very book from which I just quoted. Australian designers, set designers, costume designers, lighting designers, an Australian composer and an Australian musician, Australian choreographers, actors and a director are bringing

us a theatrical event of epic proportions. I saw this and I knew that a nation able to contemplate and describe itself, warts and all, with so much richness must be a mature nation, confident of its identity. It must have arrived.

We live in an age of box ticking. In our private lives, you tick the box showing what toothpaste you use or what channel you are watching. In our public lives, if you want a republic, you tick the box. In our business lives, if you have affirmative action or total quality management, you tick the box. We have been ticking boxes for 100 years. If you are ready for a federation, you tick the box.

If you are ready to have an Australian as Governor-General, tick the box. If you are ready to include the indigenous people of Australia as citizens, tick the box. If you are ready for your own national anthem, tick the box. If you are ready to accept our own High Court as the highest court, tick the box. Fellow delegates, we have one more box to tick. Are we ready for an Australian head of state? I believe that we are. The very full expression of Australian sovereignty cannot be complete until we tick that final box and have a head of state who is one of us.

I will give Tim Winton the final word. I am paraphrasing, and I have Tim's permission. We feel our nationhood. We recognise ourselves whole and human. We know our story for just that long, long enough to see how we have come and how we have battled in the same corridor that time makes for us. Then we burst into the moon, the sun and the stars of who we really are, being Australia, perfectly, always, every place us.

Brigadier GARLAND—Mr Deputy Chairman, delegates—that is, those who are left—ladies and gentlemen, people of Australia, I rise to oppose any proposal designed to amend our Australian Constitution which would change our political system from that of a constitutional monarchy to that of a republic, or which would attempt to substitute a president for Queen Elizabeth II, our sovereign and monarch, or the Governor-General, or which would attempt to change the role of the sovereign or that of her heirs and successors as set down in our uniquely Australian Constitution.

By its very nature, this Convention cannot be compared with the first national Australian convention of 1891. That was one of the most notable events to take place in our short history as a nation. At that convention, the key participants representing all of the colonies of Australia locked themselves away for several days on the SS *Lucinda* on the Hawkesbury River to negotiate the proposals which ultimately led to Federation and set the framework for the development of a nation of which we can all be proud. It united the nation. This Convention has the likelihood of only dividing the nation.

That the constitutional arrangements to come out of that convention gave us a federal Commonwealth under the Crown, and that those arrangements have served Australia and its peoples well, is or should not be in doubt. Those arrangements reflect a nation which has over 90-plus years exhibited a uniquely independent spirit and national character and where the peoples hold firmly to the freedoms and ideals of the four freedoms. Indeed, since Federation we have fought two world wars and a number of limited wars to protect those freedoms for the generations to come. Alfred Deakin said of the Constitution:

I venture to submit that among all the federal constitutions in the world, you will look in vain for one as broad, as liberal in its working principles, as generous in its aims, as this measure.

This same comment on our Constitution rings as true today as it did when Deakin said those words. Since raised by Paul Keating in 1991, republicanism and all of the desire to trash our current Constitution have captured an inordinate amount of attention from the media, particularly from those who are anglophobic.

As an Australian returned serviceman who has fought to preserve our Constitution and our way of life against the Queen's enemies, I welcome reasoned debate about our constitutional future but do wonder why such an issue deserves the overwhelming amount of attention it is receiving and has received over the last half decade from the media and from all sorts of academic socialists, particularly when our nation faces a level of unemployment of over 600,000, when we have chronic foreign

debt problems and when economic reform in areas such as the waterfront is moving at the speed of an Arctic glacier.

Most of the noise on the subject of a republic for Australia has been generated by those totally committed to the cause, not by those who are prepared to listen and debate. In the main, those people committed to the cause are politicians and their running mates and the media, most of whom demonstrate an anti-British bias. Of course, ever since the first national Australian convention, there have been groups of ardent republicans whose popularity has waxed and waned over the years.

The current republican debate has been engineered in the main by Paul Keating and his mates and political allies buttressed by the media and a small group of committed supporters on this particular subject. I have no difficulty with Keating, Turnbull, Whitlam or even Janet Holmes a Court arguing in favour of constitutional change. Any Australian citizen has the democratic right to do so, but arrangements proposing and favouring constitutional change require clear, unambiguous, honest statements about the benefits which will flow from such change. Above all, they need to be truthful and credible.

In a democracy such as ours which treasures free speech, failure to provide the community with the clear objectives and implications of proposed constitutional change is unforgivable, and I believe blatantly dishonest. To create the belief either deliberately or through disinformation or even through misunderstanding that what is proposed can be achieved by a small, cosmetic, minimalist change to our Constitution when in fact it is a fundamental and radical change to the whole legal framework in which our laws, judicial system and governments operate is not only deceitful but deceptive and dishonest. In the end it will prove to be divisive.

One of the main difficulties that I have with those espousing republicanism is the very apparent obsession they have with their rhetoric and their desire to change our national symbols such as our flag, et cetera, combined with their intense hatred of our British traditions and history. We cannot change our

history. It is there warts and all for everybody to see. It is not something we can sweep under the carpet.

I welcome this forum. Reform of our constitutional structure within which our government operates, and must operate, can only be made by the people, but only after they are fully—I say again: after they are fully—informed of the ramifications of the proposed changes. Changes should be properly made only after due caution and must be free of any party political drive or manipulation. There is something inherently sinister when politicians and their mates try to manipulate changes to the very structure of our society without truthfully and publicly canvassing fully the implications and consequences of any proposed changes. Until now this has not been done on this subject. The Australian people are unaware because they have not been informed of the major problems associated with this issue. Because of this they are mainly uneducated in this matter and because of that they have been hoodwinked by those proposing an Australian republic.

When dealing with our current Constitution and our system of governance, two points need to be kept in mind: the system within which we operate at present provides the greatest protection against the abuse of power by politicians and any single government, and without careful deliberation it would be foolhardy to implement changes in our current system in which the checks and balances of our Constitution and the federalism which flows from it have, since its adoption, ensured certainty and stability. These matters cannot be claimed by the majority of existing republics, not even the United States of America. If, by describing their proposition as minimalist, the Australian Republican Movement wishes to convey that the changes proposed by them are neither fundamental nor fraught with difficulty and danger, particularly when dealing with the measures needed to set down formally the powers of the head of state, then they are seriously misleading the Australian public.

Section 128 of the Constitution allows for the Constitution to be amended, but not for one minute do I believe that the founding

fathers of our Constitution ever contemplated that this section would be the vehicle for removing the monarch from the constitution. Nor do I believe that they would have contemplated that this was the vehicle to make radical and fundamental changes which go past the normal amendment of a document. There is no doubt that section 128 may be used to amend the Constitution, but I doubt it can be used to amend or delete the covering clauses—clauses 1 through 8. These clauses and many within the Constitution clearly and unequivocally envisage the continuation of the Crown within the framework of our Constitution.

Fundamental to the Constitution are the institutions of the Crown, the legislature and the judiciary. Throughout the years the Crown has been the one unifying influence in our system. All judges, politicians, ministers, public servants and members of the defence forces are servants of the Crown and they swear allegiance to it. Each owes a duty beyond self to the nation, embodied in the Crown. The Crown is therefore not only explicit but implicit in the Constitution. Thus to remove all reference to the Crown is not only to amend the Constitution but to replace it with another.

I also suggest that to change Australia into a republic will require more than just 51 per cent of the population and four of the six states voting in favour of the proposal. Unless there is almost total agreement within the community and by all of the states, then the matter will become divisive and could cause the fracturing and disintegration of our Federation and our nation as we know it today. This is not a fanciful proposition. It is very real. It was alluded to this morning by one of the state Premiers. It is also quite likely that, even if the referendum were held and passed by a simple majority, any move towards a republic would spark a court challenge on the validity of imposing a new constitution as opposed to an amended constitution on the nation. Could we accept seven High Court judges who are not elected by the people handing down a judgment on this issue? I think not.

To be an effective working document, a constitution must achieve two objectives. It must, firstly, equip government with sufficient power to run the state or the country. Secondly, it must provide checks and balances limiting the power of politicians to prevent abuse of power by them. These objectives seem to be a feature of all constitutional monarchies but, on the other hand, appear to be absent from most of those countries which are republics. More often than not, republics have heads of state who are seen within their own countries sooner or later to be enveloped into the party politics of the country concerned.

The method of bestowing the powers on any proposed Australian president have not been fully or clearly announced by those proposing to change Australia into a republic. The republican group would suggest that their president will have the same powers as the Governor-General. But there's the rub. How are those powers to be bestowed? The theoretical and reserve powers held by Governors-General and governors are quite extensive. The key to the limitation on their powers is the convention binding them through the Crown—I repeat, through the Crown—to the use of those powers. These same powers bestowed on republican presidents would be disastrous because a president could not be bound by those conventions. They flow from the Crown and, without the Crown, there is no real legal basis to force a president to observe those conventions. I doubt that they could be enforced through the courts.

Another argument put in favour of Australia becoming a republic is that, because allegiance is sworn to a Queen who some say is not an Australian resident and who some believe is a Brit and therefore a foreigner—not an Australian—we are not fully independent and we have not achieved full, mature nationhood. Tell that to the marines. All of those Australians who made the supreme sacrifice in war swore allegiance to the Crown at the beginning of their military service. I need say no more.

The catchcry seems to be, 'An Australian for our head of state.' What sort of an Australian do the republicans have in mind? A

natural born Australian, or one who is an Australian because of an act of parliament? Can this head of state have dual nationality? Will we accept somebody like Ung Huot? He is a man who is a naturalised Australian of Cambodian extract. If the answer is, 'Of course, we can,' what does this mean? Ung Huot is an Australian citizen and he is currently the first Prime Minister of Cambodia. Well done. Of course, republicans are not prepared to accept Queen Elizabeth II as an Australian, but I contend that she has been made an Australian by an act of parliament—in exactly the same way as any other person who is not a natural born Australian and is desirous of gaining Australian citizenship. She, of course, is an Australian because in 1953 the Australian government, in an act of parliament in this place, declared her to be the Queen of Australia.

The republicans have their priorities all wrong by pursuing this issue at the expense of those other pressing issues—such as unemployment, foreign debt, economic reform, et cetera—that impact on the Australian public and its people. It is perfectly right and proper for Australians to examine their constitutional institutions, but debate must be reasoned and it must be, above all things, honest—not orchestrated by politicians, nor the media, nor any of the disaffected. It must be valid. Compelling reasons for any change must be valid. Any change to our Constitution deals with changes to the fundamentals of our society and, therefore, must be treated with caution. It must not be rushed and the people must be given an honest, complete proposal on which to contemplate and then to vote.

There must be real, not phoney, benefits associated with any change. Change that has not been canvassed properly with the public and change for change sake will cause division. Australia is a federation of seven governments. To change our system without the conclusive agreement of all parties and an overwhelming majority of the total population is likely to cause bitter division within the country and could trigger a fragmentation of Australia as a cohesive nation. As I said before, that is not a fanciful proposition. The challenge facing Australians as we enter the

21st century is not whether Australia should become a republic, nor whether Queen Elizabeth II should open the Olympic Games.

CHAIRMAN—Your time has expired, Brigadier Garland. Could you please come to a conclusion?

Brigadier GARLAND—I will come to a conclusion. The important issues are to maintain our national character and our national sovereignty, to provide jobs for our population, to improve the economy of our nation, to reduce our foreign debt and to preserve the environment in which we live for the benefit of those to come. We must, therefore, retain our current Constitution, unchanged, and not take the backward step of becoming a republic.

Ms RAYNER—My friends and absent friends, I am one of those Australians who chose to be so—I was born in another country—13 years ago. I am one of those Australians who was born prior to 1949 in a country which made a sentimental commitment to the monarchy, which it has retained. I refer, of course, to New Zealand. Until recently I described myself as a sentimental monarchist, and I describe myself today as a realistic republican. Should Australia be a republic? Yes, but not at just any price. The reason I support the creation of a republic is that this is a once-in-a-lifetime opportunity to make a country which is proud of itself and is aware of its responsibilities.

I am not prepared to support a republic that entrenches discrimination or perpetuates injustice. That is not a real republic and it is not worth the trouble of creating one. A real republic puts the power in the people, not just symbolically. Republican heroes are ordinary women, men and children who value their rights and freedoms, and fight for them and for the responsibilities, and respect them and expect them from others. The quality of a republic depends on the quality of its citizens.

This republic must come because the people want it and want it passionately. I have heard on all sides of this chamber groups of people who want the status quo dressed up in much the same language. No minimalist model, no cautious compromise, no preservation of the past in aspic will

capture the hearts of the Australian people. Any constitutional document that defines our nation must reflect our democratic expectations. It must guarantee individual, human, social and economic rights somehow, but that is a debate we are not going to have. It must protect the individual from the misuse of her government's power somehow, but is this not the debate we are not going to have?

I was elected second on the real republican ticket in Victoria, together with Tim Costello, to represent Victorian electors on a platform based on three core principles. The first is that this Convention is a once-in-a-lifetime chance to build a new Constitution and a fair, modern and thoroughly democratic Australian republic, which we should not waste on just one issue. The second is that for ordinary Australians it is more important that our Constitution guarantees decent living and working conditions, social and other justice, and equality before the law; recognises indigenous rights; and respects our environment, our diversity and our common goals—far more important than the appointment of a symbolic head of state.

If Australia is to become a republic, and I believe it should, our new arrangements must not just symbolically reflect the moral as well as the political fact that all political power depends on and comes from the people. But the Constitution we have was drafted in terms of the rights of governments—colonial governments, imperial governments, federal and state governments—with each other. It reflects their turf battles, it reflects their jealousies, it reflects their trade and economic concerns. It says virtually nothing about the freedoms, rights and responsibilities of government to citizen and citizen to government. Any constitutional change must enhance democracy.

The purpose of a move to a republic is to do that and to put back in the hands of the people the constitutional and political power that is genuinely, and ought to be recognised as, theirs. But the agenda which was settled by the government and selected delegates before we commenced our discussions this morning has focused debate relatively narrowly—whether we should have an Australian head of state and the very technical and legal

issues that derive from a possible 'yes' answer to that question.

But the people who elected us and the people who write to us do not want to talk about just the appointment of a head of state, and it is not because that issue is unimportant. It is a question of where it belongs in a proper democratic scheme of things. This, I believe, falls into place after you have thought through core values, basic rights and duties, and the citizen's relationship with her government. The real republicans seem to be the only group that went to the people and asked what they wanted in their constitution.

We have not got every answer, but we do know that a far higher proportion of people support a Bill of Rights of some kind, in fact even believe they have one already, than want to have an Australian head of state. The more dialogue we had and the more we trusted the people, the clearer that message became.

The message was this, and this I believe is the core we should focus on: the Australian people do not trust their government. The Australian people believe that they are treated with disdain by these persons. They tend to regard them as self-interested and incompetent at best. So when we hear speaker after speaker today saying that we have the best democracy in the world, I say to them, 'Don't be so bloody-mindedly self-satisfied and complacent.' It is not a question of tinkering only with the top levels. Only those who have benefited from the practices of the past hundred years think so—that is, proud men, clever and cautious administrators and academics, and new and old elites.

This Convention has been opened by speakers who want to retain the way things are, who have given some lip service to those who have traditionally been excluded—especially Aboriginal and Torres Strait Islander people and, in some respects, women—but there is no special place for the poor, the unemployed, the people who have no disabilities, the children who do not vote and the alienated or cynical excluded voter who sees all politicians as power grubbers.

This is a time when government is held in deepest disrespect by the people and when, if you are running a current affairs program on

television and you put on a politician, the ratings go down. This is the time of the growth of managerial politics and of the power of the executive overwhelming the parliament which is elected by the people, a time of galloping loss of esteem for all politicians and political structures and of loss of faith in the institutions which are intended to decide—and on the face of it they do so—how we are governed. And this is a time when we must make people and their participation in government the core of the republican debate.

We need a proper consultation over the next two weeks, and I am prepared to find ways and means of making sure that discussion does take place about what sort of a republic this will be. After this Constitutional Convention we need to engage with community groups who have been left right out of this debate, and we need to find imaginative ways to break that technical nexus between our constitutional document and what really happens—not leaving it to lawyers and self-interested politicians.

We have much more to address than what has been put to us on a platter. These are symbolic issues, and we need to be concerned about this gap between what the Constitution says and how it actually works. Our Constitution is defective. It is 100 years old, for God's sake. Thomas Jefferson said that you should revise your constitution every 30 years to make sure it is relevant to your current situation. It has a real lack of substance in terms of defining and entrenching democratic values.

Our Deputy Chair actually said in the newspaper last week that we have two constitutions: one written, which says how things are; and one unwritten and largely discretionary, which is how power is actually exercised. This is profoundly unhealthy for our democratic system. Our Constitution says nothing that really matters in political practice about where power lies. It says nothing meaningful about the real power sources—political parties, the Prime Minister, the cabinet, the lobby groups that have the ear of the political parties, and of the Prime Minister and the cabinet.

We are not talking just about formal governing structures; we are talking about democratic institutions which have fulfilled the gaps in those structures over the last few years. I refer to freedom of information about government activity, access to justice—if you have a lot of money—an impartial ombudsman overseeing administrative maladministration but, most importantly, mechanisms which are all used to make government accountable to the people, because the formal structures do not make it so accountable.

The founding fathers, and the bureaucrats in London who re-wrote what they wrote, wrote a narrow constitutional framework defining powers between governments, and they did it quite well, but at a cost, leaving out democratic values and on the dubious assumption that our common law tradition would do the rest. It has not. The Constitution has been a tool of administration and when the High Court has sought to fill the gaps interpreting implied values and principles into that document, the executive side of government screamed loud and long. So this is the time, I believe, to talk about world best practice in democracy and constitutionally.

What would it really mean if our Constitution were the most progressive, best written and most effective, in democratic terms, constitution? What sort of process do we really want to create it when the public, according to the republican argument, owns its government. Most of us have not thought what that means in practice. If the public owns it, it must participate not just in our vote, and especially not in a narrow postal vote selecting half the delegates to this Convention. The public have to be engaged in framing what the Constitution should look like, given the change to a republic. If we were to adopt this as a principle, we would do far better than to be engaged in protracted and technical discussions which assume either that we know the answers or that the people are stupid and can be told that we know what the answers are.

The group of republicans who are not ARM members but are, nonetheless, united in the common goal of a republic have a very large support group, we believe. Those who elected

us believe that this Convention should be about their greatest hopes and fears represented by the symbol of a change of a form of our government. They did not believe it was an elite issue. They did not believe that there would be to-ing and fro-ing and done deals before anything happened at the commencement of this Convention. They do not want no change; they want to choose the change. They feel their government has become haughty, unresponsive and unaccountable. They punish those who govern at elections, voting ratbags out and heroes in and turning heroes into ratbags at the next election. They expect the worst and feel vindicated daily. There is no better vehicle than the building of a constitution for building a democracy and republic alike. We must trust the people. Government is based on a contract with the people. It has to be based on full disclosure.

This is not the government's convention. It is not owned by some voluntary association of politicians, republicans, monarchists, public servants, Prime Ministers or ministers. This is the people's Convention. Abraham Lincoln once said that if the people did not like the way their government was governing they had the right to overturn it by armed rebellion. This is an opportunity for the people's consultation process to begin. The fact that the people do not know much about their Constitution or, when they read it, are bored and stop reading at paragraph 5, does not mean to say they should not be actively involved. Jefferson also said:

I know of no safe depository of the ultimate powers of the society but the people themselves and, if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion by education.

I believe that the talk of rights that we began this morning, which was so vigorously curtailed by a coalition of groups who did not want that discussion to take place, is the one which should take place from time to time, where appropriate, through the next two weeks. The talk of rights implies respect which elevates a person's status from human body to social being and, even if they cannot be enforced, these statements of rights are politically animating, socially cohesive and a

source of motivation and hope, and they are not able to be parcelled out by powerful white men to minorities, whether they are Aboriginal, ethnic or other disadvantaged groups, in small pieces, in small favours or as an insulting gratuity.

Yes, we need a republic. We need an elected head of state but only if that means that their powers and the limits on their powers are absolutely clear and if the checks and balances are rightly, honestly and accurately set out in our Constitution, not in unwritten conventions which are ignored in practice, and we need a republic which is based on the accountability of government to the people and the humbleness of politicians—much forgotten. In our core document we need to have an assumption that we are no longer subjects of a crown but that we are the owners of all sovereign authority.

I began by saying that Australia should not be a republic at just any price, but the price is of course some uncertainty and the risk, a tiny risk, of actually asking the people what they want. We must surpass our cautious approach or it will defeat this move to the sovereignty being placed in the people. We must not become a 'billabong' republic—green and yellow, stuffed with decaying materials and cut off from the flow of the river: warm, safe and stagnant. We need to look at the rights of the people in a meaningful way because this is an animating spirit which fires this country's most oppressed psyche which will wash away the shrouds of inanimate object status. Let us say not that we own gold but that illuminous golden spirit owns us.

Ms HAWKE—We all feel a very deep sense of responsibility in being part of this historic Convention. I thank the voters in New South Wales who have given me the privilege of representing them here and the Australian Republican Movement for the opportunity of joining in helping shape Australia's future. The debate about our future belongs to all Australians regardless of political party, country of origin, age or gender. The important task here in this place is to get it right. We must by the end of the Convention give to Australian people a clear picture of what

republic means and what it will involve for themselves, their families and our country's future.

No doubt part of our task involves an education process for ourselves and for those we are here to represent. I learned a lot from the Convention election campaign from men and women, young and old, who took the trouble to discuss the republic in the streets and in the shopping malls. Best of all, talking with people confirmed something I had always known in my heart: that we Australians have a very strong sense of belonging to a family—the Australian family. The wonderful thing about Australia today is that this sense of the Australian family, of belonging to one great family, is growing stronger, not in spite of the increasing diversity of our peoples but because of it.

The enrichment of our national and cultural life through immigration goes arm in arm, side by side with a deepening desire for a single and simple expression of our Australian nationhood. The family analogy is relevant to the idea of a republic. In a family the kids change and grow and mature. As parents we judge ourselves and we judge our success by seeing them accept more and more responsibility for their lives. We feel a sense of failure if they do not assert their independence, 'leaving the nest' as we used to call it. The kids limit their own capacity to grow and to mature if they feel unable to strike out for themselves.

If we see the idea of the Australian republic in this way, as part of a natural and inevitable development, it is easier to understand why the monarchy of the United Kingdom seems less and less relevant. I travelled to England in 1953 with my passport stamped 'British passport—Australian citizen by birth and a British subject'. With due respect to what my grandmother called 'the mother country', I feel that Australia is my mother and I am proud and grateful to be her daughter. It is beyond question that most Australians, old and new, young and old, think of themselves not as British subjects but as Australian citizens and Australia is our mother.

Through the focus of Australia as a family, it becomes easier to see why a growing

majority of Australians feel that the House of Windsor is inappropriate as the chief symbol of the nation. But that is not the issue. Attitudes change because the world has changed. I am old enough to remember hearing Mr Menzies, as he then was, saying on the wireless, as we then called it, that Australia was at war because Great Britain was at war. Nobody questioned it. In 1939 Australians did not question that we belonged to the British Empire. If those things seemed a permanent part of life only 50 or 60 years ago, how much more 100 years ago when the Australian Constitution was drawn up? Not being part of the British Empire was not even an option for the Australian colonies in the 1890s and Federation in 1901 did mean striking a bargain.

In return for the protection we received from the British Empire, the Australian people gave the empire allegiance. The symbol of allegiance, the Badge of Empire, was the crown of the United Kingdom. In a century of immense change, Britain itself and its role in the world has changed as much as, or perhaps even more than, Australia and our role. But under our Constitution as it stands Australia still owes its national allegiance to the head of state of another country. By saying 'another country', I do not want to downgrade for a moment our historic kinship with the people of England, Wales, Scotland and Ireland. It is part of my own family's story. But, unless we are willing to accept that Britain today really is another country with its own future with distinct and separate interests and goals, we diminish our own independence and nationhood, and that means denying the full sense of our belonging to the Australian family.

We are all witness to the marvellous growth and development in our national life. Why don't we match it in our Constitution? Most of us are not constitutional lawyers, but we do have a strong sense of the sort of nation we wish to be and we need a constitution which will protect and nurture us in that great adventure together. It will have to be changed if we want all Australians to be able to declare their simple loyalty and individual allegiance to Australia.

The question of allegiance is at the heart of the meaning of the Australian republic. Until the naturalisation law was changed a few years ago, new citizens of Australia were obliged to pledge their allegiance to the House of Windsor, their heirs and successors according to the laws of the British parliament, just as members of the Australian parliament—the men and women we elect to lead us today—still must do. It is a joy to attend naturalisation ceremonies and see the genuine pride and pleasure of new citizens now that they are able to declare their allegiance to Australia alone. The pledge of commitment now reads:

From this time forward, I pledge my loyalty to Australia and its people whose democratic beliefs I share, whose rights and liberties I respect and whose laws I will uphold and obey.

There could be no better statement of what the Australian republic means.

This land of ours is a powerful land, full of wonders, not to be regarded just as territory to be tamed and subdued but nurtured, respected and loved. The Australian Aborigines have always known that and have revered and cared for the land for thousands of years. Only now after a mere 210 years of our occupation are we learning to do the same. Among us, relative newcomers, as most of us are, with this sense of reverence and wonder, there is also a new sense of belonging not only to a marvellous continent but to a truly Australian family. I do believe that the Australian republic is the next great step toward binding us together as a nation and a family and binding us, our children and theirs to this our land and our home forever. Thank you.

CHAIRMAN—Thank you, Mrs Hazel Hawke. I call on Sir David Smith, who will be followed by Senator Ron Boswell. Before we adjourn tonight, Mr George Mye, Dr David Mitchell and the Hon. Mike Rann will speak.

Sir DAVID SMITH—Mr Chairman and delegates, the question is: should Australia become a republic? The answer is an unequivocal and resolute no. As a first generation native-born Australian, whose family came from a non-English speaking background in the late 1920s, I am grateful that my parents

and grandparents were able to find in this country the peace and happiness that was denied to them in the land of their birth because of their religion. They turned their backs on a republic, and they chose the safety and the security of this constitutional monarchy. I am not about to betray their memory.

In 1988, the Hawke government's Constitutional Commission found that almost 50 per cent of all Australians were unaware that Australia has a written Constitution and that in the 18- to 24-year age group the level of ignorance rose to nearly 70 per cent. In 1994, the Keating government's civic experts group found that 82 per cent of Australians knew nothing about the content of our Constitution.

Our Constitution may be altered only with the approval of the people at a referendum. This is a rare and precious provision in a world where most constitutions may be altered by parliaments and by governments without the consent of their people. If the people are required to give their consent, it must be an informed consent, a consent based on accurate information about what our Constitution says now and an ability to understand and evaluate the various proposals for change. I propose to state some little known facts about our Constitution. Mr Chairman, I seek leave to table a document which records the evidence upon which I rely for these statements of fact.

CHAIRMAN—I do not think you really require leave. The only comment I would make is that statements being tabled cannot be incorporated in *Hansard*. They become part of the record of the Convention.

Sir DAVID SMITH—I understand that. We are told that we must become a republic in order to assert our independence of Britain. That is not true. The Hawke government's Constitutional Commission included the Hon. E.G. Whitlam as one of its members, and the commission was advised by an advisory committee chaired by the Rt Hon. Sir Zelman Cowen.

One of the commission's terms of reference required it to report on the revision of our Constitution to adequately reflect Australia's status as an independent nation. In its final report, the commission traced the historical

development of our constitutional and legislative independence, reported that at some time between 1926 and the end of World War II Australia had achieved full independence as a sovereign state of the world, and concluded that the development of Australian nationhood did not require any change to the Australian constitution. The argument that we need to become a republic in order to become more independent is simply not true.

More recently, the republicans have argued that we must become a republic in order to have an Australian head of state. This argument is also untrue. Legal opinions and political decisions over the past 97 years confirm that Australia has two heads of state: a symbolic head of state in the Queen and a constitutional head of state in the Governor-General, who is clearly an Australian.

Though republicans are agreed that they want to remove the Queen from our Constitution, they are utterly divided and confused over who or what to put in her place. The reality is that the Crown has a most important role in ensuring the stability of our system of government. Behind it lies almost 1,000 years of history and tradition, which none of the several republican models on offer could hope to replicate. Indeed, after seven years of, 'It's inevitable,' the republicans are still hopelessly divided over just what 'it' actually is.

Under our present system of government, the constitutional head of state is chosen by the government of the day, is advised by the government of the day and may be removed by the government of the day. Nothing could be more democratic or more republican. The role of the Crown in the appointment and removal processes ensures that the Governor-General's allegiance is to the entire nation, not just to those whether in the community at large or in the parliament who voted him or her into office.

In our democracy, election to a public office, as distinct from appointment, carries with it the notion of a mandate with policies to pursue and supporters to be rewarded, and there is no place for such influences on the person who occupies the desk at Government House, Canberra. I have known governors-general who have been deterred from acting

or speaking in a particular way simply because they knew they had been appointed and not elected. I most strongly urge my fellow Australians not to surrender this very powerful restraint on what is potentially a very powerful position under our Constitution.

The claim that the Governor-General is our constitutional head of state is not some bizarre theory dreamed up for the purposes of the current debate for it has been so since the beginning of Federation. The Canadian Governor-General, Lord Dufferin, described the Governor-General as a constitutional head of state in a speech he gave in 1873. Paul Keating referred to the Governor-General as our head of state in the very speech in which he announced in parliament on 7 June 1995 his government's proposals for a republic. The media, so intent on pushing for the republic, have been referring to the Governor-General as head of state for over 20 years. Of much more significance than all this anecdotal evidence is the legal evidence for the view that the Governor-General is our constitutional head of state.

In 1900, Queen Victoria signed a number of constitutional documents relating to the future Commonwealth of Australia, including Letters Patent constituting the Office of Governor-General, and Instructions to the Governor-General on the manner in which he was to perform certain of his constitutional duties. In 1901, two distinguished Australian constitutional scholars—Andrew Inglis Clark and W. Harrison Moore, later Sir Harrison Moore, both of whom had worked on the drafting of our Constitution—expressed the view that the Letters Patent and the Royal Instructions were superfluous or even of doubtful legality on the grounds that the Governor-General's authority stemmed from the Australian Constitution and that not even the sovereign could direct him in the performance of his constitutional duties.

In 1922, during the hearing of an application by the state governments for special leave to appeal to the Privy Council from the High Court's decision in the Engineers' case, Lord Haldane, Lord Chancellor of Great Britain and President of the Judicial Committee of the Privy Council, made it clear that he

shared the view of our constitutional arrangements in respect of the Governor-General's powers which had been expressed at the time of Federation by Clark and Moore.

At the 1926 Imperial Conference, the Empire's prime ministers declared that the Governor-General of a dominion was no longer to be the representative of His Majesty's government in Britain. The conference further resolved that, henceforth, a Governor-General would stand in the same constitutional relationship with his dominion government and hold the same position in relation to the administration of public affairs in the dominion as did the King with the British government in relation to public affairs in Great Britain.

The 1930 Imperial Conference decided that, henceforth, recommendations to the King for the appointment of a Governor-General would no longer be made by British ministers but by the Prime Minister of the dominion concerned. This decision further strengthened the constitutional role of governors-general and their relationships with their dominion governments.

In 1953, in the course of preparing for the 1954 royal visit to Australia, Prime Minister Menzies had wanted to involve the Queen in some of the formal processes of government in addition to the inevitable public appearances and social occasions. But the government's legal advisers pointed out, as Clark and Moore had done more than 50 years earlier, that the constitution placed all constitutional powers, other than the power to appoint the Governor-General, in the hands of the Governor-General, that he exercised these constitutional powers in his own right, not as a representative or surrogate of the sovereign, and that the sovereign could not exercise any of the Governor-General's constitutional powers, even when she was in Australia.

In 1975 the Commonwealth Solicitor-General, Mr Maurice Byers—later Sir Maurice Byers—gave Prime Minister Gough Whitlam a legal opinion in which he, the Solicitor-General, concluded that the Royal Instructions to the Governor-General were opposed to the words of the Constitution, that the executive power of the Commonwealth

exercisable by the Governor-General under chapter II of the Constitution may not lawfully be the subject of Instructions and that this had been the case since 1901.

The dismissal of the Whitlam government later that year was to provide concrete evidence of the correctness of all the legal opinions which had been given over the previous 74 years. The Governor-General Sir John Kerr, a former Chief Justice of New South Wales, did not consult or inform the Queen in advance and he accepted the full responsibility for a decision which was his alone to make.

After the Governor-General had withdrawn the Prime Minister's commission, the Speaker of the House of Representatives wrote to the Queen to ask her to restore Whitlam as Prime Minister. Buckingham Palace replied that the Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution and that the only person competent to commission an Australian Prime Minister is the Governor-General. That reply confirmed, if confirmation were needed, that the Governor-General is indeed Australia's constitutional head of state. Even so, it took another nine years before the matter was resolved by giving effect to the Solicitor-General's Opinion.

On 21 August 1984, on the advice of Prime Minister Bob Hawke, the Queen revoked Queen Victoria's Letters Patent and the Instructions to the Governor-General and issued new Letters Patent. No new Instructions were issued. In 1985, parliament passed a bill, the purpose of which as set out in its long title was to bring constitutional arrangements affecting the Commonwealth and the states into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation. This became the Australia Act 1986.

In 1988 the Constitutional Commission reported:

Although the Governor-General is the Queen's representative in Australia, the Governor-General is in no sense a delegate of the Queen. The independence of the office is highlighted by changes which have been made in recent years to the Royal instruments relating to it.

If there should still be any doubt about the fact that the Governor-General is our constitutional head of state, we have the ultimate confirmation in Prime Minister Keating's statement to parliament on the republic. After confessing that it was impossible to codify the reserve powers of the Crown and the conventions associated with their use by the Governor-General, he admitted that the design, processes and conventions at present governing their exercise by the Governor-General should be transferred to the president without alteration.

Here we see the hypocrisy of the push for a republic. We are told that we lack an Australian head of state, that we must get rid of the Governor-General and replace him with a president. But then we are told that the president would have exactly the same powers and exactly the same duties as the Governor-General has now—nothing would be added and nothing would be subtracted. One Australian would replace another Australian and do exactly the same job. All that would be changed would be the title on the letterhead. If such a president would be an Australian head of state, then that is precisely what the Governor-General is now.

It is time the republicans came clean. We have heard a great deal about the various types of republics we could have but not a single, credible reason why we should choose to have any one of them. The truth is that we are an independent nation and we have an Australian as our constitutional head of state. There is no case for Australia to become a republic.

Senator BOSWELL—Mr Chairman, all of us are proud to be here at this Convention representing the people of Australia, and we have come together for the good of our country with the ultimate aim to determine the best system of government for all Australians. This Convention represents the most democratic process that a government could deliver where all sections of the community have a voice about their nation's future. This Convention is charged with a most awesome responsibility—make no mistake, we cannot afford to make mistakes here this fortnight.

It is not simply about who will be head of state, it is not about what is the most appropriate symbolic response in today's context; it is about how Australia is to be best governed in the future and what system will deliver this. In coming to this decision we must factor in the absolute fundamentals of our present democratic system—the fail-safe democratic way of life that has been built around our constitutional system of government, that is enjoyed and guaranteed to all Australians, that incorporates the essential checks and balances on the exercise of power, and that has been tried and tested under our present system. These safeguards have worked for us for the past 100 years.

The nation's forefathers crafted a unique Australian system that has endured as one of the oldest continuous democracies in the world. Only Britain, the USA, Canada, Switzerland and Sweden have had a longer period of democratic rule. We have today a 'made in Australia', truly independent and democratic nation. By means of the Statute of Westminster and the Australia Act, we are completely free of legislative, executive, judicial, administrative or other formal links to the United Kingdom.

In practice, the Queen takes no part in the decisions which the Governor-General must take in accordance with the Constitution. In 1975, the Queen herself declined to intervene in our Australian constitutional crisis. In reality, our head of state is an Australian and always will be, and by High Court decision 'sovereignty does not reside in the Crown but ultimately sovereignty resides in the Australian people.'

You do not hear republicans complaining about the way democracy works under our present system. Almost all delegates here would agree that our democratic process not only works well but stands as a truly working model to the rest of the world. Where the differences of opinion lie is in the symbols of our present system and a desire to change the definition of our nationhood by introducing a new symbol.

Some believe Australia must take the final step to nationhood and remove the Queen as head of state when she is also head of state to

other nations, or that a modern statement of our nationhood requires an Australian as head of state. But if we allow the debate to be influenced disproportionately at the level of symbolism, if we do not elevate it beyond these current and temporal concerns to the real issues of the safest, most secure system of government for the future of Australians, we are not serving all Australians in making the right decision for our long-term future.

It is for those who wish to change the system to prove beyond all doubt how their new system will function, how it will give all Australians the same certainty, adaptability and stability that exists under the present system. The onus has to be on the proponents of change and the onus must be of the highest order. This Convention must set the standard of proof against any final proposal that is to be put to the Australian people.

The present Australian Constitution and system of government it enshrines has demonstrated a proven and enduring capacity to deal with and adapt to all circumstances over the past 97 years. The Constitution has never presented an impediment to or a restriction on the development and progress of the Australian nation. Most importantly, the same adaptability, certainty and stability is guaranteed for the massive changes that await us in the 21st century. In relation to our system of government, there is no such thing as a small change. Any change creates a major disturbance to our present system.

I stand here as a parliamentary delegate from the National Party and give you the following reasons why we, as a party, and I as a party member, an individual who has examined the issue deeply, support the status quo. All aspects of our present system are finely intertwined. This results in the sum total of our present parliamentary democracy. Remove one aspect, however small, and the intricacy of the functioning system is lost. Under the present system, having an independent head of state plays an important role as a check on the power of the executive which in modern society is an expanding arm of government.

Eminent Australians have spoken of how our present system controls power, centralis-

ing in the executive. Sir Daryl Dawson explained it as the danger of absolutism of cabinet and Prime Minister. The reserve power of the Crown, especially the power to force or refuse dissolution, in some instances is the only constitutional safeguard. Don Dunstan said that in a Westminster system an independent head of state is necessary to ensure a proper check on the executive power. However, in this debate, major changes are being proposed, such as an elected head of state and codification of the head of state's reserve powers, which all sides of the debate agree must be codified should the head of state be popularly elected or appointed by a two-thirds majority.

This is a divergent shift and invests political power in our head of state—something that we have never had. With our present system, ultimate political power rests with the people. In times of conflict or disapproval, the people ultimately make the decision through an election. Coming here as a representative of rural people, I know that people in the bush use their members of parliament more than most.

They appreciate the access they have to their elected representatives and, through them, to the head of power in the Premier's office or the Prime Minister's office or in cabinet. Introduce a head of state with its own mandate, bestowed either through a popular election or appointment by a parliamentary majority, and the average Australian will have a large piece taken out of their franchise and be one step further removed from government decision making.

There is every chance that a popularly elected president will introduce politics into the position. The head of state would no longer be acting as a surrogate constrained by the institutions of the constitutional conventions, as now, but would act on a perceived mandate of the people. There could be many circumstances where the head of state, by their own conscience, may believe that they have a right to act on the basis of their elected office, and feel a duty to do so to act independently.

An elected head of state endorsed by a political party would introduce politics and a

political strain between their office and the position of Prime Minister. We would lose the essential requirement of political neutrality of a head of state which is achieved under our present system. We all know that if a Prime Minister loses the confidence of the people he is replaced swiftly and effectively by either party pressure or by general election. How will an unacceptable head of state be removed? Does that not leave the head of state in a most powerful position?

Without a doubt, the power base will shift along the path of the United States of America where the ultimate power rests in the hands of one person. Sir Harry Gibbs said that the creation of the office of president will substantially increase the power of the executive. To increase the power of the executive is to increase the possibility that sooner or later these powers would be abused for partisan purposes. As Mr Justice Michael Kirby said, there is a risk that a local head of state, especially one enjoying the legitimacy of a vote into office, would assert and exercise reserve powers which would be most unlikely to be used by an appointed governor or state government.

Politically elected or appointed presidents will be totally different to anything known to Australians or anything they have experienced, and they will not like it. An essential characteristic loved by all Australians is our egalitarianism. When you start transferring real political power into a head of state, with superior rights and very little likelihood of dismissal, you will have created a very powerful person.

Similarly, with the option of appointment or dismissal by a two-thirds majority, which also introduces a major shift in power into the head of state, a two-thirds majority decision will divide along party lines. Never in the past 50 years has a government had a two-thirds majority in both houses of parliament. Any dismissal will have to be on party lines, with an opposition deadlocked against the government.

Mr Beazley and Mr Turnbull are on record as saying that codification of power is necessary for either direct or indirect elections. Those with any knowledge of the legal

process involved agree that the process of codification would be a minefield. It would be impossible to get an agreement on which powers and conventions to codify. Professor Winterton agrees that full codification of powers removing all discretion would be complex and difficult, and my ex-colleague Gareth Evans has offered the prediction that it would take 30 years to effect and would be almost impossible to achieve.

At this Convention, we must examine how these options would in fact work and who would be responsible for nominating contenders. What sort of person would put themselves forward to stand as a head of state when it would be a long political process? If this had been the case, there is no possibility we would have had the governors-general of the calibre we have been fortunate to have. These same outstanding governors-general would not have been the sorts of people to stand for an election.

The McGarvie model presents the minimalist position. While former Governor McGarvie has not supported either a republic or a constitutional monarchy, his aim has been to propose a scheme in substitution of the Crown. He recognises that we must maintain the unique and robust brand of democracy that we now have and that there would be a most substantial alteration in the balance of power arising from an elected or appointed president. But who would his proposed substitute council of three eminent Australians consist of? He has suggested at least one woman, but what should its composition be? Should this be in the Constitution? If it includes a retired judge, doesn't this conflict with the separation of powers?

The popular feeling of the moment is not necessarily the best way to make a decision for the next hundred years. The ALP and some members of the ARM are on record as saying that, if the people want it, they will support a popularly elected president. We must learn from others—such as what recently happened in New Zealand, where populism went unchallenged, where there was no official opposition to a radical change in voting and where now, if you come third, you

have all the power to choose the government and, if you come second, you come last.

There will also be incidental consequences from changing our way of government. While not the main issue here, it would be very difficult to maintain our present flag with a Union Jack in the corner. Let us not get spooked into change for change's sake. The one united cry from all Australians is to ask for a system of government as good as the one we have today, but we have that system now and none of the models being put to this Convention give all the advantages we now have. Ironically, while public opinion is so strongly against politicians, the polls show a majority want to give political powers to the replacement for our head of state. It is up to the supporters of this uncertain experiment to prove it will work.

I say to the people at this Convention today and to the people of Australia that we have an enviable system of government that gives us stability and adaptability and checks and balances on excesses of government. It is a system that has always been able to provide the solutions and resolutions this country has needed over the past hundred years and it is a system that guarantees to continue to do so for the next hundred years.

CHAIRMAN—Thank you. I call Mr George Mye.

Mr MYE—Before I begin, I would like to pay my respects to my Aboriginal brothers and sisters on whose land I am standing to make this delivery. I am pleased to stand before you today to represent the people of the Torres Strait on this very important and historic occasion of discussing with other fellow Australians the future of the Constitution of our country, Australia.

My homeland, the Torres Strait, the Coral Sea islands of Australia, is the only part of Australia that is geographically bordering on a foreign country. Despite the many threats of illegal entry and health risk—as the Prime Minister recognised publicly on his visit to the Torres Strait in 1997—we islanders are standing firm in our commitment to the country's unity and wellbeing and are forever on the alert in our national responsibility as

the front door keepers of Australia's far northern gateway.

The Torres Strait Island region, homeland to Australia's second minority group of indigenous people, is located in the waterways which separate the southern coast of Papua in Papua New Guinea from the northernmost tip of North Queensland in the Cape York Peninsula area. It consists of 150 islands, islets, that are continually washed by 'Kuliss', the westerly flow of currents from the Pacific Ocean via the Coral Sea, and alternately by 'Gutat', the easterly flow of currents sourced from the Indian Ocean via the Arafura Sea.

Torres Strait Islanders are proud Australians who volunteered in response to the call for the defence of Australia in World War II when the enemy's invasion of Australia's north became threateningly imminent. From a total population of 3,000 give or take, 800 of our community's able-bodied men replaced their traditional Lava Lavas, their fish spears and harpoons with army khaki uniforms and 303 rifles to form the Torres Strait Light Infantry Battalion, the pride of every Ailan man even to this day. As expressed in Ailan Tok by the men: 'for the king, the flag and the country' we swore on oath to fight and die. Whilst Torres Strait Island society, like others, is subject to change over the years and may not be today the exact replica of what it was in 1860, it still cherishes Ailan Kostoms which are directly derived from the original society those many years ago.

The arrival at Darnley, or Erub, Island in 1871 by the first Christian missionaries of the London Missionary Society had a profound influence over customs, tradition and society in the Torres Strait, the most notable being the 'Coming of the Light'—the establishment of Christianity throughout the Torres Strait region. The Queen became the head of our church and central to the religious, cultural and civic traditions of the people of the Torres Strait. To this day, this remains at the centre of our cultural life in the Torres Strait. By removing the Queen, we remove a way of teaching that has been passed on to our children over many generations. The monarchy is an essential element of our history

and cultural inheritance. Its removal will deeply affect the fabric of our society.

The debate about the Australian Constitution which has led to this Convention has not addressed the considerations of a range of diverse groups such as my own within the Australian community. Norfolk Island, Cocos (Keeling) and Christmas Island territories have their own tailor-made constitutional arrangements within the national framework of Australia, as does Lord Howe Island within New South Wales. Torres Strait Islanders want both the islands and Australia to be the model to the world of positive race relations and wellbeing.

It is time, therefore, to consider what sort of Torres Strait regional administration and political arrangements will best meet the needs of Islanders and all Australians in the 21st century. The new report on greater autonomy for Torres Strait Islanders by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs should focus positive thinking. While the mechanical problems of change are important to both sides of the debate, consideration must also be given to the symbolic nature of our constitutional monarchy.

Our connection to the monarchy should be part of the consideration of all Australians in this debate. Delegates may think that life in the Torres Strait is far removed from the Australian Constitution, but in 1972 the issue of national status of Torres Strait Islanders, as well as the northern boundary of Australia/Queensland with the emerging independent nation of Papua New Guinea, was raised in both national parliaments. Proposals had been sent forth by the Commonwealth to move the islands of the Torres Strait across the international border that would be formed with the newly independent Papua New Guinea as a matter of goodwill to the new nation. One suggestion by the Commonwealth was that the new international border would coincide with the 10th Parallel, ceding eight Torres Strait islands to Papua New Guinea. Torres Strait Islanders mobilised an effective lobby group, the Border Action Committee, placing the Torres Strait Islander point of view before the Australian/Queensland government. The

Queensland government threw their support behind islanders by exercising the states rights under the Australian Constitution. This significant event in our history brought home to us an appreciation of a system that, although complex, has the necessary checks and balances to deliver history free of political coups and revolutions.

The role of the Governor-General in guaranteeing this stability is to ensure that the laws of the Commonwealth and the Constitution are adhered to in a manner which gives regard to the public interest. By introducing an appointed or elected head of state there is a chance that we will create a dual power system with competing Prime Minister and President. An elected president would need to act with regard to an electorate or political power base. A head of state who is above politics can represent everyone.

The process of change would be expensive, disruptive and unsettled if it is a process which pursues changes for the sake of change. I believe the current system of government has served this nation well since Federation. We know it, we understand it and it meets the needs of my people. We are not afraid of change, provided we can see an advantage to the people.

Dr DAVID MITCHELL—Mr Chairman, the privilege of standing here and participating in the debate on Australia's future sits heavily and joyfully on me—a privilege that I share with each and every delegate here today. Of course, privilege always carries with it responsibility, and that responsibility should sit heavily on everyone who is here at this historic and important time as we participate in the cutting edge of a debate relating to Australia's future. This great nation will shortly have enjoyed 100 years of peaceful federation under a democratic monarchy. Democracy is a keynote of this nation. Every person, every man and woman in this land who is an Australian citizen, has a right to vote. That, I have heard today, is the mark of a republic. May I say, Sir, it is the mark of a democracy. It is not only republics that claim democracy.

I listened carefully, as I am sure each delegate present in the chamber listened

carefully, to that inspiring address from Sir David Smith. Sir David explained in the clearest terms that Australia is independent. There is no question about Australia's independence from Britain: Australia is totally and completely independent.

Some may laugh—and I see some laughing. I was warned before I stood at this podium that there are some in this chamber today who would put their fingers in their ears, who would treat with derision what I need to say at this time; what I need to say by way of introduction to the useful debate that I trust we will have together. I trust that there is no-one who has been elected and no-one who has been appointed who will not listen to other arguments. It is clear that Australia is independent. Australia will be no more independent by becoming a republic. It could not be more independent than it is today.

There is no need for me to say how much Australia and its people mean to me. Not only am I now falling into the older age bracket but also I am privileged to have a heritage of five generations of Australians on my mother's side and five generations on my father's side. This is my land. I love it. The Australians are my people. I love them. And so do you, ladies and gentlemen, fellow Australians—those who are here at this time and those across the nation who are concerned with our future.

A head of state. You have heard from Sir David a brilliant explanation about the head of state. Of course the Queen is not an Australian citizen. She is not a British citizen, either. She is the Queen. Historically, it is the Queen who confers citizenship. No, I should not say 'citizenship': the right to live under a system of law and government; a system of law and government inherited in this land and moulded and changed to suit our special needs.

The Australian Constitution is unique. It is very special. It has been noted even today that the Constitution does not spell out the rights of the citizens. It has been noted even today that the Constitution does not spell out the restrictions, limitations and powers of the Governor-General. This seems strange, even 100 years ago when the Constitution was

framed, doesn't it? No, fellow Australians, it is not strange. There was a system of law and government already in existence. The Commonwealth of Australia Constitution has the nature of a treaty, a treaty among six states—colonies, as they were then— independent from each other; a treaty as to how they would operate together in one federal union.

Every person and every nation has an ultimate measure of right and wrong. There are four possible such measures. Either the government determines the measure of law, the measure of right and wrong in a nation—we call it totalitarian where the government makes the decisions as to right and wrong, the government makes decisions as to the law—or the decisions are made by a majority of the people as they did in many of the Greek city states in years gone by. The majority of the people decide what is right and wrong, they decide the law, irrespective of the consequences for individuals or minorities.

The third possibility is that there is no law. Everyone, every person, decides his or her own measure of right or wrong. We would call that anarchy. The fourth possibility is that there is a measure of law above and beyond what any person or any government might say. That measure of law exists. A Christian or a person of any other religion would be likely to say that that ultimate measure of law comes from God. That was the situation in Australia. The ultimate measure of right and wrong was a measure of godliness. There was no need for a bill of rights. There was no need to spell out rights and powers. There was no need to deal with the discretion referred to in section 58 of the Constitution. There was no need to do this because it already existed by virtue of the ultimate measure of right and wrong.

That is still the measure of right and wrong theoretically existing in this land. I know it is not necessarily being applied, I know that there are some elements of totalitarianism, I know there are some elements of anarchy and I know there are some elements of majorities making decisions, but the discretion of the Governor-General referred to in section 58 is not an unfettered discretion. It is a discretion

bounded by the Christian scriptures. This is not spelt out in the Constitution. It did not need to be spelt out in the Constitution. It is spelt out in the Coronation.

Do you remember the Coronation oaths in which Queen Elizabeth and the monarchs before her for hundreds and hundreds of years declared that they recognised that the only rule for government is God's law? That is how the Governor-General is the Queen's representative. He represents the Queen not personally, not as her delegate; he represents her fulfilling the measure of right and wrong—the measure so clearly established in the historic common laws inherited in this land and onto which our great Constitution that has lasted these many years is implanted.

As we read the word 'Queen' in the Constitution, in every circumstance except for one, we should put in the word 'Crown'. The one circumstance where we need to mention 'Queen' or 'King' is in the appointment of the Governor-General. The sovereign does this on the advice of the Australian Prime Minister, not on any other advice. The Queen must act on that advice. It might be that the Queen would question it. It might mean that the Queen would discuss with the Prime Minister whether he really understood what he was doing. What a wonderful buffer this is.

Neither the McGarvie model nor any other model put forward is sufficient to maintain the Christian heritage of this land. This Christian heritage is not just for people of religious disposition—it is not just for Christians—but for all people of goodwill. I have no doubt that everyone here at this Convention is a man or woman of goodwill who would not want to see Australia throw away this wonderful measure of right and wrong and replace it with a totalitarian measure. Not one person here at this Convention would want to see the measure thrown away and replaced with anarchy or indeed thrown away and replaced with a system that does not recognise the needs, wants and aspirations of minorities or individuals.

I know that the republicans are not saying that that is what they propose or intend, but that is the necessary implication of getting rid of the system we now have. If you get rid of

the Queen, you get rid of the Coronation oaths. You get rid of that philosophical basis and another basis is put in its place.

I am privileged to follow Mr George Mye, who adverted to this in relation to the Torres Strait Islands. How important for him and his people, who have been in this land for many more generations than mine. How important it is for those whom he recognised have seen the light. Mr Chairman, I table a booklet which I have circulated to all delegates. It is available to members of the public and is entitled *Republic? The Hidden Agenda*.

I call upon this Convention to understand that we must be able to explain to the people of Australia the historic basis of the Constitution. We have a duty and a responsibility to explain to the people of Australia the way that the measure of right and wrong is or should be determined in this nation. The measure is the law of God. This was established in 888 by King Alfred. Most of us remember King Alfred for another reason. In 888, King Alfred declared the Ten Commandments read in the light of the New Testament and Old Testament to be the Constitution of England, and so it has remained ever since. It did not start with the Magna Carta or the Bill of Rights. There was nothing new in the Magna Carta. There was nothing new in the Bill of Rights. They were not new documents. They were merely declaring an understanding of the biblical principles as they applied to that nation—declaring biblical principles which, perhaps in an amended form, apply to this land today. My call, Mr Chairman, to this Convention and the people of Australia is to continue as a nation under our great Constitution, humbly relying on the blessing of almighty God.

Mr RANN—Chairman and delegates: being a participant in this historic Convention is a privilege that imposes upon each of us special responsibilities and duties. If these proceedings are to do justice to the Australian people and to serve future generations, we must enter into these debates with a spirit of goodwill, commonsense and civilised respect for each other's views. We must be prepared to negotiate and compromise in a flexible and pragmatic yet principled way.

Most, if not all, of us hold strong views about the issues that we are charged to discuss during the next two weeks. We would be foolish, however, to cling to either rigid dogma or to a fixed, non-negotiable formula. To do so would be to fail the Australian people and, just as importantly, to fail the test of history. As delegates, we must have open minds rather than pretend pompously that any one of us has all the answers.

More than 200 years ago the founders of the American Constitution, leaders such as Franklin, Adams, Jefferson, Washington and Madison, were big enough and great enough to be flexible in negotiating a workable system that would stand the test of time. The American Convention in Philadelphia went for four months and saw more than 500 rollcall votes on key issues. Importantly, no individual, no state delegation and no group or faction was always on either the winning side or the losing side. There was give and take and a sense of common purpose. During the ratification process that followed, there was also a fundamental belief that there needed to be broad public debate about the various options in order to achieve not only substantial change but a deeply rooted form of democracy that would endure.

One hundred years ago, Australian delegates to the various meetings of the Constitutional Convention in Adelaide, Sydney and Melbourne showed that they had the courage and the foresight to put aside self-interest and short-term political advantage to embrace far-reaching changes that led to federation and the birth of our nation. Leaders such as South Australia's Premier Charles Cameron Kingston showed that their patriotism was underpinned by both a willingness to lead and to compromise in order to achieve the best possible result for all Australians.

We as delegates face a challenge which is not dissimilar to the journey taken by Australia's founders. For our predecessors, it was inconceivable to embrace anything other than union under the British Crown, even though they left us with a unique constitution, which includes key elements from the United States, the United Kingdom as well as Canadian and Swiss influences. Here in Can-

berra we are considering a new model which reflects our maturity as a nation with a willingness to chart our own destiny.

I am a republican. I was born in Britain, raised in New Zealand and migrated to Australia as an adult. For me, Australia becoming a republic is not about change for change's sake but about defining what Australia stands for and about where we are going as a nation. For me, supporting a republic is not about embracing alien concepts but about reinforcing our loyalty to Australia as citizens, not subjects.

Becoming a republic should not be interpreted in any way as being disrespectful to the royal family, which has served Australia well and for which most Australians hold great affection as well as respect. Becoming a republic is not about ignoring Australia's history or denying our heritage. It is in fact part of our evolution as a nation. I believe that as we enter a new century it no longer makes any sense for Australia's Constitution to insist that our allegiance is to the person wearing the Crown of 'the United Kingdom of Great Britain and Ireland', according to the law made by the Westminster parliament. For me, it makes no sense for a modern, mature Australian democracy that article 59 of our Constitution states:

The Queen may disallow any law within one year from the Governor-General's assent . . .

Constitutional monarchists will no doubt tell us that this extraordinary power of the Queen to disapprove acts of the Commonwealth parliament has never been used. But it is there in black and white in the Australian Constitution, and it is contrary to every principle of parliamentary democracy in a free country—in any free country.

We must explain to our fellow Australians that becoming a republic is not about abandoning Australia's active role in the Commonwealth of Nations headed by the Queen. At last count there were 29 republics and 15 constitutional monarchies with allegiance to the Queen within the Commonwealth—and even five national monarchies such as Tonga and Brunei with allegiances to their own royal families but still within the Commonwealth.

Much of the debate has so far focused on what kind of head of state Australians want and how that person should be chosen. In December I joined with my friend and colleague in Western Australia, Geoff Gallop, in issuing a paper on this issue. We believe that, above all else, Australia deserves a head of state who exemplifies, unites and promotes our nation, who lives among us, whose loyalties lie firmly and solely with the people of Australia, a fellow citizen, one of us. Geoff Gallop and I argue that a president as Australia's head of state would immediately remove any ambiguity at home or abroad about his or her primary allegiances. In our paper we argue that Australians would also want a president who is above politics, with similar powers and ceremonial duties to the Governor-General, who at present is not Australia's head of state but remains as the representative of the Queen.

Former Prime Minister Paul Keating, a number of my senior ALP colleagues and many fellow delegates, both republican and monarchists, have a preference for the appointment of Australia's head of state by a two-thirds majority of federal parliament. I am certainly relaxed about the two-thirds model, a variation of which I would support as the method of choosing my own state's governor in South Australia. I am aware that the two-thirds model is principally designed to ensure a non-partisan choice as head of state by attempting to entrench bipartisanship into the selection process. This model would, after all, be a substantial improvement on the present blatantly partisan process whereby governors and governor-generals are selected by the party in power, often with no consultation, let alone agreement, with opposition parties.

In our paper, Geoff Gallop and I raised another option that deserves both debate and serious consideration: the direct election of the president. This is the option most favoured by the vast majority of Australians. We are aware of the arguments against direct election: that the elected head of state's popular mandate would rival that of the Prime Minister and that the election process would become highly political. Politicians who

oppose the direct elect model argue that those Australians who favour this system because they do not want politicians to choose their president would simply end up with a politician as their president if the direct elect model is endorsed.

In 1897, delegates to the constitutional convention were directly elected by the people, all of them. And the deliberations of the convention were directly voted upon by the people. One hundred years ago, the concept of full democracy was considered somewhat dangerous and radical, but there was enough confidence and goodwill to trust the Australian people. That was 100 years ago.

I firmly believe in the sovereignty of the Australian people, and I believe we should listen to the view of Australians who believe that the position of president should rest upon the ultimate power of people. Whatever we decide and recommend at the end of this Convention, all of us who are politicians, professional or amateur, should endeavour to address the perception that politicians do not trust the people and that the people do not trust the politicians to select a decent president. If we do not address that issue, we are in danger of recommending a system that will be thrown out by voters in any referendum. I certainly reject the notion that only the direct elect model requires the codification of the president's powers.

If we are to genuinely embrace a real and not a token republic, the codification of the president's powers in respect of the parliament, the cabinet and the Prime Minister is essential whatever model is supported. An Australian head of state with properly codified and limited powers, elected or at least nominated by the Australian people, would give the public a real stake in this important constitutional change. Endorsing this approach is also more likely to achieve the level of public support necessary to win a referendum with a majority of votes in the majority of states. If this happens, the debate should then focus on the process of how candidates for president are nominated, and I am impressed with a variation of the Irish model and some of the ideas put forward by Professor Victor

Prescott that involve an active role by the Commonwealth parliament. Certainly we have to devise some way of making the Australian people involved in this process committed to this process and with an investment in the process for their nation.

There are other issues that need to be resolved. So far little attention has been given to the selection and the role of a vice-president or person who temporarily assumes the powers of the head of state during his or her absence. At present, section 126 of the Constitution states that the Queen may authorise the Governor-General to appoint any person or any persons jointly or severally to his deputy or deputies within any part of the Commonwealth. In practice, state governors in order of seniority are usually appointed to act as deputy during a Governor-General's absence. What would be the process in a republic? Would it be the same or would we choose a vice-president by appointment, through a two-thirds majority or even by election. That is certainly something that needs to be considered.

Next week we will consider the implications for the states. I strongly believe that individual states should retain control of their own constitution and will argue that federal governments or Commonwealth parliaments should have no role in appointing or selecting state governors. I do, however, believe that bipartisanship should be entrenched in a republican system in choosing future governors of South Australia.

I had hoped that this Convention, held on the eve of both the centenary of Federation and a new millennium, could have been given a wider brief. Last year I wrote to the Prime Minister proposing that this Convention should be the appropriate forum to consider statehood for the Northern Territory, which was handed over to the Commonwealth by South Australia in 1911 in exchange for a commitment to build an Adelaide to Darwin rail link. We are still waiting.

Incorporating the new state of the Northern Territory into an Australian republic would be a timely and fitting act of nation building, and I look forward to a special relationship between the two central states of South Austral-

ia and the Northern Territory in the near future. The year 2001 would also be an appropriate time to make constitutional steps towards reconciliation and a recognition of Australia as a multicultural nation.

Our brief during the next two weeks may be limited, but it is vitally important. None of us must act as spoilers, and we cannot afford gridlock or stalemate. I came here with one mission: to support a republic with an Australian head of state in a system where the

people of Australia are sovereign. It is their nation and they must have a sense of ownership of both the process and the outcome. There are a number of paths that we can choose, but with goodwill, an open mind, an ear to the people and an eye to the future I am convinced that all delegates can make an important and historic contribution to the future of Australia.

CHAIRMAN—I thank delegates for their attention at the Convention today.

Convention adjourned at 6.14 p.m.

