COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Inquiry into an Australian Republic

TUESDAY, 13 APRIL 2004

SYDNEY

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **http://www.aph.gov.au/hansard**

To search the parliamentary database, go to:
http://parlinfoweb.aph.gov.au

SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Members: Senator Bolkus *(Chair)*, Senator Payne *(Deputy Chair)*, Senators Buckland, Greig, Kirk and Scullion

Substitute members: Senator Stott Despoja to replace Senator Greig for the committee's inquiry into the establishment of an Australian republic with an Australian Head of State

Participating members: Senators Abetz, Bishop, Brandis, Brown, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Humphries, Knowles, Lees, Lightfoot, Ludwig, Mackay, Mason, McGauran, Murphy, Nettle, Sherry, Stott Despoja, Tchen, Tierney and Watson

Senators in attendance: Senators Bolkus, Buckland, Kirk and Payne

Terms of reference for the inquiry:

To inquire into and report on:

(a) the most appropriate process for moving towards the establishment of an Australian republic with an Australian Head of State; and

(b) alternative models for an Australian republic, with specific reference to:

(i) the functions and powers of the Head of State;

(ii) the method of selection and removal of the Head of State; and

(iii) the relationship of the Head of State with the executive, the parliament and the judiciary.

WITNESSES

Committee met at 9.31 a.m.

HESPE, Mr Stewart, Deputy National Chairman, Australian Monarchist League

CHAIR—This is the first hearing of the Senate Legal and Constitutional References Committee inquiry into an Australian republic. The inquiry was referred to the committee by the Senate on 26 June 2003, and in the meantime we have received over 600 submissions for this inquiry. Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera.

I now welcome the representative from the Australian Monarchist League, Mr Hespe. You have lodged submission No. 42 with the committee. Do you wish to make any amendments or alterations to that submission?

Mr Hespe—Was that the one from the league itself? I did make a personal submission as well.

CHAIR—We are looking at the league submission.

Mr Hespe—No, I have no amendments to make to that.

CHAIR—I now invite you to make an opening statement.

Mr Hespe—Thank you. The first thing I want to say, and which I said in my personal submission, is that the main purpose of my interest here is to object to the abuse of process that this inquiry constitutes and the misuse of public money—that is, taxpayers' money—to promote a particular and divisive activity as far as the citizens of Australia are concerned. We have had enough of the division caused by the republican push, as it has been called. This matter was decisively decided by the people of Australia in a referendum in a constitutional way and we still have this sort of activity going on.

I also want to say that the actual material promoted by the committee does not represent an inquiry as such; it is quite blatantly a piece of propaganda. There is not one mention in the discussion paper about the existing alternative to a republic—an alternative which we have enjoyed since Federation and the fruits of which we enjoyed before Federation.

Australia is probably the safest place in the world; it is certainly one of the freest democracies in the world. Why do you want to change that? Nobody but a fool wants to change anything unless it is for the better. There has been no information given by the movement for a republic which gives any indication that a republic could be better than what we have got. One therefore questions the motives of those who are promoting a republic. I have canvassed a number of these things in my personal paper, but the league's paper, which was prepared by the national chairman, Mr Philip Benwell, goes through a number of other issues. He points out, as I did, that in our opinion this is ultra vires as far as the Senate is concerned. The Senate is a house of

review. It is not the Senate's place to promote a propaganda campaign for anything, much less a republic, and yet here we have a committee of the Senate doing just that, and we ask why.

We then move on to the way that the inquiry has been set up. It has been set up as an inquiry into 'an Australian republic'. The material provided gives not one reason why a republic should be considered. The discussion paper runs to 30-odd pages and not one question is asked there as to whether we should consider a republic and there is no reason given as to why we should. All that is included in the paper is the drivel about the form of a republic, the head of state and all the stuff that has been dredged over and over again by the republic movement for years, with no real answer and no real constructive reason as to why we should even give the time to consider it.

We on the other side of the question are very concerned about the use—or misuse—of public moneys and the abuse of process that is constituted by this so-called inquiry. We also point out that there is an enormous cost involved in this, as there was in all the business leading up to the referendum. This is money that could have been well spent on much more important issues. In this state, money needs to be spent on public transport, hospitals, schools and heaven only knows what else, and I suspect it is the same right around the Commonwealth. And yet here we have all this money being wasted on the futile exercise that we are engaging in today. Not only that—and this is a matter of concern to me—but the people that are promoting this have taken an oath of loyalty to the Queen and her heirs and successors according to law. By any test they are oath breakers, and by any further test they are acting in a treasonable fashion—that is my personal opinion and I know it is shared by a lot of other people. In passing, I want to say that the committee cannot even get their agenda correct. They refer on the agenda to 'Australians for a Constitutional Monarchy' appearing at 2.45 p.m. The title of that organisation is Australians for Constitutional Monarchy, and I point out that we already are a constitutional monarchy.

It seems to me that republicans, being completely bereft of any reason for a republic, have avoided that question and are using the old processes instituted by the former—unlamented—Prime Minister, Paul Keating, to achieve what they want by subversive means. This discussion paper is a subversive document, and you do not realise, Chair, that the majority of people in Australia look at it in that way—

Member of the audience interjecting—

Mr Hespe—except for a few ignorant people that might think otherwise.

CHAIR—I do not think that casting aspersions on other people in this room or anyone else in a personal way—

Mr Hespe—I withdraw that, Chair.

CHAIR—is going to help this debate. I ask you to actually go to your submission. I have allowed you a fair degree of latitude in terms of that personal abuse so far, but I think you need to stop it there and concentrate on the issues.

Mr Hespe—I thought I had been doing that. The issue is the whole question of the reality and, if you like, the legality of what we are going through. I also point out that, as of Thursday, I have

been given to understand that, of the speakers today, only two submissions had actually been published. Those were the submissions of Professor George Williams and Mr Bill Peach. We have not been able to find any of the others. Mind you, I do not think that is a great loss, if the ones that I have are any indication. The drivel that Professor Williams goes on with here is almost beyond belief. He says:

... I believe that a model should be arrived at through a broader process of public consultation and education—

and you could interpolate 'propaganda'. He continues:

Unless such a process is undertaken, it would seem unlikely that a referendum on the republic will be passed.

If that does not mean that we have to start a propaganda campaign, I do not know what it does mean. He uses the example of what happened in the ACT government when they introduced a bill of rights. He goes on to explain that there were 49 public forums held, amongst other sorts of things, including a deliberative poll. We all know what a deliberative poll is. It is what is otherwise known as a 'push poll'. He is using this as a model for what the republicans ought to be doing to inveigle the Australian public to consider a republic.

This was first brought into the public arena more than 12 years ago, when it was run into the Labor Party's conference as waiters were putting the chairs up on the tables in the last moments of the conference. In that time the republicans have not arrived at what it is they consider a republic ought to be. One would have thought that, if they were really taking this thing seriously, they would have arrived at what it should be. The fact of the matter is that a republic can be anything. We only have to look around the world at what republics are. The United Nations from time to time list their member states in order of, I suppose, the best places in which to live based on income, lifestyle and all of those sorts of things. Invariably, out of the top 10, eight of them are constitutional monarchies. In 1999, for example, the only two republics listed were Iceland and the United States.

CHAIR—Mr Hespe, I wonder if I could interrupt for a moment. We have until 10 a.m. I suppose what I could do is give you a choice: you can either keep on talking until 10 a.m. or give the committee a chance to ask some questions between now and 10 a.m.

Mr Hespe—By all means, ask questions. I can talk as long as you like—

CHAIR—I got that impression.

Mr Hespe—or you can ask me questions. It is all one to me.

CHAIR—Is there nothing else you want to add at this stage?

Mr Hespe—Go ahead.

CHAIR—I have just a couple of points to set the record clear. We have had some 600 submissions. I am informed that all of the submissions of those who are witnesses today are on the Net and the others are being progressively put on the Net. Secondly, we are here charged with terms of reference passed by the Senate. Those terms of reference ask us to look at the most

appropriate process for moving towards an Australian republic—that is summarising, of course—and to look at alternative models for an Australian republic. I think you should take that into account when you are criticising the committee for not doing other things. I suppose my question to you goes back to some of the suggestions you were making. You were saying that the Senate should not be involved in this process. Are you contending to us that the Senate has no role in the constitutional amendment process?

Mr Hespe—It certainly has, in my opinion, no role of the sort that is represented by this inquiry.

CHAIR—So when it comes to amending the Constitution what do you say the role of the Senate should be? Should it have different powers to the House of Reps?

Mr Hespe—No.

CHAIR—In that case, what do you think the role should be?

Mr Hespe—The role should be to review any legislation that the House of Reps sends to it.

CHAIR—The House of Representatives has a role to embark upon deliberations on constitutional change. Are you contending the Senate should not have that role?

Mr Hespe—Only in the sense that I have already said. Constitutionally the Senate is a house of review. It is very clear.

CHAIR—So there is no encumbrance on the role of the House of Representatives to consider constitutional change; you are saying that there should be an encumbrance on the role of the Senate.

Mr Hespe—In the form that this has taken. If the Senate wishes to bring back the whole question of republicanism and the existing constitutional arrangements, yes, it can do that. But when it uses its position and powers to promote a particular point of view, in my opinion that is quite wrong.

CHAIR—The fundamental point, though, is that the House of Representatives could embark upon and adopt the same terms of reference. Are you saying that the Senate should have no power to do that? Are you saying the Senate should have a different range of powers to the House of Reps?

Mr Hespe—Yes, certainly. I would have thought that was perfectly clear from the Constitution.

CHAIR—And only in respect of constitutional change are you contending that the Senate should have less power?

Mr Hespe—No, certainly not. Getting back to what I said originally, the Constitution makes it clear what the role of the Senate is: it is a house of review, which, by definition, means that it reviews material sent to it by the Reps.

CHAIR—The Senate played an important role in the last process, not just in reviewing legislation but in generating new ideas and new directions.

Mr Hespe—Yes, the Senate of course can introduce a bill of its own.

CHAIR—But I am trying to work out how you would limit the Senate's power this time as opposed to every other time in Australia's constitutional history.

Mr Hespe—I limit the power, if you make me put it that way, when the Senate sets out to promote a particular ideological point of view.

CHAIR—This is a very radical suggestion.

Mr Hespe—I do not think so.

Senator PAYNE—Mr Hespe, in its submission the Monarchist League makes reference to what it believes is the inadequacy of public polling on this issue. You make reference to your objection to plebiscites on page 4 of your submission. It leads me to ask how you think the opinion of the Australian people can be measured or assessed if you reject two reasonably democratic, common uses in relation to those matters, particularly polling. Polling is, as you know—and I am sure you are a close observer of political process—one of the more acute ways of measuring the political temperature.

Mr Hespe—As far as polling is concerned, the one thing I agree with Malcolm Fraser on is that the only poll that counts is the final election—

Senator PAYNE—We all know that.

Mr Hespe—and, in the case we are talking about, the referendum. Polling, depending on how it is done and who does it, can be a reasonable assessment of opinion, but I think it has been pretty adequately demonstrated that on the other hand it can be very wide of the mark. Unfortunately, it can also be used—and I am sure it has been used—to promote a particular point of view. In other words, it can be used to say, 'The people say this,' whereas you have a very small sample. Statistically speaking, the sorts of samples that most of these polls use are very inadequate. Secondly, the method of sampling is very critical. There is a certain amount of—how can I put it?—poll theory. Most polls, and certainly the ones quoted in the discussion paper, fall very far short of the ideal way of polling. In point of fact, I mentioned in my submission two polls on a far better base than the ones that you have quoted, and they showed the opposite answer to the ones you quoted. As far as plebiscites are concerned, you have the same problem. They are not compulsory, for a start, so you are going to get a very small response. They can also be manipulated by the people that are using them to create the sort of answer that they want. These are our objections to plebiscites and my comments on the polls.

Senator PAYNE—In relation to polling, it seems to me that in your submission, on one hand, you choose those you like and, on the other hand, you dismiss those you do not like.

Mr Hespe—No, I do not. I dismiss the ones I do not like for the reasons I have said.

Senator PAYNE—Quite.

Mr Hespe—And I qualify the ones I do like, if you put it that way. It is not a question of liking; it is a question of facing the facts.

Senator PAYNE—You like the results.

Mr Hespe—I like the results, yes. I simply say that the two that I quoted were on a better base than the ones you quoted—that is all. I do not say that they are a definitive; I simply say that, on the science of polling, they are on a better base.

Senator PAYNE—From your perspective.

Mr Hespe—No; from reality.

Senator PAYNE—It seems there are a couple you may have left out in your observations. Moving to plebiscites, the use of these in the Australian political process has on more than one occasion necessitated more than one plebiscite to assess views. Something as simple as the introduction of daylight saving is a good example. Do you reject that as an assessment of Australian political view?

Mr Hespe—Yes, I do. You can use the example of compulsory enlistment during the First World War as another example of plebiscites that did not work.

Senator PAYNE—I am sorry, I do not understand why they did not work.

Mr Hespe—They did not work because the government wanted to bring in compulsory enlistment, and they used a plebiscite to achieve that and they did not get the answer they wanted. The people voted no, in effect. The same thing applied with daylight saving. You assume that daylight saving is what the majority of people want. Is that right?

Senator PAYNE—I do not make any assumption whatsoever about daylight saving.

Mr Hespe—Then why raise the question?

Senator PAYNE—I was talking about plebiscites.

Mr Hespe—Yes.

Senator PAYNE—And plebiscites being presented on more than one occasion.

Mr Hespe—That is right.

Senator PAYNE—But you do not think that is a fair way to assess a position?

Mr Hespe—No, I do not, because whoever promotes the plebiscite—it might be the government—wants a particular answer. If they do not get that answer, they try another plebiscite—probably with a different question.

Members of the audience interjecting—

CHAIR—Please sit down. Senator Buckland, you had some questions.

Senator BUCKLAND—In the opening remarks in your submission—and I would have asked similar questions to those asked by Senator Payne—you made the comment that Australia is one of the safest places in the world. How does that change if we become a republic? Why would we no longer be the safest place in the world?

Mr Hespe—I did not make that inference.

Senator BUCKLAND—You did.

Mr Hespe—What I said, Senator, is that Australia has enjoyed its present system of government since Federation and before, and it is, amongst other things, the safest place in the world. It is certainly one of the most free communities in the world. It enjoys a very high standard of living. Why should we want to change it for something which is certainly not going to guarantee anything better? If you look around the world, it is going to almost guarantee something worse. That is all I said.

Senator BUCKLAND—It does not guarantee anything worse, does it?

Mr Hespe—I did not say it would guarantee anything worse; I said that if you looked around the world you could assume that it would. Nobody can look into the future. All I am saying is that only a fool would want to change other than to change for the better. That is all I am saying.

Senator BUCKLAND—Well, don't put me in the fool category. I have no other questions.

Mr Hespe—No, I did not mean that, Senator.

Senator KIRK—Thank you, Mr Hespe, for your submission. I just wanted to clarify one matter in relation to the referendum process. It seemed from your comments that you have some concerns about the way that the process occurs—that is, the formulating of the question by the House of Representatives, putting it to the Senate and then finally putting it to the people. Is that—

Mr Hespe—No.

Senator KIRK—No, you don't have difficulties?

Mr Hespe—We in this country are fortunate in that our Constitution may be the only one—there might be one other—that can be changed only by the people as a whole. In other words, parliament cannot change the Constitution. Nevertheless, only the parliament can initiate a

constitution. As you said, the House of Representatives formulates it, the Senate approves it and so on. I have no objection to that.

Senator KIRK—Okay. So what then is your view in relation to a question or a similar question being put multiple times possibly? At the conclusion of this process the House of Representatives may or may not decide that it wishes to enact legislation which will then have to be put before the Senate and then to the people again on the question of a republic. Do you have any problems with that? I am just trying to point out that that could well be the inevitable consequence of what occurs here. I guess it comes back to your comments about the Senate's role here in this process.

Mr Hespe—It is a separate issue, in my opinion, as to whether the Senate should be embarking upon what it is doing now. But in direct reply to your question, or what I imagine your question is: what is my objection to the using of the process of plebiscites and then eventually leading to a referendum? Is that—

Senator KIRK—No, not a plebiscite. I was just concentrating on the referendum process that is enshrined in the Constitution, in section—

Mr Hespe—Unless I misunderstand you, Senator, the referendum process, as we just agreed, is simply a matter of it being put to the people in a particular form of question.

Senator KIRK—Okay. I am just trying to clarify that because I am sure that you are aware that it is quite possible that the same or a similar question could be put to the Australian people. It was put to them in 1999 but it could well be put to them again in five or 10 years.

Mr Hespe—I see what you are getting at. That is as may be, yes. That is a constitutional process. Except for the actual working of the question, perhaps, nobody could have any objection to that. What we object to is the suggested process in the discussion paper of a series of plebiscites presumably getting closer and closer to what the Republican Movement wants so that then it can be said in its propaganda in the eventual referendum that people said this, this and this in a plebiscite, which may or may not have any real meaning. I draw your attention to that exercise in futility, the constitutional conference, or whatever it was called, in 1998. The election for that was a non-compulsory postal vote. If you looked at that vote you would have found that the majority of elected representatives were republican representatives, by what you might call a plebiscite vote. But when it came to the referendum the result was the reverse. What I am saying is that you cannot assume that a plebiscite has any real meaning. To use it in further propaganda for the next plebiscite or whatever is improper. That is all.

CHAIR—Thank you very much, Mr Hespe.

[10.00 a.m.]

LATIMER, Mr David Richard Peter, (Private capacity)

CHAIR—Welcome. You have lodged submission No. 519 with the committee. Do you wish to make any amendments or alterations to it, or would you like to start off with an opening statement?

Mr Latimer—I would like to make an amendment, but only a minor one, on page 9 at paragraph 5. The first line says 'represent not the'. It should really read 'represent not just the', and that changes the meaning. On page 55 there is a mistake in a diagram. The diagram on the legend reads 'national electorate B'. It is marked as a dotted line but it really should be a solid line. I think most people would have been able to work it out. I have set the record straight.

CHAIR—Thank you. Do you have an opening statement?

Mr Latimer—Thank you, Chair, and thank you, Senators, for reading my submission and giving me the opportunity to give evidence today. Over the weekend, I prepared a one-page summary of the model I will be presenting. I believe the committee already has a copy of that. There is also a pile of copies at the back of the room, and they are there for the benefit of the audience. They would not have been able to read the submission beforehand, unless they looked at the Internet over the weekend. It is there now; I think it was put there on Friday. I would like your permission to allow the audience to pick one up, if they would like to do so.

CHAIR—Please go ahead, Mr Latimer. If people want to take copies, they can do so at their own will.

Mr Latimer—I would like to thank Michael Payne and Susan Armstrong for helping me prepare for today and, of course, thanks to my wife, Deborah, and my family for their support. I would also like to show my appreciation for Richard McGarvie, whose efforts I have borrowed from extensively. Sadly, I will never get to meet him but, through his writings, he did inspire me with his insightful and considered approach to republican issues. I believe it is time for me to introduce the Honorary President republican model.

This is a minimalist model where the Queen's role in our Constitution is replaced by a new role: the Honorary President. Why an Honorary President? By adding that one word, you have already worked out before I have even told you that the Honorary President is a ceremonial President—a symbolic President; a President with no real power to exercise. I want the Australian public to get that point too without any confusion now or in the future, because the Honorary President is directly elected. I want people to understand what they are voting for, even if they are not interested in knowing anything more. They will be voting for an apolitical representative—an honorary role with virtually nothing to do with the Prime Minister or actual government.

Of course, Mr Chair, I am sure you will have an interest in knowing more, so let me outline what happens. On the republican transition when the first Honorary President is elected and

commences their term, they are momentarily given all powers, functions and immunities of the Queen. These are then immediately taken up by the Governor-General or state Governor as required. This means the Governor-General and the state Governors continue to do their job in the same way. As far as governing the country is concerned, nothing significant has changed. When the normal term of the Governor-General is nearly finished, the Prime Minister makes a nomination to the Honorary President for the next Governor-General. When the term does finish, the Honorary President appoints the nominated person.

Please note that the Honorary President does not choose the Governor-General. Also, the Prime Minister can make a nomination at any time, which means the Governor-General can be replaced at any time. Mr Chair, I am sure you can see the parallels with existing arrangements. Maintained are the constitutional conventions that underpin our system of parliamentary democracy. The same applies at the state level. After a nomination by the Premier, the Honorary President may appoint a replacement state Governor. The Honorary President, of course, has a ceremonial function, but apart from the appointment power, which I have just discussed, they are prohibited by the Constitution from exercising any other executive power whatsoever. The result is a model which appears to fulfil the essence of what Australians are looking for in a proposed republic—that is, a directly elected, independent and apolitical head of state. Not only that, but it is safe and it retains all the stability of our existing system of government.

I would like to quickly draw attention to just three of the many advantages of the model. Point one: in the election of the Honorary President, seven of the 10 candidates would normally be former state Governors or former Governors-General. The model takes full advantage of the experience of these distinguished Australians. The other three candidate places are filled through public petition. Ultimately, any eminent citizen could become the Honorary President. Point two: the dismissal procedures, should they ever be needed, are fair. Under this model, the Governor-General cannot be instantly dismissed. The same applies to the Honorary President. Point three: the model continues our unified federal system, which we enjoy today. The Commonwealth and the states make the transition together.

This is the first public presentation of the Honorary President republican model. It is appearing as a working prototype—mark I, if you like. Today I hope to be a confident advocate of the model as it stands, but I am under no illusions that there is not a lot more work still to be done. I want Australia to have the best possible constitutional system. On that point everyone here should agree. If we are to make changes, we need to first get them right. This is my contribution in the pursuit of this aim. Mr Chair, I think I am ready for your questions.

CHAIR—That is a brave statement. I have one or two questions and then I will pass over to my colleagues. It seems to me that, although you are setting out to get a minimalist model, it may very well need quite a lot of constitutional change. The naming of the head of state—I suppose that is what we are calling it—as 'honorary' does not necessarily mean that the powers under the Constitution that are currently with the Queen would be negated. You would have to go through the Constitution extensively to do that. Is that something you have canvassed at all? Do you think that is not a major problem?

Mr Latimer—With regard to the amount of change, there are 20 sections—I have counted them—in the Constitution which mention the Queen, and I think you would be able to implement this model by making changes to only those 20 sections. In the submission there is an

example of the changes you would make, but I am not pretending that I am a constitutional lawyer and that you would adopt those changes. Nevertheless, it is not wordy and the formulation of how the powers are distributed is done by formulae. In fact, I have pretty much outlined in my submission the essential elements of how you would distribute those powers. You would have a constitutional power with the Honorary President and you would have a ceremonial function, but apart from that you would have the powers held by the Governor-General, or in the states it would be the state Governors, just as they are today. So, on that basis, that is why I am thinking of it as minimal model and that the changes in the Constitution would not be extensive.

CHAIR—So the position would be called 'Honorary President', but that President would have constitutional powers?

Mr Latimer—They would have the power of appointment and the Constitution would specify exactly how that appointment would be made. The important point that would be mentioned would be that the Prime Minister would make the nomination. It is meant to parallel exactly what happens now, where the Queen acts on the advice of the Prime Minister.

CHAIR—Where does your direct election come into this?

Mr Latimer—I think that—and this is through reading what is in the press and articles, and through speaking to people—one of the important things people are looking for is having a head of state who is elected by the people. It makes sense to people. The constitutional function is important but, when people make that assessment, they are looking beyond what the Constitution says; they are looking for someone who they can look up to, who they can respect, who can be the patron of organisations and who can say and do things to bring people together. The Queen does that in Great Britain and I think people are looking for that.

Senator PAYNE—Mr Latimer, thank you very much for your submission, which is innovative, comprehensive and provides the committee with some interesting options to have a look at. I was going back over your 'two heads are better than one' concept, which starts on page 28 of your lengthy submission. I am still not sure though that I can come to terms with the delineation, if you like, or the demarcation between two officials at that particular level in the way that you have drawn it and how you would not have duplication, additional expense and perhaps some confusion over who is really fulfilling which role. Would you like to address those issues?

Mr Latimer—That is an important question that arises when someone is looking at my model trying to work out whether there is merit in it. The term 'two heads are better than one' is merely there to grab your attention. In the Constitution, we see that we have two officials doing two different jobs. In a sense, we have that today: we have the Queen—and people ask if the Queen does her job for Australia well, to which I reply that she does something here—and we also have the Governor-General. People see the Governor-General as a constitutional umpire and they see the Queen as someone else. It would really be up to the first Honorary President, when they got that position, to actually finalise and delineate what they would do. What I have put in the submission is sort of like a prediction based upon the role as I have outlined it. I see the Governor-General on the ceremonial side spending their time in the functions of the federal government. They would still open parliament and they would still see ambassadors.

When I had a look at the schedules of the governors-general, it seemed like most of the things they were doing were associated with federal institutions. For example, the High Court celebrated its centenary recently, I believe. They are doing those jobs and they are also based in Canberra. The Honorary President would be doing something more akin to a State Governor as they go around their state, but they would be doing it at a national level. I think there would be great interest in what the elected head of state would be doing. Again, it would be ceremonial. They would be appearing in a wide range of capacities, and there is certainly plenty of work for them to do, whether it is visiting hospitals, going to schools, opening something, attending an exhibition, cultural event or even a sporting event. There is so much that the Honorary President could be doing and, at the same time, plenty of work still left for the Governor-General. If the demarcation is not entirely clear here, I am sure that, because there is plenty of work to do, they would be able to work out the best thing for each of them to be doing.

Senator PAYNE—Is that an area which you think obviously has potential for development to achieve greater clarity and specificity about the particular roles?

Mr Latimer—One thing I think I mentioned in the submission was the idea that this is something that people can make a contribution to. It should not just be me pointing this out. I have started something, but why cannot people, if they like the idea in general, say, 'Yes, I have an idea of what the Honorary President could be doing in our community. We could invite them to do such and such.' It is something that people can understand. We already in a sense have a model for that. We see what the Queen does—and the Queen does get a lot of attention. We understand the things she does. And they are not political. People can understand that. It is a great opportunity for others to make a contribution there.

Senator PAYNE—So is part of your reasoning for this bringing the office closer to the people? Is that what you are trying to say?

Mr Latimer—Absolutely.

Senator PAYNE—Thank you very much for clarifying that.

Senator BUCKLAND—Thank you for your model, Mr Latimer, because it is different to any I—and probably the rest of the committee—have seen before. It is too early for me and I am too untrained in law to try to judge it for you. But there are a couple of things I note: it means that we still have a Governor-General, basically as we have now, with an Honorary President duplicating some or part of the current Governor-General's work. Is that how you see it?

Mr Latimer—I do not see it in terms of what the constitutional duties are; I see them as quite separate. I am untrained in law myself so I cannot make an assessment on the legal side any more than anyone else. But, in terms of the duplication, there is an overlap on the ceremonial side. There are certain cultural events where you would presently have the Governor-General or a state Governor attending that the Honorary President could do. It would be quite good if either of those officials could attend. The delineation which I have mentioned is derived from the constitutional role. The Governor-General is the highest official in the federal jurisdiction, so it would make sense that they would have priority when it came to federal institutions. The Honorary President would probably stay away from the federal parliament and Canberra most of the time and go around the country and attend functions in general.

Senator BUCKLAND—If I am interpreting you correctly, the Honorary President would not be paid. However, there would be quite a hefty bill associated with the cost of having them in office: that is, if they were to attend community functions around the country, they have to get there. They wouldn't cop the bill themselves, I am sure.

Mr Latimer—No. I originally started with the idea that the Honorary President should be unpaid, but it seemed a little bit unreasonable. There would be a lot of work to do. The word 'honorary' can mean unpaid. It does mean a couple of other things at the same time. So the definition I have taken is from the *Macquarie Dictionary*. It says:

... given for honour only, without the usual duties, privileges, emoluments, etc.

So I am using that definition. The main reason I have used the title 'Honorary President' is one of communication. I want to communicate the idea that the Honorary President is not an executive President. I do not want anyone to be confused about that, so I am using the term 'Honorary President' first and foremost as a communication tool, to communicate what the role is.

So, regarding costs, I am expecting that the Honorary President would be paid. I do not think you could compare the costs of the office with that of the Governor-General; I think it would be much less. The Governor-General has a number of things he is responsible for in his office which includes the properties, the honours system and, I believe, the Australia Day Council. That is where the expenditure goes. I have made an estimate of between $1 million and $2 million for the running of the office annually, but that is just one person's estimate. Obviously, someone else will have a look at it and come up with a better estimate than I have come up with. So there would be a cost to it.

Senator BUCKLAND—Thank you for that. There was just one other area I was going to ask you about, because I have listened to this debate so many times in so many arenas. With regard to selecting a person such as you suggest, basically, I think you are on the right track—it would be great to get such a person. But how do you find a person who is non-political and does not qualify for any of the offices that you mentioned before? Where do we find this person for popular election if they cannot be promoted, particularly by a party, to get them to that state? Who pays for the cost of their election? If I were to nominate someone who I think would be suitable and appropriate for what you are suggesting, no-one in this room would know who it was. No-one in my home state, apart from those in the city I live in, would have even heard of the person, but that person would admirably fill the role you are talking about. I am very unclear on the qualifications for that.

Mr Latimer—Yes, it is important that the position be seen as apolitical. I think there would be an expectation. I do not think that I could put the model up without having some sort of sanction on people who have association with political parties. I think it should be left to legislation. I am imagining that the person would not be in a political party and would not have been employed by a political party organisation, perhaps for a number of years beforehand. I have not specified the number, but it would be perhaps three years or five years. There are many people, of course, who would fit that.

As to the person we are looking for, I think we have been well served by our state governors and our previous governors-general. That is why I am putting forward the idea that the parliament should be able to nominate those people. They should in a sense be thought of first because they have the experience and they have done the role. As far as I am concerned, they have all done it well, so they should certainly be put forward. There could be other people. As a consequence, you always need to have that avenue of being able to nominate by petition. That said, through all of the elements that I have put toward the model, I have tried to create a position which is apolitical. So the way the election is held and how people find out about the candidates should be done in a way which does not involve the political parties. The second part is the tricky part: how do people find out? Even with state governors, chances are that there are a lot of people who will not know who the State Governor is.

What I am proposing is that it should be run very much like a plebiscite. The AEC would collect information from the candidates—or parliaments, if they are the nominating organisation—and put together a booklet just like you would for a plebiscite so people can find out about the candidates. They will all be good candidates, I am sure, and people can make that choice in their homes if it is a postal ballot—that would be my preference. As a consequence, there really would be no need for political parties to get involved. In fact, a number of organisations—the NRMA is one that I can think of—already do things like that, so why can we not have it for this?

Senator BUCKLAND—Perhaps because it is a political process—government at any level would attract politicians. That would be my view on it. I am not opening that for debate; it is just a view. I like people like you who do in fact put something before us that makes us think differently, and I appreciate that. I cannot judge your views until I have heard enough from you and others, but I see a lot of difficulties with it in getting it accepted. But I wish you well in your endeavours.

Mr Latimer—I see difficulties with that as well. This is one person's contribution. It is being aired in public for the first time. What happens next is very important. But one of the things about politics as opposed to this position is that I would imagine that someone entering politics—and you would know much better than I—is looking to change things and be part of the government in order to put policy forward, have ideas and be heard. The Honorary President does not have political power. As a consequence—and, in a sense, I am hoping that this ends up being true and that I am not incorrect in saying this—if you have a position where there is no political power, are political parties necessarily going to be that interested in finding someone to fill it?

Senator KIRK—Thank you, Mr Latimer, for your contribution and for providing us with a model that is somewhat thinking outside of the square, so to speak. I have a few questions in relation to the relationship between the Governor-General and the Honorary President. You mentioned in your submission that the Governor-General would be nominated by the Prime Minister and appointed by the Honorary President. Is that correct?

Mr Latimer—That is correct.

Senator KIRK—Who, then, would remove the Governor-General under your model, if that became necessary?

Mr Latimer—The Honorary President would remove the Governor-General—

Senator KIRK—On the advice of the Prime Minister?

Mr Latimer—but they would only be able to do it if they had received a nomination from the Prime Minister. As to the word 'advice', which is mentioned in the Constitution, because I am not a lawyer—I am not facing government—it seems a bit funny to me and I thought I would try to imagine what a modern way of expressing the same thing would be, so I have said that the Prime Minister would make a nomination and then the Honorary President would make the appointment. The wording of the Constitution would say that, after making the nomination, the Honorary President may make the appointment, which is effectively the same as the system we have today.

Senator KIRK—So it does leave that discretion in the hands of the Honorary President as to whether or not to accept the Prime Minister's nomination for the Governor-General?

Mr Latimer—In the wording I used in my example, they would not have the discretion to reject the nomination; they would have the discretion to delay making the appointment.

Senator KIRK—In what circumstances would there need to be a delay?

Mr Latimer—The circumstance would be when there is the possibility that both the Prime Minister and the Governor-General would move to dismiss each other at the same time—in other words, in the midst of a very protracted constitutional crisis, perhaps more protracted than what we experienced in 1975. Then, by creating that delay, whether it be a day or a week, the constitutional crisis would unfold without necessarily involving the Honorary President. I think it puts the Governor-General in a bit more of a certain position than now, but I am only saying that because I am not sure exactly how the Queen handles this situation. I have used what Richard McGarvie has written in his book. If what Richard McGarvie says is correct, then it does mean that the Queen is clever about how she dismisses the Governor-General, and I want the Honorary President to be clever about it as well.

Senator KIRK—With the way you have just described it, doesn't it politicise to a fair extent the role of the Honorary President if he or she can be involved in this process?

Mr Latimer—That would be a decision that the Prime Minister would have to take into account if they decided to make a nomination in the middle of a term of a Governor-General—in the middle of a constitutional crisis. The Governor-General making that nomination would be then politicising the office or at least asking for some sort of decision from the Honorary President which would be discretionary.

Senator KIRK—I think that probably needs to be thought through a bit more. Perhaps we will have a look at that a bit more closely.

Mr Latimer—Absolutely. It is a very contentious point under just about any model that is put before the committee or, ultimately, in a referendum.

Senator KIRK—In your submission you talk about the tenure of the Honorary President. You propose a:

> Term of five years, extensible in lots of six months to a maximum of eight years for synchronisation with general elections.

Am I to suppose from that that the Honorary President would be elected at the same time as a normal general election was held? Is that what you are suggesting—that there will be elections for the Honorary President every time the general elections have to be held?

Mr Latimer—Not quite at the same time—I am not saying that someone would enter the polling booth and vote in the general election and for the Honorary President at the same time. What I would imagine would happen is that the Honorary President would be elected shortly after. The cost saving that I am thinking of there is in terms of updating the rolls and making sure everyone is on the roll. I believe that happens before a general election, and it is not necessarily a good idea to do it that way in my model. I think that is very expensive. It is not central to the model, but if you could synchronise the election there would be a number of advantages. On the cost saving I just mentioned, I am in favour of postal ballots. The other thing is that after a general election it is a funny time politically—a quiet time. I would be taking advantage of that lull, and I still see the general election as being far more important.

Senator KIRK—Finally, you say that the process of removal of the Honorary President would be similar to that of a High Court judge, with a majority of parliamentarians supporting removal in a joint session for reasons of:

> (i) proved misbehaviour;
>
> (ii) incapacity;
>
> (iii) improper exercise of powers;
>
> (iv) holding foreign citizenship; or
>
> (v) activity in a political party.

There are a number of issues I wanted to raise there. You say 'activity in a political party', but part of the eligibility criteria is that they have had no association with a political party. You are suggesting that that would apply if they suddenly decided that they wished to become involved?

Mr Latimer—That is correct. I am trying to cover my bases.

Senator KIRK—There are difficulties here with how broadly you might read that term 'political party', but I suppose that is something that could be fixed. I notice that foreign citizenship is not something that you include as part of the eligibility criteria—you say 'Australian citizen'. So are you talking about dual citizenship there? Are you talking about them taking up foreign citizenship?

Mr Latimer—I suppose what I am saying is that the Honorary President would commence solely as an Australian citizen and then would continue to be an Australian citizen. That is the effect that I am trying to create, and it is a reasonable thing—I think people would expect that.

Senator KIRK—Finally, the thing that concerns me most is the phrase 'improper exercise of powers'. What do you mean by that? You say it is similar to what applies for a High Court judge, but these are additional reasons for removal.

Mr Latimer—It is not the same as a High Court judge, because you have extra provisions there.

Senator KIRK—What do you mean by 'improper exercise of powers'?

Mr Latimer—As I have mentioned before, in drafting documents this is not something that I would expect people to take as verbatim, but I mentioned in an earlier section what would be an improper exercise of power, and that would be the exercising of a power differently to how the Constitution stated it should be exercised. One of the issues that comes up over and over again when it comes to directly elected presidents and heads of state is the idea of codification. I am making an effort there to codify and to make sure that the codification is a complete one. I do not want to have any gaps.

Senator KIRK—It is very difficult to do that.

Mr Latimer—From my perspective it is a bit difficult to do it, but I am sure there are other people who can do a very thorough job.

Senator KIRK—I think most people would find it quite difficult. Thank you.

CHAIR—Thank you, Mr Latimer, and thank you very much for your creative submission.

[10.33 a.m.]

BRENNAN, Sir Francis Gerard, (Private capacity)

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Sir Gerard Brennan—I appear to support the Corowa Committee's proposal A so far as the procedure is concerned, but I am not representing the Corowa Committee. Otherwise, I suppose I am appearing in a personal capacity and certainly not on behalf of any of my erstwhile colleagues or those with whom I have been associated. Thank you for the opportunity.

CHAIR—Thank you for your submission, which we have numbered 497. Do you wish to make any amendments or alterations to that?

Sir Gerard Brennan—Yes, there are two amendments that I would like to make. I am afraid I read the questionnaire of the committee rather hastily, and my answer to question No. 1 was yes, whereas it should be no.

CHAIR—That is a small mistake!

Sir Gerard Brennan—I thought the questions was, 'Should we have an Australian head of state?' and I was answering yes to that. But, of course, the question was not that at all. The question was whether the head of state should also be the head of government, and my answer to that is no because, as the burden of this paper would indicate, I am concerned about the retention of the system of responsible government and the powers that are exercised by the head of state.

CHAIR—Thank you—that was one change.

Sir Gerard Brennan—The second is on page 23, dealing with grounds of exclusion. I mentioned section 44 as a ground of exclusion. Of course, section 45 should be added to that, if we are going to bring a correspondence with parliamentary eligibility.

CHAIR—Thank you. Would you like to start with an opening statement?

Sir Gerard Brennan—Yes, very briefly, Mr Chair. First of all the Corowa Committee's proposal A is not one which is intended to lead to any specific result. It is intended as a democratic instrument to ascertain the community's belief at this stage. You will note that there are, I think, five members of the Corowa Committee who have put forward their own personal submissions to this committee. It is an indication that it is the procedure that is common to us all, not so much the proposals as to the form which a republic might take. Secondly, I would like to stress the importance of entrenching the presidential obligation to act only on ministerial advice as the basis of parliamentary democracy and as essential to prevent a fixed-term President from acting independently except on the occasion of the exercise of reserve powers. When we come to the question of reserve powers, oftentimes there has been discussion about the importance of codifying the reserve powers. There is not really much controversy about the powers which

might be exercised. The controversy is about the circumstances in which the powers might be exercised, and to speak about codifying the circumstances in which powers can be exercised is indeed a very daunting task. But that distinction between powers and the circumstances of their exercise is, I think, basic to much of the misunderstanding which has surrounded this problem.

If one was endeavouring to make the circumstances justiciable, one would run into very grave difficulties: firstly, in trying to identify what should be defined as the circumstances in which reserve powers can be exercised and, secondly, because that would necessarily involve judicial review. You will understand that I am quite a supporter of judicial review as a general principle but, at the same time, when we are dealing with the question of the exercise of reserve powers we are dealing essentially with a highly charged political exercise, and one which necessarily may have a temporal element that needs consideration. There might be a certain urgency about it, and to then send the matter off to litigation is perhaps inconsistent with an efficient exercise of reserve powers. Therefore, some other check or balance is needed. It is for that reason that I have proposed the intervention of what I have called a constitutional council. The process for the removal of the head of state can be the same as that under section 72 for the removal of High Court justices, but there are other solutions—for example, the German or the Irish solutions have certain advantages.

Finally, in relation to the states themselves there is no reason why the President could not be empowered to accept the power to appoint or dismiss a Governor on the advice of a Premier. It would be necessary, I think, to have a specific provision empowering the President to accept and act upon the advice of a Premier rather than the ministers of the Commonwealth in order to overcome whatever problem there was in the Wakim case, which dealt with the dual jurisdiction of the judiciary. Those are the essential points that I would like to make, and I stress that my concern is with the powers, not with the politics, as it were, of the exercise.

There is one other general observation I would like to make. There are of course a variety of arguments in favour of having a republic rather than a monarchy. There are many arguments, some of which you have heard put here this morning quite eloquently, about the desirability of retaining the monarchical system. There is a constitutional difficulty about it also, and that is that, by section 2 of the Commonwealth of Australia Constitution Act—that is the covering act for our Constitution—our head of state at the moment is the British monarch. The British monarchy is in the dispensation of the parliament of Westminster. In other words, so long as we retain the existing system our head of state is determined for us essentially by the parliament at Westminster. That seems anachronistic, to put it mildly.

The problem could of course reach a classical situation if ever there were to be some change in the existing laws of Great Britain in relation to the monarchy. For example, if Prince William were to succeed Her Majesty the Queen, or even—a possibility if some of the newspapers there are to be believed—if there were an abolition of the monarchy, where would we be left? So long as we are left with the present situation, as governed by the Act of Settlement of 1701, we do know of course that there is a discrimination against those who either are members or marry members of the Roman Catholic faith, and that in itself seems to be inconsistent with section 116 of our Constitution. So there are constitutional difficulties about retaining the present system. They are not insuperable and perhaps not imminent, but at the same time there are those constitutional inaccuracies. That is really all I wish to say by way of introduction, but if there are some questions that I can answer I will be happy to do so.

CHAIR—I am sure there will be. Thank you very much for the submission. I have an opening general question. You are here supporting the Corowa proposal, but does your proposal differ in any way from it?

Sir Gerard Brennan—I think not, except perhaps in one respect. The Corowa proposal does suggest that one of the questions that is put to the plebiscite, essentially, is the question of whether the powers of the President should be codified. I am quite happy to have codification, in the sense that it is there in sections 5, 57 and 64. These are the powers which presently exist. There is no sense talking about the powers in relation to prorogation and dissolution of the parliament, because the powers have been codified already in our Constitution. There is no sense talking about the power to commission or to dismiss a Prime Minister or a ministry, because that is codified in section 64. Where, however, I think there could be some ambiguity about it is in the circumstances in which those powers should be exercised. I would be against any attempt to codify this, whereas I think there might be a considerable view that it would be desirable, if we could, to codify the circumstances in which those powers could be exercised.

CHAIR—In the absence of such codification, how do you get the binding effect that you think is necessary, as did Justice McGarvie?

Sir Gerard Brennan—A binding effect?

CHAIR—A binding effect of the conventions governing the powers.

Sir Gerard Brennan—First of all by a constitutional enactment that the President, if he should be called a President, should act only on the advice of his ministers—by that I mean the federal Executive Council or the Prime Minister or, in the case of a minister administering an act, on the advice of that minister. There would be a qualification to that, and that is that, in relation to the exercise of the powers under sections 5, 57 and 64, the President would be able to act if he reached the opinion that it was absolutely necessary either to preserve the rule of law, essentially, or to ensure the operation of the parliament according to the customs and laws of the Constitution. Take, for example, the case of a government that falls on a vote of no confidence and the Prime Minister will not resign.

On occasions like that, the President could act. But, in order to ensure that the circumstances themselves were not justiciable but that the President was constrained so that he could not exercise powers adventitiously or idiosyncratically, I would interpose a council of state, which I call the constitutional council and which I suggest should consist of three persons who have held eminent positions and would be relied upon to formulate an informed view as to whether there were reasonable grounds on which that opinion could be formed. If they did so certify, that would be the end of it. There would be no prospect of litigation to follow.

CHAIR—Would that council be appointed by the Prime Minister or by the parliament?

Sir Gerard Brennan—By the Prime Minister within three months of a general election of the House of Representatives. It would be important to note that that council must have, at least at that stage, the confidence of the government, because this is a council that is going to essentially give the green light or the tick to an exercise of power adverse to that government—in other words, without the advice of that government. So you want to have a council which, at the

commencement of a government's term, has the confidence of that government. You must draw members from people whose offices commend them to the public so that the public may have confidence in their acceptance of the view of the President of the day. If that is there, you have built in a mechanism in a sense for the political protection of the President and some break upon an adventitious or idiosyncratic exercise of power, which is the real problem underlying the reserve power situation.

CHAIR—On page 18, you talk about deadlock between the Senate and House of Representatives and the avenues that could be available to a head of state. You do not include in there the option of sending the Senate alone to an election.

Sir Gerard Brennan—That is not provided for in our Constitution. Under our Constitution—as I am sure senators are aware—senators have a fixed term, and the election for their replacement takes place within 12 months of the termination of that term of office.

CHAIR—That is something we do not have to bite off now, I suppose.

Sir Gerard Brennan—It is something I did not want to bite off in this submission. I was concerned to draw attention to the underlying problem of the powers. Once the committee or the Commonwealth has a general view of how the powers should be displayed and controlled, I suggest that then—and only then—do we start to move towards what sort of a President we want, how we want a President elected, whether we want a President and so forth. Concentration really has to be on the powers that you are going to allocate to this person rather than on the method of election or dismissal.

CHAIR—Thank you.

Senator PAYNE—Sir Gerard, thank you very much for your submission. A number of the issues that you have raised are very important for the committee in terms of the process aspect of the terms of reference. You make an observation early in your remarks in the submission under the heading 'The Westminster System' that, regrettably, in the debate that preceded the 1999 referendum, there was little analysis of some of those elements that pertain to the operation of the Westminster system. With regard to how we take the process from here, how do you suggest we overcome that particular challenge?

Sir Gerard Brennan—It is not an easy one. I can only suggest that, if the questions are put as the Corowa Committee suggested and there is an affirmative vote for a republic, there will be a large task to be performed and a very considerable amount of work to be done by parliamentary counsel and by the committee that would then have to work on it in order to ensure that the strengths and weaknesses of any proposal that went to a referendum were clearly spelt out. If we get rid of some of the misunderstandings that surround this problem, which are often overladen with emotion, it would help—in particular, the understanding that we are not going to codify powers but are going to try to think about the circumstances in which they can be exercised. That seems to me to be one of the great problems in this.

Senator PAYNE—Would that be your suggested role for the constitutional council, as you referred to it, or council of state—that is, to think about how to overcome the problems by using that sort of a mechanism?

Sir Gerard Brennan—That is right. If you try to put into law what the circumstances are in which these powers can be exercised, you must then put in some check or balance. Chapter 2 of the constitution of the People's Republic of China is one of the most wonderful statements of human rights but there is no judicial review. You need to have a check and balance in there in order to ensure that whatever you have put in the law is effective. Ordinarily you do that by going to the courts. Are the courts effective in cases of reviewing the exercise of reserve power? I would suggest that they are not; they are too slow and deliberate and accurate. But if you have a committee, a council of state, which is drawn from people of experience—for example, previous Governors-General, presidents, chief justices and justices—then you have a combination of those who can make an assessment. I think that is perhaps the best answer that our Constitution presently provides.

Senator PAYNE—I personally think that it is a very interesting proposition and one which fits well in our consideration of the terms of reference. You talk in your submission about supporting Corowa proposal A. We have briefly discussed the level of public acceptance and public awareness of the debate and issues surrounding it. Corowa proposal A incorporates a plebiscite prepared by experts that raises three particular questions. Today and in some other submissions we have had concerns raised about the value and efficacy of the plebiscite process. I think it is appropriate to acknowledge that it is not one that Australia has taken up often in its constitutional history. What are your thoughts on the value of the plebiscite process and how we might counter the perceptions of concern that it is not a valid or democratic process?

Sir Gerard Brennan—Its democratic quality cannot really be challenged, I respectfully suggest. If all members of the electorate are entitled to vote at a plebiscite, that seems to me to be a way in which one ascertains the views of that electorate. The issue, of course, is what questions are going to be posed in the plebiscite. One can look at it in two ways. One can say, 'Do we want to have an Australian head of state?'—a republic, in other words—and then we can say what sort of republic we want to have. That is the Corowa proposal. The alternative is to say, 'Do we want a republic of this or that form?' Then and only then do we say whether we want a republic at all, which really was the problem that faced the electorate on the last occasion that a referendum was put. It seems to me that there are great advantages in ascertaining whether the mass of the Australian people do wish to have a republic. If so, it will be necessary to discover what is the best form which most people would favour, and that is what the Corowa proposal sets about doing. Once we have that, we can proceed to the major exercise of forming the amendments that are necessary, but I do not see any alternative to it.

Senator KIRK—Thank you, Sir Gerard, for your submission. I have a couple of questions in relation to the constitutional council that you speak of. On pages 15 and 16 of your submission you set out the process for certification by the council of the President's proposed exercise of power and state that, if it is deemed to be necessary, a certificate would be issued which would be final and conclusive. You then go on—and this is where I am uncertain as to what you mean—to say:

> If the Council denied a certificate, the President's action would be subject to judicial scrutiny and disallowance.

At that point are you proposing that it would then go before a court—that it would then become justiciable?

Sir Gerard Brennan—Yes. In other words, the incentive would be to have effectively the approval of the constitutional council. If the constitutional council could not concur with the President in the proposed exercise of power, obviously there would be a very serious problem, and a serious problem of that kind probably needs to go before a judicial tribunal for determination. Could I just make one observation in relation to the second last line on page 15. There is an important change in the way it all legally eventuates, and that is: is the constitutional council going to certify that there are reasonable grounds for the opinion or is it going to certify that the opinion is correct? Those are two quite different things. I have really opted for the council to certify that there are reasonable grounds for the opinion, because the opinion, I think, must be the opinion of the President. He or she must bear personal responsibility for it. On the other hand, if you want to make it absolutely foolproof so that no court can interfere, then you can change it to make it so that the council can certify that the opinion is correct. If so, that would prevent the bare possibility of something intervening of a judicial kind.

Senator KIRK—So at the moment you are proposing that there be some deference then to the judgment of the President in relation to this?

Sir Gerard Brennan—Yes.

Senator KIRK—And you are right: it does make a difference because, if there is only this reasonable basis, as opposed to absolute correctness—if there is such a term—then that would permit a court to judicially review the matter.

Sir Gerard Brennan—It would permit a court to find that there was some other reason for challenging the opinion. For example, they could challenge it on the basis that the opinion was not really formed. That would be very difficult when the President says, 'I am of the opinion on these grounds,' and the constitutional council says, 'Yes, those grounds are reasonable.' In other words, there is a very small logical margin, but it is a logical margin. At the moment, I would prefer to amend, if I might, the second last line on page 15 to say: 'if the council certified that there are reasonable grounds for the President's opinion that the exercise of the power is absolute'.

Senator KIRK—You say:

> If the Council denied a certificate, the President's action would be subject to judicial scrutiny and disallowance.

Could it not just be the case that, if the council denies a certificate, that is the end of the matter?

Sir Gerard Brennan—It could, and that would be another alternative. I am not sure that would not be a good alternative. What I am mainly concerned with here is excluding the judicial process, and how far you think it should be excluded is a matter of judgment.

Senator KIRK—It then avoids the need to bring the courts into it at all, which is essentially what you are seeking to do.

Sir Gerard Brennan—Exactly. I do not want to bring the courts into what is a political process.

Senator KIRK—Exactly. Thank you.

CHAIR—I have one last question. On page 20 you contemplate a directly elected President. The way I take your submission's intent is that, if we actually do what you suggest—in terms of the codification of the council or the exercise of powers of the council—then it does not really matter whether a President is elected or nominated by any other process. But you do make the point that, if there is direct election, you would virtually eliminate eminent non-political citizens as candidates.

Sir Gerard Brennan—Yes. That is perhaps at least the result of having an elected President. There is another and I can best illustrate it, if I might have the leave of the committee, by mentioning a draft that I have seen of a paper about the Irish President that is to be given by Professor Morgan, who is the Professor of Constitutional Law at University College Cork. When Mary Robinson was campaigning, and you will understand that in Ireland it is very much a controlled presidency, one of the remarks that she made was, 'I'll be able to look Charlie Haughey—the Taoiseach—in the eye and tell him to back off if necessary because I have been directly elected by the people as a whole and he hasn't.' In other words, there can really be a shift in public perception about the role of an elected President and the role of a government in office.

So, personally, I would be concerned about the elected presidency. I can understand the popular desire to have an elected presidency, and at least the proposal I have put forward to the committee is one which I think will control the worst excesses of an elected presidency, but it would not avoid all the difficulties. Could I mention, for the council's interest perhaps, the German and Irish methods of both election and dismissal, which have some advantages. I have a copy here if the committee would like to have it for their records. They are quite interesting methods of both election and dismissal.

CHAIR—Would you like to submit that as evidence?

Sir Gerard Brennan—Certainly, for the committee's consideration. It is not that I am advocating it, but I think it is something which the committee may like to see for comparative purposes.

CHAIR—Have you contemplated the concept of a collegiate system of selecting the President with a college being elected by the public? Is that something you would be attracted to?

Sir Gerard Brennan—I would have no objection to a collegiate method. It seems to me to have some advantages even over the appointment by the Prime Minister. I suppose the problem then is: how do you elect the college? Provided that is a sufficiently democratic process, that might be a halfway house, as it were. On the other hand, you do need to retain a capacity on the part of an elected government to have confidence that the powers which they advise upon will be exercised faithfully according to that advice. You do not want to have two political hands on the tiller of national interest, as I have said.

CHAIR—Thank you very much, Sir Gerard, for your submission and your evidence. I am sure it is going to be important in the deliberations of the committee.

Sir Gerard Brennan—Thank you.

Proceedings suspended from 11.02 a.m. to 11.14 a.m.

FIDLER, Mr Richard Alan, National Committee Member and Chair, Constitutional Issues Committee, Australian Republican Movement

HENRY, Ms Allison, National Director, Australian Republican Movement

WARHURST, Professor John Lewis, Chair, Australian Republican Movement

CHAIR—I now welcome representatives of the Australian Republican Movement. You have lodged a submission which we have numbered 471. Do you wish to make any amendments or alterations to it?

Prof. Warhurst—No, we do not.

CHAIR—Would you like to start with an opening statement?

Prof. Warhurst—Certainly.

Ms Henry—The Australian Republican Movement welcomes this Senate inquiry and thanks the committee for the opportunity to appear before it this morning. We would particularly like to acknowledge the multipartisan nature of this inquiry, as we strongly believe that no constitutional change can occur without a consensus across the political spectrum.

The ARM is the largest and most active republican organisation in Australia. We enjoy support from across the community and from all sides of politics. Our membership is spread across every state and territory and is made up of Australians from all walks of life who support the simple and self-evident proposition that we should have a head of state who lives amongst us, who knows what it is like to be an Australian and who owes allegiance only to the Australian people.

The Australian Republican Movement is a democratic organisation with fully elected national, state and territory committees and local community forums across the nation. The Australian Republican Movement's sole focus is an Australian republic. We acknowledge that other organisations and individuals support a range of additional constitutional reforms that are not strictly relevant to the establishment of an Australian republic. Not wishing to comment on the merits of these issues, the ARM has no position on changes beyond the introduction of a republican system of government.

Almost five years have passed since the 1999 referendum, and we believe the time is right to begin moving towards a new referendum to replace a remote and outdated institution with an Australian republic. Polls in November 2002 and January 2004 confirm that the Australian people share this belief. In fact, 57 per cent of those polled in January this year would have liked a referendum on this issue to have occurred in 2004. Polling consistently indicates that Australians want a republic with an Australian head of state. On 25 January 2004, a Newspoll published by the *Daily Telegraph* in Sydney found that less than one-third of respondents wanted the Queen to remain as Australia's head of state. This finding confirmed polling over the last decade that has consistently indicated strong support for the proposition that Australia's head of state should be an Australian, drawn from amongst us.

Given support for these propositions, the ARM welcomes the Senate's focused approach in its terms of reference. The ARM would like to thank the committee for the extensive and thought-provoking issues paper it produced to stimulate this discussion. The ARM's submission in response addresses in some detail the terms of reference and each of the questions raised in the issues paper. On occasions we suggested that the questions posed would best be dealt with by an elected convention or, indeed, by the federal parliament itself.

The ARM's submission was drafted by members of our national committee after lengthy consultation with ARM members and other key stakeholders. Many individual members have also made submissions to the inquiry in their personal capacity. The ARM embraces the view that any change to a republic must engage the Australian people across the nation. This principle underlies the ARM's submission to this inquiry and is essential to our preferred process for progressing towards an Australian republic.

A number of central themes underpin the ARM submission. Firstly, Australia deserves a republic with an Australian head of state, a republic that can accommodate the best of our traditions and our hopes for the future, a republic that places us well for the challenges of the 21st century. Australians want a head of state with real symbolic resonance and a head of state who they can relate to. Maintaining a distant monarch in Australia's highest office can only alienate Australians from their political institutions.

Secondly, the move to an Australian republic should be driven and owned by the Australian people. The republic should suit the temperament and traditions of our democratic, egalitarian culture. The Australian people should be consulted every step of the way in the making of it.

Thirdly, an Australian republic should maintain our parliamentary system, its traditions and conventions, regardless of the mode of appointment of the head of state. These traditions, combined with the democratic traditions of the Australian people, have given us a century of stable, democratic government and should be maintained to support a future Australian republic.

Mr Fidler—I will address part (a) of the committee's terms of reference. The ARM has devoted much time and thought to the best process towards establishing an Australian republic with an Australian head of state. Throughout 2003, the Constitutional Issues Committee conducted an extensive national consultation with our membership on this question. At the outset, we decided that a renewed process must be more consultative than the one leading up to the 1999 referendum. At that time, the people were given a chance to have their say just twice: in voting for half of the delegates to the constitutional convention, and then, at the very end, at the referendum. It has been said that if you give the Australian people a take it or leave it proposition they will leave it. Next time, the Australian people should be closely consulted. Australians will not want a republic unless they feel they have ownership of it and their voices have been heard.

After much discussion, the overwhelming view of the ARM's membership and of our national committee was in favour of the following process: to begin with, a multiparty parliamentary committee should prepare an information campaign on several plebiscite questions. To assist people in making their decisions in the plebiscites it is essential that the information campaign be extensive, balanced, fair and well disseminated. We find ourselves at one with monarchist organisations in their support for further public education on our Constitution. In this matter it is axiomatic that the Australian people should be fully informed as to their options. Following the

information campaign there should be three non-binding plebiscite questions put to the Australian people. Firstly, there should be a plebiscite vote on the threshold question: should Australia be a republic with an Australian head of state or should we remain as a monarchy with the Queen as our head of state? Opinion polls repeatedly indicate that most Australians want a republic with an Australian head of state, and these polls have been consistent for a decade now. The basic proposition should be put to the people to test support for the issue and to justify the time, effort and expense of proceeding further towards a referendum.

Secondly, another plebiscite should be held to seek people's views on how our head of state should be appointed. A range of broad models that have clear community support should be presented in a preferential vote. These options might include prime ministerial appointment, parliamentary appointment, election by an electoral college or direct election by the Australian people. We believe it is vitally important that the Australian people have ownership of their republic. It makes sense that they have a say in its defining characteristics before voting on it in a referendum. Voting in this plebiscite should be preferential so as to best decide which model is most acceptable to the people as a whole.

Thirdly, there should be a further plebiscite on the title of the head of state. This should be held concurrently with the plebiscite on broad models. Whether all three plebiscite questions are held concurrently or separately would depend on the political timetable—there are issues of practicality that should be determined by the government of the day. If the first threshold plebiscite question is carried, we believe an elected convention should formulate the specific details of the model, guided by the results of the other plebiscites. We believe an elected convention is the best forum for drafting the model. Conventions were an essential feature of the Federation process as the movement towards a Commonwealth surged, faltered and paused to reconsider before eventually succeeding. If the models plebiscite has not delivered a clear preference, then more time may be required for the convention to examine the options and give the best chance for some consensus to emerge.

All convention delegates, we believe, should be elected, aside from the Prime Minister and opposition leader, and possibly the state and territory leaders as well. An advisory body of constitutional experts should also sit with the convention but not vote. The convention should be given time to assess options, consult and arrive at compromise. Once the first draft of constitutional amendment is framed, the convention might adjourn to allow time for the community and the nation's various parliaments to consider it. The convention should then reconvene to make any further revisions before submitting the final draft to the Commonwealth parliament to begin the referendum process. Once passed by the parliament, the amendment should be put to the people at a referendum held under section 128 of the Constitution. Professor John Warhurst, chair of the ARM, will now address part (b) of the inquiry's terms of reference.

Prof. Warhurst—The ARM's submission on alternative models for a republic stems from our firm view that the type of republican model that is put to a referendum should be chosen by the Australian people. How this should be done, according to the ARM, has just been outlined by my colleague. The ARM believe that the chosen model should be consistent with Australia's established parliamentary system of government. We therefore rule out an executive style presidency as it is found in the American constitution. There is little support among the Australian community and within the ARM membership for such a model. To adopt it would be to transform Australia's system of government in an unacceptable way.

Beyond that, our concern is that any model should give Australia an Australian head of state. The preferred model should be responsible and should be developed in such a way that it is as democratic as possible and as faithful as possible to our parliamentary traditions. The ARM is open both to popularly elected presidents and to parliamentary appointed presidents. The ARM has submitted five models for the consideration of the committee. They are: firstly, the Prime Minister appoints the President; secondly, the people nominate and parliament appoints the President; thirdly, an elected presidential assembly appoints the President; fourthly, the people directly elect the President; and fifthly, the people choose from the parliament's selected list.

We have addressed their strengths and weaknesses in our submission. If one of these models is eventually chosen by the Australian community, the detail should be drafted by a fully elected constitutional convention. Any weaknesses would need to be identified and rectified by that fully elected constitutional convention and ultimately by the Australian parliament before a referendum. The ARM is also willing to support other models that may emerge from this Senate inquiry by recommending that they be included in the plebiscite process if they satisfy our basic criteria.

CHAIR—I will start by putting to you some views put to me, particularly over the last few hours when I have been doing interviews. One, I suppose, is generated by the question: will the Republican Movement ever get its act together in this country? We have a whole range of models and we are five years down the track, yet there does not seem to be any convergence on any particular model. You talk about engaging the public, but, when every person seems to be driven by a different configuration of one of a number of models, how do we actually expect to get an outcome?

Prof. Warhurst—My colleagues might want to say something about that as well. We are not concerned to advocate a particular model. We believe that the ARM has a community education and facilitation role. We want to do our share, along with others, in the intellectual work which is involved in the lead-up to a republic referendum. We certainly agree that, by the end of that preliminary process, we would hope that all republicans would accept the democratic legitimacy of a model which has emerged from a process of putting the alternatives to the community.

I take your point—there are still disagreements about the type of model that ought to go to a referendum in the community. We do not see it as our task to say from on high to the Australian community what that model ought to be. We think a much better process—and this is reflecting upon the experience of the 1990s—is to take our time and to allow the Australian community to deliberate for as long as it wishes over the proposals which ought to go to a referendum and also to allow the parliamentary process to take its time. Ultimately, agreement on a republican model to go to a referendum will follow the interaction between the parliamentary process and the community's own process of deliberation. So, while we accept that there are both individuals in the community who are committed to their own model and also perhaps some frustration as to why we do not get on with it, I do not think that the 'Why don't they get on with it' school is in the majority in the Australian community. I think, rather, the better way to put it is, 'Let's do it properly, let's do it in a fully democratic way and get it right, so to speak, before we put to a referendum a proposal which follows lengthy deliberations.'

CHAIR—But it has been seven years. What you are saying to us is, 'We are still busily intellectualising the issues.' Would it not be fair to say that there should be a greater

responsibility on a republican movement to try and broker some sort of broader consensus behind a model? Seven years is a long time.

Prof. Warhurst—I will briefly answer that. I am not sure that I would characterise seven years as a long time for such a major constitutional development. We are interested in acting as a broker and I think the existence and composition of our organisation, which includes a wide range of different views on the best model to put to a referendum, shows that we do take that brokering role seriously. But that role has to continue, not only within the ARM but also within the wider community.

CHAIR—The other sentiment that has been put to me—and, I think, one that I am attracted to—is the perception that the republican movements are intellectualising and putting pet models and egos before the ultimate issue, but also, in essence, they are talking to themselves. It is academics talking to academics. Even Mr Fidler said earlier that you conducted an extensive consultative process 'with our membership'. That is also the Republican Movement talking to the Republican Movement. Isn't there some degree of obligation to actually branch out and try not to make the same mistakes that were made last time? You complain about the process last time and that there was not sufficient consultation, but the Republican Movement was very much behind the steering wheel last time. Were you conned? What do you do next time?

Prof. Warhurst—I cannot speak for the last time; I am looking to the future. A professor is perhaps not the best person to answer this question, but I would describe what we are doing not as intellectualising the process but as widespread consultation. Although we conducted consultation within our own membership, we also conducted consultation—and continue to do so—with other republicans and others in the community. We are probably the largest and most active republican organisation, which spends all its time out in the community talking to school groups or adult education groups, or taking any opportunity to discuss these issues with the Australian community. I reject entirely the suggestion that we are intellectualising it. I think there has to be a certain amount of intellectual muscle addressed to these particular issues, but what we are doing is, rather, consulting with the community as a whole.

As you would have seen, the thrust of our submission is not about the minutiae of particular models; it is about the general thrust of wanting the Australian people to 'hold the steering wheel'—to use your term—in any future process and wanting to have a greater emphasis on the type of process which will allow the Australian community to engage most extensively, intensively and, if necessary, over quite a long period of time in the process of moving towards another referendum.

To the extent that I want to look backwards, it is to learn lessons from the 1990s. One of the lessons, as Richard Fidler said, is that you have to do it properly; you have to allow the Australian people plenty of time to discuss these issues. While there are Australians with a republican model in their hip-pocket who want to talk to you about it—and I meet them all the time—I suggest that the vast majority of the Australian community is best characterised as wanting more information and more discussion. They are probably not even aware that the Senate inquiry is under way; they should be. As an organisation, we will be doing our best to try and stimulate greater discussion in the Australian community.

CHAIR—A view has come across that people have thought that the republic is no longer a live issue. Despite consistent support in the polls, over five years, there is no public debate going on. The question has been put to us: what has happened to the Republican Movement's leadership? I suppose I am throwing that back at you, but, to be fair, there has not really been much public debate generated since Corowa.

Prof. Warhurst—I will leave it to others to judge the extent of the public debate. Only recently we launched our honorary republican ambassadors for 2004, and there was extensive media and community debate about their role in public discussion of the republic issue and of republican issues more generally. I can assure you that, as an organisation, we are out there—not usurping the role of the parliamentary and political process but playing our role through the media and in local communities. I suppose the nature of the discussion about the republic in the local community is that it is not high profile, and we are quite happy that that should be the case. But when people say the republic is not getting the attention it deserves, they tend to be referring to talkback radio or television or national media. As an organisation, our focus has been on stimulating discussion in local communities, and we reckon there is plenty of it. Clearly, in the current environment, there are issues which are grabbing people's attention more, and we understand that. But we think the republic issue is a consistent concern of the Australian community. They want it addressed, as public opinion polls show. They also want time to discuss the details of the issue.

Senator PAYNE—It is a matter of public information, but I should note for the record that I am a national committee member of the Australian Republican Movement. The issues which we have been discussing this morning with other witnesses have been broad ranging. One of the issues which we keep coming back to is the question of a plebiscite process and what that will achieve in this particular debate. For example, in his submission and in his valuable evidence Sir Gerard Brennan referred to the lack of analysis of certain elements of the change proposed before the 1999 referendum. He was talking about the mechanics of the Westminster system. Mr Fidler, in his opening remarks, referred to the extensive debate and discussion that was required to in fact even move us to federation in the first place. Your submission advocates a number of plebiscites. I would be interested to hear why you think they are valuable, what importance you place on those and whether you think they will help in the level of analysis of the issues that has been referred to as lacking previously.

Mr Fidler—We think plebiscites are enormously valuable. To begin with we support a threshold plebiscite on the issue of whether or not we should have a republic. The contention has been made that there are opinion polls that suggest majority support for a republic does exist and has existed for a long time. I think it is time to test that proposition. We need to test that proposition before we can justify the expense, effort and energy of proceeding any further. In that sense, that first initial threshold plebiscite is certainly justifiable to test whether we need to expend all that effort and time in proceeding any further.

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

Senator PAYNE—Do you think there is any doubt about the democratic value of the plebiscite process, as has been suggested in other submissions?

Mr Fidler—I would not think so, no. The democratic value of a compulsory, non-binding plebiscite vote is pretty irrefutable, I would have thought.

Prof. Warhurst—I do not think any of the arguments against a plebiscite stand up at all. I would also add that the community discussion and public education that needs to take place around the republic issue is best done around these plebiscites. I think discussion and education in the abstract is going to be more difficult than the discussion and education which will take place around particular questions being put to the Australian community. Putting these questions to the Australian community and surrounding them with some education which will enable people to better appreciate the intricacies of these questions is an ideal democratic method to proceed with.

Senator PAYNE—I have one other question about the response to question 29, which is about the best way to formulate the details of a model. The submission refers to a fully elected convention. How would you change the method of election from the one that was used for the convention held in 1998?

Mr Fidler—As I recall, half the positions in the convention of 1998 were appointed by the government of the day and half were elected. I think you would look at adopting the same process that led to the election of the elected delegates to the 1998 convention. As I recall, at the time there was a postal vote system that seemed, in the end, to work quite well and was able to reduce costs. But I do not think we really have any strong recommendations one way or another on the mode of election to that constitutional convention. Perhaps the government of the day might decide what was the best and most cost-effective approach to electing those delegates.

Senator KIRK—Thank you very much for your submission. In relation to the first, threshold plebiscite, how do you address the difficulty and the criticisms that inevitably will arise that you cannot ask the threshold question—that is, whether or not we should become a republic—without giving some information as to what type of republic we are going to become? It is a chicken and egg kind of issue, which is often raised with me.

Prof. Warhurst—Briefly, before handing over to Richard Fidler, let me say that one possibility, of course, would be to hold the second, more detailed plebiscite about republican models at the same time. You would guarantee, therefore, that there would be information and education about models about at the same time. But I think the Australian people are able to distinguish as well as anyone else between abstract arguments that do not go anywhere and arguments which are leading on to the opportunity they would have under our proposal to address and choose between models. Whether the second plebiscite question is held at the same time or held later, it would still be held in a context in which there would be no doubt that the whole purpose of the exercise was to ultimately give the Australian people a choice as to the particular model which would go to a referendum. I will ask Richard Fidler to expand on that.

Mr Fidler—We found two schools of thought amongst our members about whether to hold the threshold question and the models question concurrently or separately. Some contend, as Professor George Winterton does, that to hold them concurrently is the best way to do it because

therefore you remove all those blank-cheque arguments about what kind of republic we are voting for. On the other hand, it has been suggested that that question could be ameliorated if there were an understanding that the legislative process that sets in train the plebiscites would give the people an undertaking that, at some specified date after the first plebiscite, they would have some kind of legislative guarantee that they would have a chance to vote on the kind of republic that they favoured. The other argument in favour of having separately held plebiscites on the models and the threshold question is that it would allow the vexed question of which is the preferred model enough space and air to have the question debated and decided outside of the separate question of whether we should have a republic in the first place.

We concluded that these matters and the timing of the plebiscites would ultimately be decided by the government of the day as it considers issues such as whether to hold those plebiscites concurrently with a general election in order to save money and, if so, which one would be held concurrently with a general election. While we can make that recommendation, ultimately the government of the day would decide what would be more practical: holding them simultaneously or at a later date. We certainly believe that the plebiscite question on the title should be held concurrently with the models question. It might mean that all three questions were asked concurrently or, alternatively, the first threshold question be followed by two more questions at a later date.

Senator KIRK—In relation to the second and third plebiscites, if we can call them that, how do you overcome the difficulty that would inevitably arise if you presented, say, five models to the electorate? There would be difficulties just in trying to understand the differences between the five. You understand them and a lot of us here do, but for the average citizen it will be quite difficult to understand the subtle differences between the five models. How do you address that? No doubt you will say that there will need to be an education campaign and the like, but realistically how will that information be communicated to the electorate?

Mr Fidler—I think we would recommend that the options that are put to the people in a models plebiscite would be put in terms of having options relating to broad principles. For instance, there could be three options whereby, firstly, the people could vote for the most minimal change where the Prime Minister would appoint the head of state; secondly, the parliament would appoint the head of state; or, thirdly, the head of state could be elected directly by the Australian people. Perhaps you would want to include an electoral college option as well. So each of the options you provide would be based on broad principles rather than specific models, and we would recommend that a convention would therefore frame the details of that model.

That would be particularly appropriate in the case of direct election by the Australian people. If the people voted for that, it would beg the question: what kind of direct election model? We have offered two direct election models in our submission. One model envisages the parties being very heavily involved—an open direct election model where a certain number of electors nominate the candidates. We envisage that the parties would participate in the election. The other model is similar to the Gallop model which was proposed at the 1998 constitutional convention. It envisages that the parliament would provide a shortlist of candidates by voting on the candidates by a two-thirds majority, in an effort to present non-party political figures to the electorate in a general election. There are all sorts of options available within these broad

principles. We also bear in mind that, following a models plebiscite, the people would be asked to vote for convention delegates.

It is quite probable that people would run for the convention on the basis that they would support a certain flavour being given to the model chosen by the people at the models plebiscite. So we would not suggest a highly detailed bit of constitutional law being presented to the people in the plebiscite. I think that would be irritating and bewildering and probably obfuscatory. I think we would suggest that the broad principles for the options of appointment be put to the people, and that the details be formulated by their elected delegates at a constitutional convention.

Prof. Warhurst—I think at the same time the detail would have to be available for those who were requesting it. I suppose that those involved in the political process, the electoral process, would know the importance of getting your main themes out to the community as a whole but at the same time having the detail available for those citizens—maybe only a few per cent of citizens—who really want the detail. It is about getting that balance right, and I think one of the lessons of the last 10 or 15 years in constitutional education, if you like, is that it is a very difficult exercise. Apart from getting the best sort of educational advice and the best political advice, you should do it as frequently as you can and have it as embedded in the community as you can. That is the sort of process that we are trying to adopt ourselves, by getting out not on a one-to-one basis but in smaller communities. There is a great danger that you are talking to the converted all the time, and by the converted I mean those people who do know—constitutional tragics—who know all the details of the Constitution and know all the various models.

The real challenge, I think, is to get to the 99 per cent of the community for whom life goes on and this will be not the main event in their lives but will be one on which they want to be trusted to take a decision. They want enough information but not too much, and they want it in a form that suits their particular needs. For some generations and some people that might mean extensive use of the Internet. For others it might mean extensive use of local communities. For others it might mean extensive use of the print media or television and radio. Using a combination of all of these things, we hope to reach as many people as possible.

Senator KIRK—In relation to the elected convention that you mention, are you suggesting that that would be an election by compulsory vote? I understand that last time the election was by choice.

Mr Fidler—It was on a voluntary basis. I think we have suggested that, for the plebiscites, the vote should be compulsory. But I do not think we have made a recommendation either way on whether the vote for the constitutional convention should be compulsory or voluntary. I think the government of the day would probably make a decision on what would be the most appropriate mode of election to the convention.

Senator BUCKLAND—Following on in part from where Senator Kirk was going: is it part of your plan or part of your current process to take those five models to the community for some feedback on the best of the five? Or are you saying: 'Here are five plans—go for your best'? If you give five to me—and I have no training at all at law, but I have a reasonable understanding of our Constitution—I am lost. What do you say to the common person who comes along to your meetings?

Ms Henry—We actually started off about 18 months or two years ago with six models. There was a six models discussion paper put out by the ARM which included, at the front of the issues paper, a quite easy-to-follow table describing the various features of each of the models. What we have done with that is consulted, mainly with our membership but also with the general community, and through that process we actually have deleted one of the models from the six models document to come up with the five that we have presented here to the Senate inquiry. We would envisage that we would continue to finetune those models. The document has been presented as a living document which we will update as regularly as we can, given our resources. We would certainly be looking at doing the same sort of process on a continual basis. I am not sure that we have included it in our submission, but we do have an overall summary document, which is just a one-page comparison of each of the main features of each of the five models.

Mr Fidler—I might add also that each of the models is prefaced by a single-page document which outlines the salient features, the mode of appointment, eligibility requirements and the pluses and minuses of each model as we see them. Just referencing back to the chair's remark earlier, when he asked when the ARM is actually going to come up with one definitive model, I should say that that is not the task we set ourselves after the 1999 referendum defeat. We set ourselves the task of becoming more process focused and not advocating one model.

We are in a position now where we feel that, as Professor Warhurst said, we want to distribute models and act as a facilitator for models. We make the point that, along with the five models we have submitted, we recognise there are other very sound models that have been devised by respected figures in the community, namely Professor Winterton, and others as well. We have never really seen it as the role of the organisation to come up with one model that we can now crusade for. We much prefer to let the people decide on their preferred model.

Prof. Warhurst—If I could come back to your point, Senator Buckland, you put your finger on the most difficult task of all, and that is public education. As an organisation we have experience in talking to the models document and by various means using it in schools and other community situations. The more time you have the better—that is true. There are devices by which you can role-play, take people through a process to try and understand a number of models and then choose between them, in trying to understand the important differences between them, but I know the Constitution is a difficult process. The experience with constitutional education in 1999 showed that trying to explain the present situation, the changes that you propose and the impact of those changes is something that is best done again and again, and often by trained educators or people who have experience in interacting with the community. It is certainly not something that is done in 10 minutes; it is something that is done often in a couple of hours, working with a small group, as we do with our own groups on a regular basis.

Senator BUCKLAND—It concerns me, though, with what you and Mr Fidler have said, that you are not actually offering one particular model; it is the education. At some point in time, won't someone have to pick up a model to run with?

Prof. Warhurst—That is right.

Senator BUCKLAND—You do not see it as your role to do that?

Prof. Warhurst—At some stage in the future it might become our role, once the Australian people have decided which general model they want to put to a referendum. I would assume that, once the process has reached the stage whereby there has been a plebiscite on which model will go to a referendum, the period between then and the referendum will be one which focuses entirely on the details, refining and identifying the necessary components of that model. So the constitutional convention process, the parliamentary process and the period of six months or a year leading up to the referendum itself will be where the Australian people will have to be given the most extensive information and education on the particular model which has been chosen by the people. It would be a process of refinement, I suppose. The education process that we are engaged in at the moment has to be very broad-brush because the Australian people have not yet made the choice as to what model should go to a referendum. It would be a process of constantly refining until we have a period when we are just concentrating on the model that goes to the referendum.

Ms Henry—Could I just add to that. Since the 1999 referendum, the Australian Republican Movement has recognised that we may not necessarily have a continuous leading role in this debate. At various times we have suggested it may be better for the ARM to step back from parts of the process and leave it to other organisations or the parliament itself to take up the lead in that time. It is also an important thing to consider that maybe the ARM is not the organisation that will particularly flow all the way through. At the moment, as Professor Warhurst just said, our role is to try and put these arguments before the Australian people and act as a facilitator, but in the future it may not necessarily be such a leading role.

Senator BUCKLAND—I think you were here this morning when Sir Gerard raised some very interesting points that in part were canvassed with you by Senator Payne: some of the difficulties that not only lie within our own constitutional legalities but also go back to Great Britain. Have you looked at those aspects that were raised this morning? Take a very simple example: perhaps the monarchy in Great Britain will be done away with—that will be an argument to watch develop. Have you looked at that issue and put it into the education program so that people will know all the complications that exist? Some issues were raised that I had not even considered. Have you looked at those issues and developed responses or ways of overcoming the difficulties that have been presented?

Prof. Warhurst—I do not think that our education kits include responses to all the very interesting points that Sir Gerard made this morning. The whole question of the possibility of the abolition of the British monarchy in the United Kingdom is one on which we do not spend much time in discussion with the general community. I suppose our view would be that constitutional reform in Australia is for Australians primarily. The idea that we might be gazumped, so to speak, by some development in the United Kingdom is one that we have not spent much time thinking about. We follow discussions about the republic in the United Kingdom—there are ARM members in the United Kingdom—but it is not first and foremost something that we have concentrated on. We are assuming that the decision on an Australian republic will come first in Australia. If it happened to come elsewhere—not only in the United Kingdom, of course, but also in countries like New Zealand, Canada or other constitutional monarchies in the Westminster tradition—some of those discussions and arguments would flow on to the Australian situation. We are concentrating on our own backyard primarily but, as a result of Sir Gerard's submission this morning, they are perhaps things that we ought to take up to a greater extent than we have so far.

Mr Fidler—Certainly some of the issues that Sir Gerard raised initially, when he pointed out that the appointment of our head of state is made by the parliament of Westminster and referred to the issues surrounding the exclusion of Roman Catholics and other people from the monarchy, are issues that we bring up all the time. We think that they are highly inappropriate for modern Australia.

Senator BUCKLAND—I would like to see an Australian republic but I tend to think that we may move that way and then be gazumped by something occurring overseas. I am worried about it and I will take advice from my friends on it.

Senator PAYNE—My question arises directly from the responses that the witnesses have just given. Throughout the submissions that the committee has received there are some very interesting proposals. We heard a new and unique one this morning from Mr Latimer about an Honorary President. Sir Gerard has raised the issue of a constitutional council. Professor Williams, who will speak to us, talks about reform of the referendum process with regard to education. I wonder whether the ARM has a view on what your organisation is able to do with those proposals. Are you planning to examine them and comment on them? What is the value of that process?

Prof. Warhurst—We plan to listen and learn and examine them. If during our examinations we found that there were conclusions that we would like to bring back to the committee, we would welcome that opportunity, but we have not done the examination yet, so we will wait and see. All the time we are trying to take on board new and innovative ways of addressing these issues. In our own meetings sometimes we invite people from all sorts of positions to try to stimulate our thinking. We were stimulated this morning by a number of submissions and we will go away and think about them.

Mr Fidler—In our own document we do hold out the possibility of a constitutional council, as mentioned by Sir Gerard, as an interesting innovation that may help address some of those issues about the codification of powers. There are several ways in which that might be addressed—other people have other suggestions, and we have been in contact with many of those people about those. Certainly, Glenn Patmore from Melbourne University, who I think is addressing the committee tomorrow, has a different view on how that might proceed. Sir Gerard's proposal is one we will look at even more closely; nonetheless, we will certainly look closely at Mr Patmore's proposal.

With regard to Mr Latimer's model, we would be very happy to receive a submission from him, examine it closely and have a discussion with him about it. Mr Latimer's idea is to maintain the separation we currently have between the roles of the Queen and the Governor-General, and transposing that into a republic where we have a republican head of state and a Governor-General exercising reserve powers. We have received models along the same lines from other people, including Peter Crayson, who I believe is addressing the committee later on today. We have also been in discussion with him in the past about that idea, which is certainly an interesting concept that we are very happy to look at more closely.

As Allison mentioned, our *6 Models for an Australian Republic* document is intended to be a living document that is subject to revision over time. We have revised it once, we plan to revise

it again next year and we will be taking the inquiry's submissions and its findings very much on board in any further revision.

CHAIR—Thanks very much for a very comprehensive submission and for your evidence this morning.

Mr Fidler—Thank you.

[12.01 p.m.]

WILLIAMS, Professor George John, (Private capacity)

CHAIR—Professor Williams, welcome. You have lodged a submission, now numbered 152, with the committee. Do you wish to make any amendments or alterations?

Prof. Williams—No.

CHAIR—Would you like to start with an opening statement?

Prof. Williams—If I could just speak for a few minutes to elaborate on the central theme in my submission to this inquiry—that is, the importance of focusing upon the process of this early stage of the next republic debate, rather than the constitutional outcomes. That is based on having looked at many of the prior referendum defeats and, if indeed at this early stage we end up with a battle of the models, the likelihood that any future referendum will fail. The history is well known, but it is worth repeating because of what it reveals about the particular problems of any future republic referendum.

We have had eight successful and 36 unsuccessful referendums, and no referendum since 1977 that has passed. It means that many Australians have never participated in a successful referendum. It also means that if you look at the issue of multiple referendums on a single issue—which is what we would be contemplating here, on the republic—many proposals have been put two or three times and indeed five times, but every time a referendum has been put subsequently it has failed. To put it another way, there has never been a referendum in this country on a topic which has passed once the referendum failed at the initial stage. What that means is that when we are looking at an issue like the republic, we need to look at that history and ask: why have all these referendums failed; why has so much public money been wasted in putting such proposals; and, most importantly, how can the process be changed to improve the prospects of success or to improve the engagement of the Australian people and their capacity to have good proposals put before them?

My view is that many of these referendums have failed not because they do not carry worthy proposals for change but because the process of putting the referendum itself was deeply flawed. It is not as if these 36 referendums have been put before the people by parliaments or by prime ministers who thought they were likely to fail. In each and every case they were put because prime ministers believed that the people wanted change, often informed by very strong polling; but the people simply were not prepared to put their vote where their view might have stood at an earlier stage. It is therefore a failure of process to translate earlier opinion into final outcomes.

I acknowledge there have been many useful suggestions for changing the process, and I just want to focus on three that I think are worth thinking about—each of which, if you like, must start with a vision for change, a vision that suggests and captures the Australian imagination because of the sort of change it would bring to Australian society. My first suggestion is that in thinking about future referendums on the republic we need to think incrementally about change. The republic is not only about constitutional change; it is also about changes to education,

changes to legislation and changes to other laws. I would be asking at this stage: what can we change at this early point rather than rushing to a referendum? Can we change some of the existing procedures, along the lines of some of the questions you have about models?

For example, if the Governor-General is, as many people regard him, our de facto head of state, should we be changing that office incrementally to explore options such as different appointment systems? There is absolutely no reason why we cannot look constitutionally at some of the models that are being proposed for a President for the Governor-General. After the Dr Peter Hollingworth affair, should we be looking at issues such as appointment by a broader section of the Australian community? Indeed, would such a change in appointment lead to different perceptions of the republic debate and potentially ease the transition to a change to an office of President?

We could also look at codifying the powers of the Governor-General; they ought to be codified today in any event. Frankly, if they cannot be codified with the Governor-General via legislation at the moment, it seems unlikely to me that we would be able to agree on any such codification as part of a more difficult referendum process. As part of this process, we could also explore constitutional councils and indeed a range of other incremental suggestions which have merit today and not simply as part of a 'take it or leave it' constitutional referendum sometime in the future. My first point is that incrementalism has been an effective strategy in other areas and could be effective here and indeed a pure focus only on constitutional change is somewhat misleading, in looking at a republic, and is certainly damaging in terms of the odds of getting a 'once up or nothing' referendum past the people.

The second process reform is a recognition that a vote in a referendum is not enough, and that has been recognised by many people. Australians clearly want to be involved in the key decisions on a republic, for or against, at all stages. Hence, I support the idea of a plebiscite and indeed an elected or otherwise appointed convention. However, I think it is important to focus not just on those national processes but on the need for local education and engagement. I direct the committee's attention to the ACT process that successfully led to the enactment of Australia's first bill of rights, the Human Rights Act 2004. That process was supported by an ACT-wide deliberative poll, not unlike a convention. It was also supported by 49 separate forums—about one forum for every 6,500 people—in which Canberrans had the opportunity of engaging directly at a community forum, putting their views and getting responses. If anything, the process in Canberra might have indicated that you need to have people thinking they are almost exhausted by opportunities for local engagement before they might be prepared to feel comfortable with their opportunities for engaging directly in decision making.

My last suggestion relates to education and the possibilities that offers for engagement. This is an old issue that has never been satisfactorily dealt with. You can turn back to the failed referendums of 1974 or earlier. Almost universally, the cry after each referendum is: 'The education process has failed. Australians tend to vote 'no' because they lack the adequate information. Any future referendum is unlikely to succeed unless this issue is fixed. It has never been done satisfactorily.' In my view, on an issue like the republic, it is unlikely to pass unless it is dealt with in some appropriate way before any future referendum.

I would start by looking at the referendum machinery itself. Again, it is legislative, not constitutional. It can be amended without having to deal with any constitutional change. The key

educative mechanism in that machinery is the 'yes' and 'no' cases that go to all Australian voters. Last time, it was a 71-page booklet, and it was difficult to find any Australian who actually read that booklet from beginning to end. I remember taking a poll of one of my classes—160 students—and I came across one student who had actually read the booklet from beginning to end. That is the key educative process in the current machinery, and from my experience it has demonstrably failed in educating Australians, not only because it comes at the very end of the process, when it is almost too late for people to learn about these issues, but because it is such a partisan document with little or no opportunity for separating out the key underlying constitutional material that people understand. It is unable to do its job of educating Australians satisfactorily.

I would look at other issues such as web based forms of education and other ways that Australians can engage with the process and get access to commonly agreed information, not at the end of the campaign but at the beginning. I think we need to overcome the fact that perhaps the most successful argument in recent referendums has been the argument: 'Don't know? Vote "no"'. Until we can overcome that argument, it seems unlikely that many referendums will be passed.

In conclusion, my own take on this particular process is that a referendum on a republic may well be inevitable sometime in the future. Many Australians, clearly, are interested in a republic. But success in that referendum, to my mind, is far from inevitable and indeed as things currently stand, with the process we currently have, it would seem more likely than not that any future referendum will fail.

CHAIR—Thank you.

Senator PAYNE—Professor Williams, I do not think there are very many people who would disagree with you on the observations you make about the education and information process, not just on the most recent referendum but those that preceded it: for example, the four that went down in 1988, which on the face of it appeared, in many cases, to be innocuous and reasonable assessments. Some people thought that they were the beginning of the end but, nevertheless, as that debate proceeded they went down as well. At the moment, the government has launched a discussion on section 57 reform and has run a series of public consultations around Australia led by Neil Brown QC, Michael Lavarch and—I cannot remember who the third person is.

Prof. Williams—Jack Richardson, I think.

Senator PAYNE—Thank you. I think that they, by any reasonable assessment, have not exactly been crowd-pullers. So that is a grassroots approach to education, perhaps not as fine in detail as the one in the ACT you referred to. Even when that process starts, it is still quite hard to attract the interest of the Australian community. Many people say, 'We can't get on with the republic because no-one is interested.' I do not believe that to be the case. But even on other issues of constitutional reform the challenge remains. What do you have to do practically to change that?

Prof. Williams—I think the first thing—and this applies to section 57 reform—is that you have to have a good proposal. You have to have a proposal that captures the imagination. People need to think that it is a good idea, that it relates to Australian culture and Australian identity or

that there are sound reasons for moving forward. And that may not be simply a republic referendum; it may indeed relate to many of the things that failed in 1988. One of the reasons I support a plebiscite is that you do need on occasion national focal points for debating these issues, and you need focal points earlier in the debate than the referendum itself. It is too late at that point. A plebiscite allows the different sides to debate the issue. Indeed, having local consultative mechanisms connected with a plebiscite would be far more effective than simply having a local mechanism that gets no media attention because there is no national event going on.

You would look towards a coordinated national and local strategy, at the core of which would be giving Australians a chance to have a voice without giving them any answers, necessarily, but giving them information. I think deliberative polls have proved to be very effective in other areas; they did in the ACT. Combining an ACT-wide deliberative poll with follow-up committee consultations and the capacity to engage in a committee process have proved very effective. In fact, I would say that the ACT process is the only recent process of which I am aware that has gone through this remarkably effectively with a combination of web resources, booklets and other materials. I would look there to see what they have been able to achieve.

Senator PAYNE—In discussing plebiscites, submissions this morning have cast doubt on its democratic value—that was in the submission from the Australian Monarchist League. Do you have a view on that?

Prof. Williams—A plebiscite is a glorified opinion poll; it does not have any constitutional significance whatsoever but it does have significance in that it provides a focal point for people to express their view. I think there are too few opportunities for the Australian people to express their view on basic questions. It is a matter of respecting their entitlement to get involved in the process at an earlier stage than the final vote. You have to have something. You could go for a deliberative poll instead, which is a representative sample of people whereby they debate the issue and ultimately vote. But my sense is that, despite the fact that many Australians may say they do not like voting, they do want to vote in crucial questions and they would want to vote on something before the referendum. I cannot think of any better way of doing it. I personally would like a plebiscite to be compulsory because I support compulsory voting. It is important to give it democratic legitimacy in the same way that our other democratic processes build that in.

Senator PAYNE—With regard to the level of detail you refer to and the depth you envisage in such a process, it sometimes seems to me that Commonwealth government is a particularly cumbersome beast and does not necessarily have the fine machinery to achieve that. Would you advocate state and territory involvement and perhaps even local government involvement in that consultation process to ensure that it was as grassroots—to use your earlier phrase—as possible?

Prof. Williams—I would actually start with local government for something like this to link it into a national process. I would think about empowering local bodies with the information and skills needed to hold events whereby their communities can be educated and express views that could potentially be forwarded on to national bodies. They may be views on options, models or other matters. It is not a matter of polarising those groups but providing local entry points for debate. I think there ought to be targets for a forum for however many thousands of Australians ought to be able to attend such a forum. The ACT had one forum for every 6 ½ thousand people. Local government strikes me as the right place to start with that.

Senator PAYNE—Would I be right in interpreting your submission and your remarks as saying that in advocating such a process you would recognise that it may take time—that it is not going to happen overnight—and that you would be supportive of that?

Prof. Williams—Taking time makes sense. If a referendum is held soon, more likely than not it will fail for the same reasons earlier referendums have failed. You also have to ask yourself what the object here is. To my mind a republic is important, but almost as important—and in some ways more important—is the capacity for Australians to engage in changing their own constitution in a way that makes them feel empowered and that their vote actually matters, as opposed to them having a say at the end in rejecting something. If we can actually amend this process in a way that gives people a sense that they really are involved, it is their constitution and it is their system of government, that may be at least as significant an outcome as actually getting a republic in the end. Again, for me the process not only matters for getting to an end but matters for its own sake. It has to do with overcoming some of the alienation and other very strong feelings that many Australians justifiably feel about some of these processes.

Senator KIRK—Thank you for your submission, Professor Williams. You mentioned throughout your submission the idea of a plebiscite. I wonder whether or not you have a view on the ARM's earlier idea of possibly having three plebiscites—firstly, the threshold question; secondly, about the models; and, thirdly, about the title. Do you have any view about whether or not the three-stage process is the way to go, or would you combine the threshold question with a choice of models?

Prof. Williams—Instinctively I would work away from multiple plebiscites because of a couple of factors. One is cost—unless you go for a process that involves postal voting or some other process, which may well be realistic for this, you would be looking at roughly $125 million to hold a national vote. That is what the republic referendum cost. The cost of doing that three times seems like an awful lot of money to be using for a process like this. Also, there is merit in saying that simply asking people to vote initially on whether they wanted a republic would not take you very far in the end, particularly since there does appear to be strong support in opinion polls for a 'yes' answer to that question at the moment. If it was answered 'no,' you could stop there anyway. I would combine at least two, if not three, of those processes and, as I said, twin those with local level activities in a way that would build momentum and incremental progression towards the outcome.

Senator KIRK—In relation to the local level activity that you referred to, you talk about the ACT model, and that did seem to be very effective, but of course the ACT's population is much smaller than the entire population of Australia. I wonder if you can think how you would be able to coordinate some kind of local level activity or educational campaign so that everybody was receiving the same information and also so that demographics and other sorts of consequences that people have in their lives were taken into account?

Prof. Williams—I would actually pick up the suggestion of Senator Payne. I think local government is ideally suited for this purpose. You can see that by looking at the recent elections in New South Wales and the passion and engagement that many in the community show at that level of government. Local government offers a perfect vehicle for trying to involve people in this process at that level and is the logical body to try and work through it. It will not work in every case, by any means, but, on the other hand, twinning it to a national process is likely to

send a message to people that this is a process worth being engaged in. If you had a number of events—even five or six—within each local government level, organised by their council with representatives of the different groups who wanted to be involved, to make sure it was balanced and appropriate, you would quickly get the opportunity for many events over a period of time.

The other thing I would say is that I do not think bodies like the ARM or the ACM can possibly do that function. They need the opportunity to engage in a government or parliament sponsored process. They are simply not the right bodies to be engaging in the sort of debate where people can put views from both sides. They need to be participants in that debate; they ought not to be the originators of it or the ones who carry it. It is impossible for them to do so, and that is why ultimately you have to have a government sponsored process that still builds in the parties fairly and appropriately.

Senator KIRK—Have you thought about the time frame over which this kind of process would need to occur?

Prof. Williams—I suppose I would ask who is going to win the next election, because that obviously will have an enormous impact upon the different models and the different desires of people to move forward. If I took that out of the equation, and I am not sure that is a realistic thing to do, I would be thinking of a three-, four- or five-year process. I would be thinking at the beginning: 'What is the five-year goal?' The five-year goal is to have a referendum to give Australians the capacity to vote on this and to vote on a model that they have taken a direct part in drafting and feel some ownership of. At earlier stages, I would be setting goals for community participation, plebiscites and a convention, which I think is important as part of this process; it is difficult to do it with a much shorter process. Otherwise, we would be simply seen as rushing into another referendum once the momentum has built up. It must be done differently from last time; otherwise, why would Australians vote any differently?

Senator KIRK—The ARM suggested to us that they would support a fully elected convention. They did not really have a view as to whether there should be voluntary or compulsory voting. Do you have a view about how the convention should be selected?

Prof. Williams—In general I support compulsory voting, because as much as I support issues like bills of rights I also strongly support the idea of civic responsibilities, and I think there is a responsibility to engage in the big issues of our public life. People can turn up to a ballot box and they can mark their ballot paper informally if they wish to, but personally I would support compulsory voting, and I do so generally. I would tend towards supporting a fully elected convention, but I would also build in advisory capacity—perhaps non-voting capacity—for experts and others who ought to be there. I think there is a strong argument to say that those who make the decisions on the floor of the convention ought to be chosen by the people themselves.

Senator KIRK—Thank you.

CHAIR—I have one last question. You have seen the Corowa option A. How do you rate that? Is that a model that the committee should take to be a serious way ahead, or would you look at modifying it in any particular way? How does it meet the test that you impose, that the draft model should be understood in the community?

Prof. Williams—I think the Corowa model is one of the best on the table at the moment, but it does not match my desire to have a process based approach to this issue that builds in people at a local level as well as a national level. I think also having a final model where people are chosen by the Prime Minister, if you like, as a determinative outcome is a mistake at this stage. I think that even people who feel that that is an appropriate model may feel as if they have not been adequately consulted up to this point and involved in the process of reaching it. But in terms of a proposal that should be on the table with other options it is certainly one of the best, and it is certainly one of the things that I think people should be debating very fiercely amongst themselves as to what they would like to see, as against direct election or other models. As a constitutional lawyer, I would have to say that almost any model is potentially achievable. Many have their strengths and weaknesses, but if you are able to codify the powers I do not see any greater dangers in a directly elected President than in a parliamentary appointed President. It is a matter of giving people a say and making sure that whatever model they agree with is constitutionally safe and secure and has been worked out over a period of time by incremental change with existing offices.

CHAIR—That is all from the committee, Professor Williams. Thank you.

[12.23 p.m.]

PEACH, Mr Bill, Convenor, Corowa Committee

CHAIR—Welcome. You have lodged submission No. 37 with the committee. Do you wish to make any amendments or alterations to it, or would you like to start with an opening statement?

Mr Peach—I would like to start with an opening statement, which does comment on what I have said in the submission. I thank the Senate select committee for giving me the opportunity to appear. I also thank the committee for conducting these hearings, because you have publicly and politically recognised the reality that the question of Australia's head of state is a matter of national interest. I believe it will remain a matter of national argument until we have what most Australians want, which is a head of state who is an Australian. Our Constitution does not use the term 'head of state', but there is no doubt that it places the Queen at the head of our constitutional framework, right from the first section, which states that the parliament:

...shall consist of the Queen, a Senate and a House of Representatives.

There is also no doubt that a majority of Australians want that position of the constitutional, ceremonial and symbolic head of our country to be held by an Australian, not by the Queen. Newspoll on Australia Day this year asked this question: do you favour an Australian to be Australia's head of state or the Queen to remain Australia's head of state? Sixty-four per cent want an Australian, which is more than twice as many as the 30 per cent who want the Queen, and six per cent are still uncommitted. That is a big majority for an Australian head of state, much bigger than the 55 per cent who voted 'no' in the referendum six years ago.

I think the whole process of the referendum was destined to produce the result it did. There was not enough consultation with the public, no choices were offered to the public and the one republican option offered in the referendum was not the one most people wanted. Many Australians felt the same way about that referendum, and that is why the People's Conference came together in Corowa. It was named for the People's Conference held in that Murray River town a century earlier—a conference that jump-started the move towards Federation after it had stalled. Federation took 11 years to achieve after the first constitutional convention, and that painful process included a failed first referendum. If we can achieve a republic with an Australian head of state by 2009, we will exactly match the record of the founders of the Federation.

This 21st century People's Conference resolved that there should be a new process—a process of consultation with the people by the means of a plebiscite to discover if we want an Australian republic with an Australian head of state, if so what we want to call the head of state, and how we want to choose the head of state. If the plebiscite discovers that the people do not want an Australian to be our head of state, then the process goes no further. If they do want an Australian, the People's Conference approved an elected constitutional convention to draft a constitutional amendment reflecting the will of the people. This proposal would go back to the people in a referendum.

A committee was formed to further the resolution of the People's Conference. It is called the Corowa Committee. I am the convener. You have also heard today from Sir Gerard Brennan and you will hear from Professor George Winterton, both members of the Corowa Committee, and I know you have submissions from other members of the committee, which includes Tim Fischer, Barry Jones, Bill Rogers, Sarah Henderson, Dr Bede Harris, Dr Walter Phillips and Sir Daryl Dawson. We have not found it easy to further that People's Conference resolution for a plebiscite, because in this country we do not have citizen initiated plebiscites or referendums. They do not come from the people; they come from the government, and so we can only hope that the federal government will listen to the people—and, again, we are grateful to this Senate committee for bringing this into public scrutiny.

I would like to make one other point about the Corowa resolution: I strongly support the idea of finding out the will of the people, but from a personal point of view I would like to slightly modify the suggested plebiscite questions we had there. As I have stated in my submission, the heart of the matter, perhaps the heart of the question, is not, 'Do we want a republic?' with all the vague and sometimes negative impressions the word 'republic' conveys to some of our citizens; the heart of the question is 'Do we want an Australian head of state?' If we do, that is the reason for becoming a republic—that is the meaning of becoming a republic, and that is all it means. There are no other sinister connotations, no hidden agenda. The best way to show and express that, I think, is to ask the people that question: do we want an Australian head of state? That is what it is all about.

So I suggest the first question in the plebiscite should be multiple-choice—like all the other questions, which are multiple-choice—and should ask: 'Which do you favour: (1) an Australian to be our head of state; or (2) the Queen to remain our head of state.' To the second question group that we suggested—what to call the head of state—I would add the choice of that actual title 'head of state'. The others are 'President' and 'Governor-General'. Perhaps people might say, 'Why not call the head of state just that?' In the third question group, we have suggested that the powers of a popularly elected head of state should be codified. I think now that it would be a useful reform to our Constitution and would strengthen our Westminster system of parliamentary democracy to codify the powers of the head of state no matter what method the people choose for deciding the head of state.

Finally, we have suggested that all the questions should be asked in a single plebiscite. I support that strongly. I know there is also support for a series of plebiscites taking the process along step by step. Why a single plebiscite? Most importantly, I think, because it puts all the cards on the table. It does not just promise further changes down the track; it spells them out and it spells out that all the important choices are there. Two other good reasons for a single plebiscite: it saves money and it shortens the time frame towards a referendum. If we had the plebiscite soon after the coming federal election, and the referendum at the same time as the next federal election, we could—and I believe we would—become a republic in 2007. We would then beat the time frame of the fathers of Federation by two years and demonstrate that we have made some progress in a century.

CHAIR—Can we formally record that optimism!

Mr Peach—You may!

CHAIR—To meet any sort of deadline, where does the Corowa proposal go next, short of a change of government at the next election? Where would you like to see it go without a change of government? Where would you like to see it go with a next-generation government of Costello or Latham?

Mr Peach—What we strongly felt was that the essence of this—and I think George Williams was suggesting the same—is that it is not just about a republic; perhaps any constitutional change, anything involving a referendum which changes our Constitution, has to consult the people first or we will never get anywhere. We believe strongly in this case that it is a matter of consulting the people. You involve the people by consulting the people, and you consult all of them. I think we all have in mind compulsory voting, 100 per cent plebiscites. They are indicative. Of course they do not change the law or anything like that, but we know what people think and we know what the will of the people is. A referendum then expresses the will of the people. I think it is highly unlikely that people would express one view in a plebiscite and a totally different view in a referendum, but the more things that are covered in a plebiscite—the more choices, the more options, the more people can express their thoughts about different things and debate them—the more likely we are to get good results. Whatever the result of the election or whoever the Prime Minister is, our preference is for the process of a plebiscite in which the people let us know what they think about the major question and the way in which it should be done. That would be the same whichever result.

CHAIR—Have you contemplated what sorts of elements would be part of a broad and workable consultative process with the public? You would have heard Professor Williams just a bit earlier raising a few ideas.

Mr Peach—Yes. Yes, I have—I think all those ideas are good. Again, we as the committee would all have our ideas on that. I am sure that George Winterton and Sir Gerard Brennan and others will have their own propositions. What we basically agreed about at that conference—and all of the people there supported it—was that the people should be consulted and the plebiscite was the way to do it. The other thing we agreed on was that we would accept the will of the people, and that is the proposition that should be in the referendum. We were not advocating any particular position, and therefore we were not setting out any way in which one would argue one case against another. I do not know. It always seems to me that about one per cent of Australians have read the Constitution, and less than that understand it. The process of educating people to understand and read the Constitution could take about 1,000 years, so we have to be realistic about how far one gets. On the other hand, people do have strong opinions about it. People are interested in a republic and other questions and they like to be asked what their opinions are. They like to get a chance to express them. They are not all going to be at the level of a professor of constitutional law. We have to be realistic about that. It will be argued out. Once the plebiscite is on, this will become a matter of public debate and discussion and everyone's views will be heard as usual and people will make up their minds.

CHAIR—In the Corowa model, at point 1(iii), you talk about the option of the head of state being chosen by electoral college. Was that to be an electoral college that was in itself elected by the people?

Mr Peach—Yes. Our proposal certainly would be for a fully elected electoral college in a compulsory vote by the people, as the plebiscites and referendums should be a compulsory vote

by the people. That is the way elections are held. We need to know what the real will of all the people is, not just of a percentage of them. That is why we were trying to give a range of choices as to how the head of state could be chosen so that people might not necessarily be forced into, I suppose, the obvious choice, which is either parliamentary election or popular election. There are other ways as well. Some countries use a college which then makes the choice. It is not that we are advocating any particular one; it is just trying to give the widest possible range of choices. If you hold plebiscites it is a good idea to have quite a few questions in them.

CHAIR—In terms of your tidying up some of the wording earlier on, would you see any merit in making it clear in the questions that the electoral college would be elected by the people?

Mr Peach—Yes, I would. I am sorry; it should be there. We meant fully elected. We also support a fully elected constitutional convention.

Senator BUCKLAND—You made the understatement that it will be argued out. It certainly will be. I am reasonably new to this committee and I certainly have not read as much on this issue as my colleagues have, so last week I went through my records of the previous attempt to form a republic. From my point of view, there were the professionals—the ones we heard going head-to-head every night on television, which turned off most of us lay people—and then there were people such as me who continually wrote to the papers but were uninformed professionals. Do you think that next time we have to do it better so that we take out the uninformed professionals—that is, the people writing letters to the editor? I could have written such letters day by day; I had plenty of time to do it. It made a lot of sense to people such as me but it really did not add to the debate. Do you think that we have to do something better this time? I think that Professor Williams suggested going through local councils or community groups.

Mr Peach—Yes, he did do that. Yes, anything that improves the level of knowledge, the level of the debate and the public perception of what it is all about and what the key issues are would help. I do not have any magic answers to that except that in the end we are going to say to the people: 'Well now, what do you think? What are your choices? What are your preferences?' As to how we raise the level of debate before that, I am not sure. People do get a fair amount out of the media arguments that have gone on. It is not a new question; it is six years since the referendum, so it is not as though we are pulling it out of the sky. Most people have formed a view—either yes or no. They may not have formed a view as to what exactly is the best method of election or something like that but it is a question on which they have some sort of formed opinion in most cases, I think. I do not know how to improve it by any special magic trick—I would love to hear of one.

Senator BUCKLAND—You will not get it from me. Do you think that on the last occasion the whole process was hijacked by high-profile exponents of either side of the argument? Do you think that we did ourselves a disservice by allowing that to occur?

Mr Peach—I think that is where the word 'elite' came into things. When people thought, 'This argument is not being argued by me; it is being argued by a lot of people whom I do not quite understand,' it was not helpful. Again, the whole idea of the plebiscite is to say: 'We're asking you. Do you have an idea? Would you like to express an idea? Would you like to give us

your choices and preferences?' It is one way that infallibly involves the people—100 per cent of them.

Senator BUCKLAND—In answer to question 4 in your submission you say that there will have to be a mechanism to produce a shortlist of candidates.

Mr Peach—That is presuming that people will choose popular election.

Senator BUCKLAND—That is right. How do we actually work through it? How do we get the list to begin with, and then how do we come down to the five or six short-listed people? There has been talk about how people ought to be nominated. It could be self-nomination or party nomination; it could be a great Australian from somewhere—the name sounds good, so we will put it there for the moment. That is one of the things I really struggle with. How do we short-list candidates for what will be an extremely important role for our country?

Mr Peach—Again, this is assuming that that is the one that people want.

Senator BUCKLAND—I live in hope.

Mr Peach—If this is the one that people want, I think there are various ways. The initial process should not bar anyone except those people who would not be allowed to stand for federal parliament or anything like that, because the whole idea of popular election, I believe, is to say that the people would like a wide choice from amongst their own candidates. But obviously there has to be some sort of thing, as there is in the case of standing in parliament, to show that someone is serious. Two ideas that I have heard are, for instance, some sort of electoral deposit or some form of public support shown by a nomination number. The argument is about how many people would need to nominate. There was one suggestion that you would need 4,000 nominations to stand for the head of state, and that seemed to me to be quite a large number. Somewhere between that and one nomination of a person themselves, I suggest, would be the sensible way to go. There could be other things, too, where to be able to begin to stand you must do this or that. But those are the two suggestions that I have heard so far.

I guess we have not gone too far down that sort of track, because we do not want to second-guess or predict what people will say in a plebiscite. If people say that, then our idea of an elected constitutional convention would, amongst other things—like codifying the powers of the head of state—also say things like, 'How are we going to conduct it? What is the most democratic but sensible way of producing the long list and then the short list?' The short list, as I said, possibly could be done by the constitutional convention itself. It could be done by an indicative poll. There are various ways. But you are not going to end up with a short list of 100 candidates.

Senator BUCKLAND—Do you think you would need—I do not know what you would call it—a job description, if you like, with precursors such as, 'This candidate must qualify in these areas before they get a real look-in for being short-listed'? I am not sure how to word that properly.

Mr Peach—I think that how to word that properly would be the problem.

Senator BUCKLAND—A former High Court judge might be a great person, but if you have someone who has been extremely active in the community, with no profession behind them, they would be ruled out. I am not sure how you would do that.

Mr Peach—I think it would be fairly hard to give a job description.

Senator BUCKLAND—It is worrying.

Mr Peach—I think the people would decide in the end whether they were a sufficiently distinguished representative of the community. The only thing I would say about that—and Sir Gerard Brennan I think suggested it—is that probably the one argument against popular election is that some people, like retired judges of the High Court and so on, might not want to stand in a popular election. It seems to me that that is just one of the consequences. On the other hand, that may be the election method that the majority of people want. You cannot win all of those questions. Everything is workable constitutionally if we figure out what the people want.

Senator PAYNE—In your responses to the questions in the discussion paper, particularly the latter questions about process, you talk about having a single multiple-question plebiscite, although I think you are open to discussion on that. One of the issues discussed this morning and which has been raised in a number of submissions is the need to ensure that the community is well-informed, well aware and engaged in the process before we come to referendum time. Do you have any particular views on how that may best be achieved? I think there is a fairly broad acknowledgment that we are not very good at that in Australia, not just on this issue but in terms of constitutional change generally.

Mr Peach—I believe that entirely. I do not know what the answer is, but one approach is to announce that there is going to be a plebiscite. The plebiscite is obviously not held the day after it is announced. I imagine you would give it a period of twelve months or something like that, during which time every possible issue could be canvassed about those questions. First of all people should know what the plebiscite is, what they are going to be asked. They should have quite a long time to talk about what they think about it. Hopefully, the same process as happens in the pub, when people talk about who is going to win the next football match, will happen. People will talk to each other and there will be lots of discussion in the media, in the papers—which will probably say a great deal more about the options being proposed—and people will come to a view. On the other hand, if you expect everyone to finally arrive at the wisdom of Socrates, we are not going to be here to see this happen. I think a plebiscite should be held one year after it is announced. That would be the same when you are talking about other constitutional issues as well. That would be long enough to think about it and discuss it but not so long that we never get anywhere.

Senator PAYNE—Have you given any thought to how we ensure that it goes outside the usual suspects, if you like, and becomes a community oriented process? One of the examples I used in asking a question of Professor Williams was the current discussion on the section 57 reform process—the deadlocks issue. I think Professor Williams suggested that the question might be the problem there, as well as the process. But, at the same time, we are not going to see a successful information campaign unless we get right down to it. Do you have any ideas about that?

Mr Peach—When you start talking about expert constitutional advice, I think you probably need a constitutional expert to do that. When it comes down to an emotional question like 'Do you think our head of state should be an Australian?' most people have an opinion and it is usually a fairly strong one. But they are not going to be able to tell you exactly how the pieces should fall into place after that and so on, and I do not think we can expect 100 per cent of the public to know that sort of thing. But they will certainly have an idea about it and, again, it does come back to the fact that they know they are going to be asked—there is a plebiscite coming up and everyone is going to be in it. They will be asked for an opinion and, unless they want to vote informal, they are going to have to form an opinion, and leave it at that.

Senator PAYNE—Does your support for a plebiscite process before going to a referendum hinge on the question of people making themselves aware and being engaged in the process?

Mr Peach—Absolutely. The reason that referendums have failed in the past is, I often think, because people did not think they had been consulted at all and they tended to reject an idea that had not been discussed with them, no matter how worthy the idea was. So I am strongly in favour of the plebiscite mechanism, and I hope this will be the first of many.

Senator PAYNE—Apropos of nothing, does that mean you are a supporter of citizen initiated consultations, referenda and plebiscites?

Mr Peach—I think it would be good to have some level of that at least. At the moment, if the government does not want to hold a plebiscite, we are all sitting here but nothing can happen. It would be good to have some stage at which sufficient pressure or indication from the public would make it happen.

Senator PAYNE—At the same time, you observe in your submission, at the beginning of section 2, that the process of Federation was, as you describe it, a painful process in and of itself. So these things do not happen overnight.

Mr Peach—That is right—of course not. A lot of people thought Federation would not happen at all. We now look back on it and think, 'What the devil was all that argument about?' The republic will be exactly the same.

Proceedings suspended from 12.50 p.m. to 1.47 p.m.

CRAYSON, Mr Peter Guy, (Private capacity)

CHAIR—Welcome. You have lodged a submission which is now numbered 322. Do you wish to make any amendments or alterations to it?

Mr Crayson—Yes, there are three amendments. On page 5 of part 1, the second line from the top—it is only a spelling error—the word 'principal' is misspelt; it should be 'principle'. On page 10 you will see a table. Under the column headed 'Speaker' you will see 'Removal' on the row header, the second one from the bottom. In that box you will see 'By Constitutional Council following 2/3 resolution of the House of Representatives'. I would like to remove the '2/3'. On page 18, in the table at the top, you will see 'candidates are nominated by the House of Representatives'. I would like to change that to read 'candidates nominated by the incumbent or any past Speaker, by the incumbent or any past Prime Minister, by the leader of the opposition or by any five members of the Commonwealth parliament'. This is to correct an inconsistency between parts 1 and 2.

CHAIR—Would you now like to make an opening statement.

Mr Crayson—Thank you very much for inviting me here; I very much appreciate the opportunity. I am proposing a popular election model called the constitutional council model which combines the best elements of the existing constitutional arrangements with those of the most popular republican models. It provides for the popular election of a President who, like the Queen, does not exercise the reserve powers and assigns these powers instead to a neutral, non-partisan Speaker. As a point of clarification, I should mention that I use the term 'head of state' to mean the person who occupies the office at the apex of the constitutional hierarchy; in other words, nobody is more senior than the head of state.

Republicans are generally divided into two main camps: minimalists and direct electionists. Public opinion has consistently favoured direct election of a President as head of state, whilst the majority of politicians seem to favour minimalist models, in their fear that a President with a democratic mandate may become a rival centre of power to the executive government. How can these positions be reconciled whilst improving our constitutional machinery? I hope that my submission answers this question.

Under the current arrangements, the Queen plays a symbolic role only and is perceived by some as playing the role of constitutional guardian, and the Governor-General plays two distinct roles. Firstly, he plays a symbolic role, and that is perhaps 99.99 per cent of the time. He unites the nation, reflects the nation and represents the nation abroad; and for this he requires broad national support. Secondly, he plays an umpire role, perhaps 0.01 per cent of the time; namely, he may exercise reserve powers in times of constitutional crisis, and for this he must be above politics.

My model proposes that there be, firstly, a President, who would be the head of state and at the apex of the constitutional system. The President would play a symbolic role. He would unite the nation, reflect the nation and represent the nation abroad, and for this he would require broad national support. I should just interrupt myself to say that when I say 'he' it includes a reference

to 'she'. In conjunction with the constitutional council and the Speaker—that is, not alone—the President would play a real role, as opposed to a perceived role, as constitutional guardian.

Secondly, a directly elected constitutional council would play a review, appointment-dismissal, advisory and symbolic role. Thirdly, the Speaker, who would be appointed by the constitutional council, would play the role of umpire; for this, he must be above politics. Most of the time, as under the current arrangements, he would continue to play the role of umpire in the House of Representatives, but he would also appoint the Prime Minister and in times of crisis might exercise the reserve powers. Fourthly, a chancellor of the House of Representatives would chair the House of Representatives in the Speaker's absence, but would not exercise the reserve powers.

Under the model, the Prime Minister would not control the appointment of the President, certain discretionary acts of the President, public statements of the President, the appointment of the Speaker, decisions of the Speaker or the appointment of High Court and other judges. The constitutional council would consist of five voting members elected directly for six-year terms and four associate non-voting members—the Speaker, the past Speaker, the past President and the past Vice-President. One member of the council would be the President and one would be the Vice-President. The constitutional council would appoint the Speaker, and a four-fifths vote, including the President's vote, may veto the exercise of any reserve powers by the Speaker. The council may seek advice, encourage or warn, and it may exercise ceremonial and symbolic functions.

Under the model, the President does not exercise reserve powers except in very rare circumstances—whilst a motion to dismiss the Speaker is pending. The President presides over the constitutional council and has a casting vote when the vote is tied; assents to bills and may send a bill back to parliament only once, with the consent of the constitutional council; appoints justices of the High Court and other judges in accordance with the advice of the constitutional council; confers honours and titles in accordance with the advice of the constitutional council; may grant reprieves, pardons and commutations of sentences in accordance with the advice of the council; may grant special leave to appeal to the High Court or any court with the advice of the constitutional council; may exercise ceremonial, symbolic or non-discretionary functions—such as being Commander in Chief of the armed forces, administering oaths, declaring war and appointing diplomats; and must have due regard to constitutional conventions. Powers other than those expressly vested in the President by the Constitution which I have mentioned may be exercised only in accordance with the advice of the federal executive council.

The President might bring political views to the office and is free to express his or her opinions. For example, the President might suggest that the law is inconsistent with the principles of a free and democratic society. Under the model, the Speaker should be above politics. The Speaker must have due regard to constitutional conventions; would be nominated by the Prime Minister, the Leader of the Opposition or any five members of parliament; would be appointed by the constitutional council; would be dismissed by the constitutional council upon address of the House of Representatives; and would chair the House of Representatives. The Speaker would also exercise reserve powers, which are partially codified in my model. The Speaker must inform the constitutional council of any intended exercise of a reserve power, and this may be vetoed by a four-fifths vote of the council—and that vote would need to include the President's vote.

So this model is conceptually clean and simple; it is workable and tightly constructed so there is no room for constitutional deadlocks or vacuum. There are no devils in the detail, as far as I could find. The model enhances implementation of the doctrine of the separation of powers. Evidence is that only a direct election model would be voted in—and this is a direct election model. But, on the other hand, the majority of politicians will only accept an impartial appointee exercising the reserve powers short of full codification, and this model also provides that. So I hope that the constitutional council model will satisfy more voters and more politicians than any other model, and I think it will.

CHAIR—You talk about a speaker and then you talk about a chairman of the House of Representatives, and I presume the role of the chairman of the House of House of Representatives will be, in essence, to conduct the functions of the current Speaker.

Mr Crayson—The Speaker would normally conduct all of the functions of the current Speaker. The only reason I introduced this concept of a chairman—I have also used an alternative term 'chancellor' based on the UK use of the word—is that in some cases the Speaker will be absent from the House of Representatives. The Speaker now has other duties. Although the Speaker would not have electorate duties, they would have duties associated with the constitutional council. In consideration of that fact, the Speaker might not be able to attend the House of Representatives and there might not be an acting Speaker present. In that case, the House of Representatives could elect one of its own to chair the House, but that person would simply be like an acting Speaker under current arrangements, but would not be able to exercise reserve powers.

CHAIR—You were here this morning, I think. You would have heard former Chief Justice Sir Gerard Brennan talk about his model. Putting aside titles and so on, what would you say is the major difference between the Corowa proposal A and your proposal?

Mr Crayson—I understand that his model includes a constitutional council of three members, which would be appointed by the Prime Minister. My constitutional council would be directly elected and would be a part of the election process for the election of the President. The five full constitutional council members would be elected by the nation as a single electorate, and one of those elected members would become the President. The model provides for the parliament to decide upon one of two methods. The first method would be that the member of the council who is elected with the highest vote would automatically become the President. The second method the parliament could choose—so there would be no need for a referendum to swap between these—is that the council itself would elect one of its members to be the President. You could alternate between a direct popular election model and an indirect popular election model, depending upon what the public felt most comfortable with or what the parliament felt most comfortable with. So the main difference is that my constitutional council is elected, and the role it plays is similar to the model you mentioned in that it would have a role in reviewing the exercise of the reserve powers. In this case, though, the reserve powers would be exercised by the Speaker.

CHAIR—So you would then have a constitutional council, with the President and the Prime Minister all somehow or other being elected by the people?

Mr Crayson—The Prime Minister is not directly elected except by his own electorate, but that is as their local member. The direct election would be a single election for the constitutional council. There would be no separate election for the President, but the President would be one of the members of the constitutional council.

CHAIR—I suppose one frustration I have is that the debate keeps on generating new configurations of substantially the same range of models. I am just trying to work out why we have to do what you are suggesting as opposed to, for instance, the Corowa A model.

Mr Crayson—I think the big difference is that in my model the President—the head of state—does not exercise reserve powers. So you have a direct election model which would, in my opinion, probably satisfy most people who are in favour of a direct election, but the problem of what you do about the reserve powers—what you do about preventing the President from becoming a rival centre of power to the executive government—does not arise. The President does not, or cannot, exercise any power which can rival the government. As an extension of the Speaker's umpire role, the Speaker might on a very small number of occasions—as I mentioned, possibly 0.01 per cent of the time—need to exercise reserve powers.

Senator PAYNE—Mr Crayson, thank you for your submission and the suggestions that you make. I am just trying to grapple with how one becomes a member of the constitutional council under your model. What are the qualifications for office of constitutional council members—not for non-voting ones but for the five elected ones?

Mr Crayson—It is the same as for a member of the House of Representatives except that, additionally, a person who is a candidate for the constitutional council cannot be a member of parliament, and also, once elected, cannot be a member of a political party. So a qualification for holding office is that you may not be a member of a political party.

Senator PAYNE—How do you become elected? Do you run a campaign? Do you participate in the political side of that process?

Mr Crayson—What I would like to see—although I do not believe it is necessary to specify this in the Constitution; it could be specified legislatively—is that the election would be non-compulsory. The aim is to make it low key. A low-key campaign is probably not very attractive to people who are aspiring politicians. And it would probably be run along similar lines to the constitutional convention election. There would be a booklet in which people could provide short statements about themselves and the reasons they felt they should be elected. For many candidates, that might be the entire extent of it. Others, if they wished, could run a campaign. We are a democracy and I do not think it is appropriate that we should limit any person's desire in running for public office to mount a campaign, but the people ultimately will make the choice as to whether somebody who runs as a high-profile politician or somebody who runs a much more subtle campaign—somebody who is not going to bring overt political views to the office—is more desirable.

Senator PAYNE—But how do you avoid the campaign becoming partisan in that way?

Mr Crayson—I suppose it is because, for a politician or a person who is aspiring to be a politician, one of the reasons that they aspire to that position is that they wish to exercise

political power. The constitutional councillors, it could be argued, do not formulate policy. They do not exercise political power apart from some of the things that I have mentioned, but many of the powers I have mentioned are apolitical in nature—they are more of an umpire type of role. So it is not a policy formulating body; it is not an alternative cabinet or an alternative Senate like some of the electoral college proposals might end up being. You cannot prevent people who have political views—everybody has political views—from gaining office or running for office, but the incentive is not really there. It is more for people who feel they can play an effective role as an umpire—people who feel they can represent the entire nation rather than a political agenda.

Senator PAYNE—Perhaps I have been in this business too long and I am too cynical, but I admire your optimism. The role of Speaker, as I read your submission, would not be for a member of the parliament.

Mr Crayson—Yes.

Senator PAYNE—But they would, as well as running the parliament—I think you said in response to the chair—assume the extra roles which are currently held by the Governor-General.

Mr Crayson—Yes, that is right—only the umpire side of things. If you look at what the Governor-General does now, it is 99.99 per cent symbolic and ceremonial, so that would be done by the President. The tiny proportion of the time which is spent as an umpire would be performed by the Speaker, so the Speaker's role would look, to a member of the general public, to be almost identical with what it is now, except in those times of crisis.

Senator PAYNE—What do you see would be the qualifications for becoming Speaker?

Mr Crayson—It would be the same as for the constitutional council, so it would not be open to members of parliament and it would not be a position which could be held by somebody who was a member of a political party, but again there is nothing to prevent somebody who has had political allegiances from gaining that office. That is what we have now. The Speaker at the moment is somebody who has political allegiances, and they are overt. This would probably be an improvement on the current situation in that respect.

Senator PAYNE—On the constitutional council you propose five directly elected members and four ex officio members, but those ex officio members would not have a vote. So why are they there?

Mr Crayson—They are there to provide continuity and to provide advice to existing members. You will see that some models might suggest that one half of an electoral college be elected every certain number of years. This is a similar sort of thing, except that you would not need to have such frequent elections. You would still have the former members there, but they would be there in an advisory capacity.

Senator PAYNE—Again perhaps my involvement in this process makes me cynical, but I am not sure why one would participate at that level if one did not have a capacity to exercise a vote or some influence.

Mr Crayson—It is not essential that those members actually be present. A quorum of council is—

Senator PAYNE—I understand that, but why would you do it at all? I guess that is my question. Can I come back to a process issue. This is a fairly comprehensive rewrite, if you like, of how we currently operate. How would you go about informing and persuading the Australian public that this was indeed a suitable proposition to put forward to referendum?

Mr Crayson—I think by saying that, on the one hand, we are not making major alterations to our system of government. We have still got a head of state. Instead of the Queen, we have the President. Like the Queen, the President does not exercise the reserve powers but plays a purely symbolic role. We have an umpire, who is not elected but is appointed—the Governor-General replaced by the Speaker. We are not adding additional officials, so it is not like we have a President and a Governor-General and a Speaker, with more than one person playing an umpire type role. But, on the other hand, we are improving the system and making it more democratic. We are giving people the best say they possibly could have in a direct election for their head of state. But at the same time we are not introducing many of the problems that are introduced with the other models with regards to the necessity of codifying the reserve powers should the head of state be the one who exercises those powers.

Senator PAYNE—Thank you very much.

Senator BUCKLAND—Mr Crayson, I have read your submission, and there are some points that I can follow and understand, but I do get hung up on a couple of the issues to do with this election process that we are talking about. The Speaker, you say, would do a minimal amount of the work of the Governor-General—the overflow, if you like. How do you accommodate this person? How do you make that person answerable to the people? At the moment, the Speaker is answerable. You talk about the Maltese experience, but how do you make that person answerable to the people when they do not directly elect that member? Say it was the President of the Senate that you were talking about, rather than the Speaker in the House of Representatives—why would I, as a senator, worry about the views of the President if he were not from a party or elected in the same way as I was elected? I have difficulty with that.

Mr Crayson—As you mentioned, there are parliaments around the world where the presiding officer is not a member of that house. There are many precedents for that. In terms of the legitimacy of that person, rather than being elected as a local member, the person is appointed by what you might call an electoral college—the constitutional council. The person is also nominated by elected members of parliament, so there is some democratic legitimacy there, except that it is an indirect legitimacy rather than a direct legitimacy. But then you might question whether it is appropriate for somebody who is meant to play a purely umpire role to be elected as part of an overtly political campaign. The Speaker is a member of a political party and an active member, attends party room meetings; whereas in the UK parliament the position has been significantly reformed, and in the Irish parliament also, and the Speaker is unchallenged after assuming the office of Speaker. My intention here is: if the office is not sufficiently depoliticised under the current arrangements—and I do not believe it is, although that is not to cast aspersions on people who have been Speaker—then how can we make it less political. I think this is an excellent way of doing that in that it removes the Speaker from the political process—that is, by direct election.

Senator BUCKLAND—There is discussion now, as I understand it, about a different method for electing the Speaker. The other thing I was going to ask in relation to that is: just what does the Speaker do when the parliament is not sitting? We do not sit for the whole of the year. There is a fair bit of time when we are doing things like this or are in the electorate.

Mr Crayson—The Speaker would be an ex officio member of the constitutional council, so any work done by the constitutional council would involve the Speaker. Also, the Speaker has duties in heading the Department of the House of Representatives. There are administrative duties to be taken care of. So the Speaker would not have any duties as a representative of a particular electorate, that is true; the Speaker would have some more time on his hands.

Senator BUCKLAND—If we look at the constitutional council, what was the theory behind five permanent members and four ex officio members? If there was a move to adopt something along these lines I fear we would have a constitutional crisis to start with, because some states may get left out. We are very parochial. I would be very concerned if there were not a South Australian on the council. That might be taking away from the context of what you are talking about, but the main difficulty I had my first looked at this—and it was more so when I was looking at the flow charts you had here—was that we have more states than what has been mentioned there, and I think automatically Australian people would reject the principle that they may be left out.

Mr Crayson—With respect, I am not sure that all Australians feel so strongly about their citizenship of a particular state. I feel much more an Australian than a New South Welshman. But there is probably a different sentiment in the smaller states; I acknowledge that. I guess it goes back to the purpose of the body: it is not there to represent specific electorates; it is there to perform a very specific function, which is not political and not representative in a political sense, and it detracts from the nature of the council as being one which is elected nationwide.

Remember that this is a model which provides for the direct election of the President. Of necessity, any direct election of the President would be a nationwide election. Given that the President is either elected by the council or is the councillor who is elected with the highest vote, it is necessary to have a nationwide election to the council in order to legitimise the office of President as being one that is elected by the entire nation. In terms of state representation, I would hope that the parliament already fulfils that role, obviously with the Senate representing each state equally. My intention is not to reproduce the Senate—to have a mini Senate—but to have a body which is quite different.

Senator BUCKLAND—I hope you are not going to change the Senate at this point.

Mr Crayson—No, I am not going to change the Senate.

Senator BUCKLAND—I might have a vested interest. I have found some things interesting to read but I get hung up on the role of the Speaker. It is an important part. I would dread seeing the Speaker not being an elected member, as is the case now. Not being aligned to a political party is fine. I certainly do not share your optimism that we could live without parochialism coming into the system. That is the biggest problem I have. Whether that means expanding your constitutional council or accommodating it in some way, I am not sure. It is just one of those issues that we will have to work through. Thank you.

CHAIR—Thank you very much for your submission, Mr Crayson, and for the time you put into it. All these concepts that we are addressing today in this process will be quite useful to our outcome.

[2.18 p.m.]

WINTERTON, Professor George Graham, (Private capacity)

CHAIR—Welcome. You have lodged with the committee a submission which is now numbered 319. Do you wish to make any amendment or alteration to it?

Prof. Winterton—I have no amendment, thank you, although I would like to make a brief opening statement.

CHAIR—You may do so right now.

Prof. Winterton—I thought that in my opening comments, as you have the submission, I would focus on the central core points. Essentially there are two categories. First of all, on the process, I think the core of the basic model should be chosen by plebiscite. It gives the electors ownership of the issue, reflecting popular sovereignty. In 1999 many electors resented the fact that they were given no choice of models but only, as they saw it, a take it or leave it referendum decision. Moreover, I think a plebiscite would indicate whether direct election can be defeated. It is, according to the opinion polls, the most popular model, and it has many opponents. If it can be defeated then it would be defeated at the plebiscite. I do not think direct election proponents will accept any model other than a direct election unless direct election has been defeated in a plebiscite.

The second point I would highlight—and I was one of the movers of the Corowa resolution and I am a member of the Corowa committee—is that it is critically important not to hold a separate republic/monarchy, yes/no or initially authorising plebiscite separate from the one about the models. It is critical to hold the two together if one is going to hold a plebiscite on the first question, for two main reasons. First of all, as the monarchists have been saying, you cannot really answer the question, 'Do you want a republic or a monarchy?' in general, it all depends on what you are talking about—a democratic republic or a democratic monarchy. Moreover, as the 1999 experience demonstrated, a lot of direct election republicans preferred the monarchy to a non-direct election republic. I think it is important to have the two together for two reasons. Firstly, it eliminates the blank cheque argument. Secondly, it gives context to the first question—the overall monarchy/republic question.

Looking at the other issue, the main features of the models—and this is an issue that the committee is looking at—it seems to me that there are two main concerns if one has direct election. We will have the only nationally elected public officer, who will presumably feel that he or she has a popular mandate and is able to rival the government. There are two problems with this, basically. One is that there will be a greater willingness to exercise powers, including the reserve powers, by such a head of state. The second is that, even apart from powers, there is the potential for interference with the government—destabilising the government potentially by interfering, making speeches, seeing people and all those kinds of things.

What are the measures that one can introduce in a constitution to address these things? I think there are three essential measures. Firstly, it is critically important that section 61, conferring the

Commonwealth's executive power, be made exercisable solely on ministerial advice, whether through the executive council or otherwise. This was quasi dealt with in the 1999 model, but not really adequately. Although the principle was accepted, it was not well drafted. But if you do not do that then you run the risk that the popularly elected President might end up as a quasi-executive President along French lines, for example.

Secondly, I think it is important to partially codify the reserve powers, basically those where there is broad agreement, which are, generally speaking, those where there has been most action and where action is most likely to arise. Partial codification provides the proper balance between no codification and full codification. Thirdly, I think there is value in a constitutional council, which I deal with on page 7 of my submission, to advise the head of state in the exercise of reserve powers against or without ministerial advice, although I would have a differently constituted council than Sir Gerard Brennan.

Fourthly—and I think this is a critically important point overall—no matter how well you craft these things, if you do not have quality people administering them, you are going to have a disaster and, if you have a badly drafted model and quality people administering it, everything is going to work. It is important to operate from the principle that one can trust the Australian electors. It sounds arrogant for one to talk about trusting the electors, but I think one can trust the Australian electors to make a sensible choice provided the Constitution gives them the opportunity to make a sensible choice, which means it is critically important to have a nomination process which ensures that high-quality candidates are nominated. We can then assume that the people will choose good heads of state from those candidates, but they must be offered the choice. As you will see on pages 3 and 4 of my submission, I have outlined a three-avenue process, which I will go into in more detail later if you wish. Essentially, it embodies the three components of the Australian Constitution—that is, the Commonwealth, the states and the people. That is all I wanted to say by way of an initial statement.

ACTING CHAIR (Senator Payne)—Thank you very much, Professor Winterton. Fortuitously I get to kick off. I want to ask you a question about the reference you make to the constitutional council in relation to question 24 in the discussion paper, but Sir Gerard Brennan referred to it more broadly in relation to codification and other issues. I think you said a moment ago that you would constitute that differently than is suggested by Sir Gerard. How would you suggest that be done?

Prof. Winterton—There are two or three differences between my suggestion and his. His suggestion, if I recall correctly, is that the constitutional council would basically comprise former governors-general, or presidents, to use his term, or former justices of the High Court chosen by the Prime Minister, and that the consent of the constitutional council is a necessary condition if the exercise of presidential reserve power is to be non-justiciable. So it is not essential to get the consent of the council, but if you want the issue to be non-justiciable then you need that consent.

I differ in three respects. First of all, just to remind you of what I propose, I propose a constitutional council of three to five members, all with some expertise in the field of constitutional law or constitutional history. I think it is essential that this group—which is to advise the head of state in a non-binding way on the exercise of reserve power, against or without ministerial advice, but not if the reserve power was exercised on ministerial advice—

should be independent and should be chosen, therefore, by an independent person or body. Under Sir Gerard's model, the Prime Minister would do the choosing, and we all know that prime ministers have chosen judges and certainly governors-general or governors who might not be considered 100 per cent impartial; whereas under my model the chief justices of the states and territories, sitting jointly—in other words, eight persons at the moment—would choose the three or five members. So you would have a generally admitted independent body—the council of the chief justices—choosing these people and they would be able to assess the knowledge and the independence of these people. They might well choose former justices, former governors-general and so on—they probably would—but at least one would have their assurance and not the view of the Prime Minister.

Secondly, I think his model, with all respect, is a little complicated in terms of justiciability. Besides that, some of the exercises of the reserve powers would not really be justiciable, so I think that making their consent a condition of non-justiciability is rather complicated. I would prefer to specify what is justiciable and what is not justiciable and make their consultation a requirement but not their consent. Their advice should be published soon but maybe not immediately. That would be my model.

ACTING CHAIR—That is quite a different role from the model that I think Sir Gerard suggests, in a number of ways.

Prof. Winterton—Yes, but it would operate in essentially a similar way, in that the core notion is similar—to provide independent advice on the exercise of the reserve powers—but it is true that it is differently constituted, so it does differ. I must say that his model is somewhat more analogous to the Irish and the Portuguese models, but not wholly, because in both of those countries they have, if you like, ex officio people on the council who are available to advise the President on the exercise of reserve power, but the presidents in both countries are able to appoint many members to the council. I have trouble with Sir Gerard leaving it solely in the hands of the Prime Minister to choose these people. I think you can have greater expertise in constitutional matters when it is not necessarily confined to former heads of state, presidents or judges. The council of chief justices could decide that.

ACTING CHAIR—Eminent members of the academic community perhaps, Professor. I will read from Sir Gerard's submission so that I will not to be accused of verballing him. He suggests that method because:

> That would ensure the respect of Government, at least at the commencement of Government's term after a general election.

He goes on to say:

> It would be desirable for the Prime Minister to consult with the President about the appointments, but that should not be a constitutional or statutory requirement.

I think the point he makes is about the system working and the various components of the system being able to work together.

Prof. Winterton—With respect, I am not that troubled by what the government might think. If the people of Australia have decided there should be an independently constituted body, like the constitutional council, say, chosen by the state chief justices, then they have to put up with it, whether they are happy with it or not. I do not see that as a particularly important value. One could equally say that the opposition should be satisfied with the body.

ACTING CHAIR—That was a question I was hoping to put this morning but did not have an opportunity to. You made points on plebiscites and whether we should be asking plebiscite questions simultaneously. The concept of awareness and an informed and educated community making these decisions has been discussed at some length today. Do you see a single plebiscite enhancing that process or is it possible that perhaps holding more than one plebiscite may be a more effective way of ensuring that awareness?

Prof. Winterton—I see it as enhancing the process for the obvious reasons. First of all, as I say, the question, 'Do you want a republic or a monarchy?' is not one you can really answer in abstract. The intelligent answer really is that it all depends. I am not suggesting that I frame my views with the end in sight, although some people do. Public opinion polls do demonstrate that, when you ask people the abstract question, 'Monarchy or republic?' as Professor Flint has pointed out countless times, you do not get a huge majority. It is always talked about how Australian people want a republic and that that is demonstrated by a large number of votes. It is not; it is 51 per cent. The general figures are about 51 or 52 per cent saying they want a republic, 35 per cent or so saying they want a monarchy and the others are undecided. And most of the undecided obviously went for the monarchy in 1999. But, if you ask people in the context of a direct election, the numbers increase to something like 80 per cent.

I am not framing these views with the end in sight; I am just pointing out that there is a very good possibility that the abstract single question, 'Monarchy or republic?' would actually fail. Besides, even if it gets 51 per cent of the vote and even if it gets a majority 51 per cent vote in all states, the monarchists will be able to ask with a certain amount of justification, 'Is this really a mandate to proceed and spend all that extra money?' because, as they point out, we have spent a lot of money on this process already. If you really want people's consent to spend that money, I do not think 51 per cent is a huge mandate.

ACTING CHAIR—I am reasonably confident they will share their views with us again just after you have finished today.

Prof. Winterton—I am sure they will.

ACTING CHAIR—The reference you make to ownership of the proposed constitutional alteration is one which has also occupied the committee's attention this morning. That is to say that we do not seem to be terribly good at advocating constitutional change in Australia, no matter which side of politics is in power and no matter the questions being put—it is not just about this particular aspect of constitutional change. Professor Williams has suggested that we should look at adjusting the referendum process itself—that is, the yes/no case that is provided for in the referendum act. Do you have a view on that?

Prof. Winterton—Do you mean to offer a preferential vote among models?

ACTING CHAIR—No, to offer a better information and education process so that the whole system is more effective.

Prof. Winterton—I do have views. Basically, in all the referenda that I have noticed since I have come of age, I have had the view that there was a lot of misinformation. I think it is regrettable that the 'yes' and 'no' cases are produced by the proponents rather than by some sort of independent body. I do not favour having preferential referenda, for example—although that was discussed, as you know, in light of the fact that there was a very strong public objection in 1999 that the people only got one model.

It is also true that our record of proposals being passed has not been great. I think that is partly because, in contrast to America, it is very easy to get a proposal to the people. If you look at America, you will see that it is much harder to get a proposal put to the state legislatures to support, endorse and ratify but, once you do, the proportion of acceptances is greater than here. But we have never tried the plebiscite path, which I think is the way to go because you are asking the people. As I suggested in my submission, I do think that, even though it might not be what some of the republicans favour—and I did receive republican opposition to it—you should model the plebiscite process on section 128 so that, if you do not get a national majority and a majority in four states, you do not regard it as a majority outcome. I think that would give real ownership to the people, particularly if you are going to close off models and options in light of it.

Senator PAYNE—The Australian Monarchist League suggested in their submission and in their evidence this morning that the plebiscite process had dubious democratic value. What is your view?

Prof. Winterton—I cannot see how asking the people their view on something is dubiously democratic; in what sense? I know Professor Flint—I hope I am not misrepresenting him, but he will soon correct me if I am—has a great penchant and love for France. He is always referring to various plebiscites that were misused by some of the French authorities in the past, in the Third Republic and so on; he suggests that the plebiscite can be misused. But if you ask clear questions and make it clear what use you are going to make of the answers—and, as you know, my proposal and the Corowa resolution suggest that a joint parliamentary committee should frame these things in a very neutral way—I cannot see how it is democratically questionable.

Senator PAYNE—Thank you.

CHAIR—At the same time, if you put up three or four models to the public and there was no clear majority for one, how would you anticipate handling that?

Prof. Winterton—In one of my submissions, as you may recall, I actually dealt with the issue of whether, of the four models, you should use preferential voting or first past the post, if I may just say that. I think there is an argument here for first past the post, on the grounds that you might proceed with the model that most people favour rather than with the preferential system, which is the model that most people dislike least, if you know what I mean. I still think people are used to the preferential system; they would smell a rat, in a sense, if you did not use the preferential system. But if the numbers are close then I would leave that to the convention. If the

process adopted were the Corowa process, a plebiscite followed by a democratically elected convention, and the numbers were close, I would leave it to the convention to choose.

Senator KIRK—Thank you for your submission, Professor Winterton. I wanted to follow up on a few matters about the constitutional council that Senator Payne asked about. It was not clear to me how long these people's tenure of office would be. I understand that they would be chosen by the Council of Chief Justices from the states and territories, but for what period of time?

Prof. Winterton—I did not go into all that because that would be something the Constitution could go into, but I imagine a presidential term might be appropriate—five years. It would be better to use the presidential term than the governmental term because I think it is better to keep these two things separate.

Senator KIRK—You mentioned that their advice would be non-binding to the President—

Prof. Winterton—Yes.

Senator KIRK—so theirs is really just a consultative role, under your model?

Prof. Winterton—Yes, but if they are a recognisably independent body, which is a further reason for having them—so, clearly independent, appointed by the state and territory chief justices—I think, de facto, the advice would be strongly obligatory, not obligatory legally. But I think it is important not to make it binding, for the reason that—and this is an argument often put in favour, for example, of prime ministerial appointment of the Governor-General—if you want someone to do the best job possible, you need to impose responsibility on them, and in order to impose responsibility you have to give them the last say, really. So I think the important reserve powers should fall on a democratically elected head of state, if that is what we have, and they have to bear the responsibility. They cannot hide behind somebody else. They receive the advice and they need a pretty good explanation if they do not take it.

Senator KIRK—And would that decision, once taken by the President, be non-justiciable, or would it depend on the nature of the power?

Prof. Winterton—On the nature of the power, I think. Basically, I favour justiciability of the justiciable standards. For example, in the Republic Advisory Committee's draft partial codification that I referred to, there is a provision that if the House of Representatives passes a constructive resolution of no-confidence in the government—so, no competence in the government, competence in somebody else—that must be followed. I think that could be justiciable, because any judge could certainly say, 'Well, do we have a constructive no-confidence resolution and has it been followed?' So I think those sorts of things should be justiciable. In more obscure, more difficult to judge matters, such as refusing a dissolution of parliament because you think there is an alternative government when there has been only a simple no-confidence resolution, I do not see that there would be justiciable standards.

Senator KIRK—So, whether or not a decision were justiciable would be covered within the text of the Constitution?

Prof. Winterton—I think that would be preferable, yes, as indeed the Republic Advisory Committee's draft code does say with pretty well every provision: this is justiciable; this is not.

Senator KIRK—And that would be a matter for the High Court to consider?

Prof. Winterton—Yes.

Senator KIRK—I am just looking to see whether or not there might be any conflict with the body who will be appointing the council.

Prof. Winterton—That is why I suggested that, no, it should fall to the state and territory chief justices to appoint the council. I would imagine it would include people, as I say, similar to Sir Gerard's model. They would be very likely to choose not so much academics, for example, as has been raised, but former justices of the High Court. But I think that would not be a problem, particularly because it might well be appropriate that the advice not be published, say, until after the election or sometime within a year or two but not necessarily immediately, so that you do not put further pressure on the head of state.

Senator KIRK—So the advice of the constitutional council would be made public—is that what you are saying?

Prof. Winterton—Yes, but maybe not immediately. Sir Ninian Stephen, in some evidence he gave long ago to the constitutional convention, took the view that, if you require the publication of the advice—he was talking about advice by the Prime Minister under section 57—indeed during the election campaign, this is a very strong guarantee that it will not be improper. It might be proper to publish the constitutional council's advice even immediately, but that is a matter on which I do not have very strong views and I would be more interested to hear what other people think on that. But I think it should be published, say, within a year or two, but it may aggravate an inflammatory situation more by publishing it immediately and adding public pressure. I think you really want an informed decision by the head of state, knowing that he or she is going to bear the sense of responsibility of history, but perhaps the tabloids getting in on the act may not be helpful.

Senator KIRK—But, as you say, because it is the President who ultimately has to take the decision, perhaps that is an argument to say that the advice should not be published.

Prof. Winterton—You mean never? I think that would be unwise because this would be an important corpus of information and precedent which would inform governments and heads of state—governors as well as the national head of state—in the future. I think that would be a shame if it were not published except perhaps after 30 years. Early publication would be wise, perhaps once the crisis is over, in effect.

Senator KIRK—Thank you.

CHAIR—That is all the questions we have of you, Professor. Thank you very much for your evidence.

Prof. Winterton—It is a pleasure.

[2.42 p.m.]

FLINT, Professor David Edward, National Convenor, Australians for Constitutional Monarchy

JONES, Mrs Kerry Lyn, Executive Director, Australians for Constitutional Monarchy

CHAIR—Welcome. You have made a submission to the committee, now numbered 455. Do you wish to make any amendments or alterations to it?

Prof. Flint—No.

CHAIR—Would either of you like to make an opening statement?

Prof. Flint—The organisation which we represent is a strong believer in the Constitution as it is—that is, of the indissoluble federal Commonwealth of the Crown that was established in 1901. We do not support any particular model, but we do note that the position before the referendum which Mr Turnbull reported in his diary—that is, that nobody is interested—is still probably the position now. A recent opinion poll in the *Sydney Morning Herald* on issues which interested young people, where a whole list was given to them, got a vote of one per cent in relation to the republic.

We are also concerned, as we were before, about the amount of money that would be involved in a change for which we can see no justification and about the diversion of funds from schools, hospitals and so on into what we see as not really achieving terribly much. We have tabled a list of questions that our supporters are asking of the committee. Our people believe Australia should stay as it is; it works well.

In relation to the head of state, we draw your attention to the paper submitted by Sir David Smith, which is a detailed paper on the constitutional role of the Governor-General as head of state. With respect, we also draw your attention to the fact that all foreign governments and the United Nations receive the Governor-General of Australia as the head of state of Australia, principally because the Australian government and previous Australian governments have asked that that be done.

We do not believe in any way of changing the Constitution except by referendum. We believe it would be a mistake to initiate a constitutional plebiscite. The founders of this country were well aware that, since the French Revolution and until the time of Federation, constitutional plebiscites, apart from those agreeing to the name of a particular new sovereign, were grossly misused because of the propensity for them to be blank cheques—that is, the people are asked the question first and given the details later. With respect, we believe that that the particular and especial danger of a constitutional plebiscite in Australia would be that it would be irresponsible. It would be inviting the Australian people to cast a vote of no confidence in what is probably the world's most successful federal constitution and it would not immediately—if ever—have an alternative to put in place and certainly it would have no particular model in mind to substitute for the existing Constitution. That is our position.

The Constitution provides for that means of amendment. It is contained in section 128. As the founders of this country, Robert Garran and Sir John Quick, wrote, soon after Federation, that method of change does not freeze the Constitution in aspic, but it does require that there be proper discussion, proper debate, and that change only take place where it demonstrated to the satisfaction of the people, across Australia and in the several states, that the change is desirable, irresistible and inevitable.

Mrs Jones—I would briefly add that we have been through the process, at enormous cost to taxpayers. As we said in our submission, well over $150 million of taxpayers' money has already been spent on this debate. Professor Winterton, a prominent republican, pointed out that, if anything, the polls are still even—fifty-fifty—without putting up a model. We have probably had every debate possible through constitutional conventions, books, records, papers and town hall debates, yet we still have not seen a republic offered to the Australian people that in any way measures up to the safeguards in our current constitutional arrangements. We have been through the process. We have had over 10 years of it, and we have spent over $150 million of taxpayers' money on the process. All of us—republican or constitutional monarchist—agree that what we need is education. We want to get out there and spread the message. We want the message to be that of why Australia has the best constitutional arrangements in the world, why Australia is the best democracy in the world, why our founding fathers came up with that incredibly good working constitution that is now the envy of the world. But, from the point of view of all Australians, whatever their views on the republic, everybody agrees that we want education. We believe very strongly that we should be moving into a national education debate, which the Senate could play a major role in, on the operation of our Australian Constitution, its history and why it is the best in the world. That is what we believe we should be doing in the current climate. We need many years of education before the republic issue should even be raised again. That is a point we will be very strongly pushing today.

CHAIR—Professor Flint, your language was a bit colourful but towards the end you acknowledged that the Constitution does provide for amendment. I presume that by acknowledging that, by implication if not directly, it means that the Constitution anticipates that people can have the capacity to change it without expressing confidence in it.

Prof. Flint—Chair, I would agree that the Constitution does provide for amendment. It was the first in the Commonwealth.

CHAIR—So why do you say that those who want to change the Constitution are directly asking the Australian people to express a vote of no confidence in the existing Constitution when the Constitution allows for amendment to it?

Prof. Flint—It certainly allows for amendment, but a plebiscite was never intended, and the use of the plebiscite in this way would be to cast a vote of no confidence.

CHAIR—Why is that? Why would that be so?

Prof. Flint—It is obvious. You would have the vote 'are you in favour of maintaining the existing Constitution as it is?' If there were a vote against it—I do not think that there would be—internationally and internally we would see a vote of no confidence in the existing Constitution.

CHAIR—Are you implying that the only changes that would be acceptable to you as not expressing a vote of no confidence in the Constitution are the ones that you would agree with? Why can't other people come up with suggested changes to the Constitution through the mechanisms of the Constitution and not be tagged as wanting to express no confidence in the Constitution?

Prof. Flint—The referendum is a 'yes' or 'no' vote. The model comes up. All the proposed changes are on the table. Every voter in Australia is capable of knowing what the changes are. They say yes or no. The proposed changes take effect or they don't.

CHAIR—That is right.

Prof. Flint—And that is the way that the founders intended that we change the Constitution.

CHAIR—Sure. But when I read your submission I cannot help thinking that you are actually trying to mislead the public when you make a statement like that. Why do republicans wish to avoid the letter and spirit of our Constitution? I would have thought that in the submissions put to us by those who want to change the Constitution, pivotal to their considerations are the acknowledgment and acceptance of the desirability of using the referendum provisions of the Constitution for a change to the Constitution. How do you claim that republicans wish to avoid those mechanisms in the Constitution? Why do you claim that, and on what basis?

Prof. Flint—The freedom of speech which we enjoy in this country entitles all Australians in salons, clubs and eisteddfods all over Australia to debate the ARM and the ACM as much as they wish. They can debate the Constitution all they want. What we are saying is that there should not be a government-paid legislated plebiscite to vote on whether to change the Constitution except by a referendum.

CHAIR—I have asked you a direct question, Professor Flint, and that is to justify your assertion that republicans wish to avoid the amendment process of the Constitution. How do you come to that conclusion?

Prof. Flint—Chair—

CHAIR—You can justify it by saying, 'We have freedom of speech and I can say what I like wherever I like,' but why do you say that, and on what basis?

Prof. Flint—Chair, we have had a referendum. There was a very strong vote against the proposal notwithstanding—

CHAIR—Are you refusing to justify that statement?

Prof. Flint—If you will allow me to finish, Chair, I will tell you.

CHAIR—I would like you to get to the point.

Prof. Flint—I will get to the point as soon as you allow me to finish, Chair. What I am saying is that we have had the referendum. We voted on that referendum. Now it is obvious that people

are not prepared to put a second referendum straight to the people because they fear that it would be lost. So we are going to go through a series of plebiscites to trap people into holding to a position which they would adopt when they were not properly informed.

CHAIR—You are very afraid, Professor Flint.

Prof. Flint—I am not afraid at all. I am not afraid of a plebiscite, and I am certainly not afraid of a referendum.

CHAIR—So what is the justification for your assertion that people wish to avoid the letter of the Constitution? You still have not answered that question.

Prof. Flint—The Constitution never envisaged that the Commonwealth of Australia would legislate to have a plebiscite in relation to the Constitution in lieu of or in preparation for a section 128 referendum.

CHAIR—Why are you afraid of the expression of the will of the people by way of a plebiscite?

Prof. Flint—I am not afraid of the will of the people. A plebiscite would be like a very expensive opinion poll except that it would be given official sanction.

CHAIR—We have had five years of opinion polls, and all those polls indicate the support of the public for an Australian head of state. Your concern is that it is a waste of money. Wouldn't it be best to embrace the will of the public and go down that road instead of obstructing it and causing greater expense for the taxpayer?

Prof. Flint—The largest circulation newspaper in this country, the *Herald Sun* in Melbourne—in the state which voted most favourably for a republic but which still voted for a constitutional monarchy—sent out 28,000 questionnaires to readers who wished to receive them, and the majority, 56 per cent, came back saying that they did not want a republic. They had had time to think about it.

CHAIR—Professor Flint, I put it to you that it was the process and questions—which were put before the public in a manipulative way—which have led to the will of the public not being fulfilled at the last referendum and not being fulfilled now. I put it to you that maybe that obstructionism is responsible for the taxpayers' costs, rather than anything else. How can you continue to resist the expression of public opinion year after year, time after time, and then blame someone else for the expense?

Prof. Flint—Mr Turnbull and Mr Barnes attempted to change the question at the last referendum to remove two words: 'President' and 'republic'. Even the press thought that was going far too far. They were left in, and we have a question which—

CHAIR—I have asked you three direct questions, and I cannot get an answer. Senator Payne.

Senator PAYNE—Professor Flint, I think you said in your initial remarks that your organisation does support proper discussion and proper debate. You have made reference to

opinion polling as well, and it has been the subject of discussion with the committee earlier today. I do not spend a lot of time in salons and eisteddfods but, rather, in working around the state of New South Wales, which I have the honour of representing, and these questions are often raised with me. One of the reasons that the issue of a plebiscite has been the subject of discussion in this process, and was at Corowa—at which, I believe, you were present—is that it would facilitate the proper discussion and proper debate which you so eagerly advocated in your earlier remarks but reject as a concept attached to a plebiscite. I do not understand the divergence in your views.

Prof. Flint—A plebiscite is an official legislatively sanctioned vote. The very first question which is invariably proposed in all these processes—for example, at Corowa—is effectively a vote of confidence in the existing Constitution, without the guarantee of substituting something else in it. The founding fathers of this country would not have that. They were erudite men; I am not being sexist, but they were all men. It was just one of those things.

Senator PAYNE—I am aware of that; that is why they are called 'forefathers'.

Prof. Flint—They were all aware of history and had seen the manipulation of the constitutional plebiscite in all other countries in which it had been attempted to that date. So they adopted instead, as you would know, the Swiss style of referendum, which gives you the details on the table, and you vote on the details, not on a vague question.

Senator PAYNE—I have rather more faith in the Australian people than your organisation seems to exhibit. I would have thought that you would be more confident in your view about the position of the Australian people and that you would be comfortable in going to a plebiscite, which would enable that proper discussion and proper debate to take place.

Prof. Flint—We would be very comfortable in discussing matters with the Australian people. What we are not comfortable with is the Australian parliament legislating against, effectively, the spirit of the Constitution. The Constitution provides for a referendum, and that is the way to go. You have a debate, a convention or something like that, and then what you precisely have in mind you put to the Australian people.

Senator PAYNE—Are the Australians for Constitutional Monarchy opposed to any form of constitutional change on any issue, or only in relation to the republic and head of state issue?

Prof. Flint—We are essentially a single-issue organisation. We have no objection to changes, for example, in the powers of the federal parliament under the Constitution. That is a matter for discussion and for the people to decide on. We took no position on the proposals to change the deadlock provisions relating to the Senate, although many of us would have had strong views about it.

Senator PAYNE—Let me try and put this in the abstract for you, because it seems to me and to those who are interested in the constitutional development process in this country that we are not terribly successful at communicating our proposals for constitutional change on this and other issues—and I do not restrict that to the 1999 referendum by any means. As Mrs Jones referred to, one of the issues to do with that is how well educated members of the Australian community are about what our Constitution does and does not do, allows and does not allow and

so on. It seems that, in the discussion of a proposed constitutional change such as this, the introduction of a plebiscite process, which is non-binding and has none of the conspiratorial flags that might concern you about some method of subterfuge to amend the Constitution, would allow for that proper discussion and proper debate and facilitate the education process about the Constitution which you hold so dear. In fact, the overwhelming majority of people who are participating in this process certainly do hold it dear also.

Mrs Jones—I think that both you and the chair have got our submission a little bit wrong.

Senator PAYNE—But it was so subtle, Mrs Jones. How could that be?

Mrs Jones—We are certainly not saying that we do not want the Australian people to exercise their democratic rights every day. We firmly believe that we have the best democracy in the world. If, through your process, you decide to run a series of cascading plebiscites, we are just warning you that you are (a) really mucking around and creating a lot of constitutional uncertainty and (b) reopening a very divisive debate. We saw that through the referendum. We saw families and politicians divide on the issue and we saw the Liberal Party and certainly The Nationals nearly split on the issue. You are really opening up a can of worms over a very long period of time. I think, with due respect, we are actually trying to help you along here by saying, 'If you run cascading plebiscites, you may be opening up a political nightmare for yourselves.'

By the way, I go around Australia talking to people about this issue too. There is not great interest in it. You would be lucky if 20 per cent of the population were interested in it. I do not think even 20 per cent even are. And, from moving around Australia, I believe extremely strongly that if you open a political debate through plebiscites you are going to open up a divisive debate and you are not going to get a united republic answer, which is surely what republicans would want; you are just going to get divided answers all over the nation as well as create constitutional uncertainty. You are asking for a lot of trouble if you set up a series of cascading plebiscites. I believe we would win it. I believe you would strengthen the constitutional monarchy through a series of cascading plebiscites. I have always felt that, even before the 1990s debate. I have always felt that plebiscites would strengthen the current system because people would say, 'Look at the can of worms that that is opening up.' We are trying to help you; we are not trying to inhibit you.

Senator PAYNE—That is very kind of you. Thank you for your salutary warning. I can certainly assure you that my family, my party and my coalition are not split post-1999. I can certainly speak for my party and my coalition when I say in public that we operate in a particularly cohesive manner, and I am sure you will be pleased to hear that. But you have not come back to my question of education, which I thought you might. Where do you think the current system is failing with regard to education and what is the ACM doing in relation to that?

Mrs Jones—Right throughout the debate, ACM has published books, resources and materials which are all available on our wonderful web site. We have produced papers of the highest order, written by eminent Australians such as Sir David Smith, Sir Harry Gibbs and Justice Ken Handley. It is incredibly worthy material that provides education. The problem is getting people interested enough to read it because, as I said before, nobody is interested. So we are going to do whatever we can to get people interested, and we will continue to do that. I just wish the republicans would do a similar thing because, as I said, we have produced hundreds and

hundreds of resources and you find virtually nothing that republicans have produced, and there is certainly no unity in the documentation.

Senator PAYNE—Perhaps there are some people at the back of the room who could assist you with that, Mrs Jones.

Senator KIRK—I have a question in relation to the concluding paragraph of your submission. You say there that if in fact there is a need to cure our system, which you deny:

... it should be undertaken by an expert body with some reasonable representation of the majority opinion in the land ...

I wonder if you could elaborate upon this expert body that you are suggesting could look at this issue with some reasonable representation. There is not very much detail fleshed out there.

Prof. Flint—If there were a need for substantial constitutional change, it would be right and proper, we would argue, that there be broad representation on the body that made that decision. That is not meant in any way as disrespectful to this committee but, with the greatest of respect, it is dominated by people who seem to have been supporters of the model in 1999. That is not meant as any criticism. But if there is to be constitutional change which could inspire the 55 per cent of people who voted against the model, it would really need a broader based committee or body to deal with that.

Senator KIRK—Are you suggesting, then, perhaps a joint committee of the parliament—a House of Reps and Senate committee? We just happen to be the legal and constitutional committee of the Senate.

Prof. Flint—Again I mean no disrespect, but I think that the reference is highly premature. Both sides in this debate say we need more education, as Mrs Jones was saying—both republicans and monarchists. The monarchists say that, if you have more education, Australians will like even more what they have and not change. The republicans say that, if the general public knew more about their Constitution, they would want to rush out and change it. We would say, and I hope the republicans would say, 'Let's see.' Why don't we do that? There is not enough civics education in this country. People do not know enough about their Constitution. We think that would be a first step before we make such a substantial constitutional change at great potential cost without necessarily achieving what is intended to be achieved.

Senator KIRK—Going back to what you are suggesting—I am just trying to get some idea as to what you would consider to be a sufficiently expert body; you seem not to like the idea of the joint House of Reps and Senate committee—are you perhaps suggesting a fully elected constitutional convention or have you not really thought through in detail this aspect of your proposal?

Prof. Flint—We have not really thought through it, but if you did have a body it would have to be one in which those who voted no could have confidence in it, and that would require, for example, the sort of people—not necessarily us, but if it were a political body—who were prominent on the no side in the campaign.

Senator KIRK—Understandably.

Senator BUCKLAND—I was not going to ask a question, but one thing continues to worry me and I thought it might have been picked up by Senator Kirk. You both mention what a great democracy we have and a great Constitution that is the envy of the world, and I agree with you. Can you tell me, though, what we will lose from that if we change to a republic? You have never explained that to the people and you talk about education.

Mrs Jones—I will hand to David Flint, who of course is an eminent Australian constitutional lawyer, but we have written book after book on this topic, Senator Buckland. I am very happy to send you a package of material. The answer to that question would fill this room. You cannot answer it in one sentence—you really cannot.

Prof. Flint—The recent unfortunate furore in Hobart, where the Premier of Tasmania has delivered a message to the Governor, has at least united Australians across the political spectrum in that if we are to stay with the Westminster system and not go to an executive presidency as in the United States—and I think there is an overwhelming view in Australia that we should stay—then at its centre there must be an institution which provides leadership above politics.

The Westminster system has such an institution—the Crown. The Crown ensures via the various subtleties and conventions within it that you have in Australia leadership above politics. That is very important, not only in the ceremonial sense but in relation to the reserve powers. You will have seen the contortions that my colleagues are going through in trying to somehow bring across the Crown to a republic yet still keep the virtues of the Crown, and also in regard to the day-to-day function of the Governor or the Governor-General in the exercise of the checks and balances in relation to the exercise of executive power. Sir Guy Green has written much about this. Sir Guy Green says that the Governor must be assured, before the Governor accepts advice in relation to executive acts, (a) that what he is being advised to do is within his power (b) whether it is subject to any conditions and (c) whether those conditions have been fulfilled. We do this wonderfully in our system by having these non-political persons who must behave non-politically in those positions.

Once you move to a republic you run into the danger of the person having a mandate or behaving politically. The fact that the Governor-General, for example, may be a former politician has nothing to do with it. Some of the best Governors-General of this country—for example, Sir William McKell—have been former politicians and fulfilled their positions superbly, because they have accepted that they must abide by the rules which apply to the Crown. It is very hard to replicate the Crown in the Westminster system. The French tried to do it in three of their five republics and failed on each occasion. If the French cannot do it, it might also be difficult for us.

Senator PAYNE—You are not seriously saying, Professor Flint, that Australia is not capable of doing a better job than France, are you?

Prof. Flint—I am saying—

Senator PAYNE—On anything, quite frankly: start on going to war and move on to constitutional change.

Prof. Flint—I think we do a better job than the French—

Senator PAYNE—I know we do.

Prof. Flint—in relation to political matters—

Mrs Jones—Already.

Prof. Flint—because of our constitutional system.

Senator PAYNE—You have no respect for your own country; it is extraordinary.

Prof. Flint—Thank you.

[3.14 p.m.]

MURPHY, Mr Peter Andrew, Secretary, A Just Republic

WOLDRING, Dr Klaas, Convenor, Republic Now!

CONSANDINE, Mr Peter Warren, National Executive Director and Founder, Republican Party of Australia

CHAIR—Welcome. Dr Woldring, you have given us submission No. 466. Is there anything in it that you would like to amend or alter?

Dr Woldring—I have one minor thing: a typographical error in the answer to question 26. It says that a choice of models should be given 'at'—that 'at' should be taken out. That is all.

CHAIR—Mr Consandine?

Mr Consandine—I have two corrections. The first is in my original submission under the heading 'Terms of Reference Item (a)'. It is merely a numerical error. It should state '152' and it says '157'. The other corrections are typos, although they were deliberate. I was trying to give a bit more impetus to the word 'torpedo'. The spellchecker tried to prevent me from leaving the 'e' out on both occasions. I know that torpedoes is spelt with an 'oes'. So, at the top of page 2, just above that heading 'Terms of Reference Item (a)' the word 'torpedoes' is spelt without the second 'e' on two occasions, and that is incorrect. I am just being pedantic.

CHAIR—We all are, in this process. I invite each of you to give us a three- or four-minute short introduction to your positions—I know that Mr Consandine has given us a long document, which the committee will take away and digest—after which we will go to questions.

Dr Woldring—Republic Now! is basically a study group that has emerged out of courses at the Workers Education Association. There are two courses on the republic: one is called 'What kind of republic?' and the other is called 'Republics and their presidents'. In that course I deal with 15 modern republics—not including the United States. I look at the relationship between the President and the parliament, how these people are elected or appointed, what terms of office they have, what their ages are and so on. It is in that fashion that I have answered your discussion questions.

In your terms of reference you ask for 'the most appropriate process for moving towards the establishment of an Australian republic' and 'alternative models for an Australian republic, with specific reference to' and so on. As it says 'with special reference to' I thought I might as well include our entire philosophy on achieving a republic, because we see the direct election of a President as merely a first step of a process which takes us much further and not, perhaps, even the most important step. We distinguish ourselves from the minimalist debate—we describe ourselves as 'maximalist'—which concentrates very much on that one issue of the head of state and how this person should be elected or appointed. We believe that this is just the first step and that major steps will have to follow from that.

We are saying, in relation to that first step, that, yes, there should be a plebiscite but that plebiscite should not be about whether people want a republic or not. In the first instance, it should be combined with the models for the head of state. There may be four or five models—I have mentioned some in my submission. Therefore, we at once get an indication of where people want to move: whether the head of state should be appointed, elected, elected by indirect election, such as by electoral college, or whether there should be a strong executive President and so on. This can be done in one go, which would save a lot of money. If it is a plebiscite it is only indicative anyway, and that could be followed by a referendum. This is a very good process and one of the few positive things that came out of the Corowa conference, in my view. We should have a process of plebiscites, perhaps multipurpose plebiscites, with multiple questions so that governments have a fair idea of what people want to do.

We have just heard how uneducated and uninformed the Australian people are about matters constitutional and matters relating to the political system. Indeed, as I mentioned in my submission, there has been and still is a great scarcity of comparative study of how other systems work. Most people have some idea of how the United States system works and perhaps how the Irish system works, but it is very Anglo-orientated. There are far more interesting examples in the world that we should study. As far as I am concerned, that has not been done enough. In 1993 the Republican Advisory Committee included a chapter on comparative matters like this. Also, the Constitutional Centenary Foundation had a booklet about heads of state and it gave several examples. We should have more of that.

Apart from that, it is true that people's knowledge is limited and it should be increased considerably. I believe that a process of plebiscites will have a great educational function. It will create debate about detailed issues of the Constitution and the political system. To go that way, a head of state would be very desirable. But, as you will see in the rest of my submission, we believe that there is a lot wrong with the Constitution and that by this particular process the Constitution should be completely rewritten. That is basically what it amounts to.

Mr Consandine—Before I commence, could I establish our submission number, please?

CHAIR—Yours is 495.

Mr Consandine—I head a community orientated republican organisation called the Republican Party of Australia. When I say it is a community orientated party I mean that we are what we are and what we say we are. On 468 occasions since October 1991 I have conducted street stalls amongst the people of Australia—the community of Australia, which is our constituency, as it were. We have been around since 11 January 1982 but obviously we have had no electoral success to date—but you never know, there might be a turning of the corner at some future time; we are working towards that. Maybe in the next federal election we can prove that Professor Flint does not know how strong the feeling for the republic still is in the state of Victoria—who knows.

As leader of a micro minority federally registered party, I have done this community work on a longstanding basis along the length and breadth of the country. Our model for the republic helps us to recruit. We have 1,300-odd financial members and/or members who are satisfactorily registered to ensure that our registration is maintained. I reflect the views of most members of our party: there is only one way that Australia will ever be a republic and that is if the people can

not only sense ownership but also know that ownership is something they have and that it cannot be taken away from them. I am utterly convinced that unless the second referendum on the Australian republic is based on an inclusivist model—one where the Australian people are sovereign—it will be doomed to fail, as was the first referendum. I have addressed your terms of reference but I need to add some very salient points.

The opportunity for a so-called indicative plebiscite on the issue of an Australian republic has vanished. Everybody here today, including my friend Klaas, who advocates cascading plebiscites or a series of plebiscites on this issue, is way behind the thinking of the electorate at large. The indicative plebiscite, or the series of them, that they are all talking about should have taken place in tandem with the 1996 federal election. That opportunity having been lost or passed up by the then incumbent Keating Labor government, the only way forward is through what I call the no-risk route.

The no-risk route can be arrived at this way: the parliament of the day stages—if it is a Labor government or a future Peter Costello Liberal government; we obviously cannot rely upon the Howard government to initiate this, but at some future time—another constitutional convention. We would not be bothered with the way those 150-odd delegates were either appointed or elected; the previous way that the delegates were either elected or appointed did not bother us particularly. I think something similar to that would be like precedent being followed. With this formula, if these 152 delegates could go to Old Parliament House again, it would be a perfect venue, and obviously all of these people would have to be declared and committed direct electionists. From my understanding of the overall situation, there is a reflection in repeated national opinion polls going back to 1987—

CHAIR—I should tell you that your four minutes are up and we have Mr Murphy here now as well.

Mr Consandine—We do. The opinion polls' findings on the questions indicate that a direct election is the only way the people will vote yes. Obviously, at the second constitutional convention, a direct election model could be arrived at and it would underpin the eventual second referendum, and that referendum, I believe, would carry.

CHAIR—Thank you. Mr Murphy, the committee has your submission, now numbered 281. Do you wish to amend or alter it, or would you like to start off with a three- or four-minute statement?

Mr Murphy—I will just give a brief summary, if that is okay. My submission to you is really based on a few years of experience and, without the benefit of a wider form of community consultation, I think that is quite a good view of how the direct election caucus at the constitutional convention conceived of a process. A Just Republic has its origins in the campaign for election to that convention, and we had two delegates elected: David Curtis from the Northern Territory and Magistrate Pat O'Shane from New South Wales. We are firmly of the view now, and we were then, that a popular election process is the way to move forward constitutionally in Australia. We think there needs to be broader constitutional change than simply the debate about the nationality of the head of state.

Therefore, in our submission we have proposed that there be options put forward in a plebiscite and that these options encompass popular election for a head of state—as well as other models that might be put forward to you—and also bring forward ideas about a bill of rights, electoral reform and more definition of the various sections of the constitutional framework in our Constitution, such as on the role of the Prime Minister and the executive. These things are not really defined at the moment in our Constitution. We think that this plebiscite should be held as soon as possible—that is, at the next federal election if it could be done—and that it should trigger an elected constitutional convention process as well.

We feel that there were many problems with the 1998 convention, and one of them really was the way that the election and appointment process worked, so we would like to see a fully proportionally elected convention and that it have perhaps one year at least to do its work, because the Constitution is not really amenable to a find and replace process on a computer. They are our views as we have submitted them.

CHAIR—I will start off with one point that reflects the other side of the coin to the question I asked the ARM this morning. One of the questions I get asked as chairman of this committee is essentially: why can't the republicans in a common cause put aside some of the issues they have and come up with a common agenda? I recognise that there is a big difference between the maximalist and minimalist approaches. Have any of you had a look at the Corowa model and what are your major concerns with it, recognising that, for instance, it can be configured to allow direct election? Mr Consandine?

Mr Consandine—I have difficulties with all three models, but then again I am speaking as a party political animal.

CHAIR—You have difficulties with all three models?

Mr Consandine—Yes, I do, for various reasons.

CHAIR—If you want a republic, is it beyond your capacity to actually acknowledge that you cannot do it on your own but that there needs to be a broader umbrella to get there?

Mr Consandine—That is a very fair point. I have not been doing it on my own but I have been doing a lot of advance work—that is true. But as to the difficulties I have with the three proposals, that is not to say that, if invited, I would not attend and participate. I have been participatory for a long time as a maximal republican.

CHAIR—Would you agree? Would you find some way that you could come to a common position?

Mr Consandine—There is no doubt that, as before, we would accommodate that. We have every reason to believe that, in moving on, we are being progressive.

CHAIR—Dr Woldring might have a different view, though.

Dr Woldring—As I said before, the only positive thing that I felt came out of Corowa was the fact that the first step was seen as a process. We had Marshall McLuhan at one stage saying that

the medium is the message. What we can now say is that the process is the message. The process will be extremely important from an educational point of view, and that was the contribution of Corowa. Otherwise, I would have to say, I found the Corowa proposition extremely minimalist and conservative.

CHAIR—The same question goes to you. Aren't you, in essence, just playing around in the wind? Where do you go on your own? If the republic is the important part of your objective, shouldn't you be looking at teaming up with others?

Dr Woldring—I am happy to team up with others who have similar ideas to ours. We have a strategic plan.

CHAIR—That is the point, though, isn't it? If you were the general public and you were presented with a multiplicity of republican models, you would say one of two things: 'It's too hard' or 'If these guys can't get it together then how should we be asked to?' Each one of you as individuals cannot change the Constitution. There needs to be a referendum and a process. Putting aside my own spin on things, there is a certain critical mass behind a proposal, whether it is the Corowa model or another. Why wouldn't you say, 'Right, I'll get behind that'?

Dr Woldring—I think the Corowa model lacks a strategic plan. It does not have an overall plan. There is no acknowledgment of serious shortcomings in the Constitution. So, I am sorry, we will not be in this.

CHAIR—So Professor Flint can walk away smiling.

Mr Murphy—I think that the Corowa meeting did resolve a good process and that it did unite most republicans. As far as we are concerned, as people who advocate a popular election, we also campaigned for a 'yes' at the last referendum because there had to be an effort for a republic. It would have been good if some people on the other side of the 'yes' case had been willing to compromise at the convention. The convention was a very bitter experience for people. As I said before, it was highly manipulated. But I do believe there have been a lot of lessons learned and that the ARM's own process has advanced this sort of coming together. As far as our group is concerned, we convened a meeting soon after the referendum defeat a few months later, with the Phil Cleary group involved, to try to review the process. There was a positive engagement and a willingness to be flexible for the next phase, whenever it would come. We have been very frustrated by the last few years.

CHAIR—Phil has gone AWOL this time around.

Mr Murphy—I have not seen him lately at all, so I do not know. So many people feel there is no real basis at present in Australian politics for this debate to be practical. But I think it is a great opportunity and I am very pleased that the Senate has made this committee happen so that we can have this discussion and you can have some sort of report to the people about what could happen. I do think there is a convergence. The ARM's own process, which I am part of as well, has at least now embraced the option that, 'Yes, we must consider a popular election.' If it goes a little bit further, there could be agreement on one proposal to put forward. One more thing that I would like to say is that, in an indicative plebiscite, I believe the Australian people would like to be asked a range of things, not just one thing. I think that might look like a bit of a stitch-up and

too quick. But when it comes to a referendum, of course the whole republican movement ought to be united and I would certainly be of that mind.

Senator PAYNE—One of the terms of reference of the committee is about the process that should be pursued now:

... the most appropriate process for moving towards the establishment of an Australian republic with an Australian head of state ...

Your three organisations come before the committee with at least one single issue of unity—that is, support for an Australian republic—but not a lot of information in your submissions on process. I appreciate the remarks that Mr Murphy has just made about his organisation's participation in other consultations and discussions, but process is key for the committee, because the criticisms of the pre-1999 period were that the process was too truncated, that it did not allow for an adequate and substantial process of education and constitutional awareness raising, that we walked into a referendum and did not, for example, hold the plebiscites that are referred to in the Corowa discussion and referred to in the paper and that a number of people—some very eminent Australians—advocate.

We have just had a discussion with the Australians for Constitutional Monarchy about why a plebiscite would result in the world as we know it coming to an end and, I thought, some implication that the divisions wrought in the Australian community by the 1998-99 process were such that we may never recover. I think we have recovered. I think Australia has moved on and we can contemplate issues of constitutional change again. But what I do not get out of your submissions, other than from the remarks that Mr Murphy made—and I am grateful for those—is the process. Mr Consandine, you just suggest, 'Let's go straight into a second constitutional convention.' How will that be any better than last time?

Mr Consandine—As I did remark, and I am sure I got on the record, we obviously believe that the second time around—in a second constitutional convention, held in the same venue with the same number of delegates, so that we do have a precedent situation obtaining—everybody that attends is of the one outlook, that we are going to arrive at what the people want: a direct election model for the republic. If you get 152 appointed and/or elected delegates to a convention and they are all committed to a people's ownership model for the republic then they will work it out, they will come up with the process. It is not for me to determine the process. I can make some suggestions. I have given you 25 answers to 25 boxed questions. I know it is late, but we are not that far behind the game here; you can take a positive view of this.

I do not wish to really rip into my friends in the Australian Republican Movement here, but I do have a major grievance, and I think it is pertinent to the matter. At the end of the Constitutional Futures Convention in Brisbane in mid-November of 2002—you were there, I was there, a lot of people in this room were there—I approached my counterpart in the ARM, John Warhurst, and put to him on the Sunday that there had been so much discussion from various contributors on the panels that had presented submission papers over the previous two days and that maybe we should get a little closer to Perth, Western Australia, for the next Constitutional Futures conference. I also put to him that maybe the time had come, since there had been so much—if you do not mind me saying this—pissy arsing around on the issue, to, before the convention, have a constitutional conference, if you like, where ARM people, RPA,

the Progressive Labour Party of Australia and other parties could come together as direct electionists and come up with a uniform model that we can take to a convention, and then we would go to the people. That is the no-risk route.

Senator PAYNE—That is one part of it, but our concern is overwhelmingly with the Australian people and how we take the process to them, how we engage them in moving forward.

Mr Consandine—At the beginning of 1999—like Peter Murphy's group, A Just Republic—we were invited to the Yes Coalition conference in Canberra at the Convention Centre. We went there, we put our direct election model on the shelf, and we joined the Yes Coalition and campaigned all year long for 'yes'. I was doing it in the Pitt Street Mall and I was doing it in the Hay Street Mall. Over the length and breadth of the country I put my model—my party's model; my members' model—on the shelf and campaigned for 'yes', in the hope that we would get 50 per cent of something. We got 100 per cent of nothing. The opinion polls starkly reveal, time and time again, that the people want a republic but they want ownership. They do not want the parliament appointing the President; they want a process whereby that ownership can be not only sensed but lived and breathed, and where they know they have got it for all time. It can be built into a republican constitution. Direct election is the only way to go.

CHAIR—Can I just interpose here; I find this extremely depressing. You tell us vehemently that you want a republic and then you say, 'But direct election is the only way to go,' when you know there is a divergence of view. That is the frustration—

Mr Consandine—I am telling you what other people are telling you too.

CHAIR—No, people are telling me all sorts of things. Through this committee, they are telling us all sorts of things—they are taking a populist approach, they are taking a not-so-populist approach. There has been a lot of work done with a lot of implications. It is not a simple yes or no, you have a politician or you do not. There are all sorts of hidden catches in this process that you have to steer around. When someone says, 'I want this,' realising that there is a divergence of views in the debate, and then says, 'but this is the only way to go,' I think that person is not serious.

Mr Consandine—Sorry you are depressed. We joined the Yes Coalition and campaigned 'yes'—

CHAIR—It is depressing.

Mr Consandine—on a model that the people did not want. I think it is about time the ARM came over to what the people want. Have a conference on that, Chair.

CHAIR—We can rearrange deckchairs forever, but the *Titanic* will still go down.

Mr Consandine—The *Titanic* has already gone down.

CHAIR—I mean the republic *Titanic*.

Senator PAYNE—Dr Woldring, could you answer my question by looking at the term of reference that is the basis of it. I understand the issues amongst various organisations that Mr Consandine has referred to, but that is not really the basis for my question; it is about how we as a nation move towards the establishment of an Australian republic, with an Australian head of state. Do you reject out of hand the concept of plebiscites? Do you think—

Dr Woldring—No. No, I have already said that.

Senator PAYNE—we should have another constitutional convention? Okay; that is what I wanted to talk to you about.

Dr Woldring—We are very much in favour of plebiscites, not only because they are educational in themselves but also because, if there is a process where increasingly controversial and difficult questions are put over a period of time, people become accustomed to that and able to deal with controversial questions. There is, as you will see, a step-by-step process towards this at the end of my submission. But your question now was, 'How do we start this; how do we involve the people in this?' I do not think that there was anything wrong with the convention process in 1998, as far as the election of the members was concerned. What was wrong was that half of those nominated were politicians and still others were former politicians, and they dominated the whole proceedings. If you—

Senator PAYNE—I do not mean any disrespect, but—

Dr Woldring—Can I just finish? If you recall, there was a minority of what I would call more progressive thinkers, who were putting all kinds of ideas forward in the first two days and were knocked on the head after two days. But at the end of the convention there was an appendix which said that if the referendum succeeds then in five years time there will be a further convention and that convention must deal with several really interesting items that were knocked on the head in the first two days of the 1998 convention. My feeling is that if we have a popular convention, as we had, entirely made up of members elected from the public and it sits for a much longer time, as Peter Murphy has just said—perhaps five or 10 times for 14 days over a year—then I think we will come up with some really interesting propositions.

Senator PAYNE—I also wanted to get Mr Murphy to comment. But I make the observation, Dr Woldring, that it is still only a very small group that you can get into a convention in that way.

Mr Murphy—Our group strongly wants to have a plebiscite at a federal election as the starting point of this next process, if we are going to have it at all. The plebiscite is a way for the parliament to acknowledge the people's vote in 1999—to open up the agenda and specify the items it wants on the agenda of the next phase, rather than someone deciding in advance what it is all about, which is what happened before. So we are very strongly in favour of a plebiscite to start the process and then an elected convention to continue a serious, substantive discussion. If it is done properly the people, through the media, can be very much involved.

CHAIR—Thanks very much, everyone. That winds up today's hearings.

Committee adjourned at 3.44 p.m.