

# CHAPTER 7

## THE "BATTLE OF THE MODELS"<sup>1</sup> –

### ALTERNATIVE MODELS FOR AN AUSTRALIAN REPUBLIC

*"It seems that every Australian has at least one model for a republic"*<sup>2</sup>

#### **Introduction**

7.1 This chapter will discuss the key features of various alternative models for an Australian republic, including the perceived advantages and disadvantages of each.

7.2 It is important to state at the outset that this Committee does not intend to endorse any one model over the others — that is ultimately a role for the Australian people. The report merely outlines some of the advantages and disadvantages of a number of the broad models that were presented in submissions and evidence during the Committee's inquiry.

7.3 In over 700 submissions, the Committee received a plethora of different proposals for models for an Australian republic. These ranged from "ultra-minimalist" style models which proposed as few changes as possible to our current system, through to more radical proposals for a complete overhaul of Australia's system of government. Some models were submitted with complete suggested constitutional amendments, others were just a broad outline of the proposed model. Unfortunately it is not possible in this report to examine each and every model submitted, many of which varied only slightly in the detail. However, many of the possible variations and related issues have been discussed in the previous two chapters.

7.4 As was outlined in earlier chapters, one of the fundamental differences between alternative republican models is the method of selection of the head of state. Other important variations relate to the powers of the head of state and the method for removing the head of state. Many other aspects, such as the qualifications and term of office, or methods for dealing with casual vacancies, varied slightly in the different models submitted to the Committee. However, some of these variations are not necessarily dependent on any particular type of model, and the issues surrounding them have been discussed in the previous two chapters.

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1 Professor George Williams, *Committee Hansard*, 13 April 2004, p. 39.

2 Professor Greg Craven, *Committee Hansard*, 18 May 2004, p. 1.

7.5 After making some comments on models generally, this chapter aims to outline some of the main types. These models are discussed under the following broad categories:

- minimalist models;
- direct election models; and
- other models, including "hybrid" or "indirect election" models.

### **General comments on models**

7.6 Before examining some key models for an Australian republic, it is worth presenting a few of the general observations that were made about "models" during the Committee's inquiry.

7.7 Several submissions emphasised that examining particular models was not a useful exercise at this point in time, and that the process was more important. For example, Professor Greg Craven commented that:

A major difficulty here has been the rush to models, with each participant hastening to produce his or her own version of a republic. Particularly at a point when no referendum on the subject is imminent, this is not a particularly useful activity. Far more important is the need to structure the debate by asking and answering some fundamental and quite general questions about the Australian Constitution, and relating them broadly to its possible amendment in a republican direction.<sup>3</sup>

7.8 Professor Craven reiterated this during the Committee's hearing in Perth:

There are two basic questions we need to worry about now, neither of which has to do with models. I think models are a problem. It is often said everybody has at least one novel in them; it seems that every Australian has at least one model for a republic. The two questions are: what is the broad sort of republic that Australia should be, not the model, and what process should be adopted on the way to that?<sup>4</sup>

7.9 It was also suggested that, in order to achieve a republic, supporters of a republic should be flexible and not get too attached to any particular model. For example, Dr Barry Gardner expressed a view that:

I am not terribly dogmatic about models, and I think that anybody who is serious about the republic should not be dogmatic about models either.<sup>5</sup>

7.10 Indeed, a considerable number of submissions indicated a willingness to accept and support any model that was chosen by the Australian people through an appropriate public process.<sup>6</sup> The Hon. Michael Beahan, for instance, submitted that:

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3 *Submission 167*, p. 3.

4 Professor Greg Craven, *Committee Hansard*, 18 May 2004, p. 1.

5 Dr Barry Gardner, *Committee Hansard*, 20 May 2004, p. 18.

... while I have personally favoured the minimalist model for essentially practical reasons, I am open minded about the model which will emerge from a process involving the public and would be prepared to support any model, provided I am satisfied with the integrity of the process.<sup>7</sup>

7.11 Mr Jack Hammond QC suggested that one of the prerequisites for any republic model should be the "retention or improvement of our democracy while not putting too much strain on the federation".<sup>8</sup> Several submissions also suggested that, to be successful, a republican model should be simple and easily understandable.<sup>9</sup>

7.12 Finally, it was suggested that almost any model would be achievable from a constitutional perspective. Professor George Williams stated in evidence:

As a constitutional lawyer, I would have to say that almost any model is potentially achievable. Many have their strengths and weaknesses ... 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.<sup>10</sup>

### Minimalist models

7.13 Many submissions supported what has been described as a "minimalist" approach to achieving an Australian republic. At its simplest, minimalist models involve minimal changes to our current system of government. Some of the main republican models put forward during the Committee's inquiry that could be described as "minimalist" include:<sup>11</sup>

- ARM "Model One" (Prime Minister appoints);

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6 For example, Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 32; Mr Eric Lockett, *Submission 354*, p. 3; The Hon Michael Beahan, *Submission 334*, p. 6; Mr Howard Teems, *Committee Hansard*, 19 May 2004, p. 3.

7 *Submission 334*, p. 6.

8 *Committee Hansard*, 29 July 2004, p. 5.

9 For example, Professor George Williams, "The Treaty Debate, Bills of Rights and the Republic: Strategies and Lessons for Reform" in *Balayi: Cultural, Law and Colonialism Volume 5, 2002*, p. 21, attached to *Submission 152* from Professor George Williams; see also Dr Barry Gardner, *Committee Hansard*, 20 May 2004, p. 19; Women for an Australian Republic, *Submission 476*, Attachment A, p. 2.

10 *Committee Hansard*, 13 April 2004, p. 45.

11 Other variations of 'minimalist' models were also received: for example, Mr Michael Pepperday, *Submission 621*, pp. 11-15. Some models submitted were described as 'minimalist' but could not actually be considered as such because, for example, they appeared to shift the power arrangements under our current system: see for example, Mr Andrew Nguyen, *Submission 256*, pp. 6-9. Some submissions suggested that even some 'direct election' models could arguably be considered to be minimalist: see Mr Stephen Souter, *Submission 526*, p. 209; Mr James B Kelly, *Submission 506*, p. 28. However, for current purposes, direct election models will be considered separately.

- the "McGarvie Model";
- the model put to the 1999 referendum ("1999 republic model"); and
- ARM "Model Two" (People nominate, Parliament appoints).

7.14 Table 1 summarises some examples of minimalist republican models, which will then be outlined in slightly more detail below.

<b>Table 1: Some Examples of Minimalist Models</b>				
	<b>PM appoints (ARM Model One)</b>	<b>McGarvie model</b>	<b>1999 referendum model</b>	<b>People nominate, Parliament appoints (ARM Model Two)</b>
<b>Eligibility</b>	Australian citizen qualified to be a member of Commonwealth Parliament (MP) provided not an MP at the time of nomination.	Australian citizen	Australian citizen qualified to be a member of Commonwealth Parliament, provided not an MP or member of a political party at the time of appointment.	Australian citizen qualified to be a member of Commonwealth Parliament, provided not an MP at the time of nomination.
<b>Nomination</b>	By the Prime Minister (PM)	Chosen by the Prime Minister	Single nomination by the Prime Minister after consideration of a report of a 32-person committee.	Made to a nominations committee established under legislation, which shortlists between 3-7 candidates.
<b>Appointment</b>	By the Prime Minister	By a three-member Constitutional Council bound to act on the Prime Minister's advice.	Nomination by the PM, seconded by the Leader of the Opposition. Approved by a two-thirds majority of a joint sitting of Commonwealth Parliament.	PM chooses from shortlist, seconded by the Leader of Opposition. Nomination must be ratified by a two-thirds majority of a joint sitting of Commonwealth Parliament.
<b>Tenure</b>	5 years	At pleasure (no defined term)	5 years. More than one term possible.	5 years
<b>Removal</b>	By the Prime Minister	By the Constitutional Council within two weeks of the Prime Minister's advice.	By the PM, approved by the House of Representatives.	Ordinary resolution of the House of Representatives.
<b>Powers</b>	Same powers as Governor-General. Non-reserve powers incorporated by reference.	Same powers as Governor-General, but (except for reserve powers), powers may only be exercised on advice of Federal Executive Council or a Minister.	Same as Governor-General. Non-reserve powers exercised on advice of Federal Executive Council, the Prime Minister, or another Minister.	Same powers as Governor-General. Non-reserve powers incorporated by reference.

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***Prime Minister appoints the head of state***

7.15 Under "Model One" put forward by the ARM, the Prime Minister would select, appoint and remove the head of state.<sup>12</sup> The powers of the head of state would be the same as the powers currently exercised by the Governor-General, although the non-reserve powers would be incorporated by reference. As the ARM commented, this model reflects "the current political reality", and requires only minimal change to our existing Constitution.<sup>13</sup>

7.16 Perhaps the main disadvantage of this model, acknowledged by the ARM, is that the appointment of the head of state is left to the discretion of a single individual – the Prime Minister, and neither the Australian people nor Parliament have any say in the appointment.<sup>14</sup>

7.17 A similar, if not identical model, was supported by Dr Baden Teague,<sup>15</sup> although Dr Teague specifically noted that in his model there would be an informal mechanism for any Australian citizen to be able to nominate any other Australian citizen to be considered by the Prime Minister.<sup>16</sup>

***Parliament appoints the head of state***

7.18 "Model Two" submitted by the ARM<sup>17</sup> and the model put to the 1999 referendum ("1999 republic model") are very similar, and will be outlined here.

7.19 Under ARM "Model Two", nominations for the head of state would be accompanied by a required number of signatures, and would be presented to a nominations committee established by Parliament. The nominations committee would then shortlist nominations to between three to seven names. The Prime Minister would then choose a name from that shortlist, which the Leader of the Opposition would need to second. A two-thirds majority of a joint sitting of Parliament would then be required to ratify or endorse that candidate.<sup>18</sup>

7.20 As can be seen from Table 1, one of the main differences between ARM "Model Two" and the 1999 republic model is the dismissal mechanism. Another difference is that the nomination process in ARM "Model Two" allows for greater public participation, and the Prime Minister would be obliged to nominate someone who is on the short list of the nominations committee. Under the 1999 republic model,

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12 *Submission 471*, Appendix A, p. 3.

13 *Ibid.*

14 *Ibid.*, p. 4.

15 *Submission 538*, pp. 9-10.

16 *Committee Hansard*, 19 May 2004, p. 31.

17 *Submission 471*, Appendix A, pp. 5-6.

18 *Ibid.*, p. 5.

the Prime Minister would only be obliged to consider the nomination committee's report, but would not be required to select a candidate from the nomination committee's short list.<sup>19</sup>

7.21 Many of the advantages and disadvantages of this form of model are discussed below in the section on arguments for and against minimalist and direct election models. Some of the advantages of "Model Two" were also summarised by the ARM in its submission. These included the opportunity for public participation in the nomination process, and the fact that every nomination is considered and made public. It also noted that the Prime Minister would lose the power to dismiss the Governor-General.<sup>20</sup> The ARM also submitted that this form of model provided the:

... best chance of obtaining an independent, impartial and non-political person as president because the Prime Minister and the Leader of the Opposition have to agree and neither would accept a candidate allied with the other side.<sup>21</sup>

7.22 Ms Sarah Brasch, from Women for an Australian Republic, while not actually supporting this model, suggested that it:

... presents the best opportunity for a woman to become head of state in the shortest possible time. However, we think the chances of that model being successful are becoming slimmer by the day.<sup>22</sup>

7.23 However, as the ARM acknowledged, while this model has a few significant alterations, including greater public consultation and an improved dismissal mechanism, it is essentially the same model that was defeated in 1999.<sup>23</sup> Many submissions were therefore sceptical about the future prospects of this sort of model.<sup>24</sup> Nevertheless, many submissions still supported a model along these lines.<sup>25</sup> As Dr Barry Gardner commented:

... for the record, I would prefer some kind of election or appointment—call it what you will—by a majority of both houses of parliament, provided there is sufficient or adequate community input in nominating people and

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19 Joint Select Committee on the Republic Referendum, *Advisory Report on the Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee Bill 1999*, August 1999, p. 27.

20 *Submission 471*, Appendix A, p. 6.

21 *Ibid*; see also Dr Bede Harris, *Submission 93*, p. 13, commenting on the 1999 model.

22 *Committee Hansard*, 29 July 2004, p. 19.

23 *Submission 471*, Appendix A, p. 6.

24 For example, Mr Michael Pepperday, *Submission 621*, p. 5; Mr John Pyke, *Submission 512*, pp. 5-6; Mr Andrew Newman-Martin, *Submission 107*, pp. 14-17; Mr Howard Teems, *Submission 100*, p. 8; Mr James Kelly, *Submission 506*, p. 27.

25 For example, Dr Debra Rosser, *Submission 325*, p. 2; Mr Mike O'Shaughnessy, *Submission 329*, p. 2 & 6-7; Ms Louise Houston, *Committee Hansard*, 19 May 2004, p. 40; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 27.

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so on. In other words, this is a model quite like the one that got done in 1999. The conventional wisdom is that such a model does not have much chance any more but we shall see.<sup>26</sup>

### **"McGarvie Model"**

7.24 Another model described as minimalist is the "McGarvie Model". The model was developed by the late Richard McGarvie, and was discussed at the 1998 Constitutional Convention.<sup>27</sup> The model was outlined in the Committee's discussion paper, and the Committee received some evidence directly supporting this particular model.<sup>28</sup>

7.25 Under the "McGarvie Model", as outlined in Table 1, a Constitutional Council would appoint and dismiss the head of state (titled "Governor-General"). The Constitutional Council would be bound to act in accordance with the Prime Minister's advice (by a convention backed by the penalty of public dismissal for breach).<sup>29</sup>

7.26 The three members of the Constitutional Council, who can act by majority, are determined automatically by constitutional formula, with places going first to former Governors-General or Presidents (with priority to the most recently retired), and excess places going (on the same basis) in turn to former state governors, lieutenant-governors (or equivalent), judges of the High Court or judges of the Federal Court.<sup>30</sup>

7.27 The tenure of the head of state would be under the same arrangements as the existing practice for the current Governor-General.<sup>31</sup> The head of state would also have the same range of powers as the current Governor-General, but, except for the reserve powers, they could only be exercised on the advice of the Federal Executive Council or a Minister. Otherwise there would be no codification of the constitutional conventions.<sup>32</sup> The only eligibility requirement for a head of state under the "McGarvie Model" would be Australian citizenship because the process for selecting the head of state is designed to ensure a non-political head of state.<sup>33</sup>

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26 Dr Barry Gardner, *Committee Hansard*, 20 May 2004, p. 18.

27 See McGarvie, R., *Democracy: Choosing Australia's Republic*, Melbourne University Press, Melbourne, 1999; *Final Report of the Constitutional Convention*, 1998, Volume 1, Attachment E.

28 Mr Jack Hammond QC and Ms Juliette Brodksy, *Submission 719*, pp. 4-16; Professor Greg Craven, *Submission 167*, p. 5; Festival of Light Australia, *Submission 540*, p. 15; Ms Shirley McKenzie, *Submission 694*, p. 1.

29 Mr Jack Hammond QC and Ms Juliette Brodksy, *Submission 719*, p. 14.

30 *Ibid*, pp. 4-5.

31 *Ibid*, p. 14.

32 *Ibid*, pp. 8-9.

33 *Ibid*, pp. 7 & 14-15.

7.28 Mr Jack Hammond QC and Ms Juliette Brodsky noted in their submission supporting the "McGarvie Model" that:

It has been described as "no-risk but uninspiring" and occasionally misrepresented as "elitist", but has the not-inconsiderable advantage of being developed by one with experience as a Governor and hence a working knowledge of how the system of governorship actually functions in Australia. The McGarvie model is not perfect (no approach is), but it is straightforward, easily implemented, demonstrates twin requirements of practicality and principle, and keeps the separation of powers intact.<sup>34</sup>

7.29 Professor Greg Craven, suggested that the "McGarvie Model" is one of only two models that is "broadly consistent with the Constitution's existing arrangements".<sup>35</sup> Others argued that it is in fact the only model that could be accurately described as minimalist.<sup>36</sup> Professor Craven felt that the "McGarvie Model" is:

... unattractive at the appointment level, but, in dismissal, the idea of the Prime Minister having to move through a council of impartial people has some attractions.<sup>37</sup>

7.30 Others were still critical of the dismissal process in the "McGarvie model".<sup>38</sup> For example, Women for an Australian Republic suggested that this model was:

Too minimalist and has the appearance of entrenching power in the establishment by leaving the choice of head of state to a small group of people — almost certain to be men for the foreseeable future.<sup>39</sup>

## Direct election models

7.31 Many submissions supported an Australian republic with a directly elected head of state. Some of the direct election models put forward during the Committee's inquiry included:

- ARM "Model Five" (People elect the President);
- ARM "Model Four" (People elect from Parliament's List); and
- executive presidency models.

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34 Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 5.

35 *Submission 167*, p. 5.

36 Mr Martin Kjar, *Submission 682*, p. 30.

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

38 For example, Mr Andrew Cole, *Submission 41*, pp. 142-143; Mr Michael Pepperday, *Committee Hansard*, 29 July 2004, p. 28; Mr Howard Teems, *Submission 100*, p. 8; Dr Noel Cox, *Submission 335*, p. 5.

39 *Submission 476*, Attachment D, p. 1.



7.32 Table 2 summarises these examples of direct election models with non-executive heads of state, which are then outlined briefly. Some of the main arguments for and against minimalist and direct election models generally will then be outlined. Finally, an executive presidency model will be considered.

<b>Table 2: Some Examples of Direct Election Models</b>				
	<b>People elect the President (ARM Model Four)</b>	<b>People choose from Parliament's list (ARM Model Five)</b>	<b>"Direct election A"</b>	<b>"Direct election B" — Hayden model</b>
<b>Eligibility</b>	Australian citizen qualified to be a member of Commonwealth Parliament.	Australian citizen qualified to be a member of Commonwealth Parliament, provided not an MP at the time of nomination.	Australian citizen qualified to be a member of Commonwealth Parliament, provided not an MP at the time of nomination and not a member of a political party during office.	Australian citizen of voting age and enrolled on federal division rolls.
<b>Nomination</b>	Nomination by petition of a minimum 3000 nominators, with at least 100 from each state.	By any Australian citizen qualified to be a member of Cwth Parliament; by any state or territory parliament; or any local government. Short listing of at least seven candidates by a joint sitting of the Senate and House of Representatives, by at least a two-thirds majority.	By any Australian citizen qualified to be a member of Commonwealth Parliament; the Senate or the House of Representatives; either house of a state or territory parliament, or any local government. Short listing of at least three candidates by a joint sitting of Commonwealth Parliament.	Nomination by petition – minimum of 1% of voters enrolled on all Federal division rolls. No voter to endorse more than one candidate.
<b>Appointment</b>	Direct election (preferential voting)	Direct election (preferential voting)	Direct election (preferential voting)	Direct election (preferential voting)
<b>Tenure</b>	Five years.	Five years. No more than two terms.	Two terms of the House of Representatives. Not eligible for re-election.	Four years, maximum of two terms.

<b>Removal</b>	Same as for federal judges: resolution of both Houses of Parliament in same session on the ground of proved misbehaviour or incapacity.	Same as for federal judges: resolution of both Houses of Parliament in same session on the ground of proved misbehaviour or incapacity.	By an absolute majority of the House of Representatives for misbehaviour, incapacity or behaviour inconsistent with the terms of appointment.	Resolution of an absolute majority of both Houses of Parliament in joint sitting on the grounds of proved misbehaviour or incapacity.
<b>Powers</b>	Same as Governor-General. Constitution to state that non-reserve powers should only be exercised in accordance with the advice of government. A presidential oath emphasises a duty to act impartially and without favour to any political interest. Codification of existing reserve powers.	Same as Governor-General. Constitution to state that non-reserve powers should only be exercised in accordance with the advice of government. Codification of existing reserve powers.	Same as Governor-General. Partial codification of existing reserve powers. Constitution to state that non-reserve powers should only be exercised in accordance with the advice of government.	Same as Governor-General. Partial codification of existing reserve powers. Constitution to state that non-reserve powers should only be exercised in accordance with the advice of government. Obsolete powers to be removed, existing conventions to be referred to in Constitution.

### *Direct election with parliamentary involvement*

7.33 One of the direct election models submitted to the Committee was the ARM "Model Five: People Choose from Parliament's List". Under this model:

[N]ominations for President may be made by any Australian. They may also be made by either House of a State or Territory Parliament or by the Council of any unit of local government. The full list of nominees would be published for public scrutiny for one month and then presented to the Federal Parliament. A joint sitting of both Houses shall by a two thirds majority choose no fewer than seven candidates from eligible nominees. The people will then choose their President from the seven nominees ... by voting directly by secret ballot with preferential voting by means of a single transferable vote.<sup>40</sup>

7.34 The powers of the head of state would be similar to the current Governor-General, except that the existing practice that non-reserve powers should be exercised

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40 ARM, *Submission 471*, Appendix A, pp. 13-14.

only in accordance with the advice of the government would be stated in the Constitution and in the presidential oath of office. The existing reserve powers would be partially codified.<sup>41</sup>

7.35 A very similar model, described in Table 2 as "Direct Election A", was discussed at the 1998 Constitutional Convention.<sup>42</sup> It was also supported by A Just Republic during this inquiry.<sup>43</sup> There are some minor differences – for example, "Direct Election A" restricts membership of political parties during office, the minimum number of candidates is three (rather than seven). Tenure is also fixed to two terms of the House of Representatives, rather than five year fixed terms. Removal of the head of state is by an absolute majority of the House of Representatives, rather than a joint sitting of Parliament.<sup>44</sup>

7.36 The advantages of this model as summarised by the ARM included that it provides for direct popular election of the head of state. The ARM also suggested that:

Shortlisted nominees are more likely to be non party political, due to the necessity of bipartisan parliamentary approval of the shortlisted nominees - although this is by no means assured.<sup>45</sup>

7.37 Some of the disadvantages of this model were then summarised by the ARM as follows:

- Parliamentary shortlisting could be seen to be undemocratic - screening out of undesirables from the top job could be seen as contemptuous of the public's commonsense.
- The model stops short of open direct election yet still empowers a president with a greater personal mandate than the Prime Minister of the day.
- The political hurdles contained within the codification of the powers must still be faced.
- Politicians could simply collude to have a candidate from each of the Government and Opposition parties with five also-runs with no prospect of winning.<sup>46</sup>

7.38 Mr Andrew Newman-Martin also thought that this model:

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41 Ibid, p. 14.

42 *Final Report of the Constitutional Convention, 1998, Volume 1, Attachment E*; see also Dr Geoff Gallop, Premier of Western Australia, *Submission 73*.

43 *Submission 281*, pp. 4-5.

44 A Just Republic, *Submission 281*, p. 5; see also Dr Geoff Gallop, Premier of Western Australia, *Submission 73*.

45 *Submission 471*, Appendix A, p. 14.

46 Ibid.

... resembles the "elections" for the Communist Party in the old Soviet Union, where people were given a list of Party-endorsed candidates at every election. The people would reject having the "politicians" decide who they would vote for.<sup>47</sup>

7.39 Some of the other advantages and disadvantages of this form of model are discussed below in the general section on arguments for and against minimalist and direct election models.

### ***Direct election***

7.40 The other direct election model submitted by the ARM was "Model Four: People elect the President".<sup>48</sup> As summarised in Table 2, under "Model Four", the head of state is directly elected by the Australian people after nomination by petition. Both Houses of Parliament would have to vote to remove the head of state on the grounds of misbehaviour or incapacity.<sup>49</sup>

7.41 In terms of the powers of the head of state, the ARM proposed that:

The existing practice that non-reserve powers should be exercised only in accordance with the advice of the Government shall be stated in the Constitution. A Presidential Oath shall emphasise the President's duty to act impartially and without favour to any political interest ... The existing reserve powers shall be codified as provided in the Republic Advisory Committee's 1993 report where the head of state retains appropriate discretion.<sup>50</sup>

7.42 This model is quite similar to the "Hayden model", which was discussed at the 1998 Constitutional Convention,<sup>51</sup> and was supported by some submissions during this inquiry.<sup>52</sup> As can be seen from the summary in Table 2, there are some differences in relation to nomination requirements, and the powers of the head of state.

7.43 The ARM commented that this model "is the most openly democratic method of appointing the president, a symbol of the people's sovereignty".<sup>53</sup>

7.44 Again, some of the other advantages and disadvantages of this form of model are discussed below in the general section on arguments for and against minimalist and direct election models. Some of the disadvantages of this model were also summarised by the ARM as follows:

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47 *Submission 107*, p. 17.

48 ARM, *Submission 471*, Appendix A, pp. 10-12.

49 *Ibid*, p. 10.

50 *Ibid*, pp. 11-12.

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

52 For example, Councillor Betty Moore, *Submission 76*, p. 1.

53 *Submission 471*, Appendix A, p. 12.

- Any popularly elected president would enjoy great prestige and be able to claim a powerful personal mandate. This would necessitate the substantial constitutional reform (and political debate) involved in codifying the President's powers.
- With such codification, critics might ask: why go to the trouble of electing someone to such a powerless office?
- Candidates for the office would inevitably be tempted to campaign on the issues of the day, impinging on the president's status as a politically disinterested figure.<sup>54</sup>

7.45 Mr Andrew Newman-Martin commented that ARM "Model Four" is "the only option with the popular appeal needed to achieve the difficult task of winning a constitutional referendum."<sup>55</sup>

### *Arguments for and against minimalist versus direct election models*

7.46 Supporters of minimalist models argued that a republican model should be broadly consistent with our current constitutional arrangements.<sup>56</sup> For example, Professor Greg Craven was a notable supporter of the minimalist approach to an Australian republic. He submitted to the Committee that:

... an Australian republic should be achieved not through radical surgery, but by the modest adaptation of the existing executive arrangements from a monarchist to a republican idiom. This follows inexorably from the conclusion that the relevant aspects of the Constitution are fully functional and in no demonstrable need of reform, other than by virtue of their outmoded monarchist connection. This is not to say that there no aspects of the executive arrangements of the Constitution that might not be improved, but none of these are directly relevant to the achievement of an Australian republic.<sup>57</sup>

7.47 Ms Louise Houston expressed a similar view:

We have a very strong and very stable democracy and I would like to see a model that changes that in as few ways as possible.<sup>58</sup>

7.48 Professor Craven also submitted that there were only two models that are "broadly consistent with the Constitution's existing arrangements", these being the

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54 Ibid.

55 *Submission 107*, p. 17.

56 See, for example, Dr Baden Teague, *Submission 538*, p. 1 and *Committee Hansard*, 19 May 2004; The Hon Bob Carr MP, Premier of New South Wales, *Submission 721*, p. 1; Professor Greg Craven, *Submission 167*, p. 5; Ms Louise Houston, *Committee Hansard*, 19 May 2004, p. 40.

57 *Submission 167*, p. 5.

58 *Committee Hansard*, 19 May 2004, p. 40.

"McGarvie Model", and some form of parliamentary appointment along the lines of that put to the referendum in 1999.<sup>59</sup> He explained that:

The reasons underlying the consistency of these two models with existing arrangements are straightforward. Each is designed specifically to preserve the central constitutional reality that the head of state (or surrogate) is an apolitical figure of unity, substantially without power, while political power resides in the Prime Minister and Cabinet.<sup>60</sup>

7.49 However, many submissions argued that, since a minimalist model was rejected in 1999, a similar minimalist model is unlikely to succeed at any future referendum.<sup>61</sup> Mr John Pyke even claimed that "an appointed head of state is no longer seriously on the agenda."<sup>62</sup> Professor George Williams suggested that one of the lessons from the 1999 referendum was that "minimalism" should be rejected:

Minimalism has its advantages in enabling debate to be focussed on one model and a specific set of issues. However, the 1999 republic debate and referendum demonstrated that this also creates the likelihood that such a change will not only be opposed by people who reject the need for reform altogether, but also by people who would prefer a different model. Any change ought to be tailored to the problem in a way that matches community expectations without seeking to confine the solution to such a narrow outcome as to alienate potential supporters. Minimalism rightly failed as a strategy at the 1999 referendum.<sup>63</sup>

7.50 Supporters of direct election models believed that they were the "most democratic" and gave sovereignty to the Australian people. Some argued that this was the whole point of a republic.<sup>64</sup> Professor George Winterton has acknowledged that:

Since a republic is essentially a state based upon popular sovereignty, direct election of the Head of State is, perhaps, the most natural form of republic.<sup>65</sup>

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59 *Submission 167*, p. 5.

60 *Ibid.*

61 For example, Mr Michael Pepperday, *Submission 621*, pp. 4-5; Mr Andrew Newman-Martin, *Submission 107*, p. 17; Mr John Pyke, *Submission 512*, p. 11; Mr Howard Teems, *Submission 100*, p. 8.

62 *Submission 512*, p. 11.

63 Professor George Williams, "The Treaty Debate, Bills of Rights and the Republic: Strategies and Lessons for Reform" in *Balay: Cultural, Law and Colonialism* Volume 5, 2002, p. 20, attached to *Submission 152* from Professor George Williams.

64 For example, Mr David Muir, *Submission 451*, p. 4; Mr Michael Pepperday, *Committee Hansard*, 29 July 2004, p. 26.

65 Winterton, G., *Resurrection of the Republic*, Federation Press, Canberra and Sydney, 2001, p. 5, referred to by Professor George Winterton, *Submission 319*, p. 1.

7.51 The Committee also received a considerable amount of evidence which suggested that a republic with some form of directly elected head of state had the greatest level of support in the Australian community. Many pointed to opinion polls indicating that this is the sort of republic that the Australian people want.<sup>66</sup> Ms Sarah Brasch from Women for an Australian Republic suggested:

From everything we hear people do want to vote for the head of state. Of course they do — they are voting for all sorts of things all the time. They are voting people off reality TV shows and they are voting for classic catches. People are used to being able to make a choice.<sup>67</sup>

7.52 Others also suggested that a direct model has the best chance of success at a referendum.<sup>68</sup> For example, Dr Geoff Gallop, Premier of Western Australia, argued that:

In my view, the only model which will be acceptable to voters is a model that contains provisions for the direct election of an Australian head of state. The fact that the model which was put to electors at the 1999 referendum did not involve such a direct election was the reason for its defeat, rather than the Australian people preferring to remain a constitutional monarchy under the Queen.<sup>69</sup>

7.53 Others expressed doubt that a direct election model would be successful at referendum.<sup>70</sup> For example, Professor Greg Craven submitted to the Committee that:

Direct election cannot win a referendum because it will produce [a] coalition between monarchists and conservative republicans ... There was an understandable tendency after 1999 for republicans to jump to the opposite solution: "We lost with parliamentary election, therefore direct election will work." It will not work for the same reason. It will be divisive, with more problems. It will put a formidable array of opposition up against that particular model and it will lose again.<sup>71</sup>

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66 For example, Mr John Pyke, *Submission 512*, pp. 5-6; Mr Ross Garrad, *Committee Hansard*, 29 June 2004, p. 30; Dr Bede Harris, *Submission 93*, p. 15.

67 *Committee Hansard*, 29 July 2004, p. 19.

68 For example, Mr Andrew Newman-Martin, *Submission 107*, pp. 18-22; Mr Peter Consandine, *Committee Hansard*, 13 April 2004, p. 79; Ms Sarah Brasch, Women for an Australian Republic, *Committee Hansard*, 29 July 2004, p. 17; Mr Howard Teems, *Submission 100*, p. 8.

69 *Submission 73*, p. 1.

70 Dr Baden Teague, *Committee Hansard*, 19 May 2004, pp. 24-25; Mr Michael Pepperday, *Committee Hansard*, 29 July 2004, pp. 28-29; Professor Greg Craven, *Committee Hansard*, 18 May 2004, p. 2.

71 *Committee Hansard*, 18 May 2004, p. 2.

7.54 As outlined in earlier chapters of this report, it was suggested that a models plebiscite would give an indication of whether a direct election model would be likely to be successful at referendum.<sup>72</sup> On the other hand, Mr John Pyke argued that:

The majority of the people of Australia do not care too much about the fine details as long as there is a clause in there that says, in the end, they get to choose between the candidates [for head of state].<sup>73</sup>

7.55 Conversely, Professor Craven observed that:

... although direct election has surface appeal it has many core problems. I believe that the Australian people are bright enough to figure that out over time.<sup>74</sup>

7.56 Many of those who objected to direct election models were concerned that they are not consistent with our current constitutional arrangements, and could create power struggles between the head of state and the Prime Minister.<sup>75</sup> For example, Professor Greg Craven argued that any form of direct election is in "constitutional outer space",<sup>76</sup> because "it is fundamentally inconsistent with the assumptions of the Australian Constitution".<sup>77</sup> Professor Craven explained further that:

... the reason for this is straightforward. The presently apolitical, symbolic character of the Governor General as surrogate head of state is grounded on the fact that the Governor-General is not elected but appointed, effectively by the Prime Minister, formally by the Queen. The significance of this is that within Australia's contemporary constitutional and political mores, an unelected official can have no claims to the exercise of political power or leadership. Moreover, as the procedure for the dismissal of a Governor-General mirrors that for appointment — royal removal on prime ministerial direction — any Governor-would be most unwise to entertain interventionist ambitions.<sup>78</sup>

7.57 Professor Craven continued:

Neither of these factors would survive direct election. An elected head of state necessarily would stand for election ... and would arrive in office if

72 Professor George Winterton, *Committee Hansard*, 13 April 2004, p. 61.

73 *Committee Hansard*, 29 June 2004, p. 15.

74 *Committee Hansard*, 18 May 2004, p. 4.

75 For example, Professor Greg Craven, *Submission 167*, p. 9, and also *Committee Hansard*, 18 May 2004, pp. 1-2; The Hon Bob Carr, MP, Premier of New South Wales, *Submission 721*, p. 2; Mr John Flower, *Submission 447*, p. 4; see also Sir David Smith, *Committee Hansard*, 29 July 2004, p. 10; Dr Ken Coghill, *Submission 536*, p. 3; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, pp. 26-27; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 7.

76 *Committee Hansard*, 18 May 2004, p. 11.

77 *Ibid*, pp. 1-2.

78 *Submission 167*, pp. 5-6.



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not with policies then with positions. Once elected, the logic of the office as representative of the Australian people would impel the incumbent towards intervention. Depending upon the powers of the President this could take more or less dramatic forms, but at the very least would be highly likely to involve institutional conflict with the Prime Minister.<sup>79</sup>

7.58 Many submissions expressed a similar concern that direct election models would not deliver an apolitical head of state.<sup>80</sup> In the same vein, it was argued that minimalist models were more likely to result in an apolitical head of state,<sup>81</sup> which, as discussed in the previous chapter, is a notion that was supported by most submissions to this inquiry. For example, Mrs Janet Holmes a Court argued that:

The President will be a politician if we have direct election. Secondly, the President will have moral power. Something like 40,000 votes are registered for someone like Mr Howard when he becomes Prime Minister. A presidential candidate could receive six million votes. Regardless of what position and what codification of powers we give, he or she will have the moral power from that point of view, which worries me.<sup>82</sup>

7.59 Professor George Winterton acknowledged these concerns:

... 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.<sup>83</sup>

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79 Ibid, p. 6.

80 For example, Dr Baden Teague, *Committee Hansard*, 19 May 2004, p. 25; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 26; Professor Greg Craven, *Submission 167*, p. 9; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 7; Mr Jon Stanhope MLA, ACT Chief Minister, *Submission 730*, p. 6.

81 For example, Professor Greg Craven, *Submission 167*, p. 9; Mr Jack Hammond QC and Ms Juliette Brodsky, *Submission 719*, p. 7; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 26.

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

83 *Committee Hansard*, 13 April 2004, p. 61.

7.60 As discussed earlier in this report, many submissions suggested that the problems with direct election could be overcome through "codifying the powers" of the head of state.<sup>84</sup> For example, Professor George Williams argued that:

... 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.<sup>85</sup>

7.61 Similarly, Sir Gerard Brennan submitted that, in relation to the non-reserve powers:

If the conventional duty [for the Governor-General to act on Ministerial advice] were entrenched in the Constitution, the main objection to an elected Presidency would be reduced substantially.<sup>86</sup>

7.62 On the other hand, Professor Greg Craven disagreed that some of the problems with direct election could be resolved through codification of the powers of the head of state, arguing that this was "an illusory hope".<sup>87</sup> Professor Craven noted that there were many potential problems with codification, as outlined in Chapter 5 of this report, and concluded that:

... a republican model saddled with a major measure of codification would face prodigious difficulties at referendum.<sup>88</sup>

7.63 The Committee also heard concerns that suitable candidates would not make themselves available for the position of head of state under direct election models, because they would not want to stand in a popular election.<sup>89</sup> As Sir Gerard Brennan pointed out:

... the model of direct election could be adopted only at a price, namely, the virtual elimination of eminent, non-political citizens as candidates for the Presidency ... A choice must be made between that loss and any desire to vote to elect the Head of State.<sup>90</sup>

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84 For example, Professor George Winterton, *Committee Hansard*, 13 April 2004, p. 62; Dr Bede Harris, *Submission 93*, p. 15; Professor George Williams, *Committee Hansard*, 13 April 2004, p. 45; Mr John Kelly, *Committee Hansard*, 14 April 2004, p. 24; Dr Geoff Gallop, Premier of Western Australia, *Submission 73*, p. 2; Dr Walter Phillips, *Committee Hansard*, 14 April 2004, pp. 12-13.

85 *Committee Hansard*, 13 April 2004, p. 45.

86 *Submission 497*, p. 11.

87 *Submission 167*, p. 6.

88 *Submission 167*, pp. 6-7.

89 See, for example, Mr Bill Peach, *Committee Hansard*, 13 April 2004, p. 51; Ms Clare Thompson, *Committee Hansard*, 18 May 2004, p. 35; Sir Gerard Brennan, *Submission 497*, p. 20; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 32; ARM, *Submission 471*, Appendix A, p. 14; Dr Baden Teague, *Committee Hansard*, 19 May 2004, p. 25; Mr John Flower, *Submission 447*, p. 4.

90 *Submission 497*, p. 20.

7.64 Ms Clare Thompson expressed the same concern:

... you are asking people of the stature of Sir William Deane—hopefully—to put themselves into a position which they would not normally put themselves in ... Asking them to go through a process of public scrutiny and then potentially the humiliation of losing is really not appropriate ... The evidence in Australia is that an election is more likely to throw up a football player.<sup>91</sup>

7.65 Dr Bede Harris acknowledged that this could be a possible problem, but then pointed to the example of Ireland, which has a directly elected president (with non-executive powers):

... up until the 1990s it was difficult to get people to stand for election because the process was bland; it was very unemotive. I think that for any public office, particularly the one of President, if people want to stand for election to it then they should be prepared to expose themselves to the scrutiny of the voters. That is what a republic is all about—that you have survived the rigours of a process of election. I know there are negatives associated with that, but I think that is one of the costs of democracy.<sup>92</sup>

7.66 Mr John Pyke also suggested that opponents of direct election were not only ignoring popular support for a direct election, but had an "elitist" attitude.<sup>93</sup> Mr Pyke argued strongly that the Australian people want to be trusted, and should be trusted to vote sensibly.<sup>94</sup> Professor George Winterton expressed a similar view:

We can trust the good judgement of the Australian people; they will elect good heads of state provided that the Constitution enables such candidates to be nominated.<sup>95</sup>

7.67 Similarly, Mrs Janet Holmes a Court acknowledged:

... I may have to move from being 100 per cent against it [direct election] to some model where the Australian people do have some ability to have an input. They want an input. How do we do that? How do we ensure that people like John Sanderson or Sir William Deane are there for them to vote for? ... I recognise that the Australian people really want to have a say in this. What I want is for someone to invent a model so that the people they have to choose from are the people who would be chosen by the system that I favour anyway.<sup>96</sup>

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91 *Committee Hansard*, 18 May 2004, p. 35; see also Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 26.

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

93 *Submission 512*, p. 6.

94 *Submission 512*, p. 6 and *Committee Hansard*, 29 June 2004, p. 11.

95 *Submission 319*, p. 3.

96 *Committee Hansard*, 18 May 2004, p. 32; see also Ms Clare Thompson, *Committee Hansard*, 18 May 2004, p. 34.

7.68 Several submissions pointed to successful overseas examples of republics with directly elected non-executive heads of state.<sup>97</sup> The Committee's discussion paper outlined the Irish republic model as an example of a popularly elected non-executive president. Many submissions expressed support for a similar model, modified to suit Australian conditions.<sup>98</sup> Mr John Kelly submitted that:

The Irish direct election method of appointing a Head of State is the most relevant to Australia in terms of inherited concepts of law and parliamentary democracy...<sup>99</sup>

7.69 Other overseas examples were also pointed out to the Committee.<sup>100</sup> Mr John Pyke observed that:

... there are in fact 4 models of stable republics in Europe with directly elected, non-executive Presidents and parliamentary governments – Iceland, Austria and Portugal, as well as Ireland. [And, though I know less about their constitutions, I understand most of the former Soviet republics and Soviet satellites have adopted similar structures in the last 14 years].<sup>101</sup>

7.70 Professor Greg Craven warned, however, that overseas examples of republics with directly elected heads of state may not necessarily be applicable in an Australian context:

Nor should facile arguments that direct election has "worked" in other countries lightly be accepted. Unless a careful assessment is made of the relevant comparator constitutions with a view to determining the similarity of conditions between Australia and the nation state in question, such comparisons are futile. To take the most common example, Ireland, that country has a very different and complex tradition regarding its head of state; is not a federation; is a vastly smaller nation state than Australia; and does not possess one of the chief complicating characteristics of the Australian Constitution, a strong upper house.<sup>102</sup>

7.71 Another possible objection to direct election included the cost. By comparison, this was a perceived advantage of minimalist models, which could be less costly, because there is "no need for spending on a presidential election".<sup>103</sup>

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97 See, for example, Dr Tony Adams, *Submission 24*, pp. 1-2; Mr John Pyke, *Submission 512*, p. 4; Dr Walter Phillips, *Submission 219*, p. 2; Mr John Kelly, *Submission 142*, p. 12.

98 See, for example, Mr John Kelly, *Committee Hansard*, 14 April 2004, p. 24; Mr Peter Bishop, *Submission 113*, p. 6; Mr Matthew Lovering, *Submission 307*, p. 1.

99 *Submission 142*, p. 12.

100 *Submission 512*, p. 4; see also Dr Walter Phillips, *Submission 219*, p. 2; Mr John Kelly, *Submission 142*, p. 12.

101 *Submission 512*, p. 4.

102 *Submission 167*, p. 7.

103 ARM, *Submission 471*, Appendix A, p. 6.

7.72 Another potential disadvantage of direct election models was the possibility that, depending on the design of the voting system, voters in smaller states may be outnumbered by those in larger states. As a result, heads of state may only ever come from those larger states.<sup>104</sup>

7.73 Finally, Professor Craven also expressed concern in relation to dismissal mechanisms for a directly elected President:

Further, it would not be plausible to devise a model where the President was elected by the whole people, but was readily dismissible. This would mean that the sanction of dismissal would be removed from the equation at the same time as the logic behind the office of Australian head of state was fundamentally changed.<sup>105</sup>

### ***Executive presidency model***

7.74 Some submissions suggested that, if Australia is to become a republic, an executive-style presidency should be considered.<sup>106</sup> As mentioned earlier in this report, an executive-style presidency model would go beyond merely replacing the current Queen and Governor-General with a largely ceremonial head of state. An executive presidency would involve an elected head of state who is also the head of government, and would require some fundamental changes to our current system of government.

7.75 For example, Dr David Solomon argued strongly for an elected executive President, along the lines of the US system of government. In arguing for a head of state who is also the head of government, he suggested that other changes to the Constitution would be required to "enhance the powers of the parliament vis-a-vis those of the head of government".<sup>107</sup> Some of the other changes that Dr Solomon proposed as a part of an executive style presidency included a single chamber Commonwealth Parliament and fixed parliamentary terms.<sup>108</sup>

7.76 Dr Solomon countered the argument that a combined head of state and head of government would have too much power by arguing that:

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104 For example, Mr Geoff Calder, *Submission 543*, p. 2; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, pp. 28-29.

105 *Submission 167*, p. 6.

106 For example, Mr Charles Mollison, *Submission 129*, p. 1; Dr Bruce Hartley, *Submission 330*, p. 1; Dr David Solomon, *Submission 457*, p. 1; Ms Laetitia Legg-Capelle, *Submission 479*, pp. 1-2; Mr Matthew Harrison, *Submission 10*, p. 1; Mr James Stack, *Submission 404*, p. 1; Mr Stephen Souter, *Submission 526*, p. 295.

107 *Committee Hansard*, 29 June 2004, p. 38.

108 Dr David Solomon, *Submission 457*: "A Single-Chamber Australian Parliament", *Papers on Parliament 36*, June 2001, p. 2.

The fact is that the American president, despite his very high profile, exercises less power in the American system of government than the Australian prime minister exercises in modern Australia.<sup>109</sup>

7.77 Dr Solomon acknowledged that this would be a "major change to our system of government".<sup>110</sup> However, he considered that there were strong arguments for changing our current system, arguing that:

Those changes would deal with what I see to be a major problem with our current democratic system; namely, that too much power has accrued in the person who is the Prime Minister ... These powers have developed in the absence of any separation of powers between the government—the executive, that is—and the parliament. They are moderated to some extent by the way the electoral system has empowered the Senate ... However, while the legislative power remains split between the government and the Senate, the executive power is subject to few restrictions.<sup>111</sup>

7.78 The ARM acknowledged this problem to a certain extent:

Constitutional lawyers, former governors-general and commentators have noted an inclination over the past 25 years for Prime Ministers to perform many of the ceremonial roles that, arguably, would usually be performed by a Head of State ... The declining relevance of the Queen in Australia has created a vacuum that Prime Ministers have inevitably filled. Although Prime Ministers are party political figures, they do at least have a national and democratic relevance for Australians.<sup>112</sup>

7.79 However, the ARM also argued that:

The blurring of the roles of a Head of State and a Head of Government is undesirable in a parliamentary system such as ours, where the two roles ought to remain distinct and separate. It is a weakness of our current system that these roles are becoming blurred, and another good reason to make the change to a republic.<sup>113</sup>

7.80 However, as also mentioned earlier in this report, there appeared to be minimal support for an executive presidency system in the evidence received by the Committee, and many objected to such a fundamental change to our system of government.<sup>114</sup> In fact, the ARM deliberately excluded an executive presidency model in the models it submitted to the inquiry. The ARM explained:

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109 Dr David Solomon, *Submission 457: Coming of Age, Charter for a new Australia*, University of Queensland Press, Brisbane, 1998, p. 57.

110 *Committee Hansard*, 29 June 2004, p. 38.

111 *Ibid.*

112 *Submission 471*, p. 9.

113 *Ibid.*

114 For example, ARM, *Submission 471*, p. 9; Professor George Winterton, *Submission 319*, p. 1; Dr Ken Coghill, *Submission 536*, pp. 1-2; Professor Greg Craven, *Submission 167*, p. 4.

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We have not included the original Model 6, which briefly outlined the features of a US style system with an executive presidency, as the ARM has detected little support for such a radical break with our current parliamentary system.<sup>115</sup>

7.81 The ARM further observed that:

We find that much of the public sentiment towards direct election is based in a desire for people to have a say in who their head of state is, not from a wish to overturn our long standing parliamentary system.<sup>116</sup>

7.82 Professor John Warhurst, on behalf of the ARM, explained further:

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.<sup>117</sup>

7.83 Professor George Winterton also argued against a combined head of state and head of government:

Such a move would probably mean moving to a system, like that of the United States, based upon the separation of legislative and executive power. There is no evidence of significant support for such change in the Australian community. Moreover, if the American system were introduced into the Australia political environment with its strong party system it would operate very differently from the American system, at least initially.<sup>118</sup>

7.84 Similarly, Professor Greg Craven argued persuasively that:

... it is worth noting the central feature of our Constitution's executive arrangements that has served us so well. These arrangements produce a surrogate head of state - the Governor-General - that enjoys respect and legitimacy, but no power; and a head of government - the Prime Minister - who exercises power, but is entitled to no great institutional respect. In this way, our Constitution ensures that no political figure is produced who simultaneously embodies constitutional power and popular respect, like the Emperor Napoleon, or more prosaically, an American President. At the same time, it ensures that political and constitutional wires stay uncrossed: the Prime Minister runs the country, the Governor-General presides over it.<sup>119</sup>

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115 *Submission 471*, Appendix 1, p. 2.

116 *Submission 471*, pp. 9-10.

117 *Committee Hansard*, 13 April 2004, p. 28.

118 *Submission 319*, p. 1; see also Dr Ken Coghill, *Submission 536*, p. 2.

119 *Submission 167*, p. 4.

7.85 In arguing against an executive-style presidency, Dr Ken Coghill also pointed to "ample evidence of the relative instability of executive presidencies" in a number of overseas countries.<sup>120</sup>

### **Hybrid and other models**

7.86 Several submissions received by the Committee proposed models that could not be classified easily as either direct election or minimalist models. In fact, many of these submissions proposed what could be described as "hybrid" models. For example, the ARM, in discussing its "Model Three: Presidential Assembly" stated that:

Proponents of this model see it as a bridge between popular election and parliamentary appointment, giving the people a vote (if only an indirect one) while avoiding the risks of a President claiming a superior personal mandate to the Prime Minister of the day.<sup>121</sup>

7.87 Similarly, Mr Peter Crayson observed that "republicans are generally divided into two main camps: minimalists and direct electionists".<sup>122</sup> Mr Crayson, in presenting his "Constitutional Council" model, argued that it:

... moves beyond the "minimalists" and the "direct electionists" paradigms, reconciling the two camps. The prospect of this reconciliation is the driving motivation behind this model.<sup>123</sup>

7.88 However, it is also possible that some of these models may please neither side. For example, the ARM, again discussing its "Presidential Assembly" model, acknowledged that:

[T]he model stops short of full direct election with all its attendant democratic appeal. While it is intended to bridge the gap between direct electionists and those who favour parliamentary appointment, it may please neither group.<sup>124</sup>

7.89 Some of the other models proposed to the Committee are outlined further below, including:

- electoral college style models;
- models with both a republican head of state and a Governor-General; and
- other republican models.

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120 *Submission 536*, p. 1.

121 *Submission 471*, Appendix A, p. 7.

122 *Committee Hansard*, 13 April 2004, p. 53.

123 *Submission 322*, p. 6.

124 *Submission 471*, p. 9.



### *Electoral college models*

7.90 The Committee received only a few submissions supporting or proposing "electoral college" style models.<sup>125</sup> However, it was pointed out to the Committee that in several overseas republics, such as Germany, India, Indonesia and Italy, the President is elected by an electoral college comprising members of parliament of the national and state or regional governments.<sup>126</sup>

7.91 "Model Three" put forward by the ARM was an example of an electoral college system.<sup>127</sup> Under this model, the republic head of state would be appointed by a directly elected, special-purpose Presidential Assembly. The ARM proposed that the Presidential Assembly would be:

... composed of 48 members in total: 42 members being directly elected by the people with the addition of the 6 state governors. The elected seats may be apportioned to each state as follows: NSW and VIC: 8 seats each, QLD: 6 seats, SA and WA: 5 seats, TAS: 4 seats, NT and ACT: 3 seats.<sup>128</sup>

7.92 Under the ARM's proposal, elections for the Presidential Assembly would be held simultaneously with every half Senate election, to reduce the costs of the election. Each elected member would hold office for six years, with elections for half the Presidential Assembly to be held every three years.<sup>129</sup> The ARM commented that the Presidential Assembly would ideally conduct itself as a non-party political body, but that:

While this would be the ideal, there is no way to ensure this would happen, short of banning party participation, which would be both undemocratic and probably unconstitutional.<sup>130</sup>

7.93 The ARM further explained:

Candidates for the Presidential Assembly would ideally ask to be elected on the basis of their standing in the community, rather than their support for a party's nominee, as there would be no official nominees at the time of the election. The presence of the six state governors is intended to "set the

125 See, for example, Mr Wilby Lawrence, *Submission 8*, pp.2-3, who supported a modified version of ARM Model Three; Mr Paul Canet-Senior, *Submission 724*, p. 1; Mrs V.D. Burnett, *Submission 726*, p. 1; ARM (Model Three), *Submission 471*, Appendix A, pp. 7-9.

126 Dr Walter Phillips, *Committee Hansard*, 14 April 2004, p. 10; Mr Paul M. Canet-Senior, *Submission 724*, p. 34; see also RAC Report, Volume 1, p. 73; and Ms Anne Twomey and Ms Rosemary Bell, "Methods of Choosing a Head of State", Department of Parliamentary Services, *Parliamentary Library Background Paper 12 1997-1998*.

127 *Submission 471*, Appendix A, pp. 7-9.

128 *Ibid*, p. 8.

129 *Ibid*, pp. 7-8.

130 *Ibid*, p. 7.

tone" for the body and provide the assembly with the benefit of their constitutional knowledge and experience.<sup>131</sup>

- 7.94 In terms of the appointment process for head of state, the ARM proposed that:
- one year before the end of the incumbent head of state's term, the chair of the Presidential Assembly would call for nominations;
  - at least 1000 nominators would be required for a candidate to be considered by the Presidential Assembly, of which at least one hundred must be from each state;
  - once nominations close, the full list of nominees would be published for public scrutiny before being presented to the Presidential Assembly; and
  - the Presidential Assembly would then convene to begin the process of appointing the new president (or re-appointing the incumbent) from the list of nominees. Appointment would be carried by a simple majority of votes in the Presidential Assembly.<sup>132</sup>

7.95 In terms of removal processes, the ARM proposed that it would be the same as for federal judges — that is, the head of state may be removed from office by a resolution of both Houses of the Parliament in the same session on the ground of proved misbehaviour or incapacity.<sup>133</sup>

7.96 The ARM submitted that one of the advantages of this form of model would be that it offers public participation through the vote for the Presidential Assembly and through the open nominations process, yet does not require codification of the president's powers because the existence of the college curbs the presidential mandate. The ARM argued that a wide range of people who might otherwise be reluctant to enter the fray of a general election campaign, would agree to nominate for the presidency. The ARM also submitted that the Presidential Assembly would "keep the presidency at least one step removed from an issues based campaign and therefore from needing to take a stance on political issues of the day".<sup>134</sup>

7.97 Some of the disadvantages of this model outlined by ARM included concerns as to whether the Presidential Assembly may be filled by politicians, and political involvement of the major parties in and around the Presidential Assembly which might transform it into a very political body. In this case, a model which uses Commonwealth Parliament to appoint the head of state (as in ARM "Model Two") might be preferred.<sup>135</sup>

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131 Ibid.

132 Ibid, pp. 7-8.

133 Ibid, p. 8.

134 Ibid, p. 9.

135 Ibid.

7.98 The Committee notes that another possible advantage of an electoral college system might be that each state elects a certain number of delegates to the electoral college. This could reassure people concerned that, in direct election models, the smaller states may be swamped by votes from bigger states.<sup>136</sup> The Committee notes that a possible alternative electoral college model could deal directly with this issue by providing for an equal number of electoral college delegates from each state, along the lines currently provided for in the Senate. That is, 12 delegates could be elected from each state and two delegates from each territory. Similar to the Senate, these delegates could be elected for two terms of the House of Representatives.

7.99 However, the Committee received evidence which was quite critical of an electoral college model.<sup>137</sup> An "electoral college" model did not convince Professor Greg Craven, who asserted that:

... to the extent that the members of the college were elected, this merely would comprise the election of the head of state at one remove, with the creation of a transferred popular mandate rather than an immediate one, as is the case with the President of the United States. Conversely, were a substantial number of the members of the College to be appointed, such a model hardly would appeal to supporters of direct election. Indeed, as soon as one seeks to compromise direct election, its *raison d'être* — popular choice — dissipates.<sup>138</sup>

7.100 Professor Craven elaborated on this issue further at the Committee's hearing in Perth, arguing that a head of state selected under an electoral college system would still have popular mandate:

One would have to think that the great proof of this fact is that the most powerful, the most prestigious and the most dangerous elected head of state in the world is the American president, elected by a collegial system. So my flirtation with collegial models ends.<sup>139</sup>

7.101 Mr Ross Garrad also commented in response to questioning from the Committee, that while this model would provide for greater public input:

... the electoral college model manages to most likely take one of the negative aspects of many direct election models—that is, the likelihood that we would see an election fought by political parties—and combine it with at least the partial exclusion of the most positive aspect of direct election

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136 See, for example, Mr Geoff Calder, *Submission 543*, p. 2; Mrs Janet Holmes a Court, *Committee Hansard*, 18 May 2004, p. 32; Dr Walter Phillips, *Committee Hansard*, 14 April 2004, p. 10.

137 See, for example, Professor Greg Craven, *Submission 167*, p. 6; Mr Andrew Newman-Martin, *Submission 107*, p. 17; Mr Michael Pepperday, *Committee Hansard*, 29 July 2004, p. 26; Women for an Australian Republic, *Submission 476*, Attachment D, p. 1; Mr Howard Teems, *Submission 100*, p. 8.

138 *Submission 167*, p. 6.

139 *Committee Hansard*, 18 May 2004, p. 12.

models, which is that the people have more of a sense of ownership of the election process ... I think there are better ways of achieving the same end.<sup>140</sup>

7.102 Similarly, Mr Andrew Newman-Martin suggested that "most people would see a presidential assembly as poor substitute for direct election".<sup>141</sup> He also commented that this sort of model appears to have little public support, and would be unlikely to succeed at a referendum.<sup>142</sup> Women for an Australian Republic also observed that an electoral college model would be "impractical and very costly".<sup>143</sup>

### ***Models with both a President and a Governor-General***

7.103 A number of separate, but similar, models were put to the Committee which proposed to replace the Queen with a directly elected Australian head of state, but also retain the position of Governor-General.<sup>144</sup>

7.104 These models proposed different nomination methods, but retained the essential ingredient of a direct election of potential candidates for the Australian head of state. For example, Mr David Latimer suggested an "Honorary President" model.<sup>145</sup> Under this model, Mr Latimer proposed a nomination process for the office of "Honorary President" involving public petition, each of six state parliaments nominating former Governors or Lieutenant Governors of their state, and the Commonwealth Parliament nominating a former Governor-General.<sup>146</sup> This would be followed by a direct election with a maximum of ten candidates.<sup>147</sup>

7.105 In terms of the role and powers, while these similar models varied slightly, most suggested that the distribution of powers and functions between the new Australian head of state and the Governor-General would remain essentially the same as the current situation with the Queen and the Governor-General.<sup>148</sup> For example, Mr

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140 *Committee Hansard*, 29 June 2004, p. 33.

141 *Submission 107*, p. 17.

142 Mr Andrew Newman-Martin, *Submission 107*, p. 17; see also, for example, Mr Michael Pepperday, *Committee Hansard*, 29 July 2004, p. 28.

143 *Submission 476*, Attachment D, p. 1.

144 See, for example, Professor John Power, *Submission 28*; Dr Peter Carden, *Submissions 105 and 105A*; Mr David O'Brien, *Submission 126*, p. 1; Mr Robert Vogler, *Submission 480*, p. 4; Mr David Latimer, *Submission 519*. Note that these models are discussed here because, although their authors may describe them as 'minimalist', they provide for a directly elected head of state and hence do not fit neatly under either the 'minimalist' or 'direct election' headings above.

145 Mr David Latimer, *Submission 519*. Note that in mentioning this specific model, the Committee is not intending to endorse any particular version of this model over another.

146 Mr David Latimer, *Submission 519*, pp. 16-18.

147 *Ibid.*

148 See, for example, Mr Robert Vogler, *Submission 480*, p. 12; Professor John Power, *Submission 28*; Mr David Latimer, *Submission 519*, p. 38.

Latimer proposed that the "Honorary President" would have a ceremonial and symbolic role with no executive powers. The "Honorary President" would hold all powers of the current Queen of Australia, but the exercise of those powers would be limited to appointing and dismissing the Governor-General and state Governors.<sup>149</sup> The Constitution would allow the "Honorary President" to delegate other powers to the Governor-General, who would be chosen by the Prime Minister and continue to exercise all powers in a similar way to the existing arrangements.<sup>150</sup>

7.106 The Committee queried the potential for duplication and possible confusion over the roles of the Australian head of state and the Governor-General. In response, one of the proponents of this sort of model, Mr David Latimer, acknowledged that there may be overlap in terms of the ceremonial aspect of the roles of the proposed Governor-General and the Australian head of state, and that perhaps greater clarity might be required.<sup>151</sup>

7.107 Submissions which proposed this type of model often argued that the advantages include minimal changes to the Constitution.<sup>152</sup> However, the Committee notes that considerable change may still be required, for example, in terms of delineating and limiting the powers of the head of state as compared to the Governor-General. Some of the submissions proposing this form of model also acknowledged that there may be additional expense and costs involved in maintaining both the Governor-General and a directly elected Australian head of state.<sup>153</sup>

### *Variations on a theme*

*"The last thing we need at this stage is another model"*<sup>154</sup>

7.108 The Committee also received many other proposed republic models. Aspects of some of these models have been discussed in earlier chapters, particularly the chapter on the methods of selection of the head of state.<sup>155</sup> Some models could be considered to be variations on the main minimalist or direct election models outlined above.<sup>156</sup>

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149 Mr David Latimer, *Submission 519*, p. 38.

150 *Ibid*, p. 38-40.

151 Mr David Latimer, *Committee Hansard*, 13 April 2004, pp. 11-12.

152 Mr David Latimer, *Submission 519*, p. 6.

153 For example, Mr Robert Vogler, *Submission 480*, p. 12.

154 Professor Greg Craven, *Committee Hansard*, 18 May 2004, p. 8.

155 See, for example, Mr Ross Garrad's "citizen's jury model", *Submission 533*, pp. 9-12; or Mr Michael Pepperday's "popular appointment" proposal, *Submission 621*, pp. 11-15.

156 For example, Mr Phill Chadwick, *Submission 81*, p. 1, suggested that a single candidate could be selected by a two-thirds majority of Parliament, who the Australian people could then either endorse or reject at an election.

7.109 Others could be described as "compromise" models which attempt to reconcile "direct electionists" and "minimalists".<sup>157</sup> For example, Mr Peter Crayson proposed a "Constitutional Council model", which provided for the popular election of the head of state, who would have a symbolic role.<sup>158</sup> The head of state would not exercise the reserve powers, but rather would assign those powers to the Speaker of the House of Representatives, with the office of the Speaker reformed "so as to be more independent and impartial".<sup>159</sup> The model also had a Constitutional Council which would play a "review, appointment-dismissal, advisory and symbolic role".<sup>160</sup>

7.110 As outlined earlier in this report, other submissions proposed incremental changes to our current system, prior to any move to a republic, such as allowing greater public involvement in the selection of the current Governor-General and codifying the powers of the Governor-General.<sup>161</sup>

7.111 Other models examine our political values and system of government and proposed some different changes in the context of a republic, such as directly electing the Prime Minister.<sup>162</sup> Some submissions also proposed broader constitutional changes, which were outside the terms of reference of this inquiry, such as including a bill of rights in the Constitution,<sup>163</sup> or abolishing the states.<sup>164</sup>

7.112 Many submissions also supported a revision of the preamble to the Constitution.<sup>165</sup> Some felt the preamble should be considered separately so as not to distract from the republic issue.<sup>166</sup> On the other hand, Dr Mark McKenna, suggested that the preamble should provide constitutional recognition of Indigenous Australians, argued strongly that:

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157 See, for example, Mr Peter Crayson, *Submission 322*; Dr John Costella, *Submission 25*.

158 Mr Peter Crayson, *Submission 322* and *Committee Hansard*, 29 July 2004, pp. 53-60.

159 Mr Peter Crayson, *Submission 322*, p. 7.

160 Mr Peter Crayson, *Committee Hansard*, 29 July 2004, pp. 54.

161 For example, Professor George Williams, *Submission 152*.

162 Mr Andrew Cole, *Submission 41*, p. 188.

163 ATSIIC, *Submission 112*, p. 6; Dr Klaas Woldring, *Republic Now!*, *Committee Hansard*, 13 April 2004, p. 77; A Just Republic, *Submission 281*, p. 2; Australian Freedom Forum, *Submission 467*, p. 2; Mr Bill Willcox, *Submission 5*, p. 12; Progressive Labour Party, *Submission 498*, p. 2.

164 *Republic Now!*, *Submission 466*, p. 8; Mr Fred Carter, *Submission 23*, p. 3; Mr Mark Drummond, *Submission 128*, p. 1; Dr Lionel McKenzie, *Submission 350*, p. 8.

165 Aboriginal and Torres Strait Islander Commission (ATSIIC), *Submission 112*, p. 6; Dr Mark McKenna, *Committee Hansard*, 29 July 2004, p. 41; see also Professor George Winterton, *Submission 319*, pp. 8-9; A Just Republic, *Submission 281*, p. 2.

166 Dr Baden Teague, *Committee Hansard*, 19 May 2004, pp. 24-25; Ms Louise Houston, *Committee Hansard*, 19 May 2004, p. 39; Mr Andrew Newman-Martin, *Submission 107*, pp. 48-54.

To imagine that we would end up with a republican constitution that says nothing about the constitutional position of Aboriginal people would be a great tragedy, a lost opportunity.<sup>167</sup>

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167 *Committee Hansard*, 29 July 2004, p. 41.

