

[PROOF HANSARD]

# CONSTITUTIONAL CONVENTION

[2nd to 13th FEBRUARY 1998]

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TRANSCRIPT OF PROCEEDINGS

**Thursday, 5 February 1998**



Old Parliament House, Canberra

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# CONSTITUTIONAL CONVENTION

Old Parliament House, Canberra

**2nd to 13th February 1998**

*Chairman*—The Rt Hon. Ian McCahon Sinclair MP

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

## ELECTED DELEGATES

### **New South Wales**

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

### **Victoria**

Mr Eddie McGuire (Australian Republican Movement)  
The Hon Don Chipp AO (No Republic—ACM)  
The Reverend Tim Costello (Real Republic)  
Mr Bruce Ruxton OBE MBE (Safeguard the People)  
Ms Mary Delahunty (Australian Republican Movement)  
Ms Sophie Panopoulos (No Republic—ACM)  
Mr Steve Vizard (Australian Republican Movement)  
Ms Poppy King (Australian Republican Movement)  
Mr Lindsay Fox AO (Australian Republican Movement)  
The Hon Vernon Wilcox CBE QC (Safeguard the People)  
Ms Moira Rayner (Real Republic)  
Ms Misha Schubert (Republic4U—The Youth Ticket)  
The Hon Jim Ramsay (No Republic—ACM)  
Mr Kenneth Gifford QC (Australian Monarchist League)  
Mr Phil Cleary (ungrouped—Phil Cleary—Independent Australia)  
Mr Eric G Bullmore (Shooters Party)

## **Queensland**

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

## **Western Australia**

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

## **South Australia**

Mr Kym Bonython (No Republic—ACM)  
Dr Baden Teague (Australian Republican Movement)  
Mr John Hepworth (No Republic—ACM)  
Ms Linda Kirk (Australian Republican Movement)  
Ms Victoria Manetta (No Republic—ACM)  
Mr Tony Cocchiaro (Australian Republican Movement)  
Father John Fleming (No Republic—ACM)  
Ms Kirsten Andrews (Australian Republican Movement)

## **Tasmania**

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

## **Australian Capital Territory**

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

## **Northern Territory**

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

## APPOINTED DELEGATES—NON-PARLIAMENTARY

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

## **APPOINTED DELEGATES—PARLIAMENTARY**

### **Commonwealth**

#### *Government*

The Hon John Howard MP (Prime Minister)  
The Hon Peter Costello MP (Treasurer)  
The Hon Daryl Williams AM QC MP (Attorney-General)  
Senator the Hon Robert Hill (Minister for the Environment)  
Senator the Hon Jocelyn Newman (Minister for Social Security)  
Mr Neil Andrew MP  
Mrs Chris Gallus MP  
Mr Kevin Andrews MP  
Senator Alan Ferguson  
The Hon Tim Fischer MP (Deputy Prime Minister)  
The Hon John Anderson MP (Minister for Primary Industries and Energy)  
Senator Ron Boswell (Leader of the National Party of Australia in the Senate)

#### *Australian Labor Party*

The Hon Kim Beazley MP (Leader of the Opposition)  
The Hon Gareth Evans QC MP  
Senator the Hon John Faulkner (Leader of the Opposition in the Senate)  
Senator Sue West (Deputy President of the Senate)  
Senator the Hon Nick Bolkus  
Senator Kate Lundy

#### *Australian Democrats*

Senator Natasha Stott Despoja

#### *Independent/Green*

Mr Allan Rocher MP

### **State/Territory**

#### *New South Wales*

The Hon Bob Carr MP (Premier)  
The Hon Peter Collins QC MP (Leader of the Opposition)  
The Hon Jeff Shaw QC MLC (Attorney-General and Minister for Industrial Relations)

#### *Victoria*

The Hon Jeff Kennett MLA (Premier)  
Mr John Brumby MLA (Leader of the Opposition)  
The Hon Pat McNamara MLA (Deputy Premier and Minister for Agriculture)

#### *Queensland*

The Hon Rob Borbridge MLA (Premier)  
Mr Peter Beattie MLA (Leader of the Opposition)  
The Hon Denver Beanland MLA (Attorney-General and Minister for Justice)

*Western Australia*

The Hon Richard Court MLA (Premier)  
Dr Geoffrey Gallop MLA (Leader of the Opposition)  
The Hon Hendy Cowan MLA (Deputy Premier)

*South Australia*

The Hon John Olsen FNIA MP (Premier)  
The Hon Michael Rann MP (Leader of the Opposition)  
The Hon Mike Elliot MLC (Leader of the Australian Democrats)

*Tasmania*

The Hon Tony Rundle MHA (Premier)  
Mr Jim Bacon MHA (Leader of the Opposition)  
Mrs Christine Milne MHA (Leader of the Tasmanian Greens)

*Territories*

Mrs Kate Carnell MLA (Chief Minister, Australian Capital Territory)  
The Hon Shane Stone MLA (Chief Minister, Northern Territory)

## PROXIES TABLED BY THE CHAIRMAN

### PRINCIPAL

Mr Howard  
Mr Carr  
Mr Borbidge  
Mr Olsen  
Mr Rundle  
Mrs Carnell  
Mr Stone  
Mr Bacon  
Mr Collins  
Senator Alan Ferguson  
Mr Kennett  
Mr Beattie  
Mr Court  
Sir David Smith  
Mr Fox  
Mr Beazley  
Ms George

### PROXY

Senator Minchin  
Mr Iemma  
Mr FitzGerald  
Mr Griffin  
Mr Hodgman  
Ms Webb  
Mr Burke  
Ms Jackson  
Mr Hannaford  
Mr Abbott  
Dr Dean  
Mr Foley (4-6 February)  
Mr Milliner (9-10 February)  
Mr Barnett  
Professor Flint  
Mr McGuire  
Mr McLeay  
Ms Doran

# CONSTITUTIONAL CONVENTION

## Hansard

1998

OLD PARLIAMENT HOUSE, CANBERRA

2nd to 13th FEBRUARY 1998

*Thursday, 5 February 1998*

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### Convention met at 9.00 a.m.

**CHAIRMAN**—I have received a proxy from the Hon. Kim Beazley, the Leader of the Opposition, nominating the Hon. Leo McLeay for certain dates and places on congressional grounds. I table that proxy. In addition, I have received a proxy from Mr Lindsay Fox, nominating Mr Frank McGuire for certain dates and places on congressional grounds, which we will table.

Yesterday I had a request from Dr Mitchell about identifying official Convention papers. To make sure that delegates understand what papers are official Convention papers, I have organised for all official Convention sheets to be in green. The official papers will be designated in that form so you will be able to identify all official papers from the Convention secretariat.

The third thing is that I had a number of complaints yesterday about the degree to which some delegates interjected while other delegates were speaking. Some of us are more accustomed to interjection than others. Some delegates use them to their advantage during the course of their speech but others find the interjections intrusive. I ask all delegates to remember that interjections are difficult for those unused to parliamentary fora. It would be appreciated if they kept their interjections to themselves. If they feel so opposed to whatever a particular speaker might be saying I suggest they leave the room rather than remain and get embarrassed. It is not only that there are a number of individuals who feel quite intruded upon within the chamber; it is reasonable that individual delegates register that others are offended even though they are not the speakers. This is a Convention where we want to obtain the diversity of views that represent the Australian people. It is therefore particularly important that we behave in an appropriate way.

The next matter that I need to mention is mobile phones—not just those in the press gallery but also those of delegates. If you are here with your mobile, please switch it off in the Convention room. If you wish to have telephone calls, please take them outside this Convention room. That admonition applies to those in the spectators' gallery as it does to those in the press gallery.

The list of speakers on whether Australia should become a republic is still very large, as is the speakers list for the 10-minute addresses on today's issues. I know numbers of you have been shuffled around the queue, but we are trying to give priority to those delegates who have not spoken at all. The next priority goes to those who have spoken only once. There are exceptions to that either because a person has unfortunately been unable to speak at a particular time and they have given us notice so they have gone back on the list, or there may be other reasons. Essentially, we will try to give priority to those who have not spoken so that everyone gets an opportunity to make a contribution.

On the overall question of speakers lists, it is essential that delegates who wish to speak on the general question—that is, whether or not Australia should become a republic, on which there will be considerable debate on Monday, day 6, and Tuesday, day 7—nominate as soon as possible so that we can draw up a schedule for the rest of the Convention. I would suggest that we close nominations for that general debate, say, at 4 o'clock this afternoon. Those who wish to speak on the general question, please give your names to the secretariat by 4 o'clock this afternoon.

The debate that will take place on the last day of the Convention—the 10th day—will also be on the general question. But it will be somewhat different because it is hoped, by the evening of the ninth day of the Convention—that is, the penultimate day—that we will have taken our final votes on a preferred vote. When we are speaking on the 10th day there will be another. In due course, the Convention will have reached its conclusions on the preferred alternate model so that by the time we come to the final vote on Friday week we will actually be having another debate, but it will be more precise because we will have in mind the model that has emerged from the deliberations during the balance of the Convention.

The resolutions group, as you will recall, presented a preliminary report through the Hon. Gareth Evans. It is proposed that resolutions groups report at noon today. I propose that that report be debated for one hour—that is, up to lunchtime at 1 o'clock—with a strict limit of three minutes from the floor. It is intended that the vote on that resolutions group proposal take place at 4 o'clock. The vote will take place later on the day that all voting takes place, but this will enable delegates to consider, across the floor,

the proposal from the resolutions group and then to vote on it at 4 o'clock this afternoon. As you will recall, the proposal was that all votes be taken at the end of the day so that all delegates can be present. I would propose to undertake that with respect to the concern that there be an opportunity for consideration of the consequences of a report that has been submitted.

The debate today is on the issue of arrangements for appointment and dismissal. There are a number of working group reports which were tended to the Convention yesterday. They are again appended to the *Notice Paper* for today. We have a very long list of speakers. I have a number of names of people who are apparently not on the list and I will consider what we should do with them. We have a long list of speakers and I see that three people have also asked to speak. I do not know what can be done about it. There can be some adjustments but I have tried to put on the list, as high as possible, those who have not spoken at all. It has largely been to try to accommodate those who have not spoken before.

There is one other procedural matter that I have to identify, which is that of proposed amendments to the draft resolutions for today. You would know that these six working group resolutions will be up for voting after 4 o'clock this afternoon, but in order that the amendments can be put on the screen for consideration again, as we did the other day, we will determine a cut-off time of noon—that is, lunchtime—for amendments for each of these working group proposals. I invite Mr Alasdair Webster to speak on the issue of the day.

**Mr WEBSTER**—I want to say at the outset what a great honour and privilege I consider it to have been invited to be a delegate at this Convention. I thank the people of New South Wales, who elected me to that position.

There is a definition of Constitutional Convention going around at the moment which says that it is a place where somebody gets up to speak and says nothing, and where nobody listens and then everybody disagrees. I hope, as a result of the prayer that you prayed this morning, that at the end of next week we will all agree and come to some reasonable consensus with regard to the future wellbeing of this country in which we live.

So far I have been a good listener to the main sessions of this Convention. I have listened intently to what all sides are really saying and, frankly, I struggle to find acceptable modes of appointment in any of the models proposed. Every alternative seems shallow when compared with appointment at a coronation service, where our head of state accepts a Bible as 'the most valuable thing that this world affords'. He or she promises, to the utmost of their power, to maintain the laws of God and the true profession of the gospel. And, before any heir to the throne can get their hands on the sceptre, which is the symbol of kingly power, they must first accept the orb—a golden sphere mounted by a cross—with the following words: 'Take this to remind you that the whole world is subject to the power and empire of Christ our redeemer.'

The clashes so far over appointment of any future Australian president perfectly illustrate the weaknesses of republicanism. They have been clashes between the elitists and populists. Both the mini and midi proposals favour the rigidly disciplined parties and, hence, the political elite of this country. Understandably they are protecting their interests, such as prime ministerial power, by keeping the election of a president out of the hands of the people. No wonder the polls show that the maxi proposal is popular. Electors are feeling disenfranchised by power politics. They want a say in electing any future president.

Phil Cleary, Professor O'Brien and others gave us strong warnings about the strength of electoral feeling in this regard. The very struggle in this Convention between the elitists and the populists directs our attention to the central weaknesses of republicanism. Republican systems select their leader and determine all their laws on the false idea that the will of the people determines what is right and wrong. Throughout history, powerful minorities have manipulated the will of the people, producing the French Revolution and Hitler's Third Reich.

We should not give absolute sovereignty to the so-called will of the people any more than we should give it to tyrannical kings or to parliament. Those who manipulate the will of the people in a republic to make or break presidents expect to, and usually do get, a pay-off. They coerce the presidents to accumulate and centralise power and then use it to quell opponents and advantage friends.

Over centuries, our monarchical system has moved in exactly the opposite direction. The personal power of the king was appropriately regulated and distributed. Apart from infrequent personal exercise of reserve powers, emphasis was placed on kingly virtues such as servanthood. With all the talk of minimalist approaches to this Convention, ours is a minimalist monarchy.

In a republic there is no legal authority higher than the will of the people. History has shown all too often that those at the top of the republic try to manipulate the will of the people, driving it towards dictatorship. Those below drive it towards revolution because they see that the will of the people is being manipulated; they become frustrated and then rebellious. Corruption and violence are therefore inevitable in a republic. History bears sad testimony to this, including in the greatest of all republics, the United States of America, where the dismissal of the President has sometimes occurred by means of a bullet. This is a direct result of having a president elected by the people: it polarises the nation. One half of the nation think he is God's saviour who will solve their problems; the other half want him out of the way.

Recently my wife and I attended our daughter's graduation ceremony at the Defence Academy in Canberra. We marvelled, as we should, to see the Governor-General, as chief of the defence forces, get out of his box and walk across to his Holden Caprice to be driven quietly back to his house at Yarralumla.

As he drove past the guard box at Government House guarding the entrance, we reflected on what would have happened if our daughter had been

graduating from the United States military academy at West Point with President Clinton as chief of the defence forces. We imagined the weeks of detailed security preparations. There would have been at least two helicopters overhead. There would have been snipers on every rooftop and metal detectors swarming around the President as he moved towards his bulletproof cadillac, and then he would be followed by a convoy of heavily armed security people, which would be like entering a maximum security prison.

My wife and I, while we have great respect for the people of the United States, are very grateful to be Australians living under our existing minimalist head of state. Perhaps some of you are horrified that I should dare to question the so-called will of the people. If you are, I venture to suggest that you have accepted the fallacy that democracy is the source of our freedom. In reality, nothing could be further from the truth.

It was the development, over many centuries, of a biblical system in the government of Great Britain which led to what we very loosely call democracy. I will be talking about that in a later session. Our hereditary monarch guards our freedom not by the powers that the monarchy exercises but by the power it denies to others. Big money, big government, big media and big anything else, in their attempts to manipulate the so-called will of the people, simply cannot influence who gets our top job. Kings and queens are born into that position. None of the proposed methods of appointment and dismissal does anything to achieve what we prayed for this morning, namely, the true wellbeing of the people of Australia. In fact, they would be detrimental to the Godly foundations of this Federation.

I want to end on a spirit of optimism by quoting a poem about two frogs that fell into a deep cream bowl—you might call it a froggerel. These two frogs fell into this deep cream bowl and could not get out. They were going to drown.

One was an optimistic soul, the other took a gloomy view.  
Well down he cried without more ado.

So with one last despairing cry he kicked up his legs and he said goodbye.

He drowned.

Said the other frog with a merry grin, I can't get out but I won't give in.

I'll keep swimming around until my strength is spent, then will I die the more content.

Bravely he swam til it would seem, his struggles began to churn the cream.

On top of the butter at last he stopped, and out of the bowl he gayly hopped.

The moral of the poem is easy found.

If you can't see a way out, you keep swimming around.

I say to all minimalist monarchists in Australia today: stay optimistic, keep smiling, keep praying and keep swimming hard because in 1999, when the referendum is held, the cream will definitely turn to butter.

**Mr ANDREWS**—The task of today's session of this Convention is, I believe, to test each of the propositions put forward for the appointment and removal of the head of state, which can be summarised as follows: first, the popular election of the head

of state; secondly, the election and possible dismissal of the head of state by a two-thirds majority of a joint sitting of the Commonwealth parliament; and, thirdly, the appointment and dismissal of a head of state by a constitutional council acting on the advice of the Prime Minister.

Our task, I believe, is to searchingly question each model and to consider not only the rhetorical blandishments offered in favour of a particular proposition, but to identify any shortcomings and to ask those favouring each model to convincingly answer the questions put to them. Future generations of Australians will pay us delegates little credit if we blindly adopt some abstract theory without giving consideration to the practical considerations and consequences which follow. So let me examine each model.

The advocates of a popular election of a head of state insist that their model is preferable because the people ultimately decide the occupant of the office. They ask: why can't the people be trusted with this decision rather than the representatives of the elected people? But this, I submit, is the wrong question. Of course the people can make a decision, of course we can have a republican system with an elected president but what are the consequences for the stability of our Westminster system of representative government of trying to impose that sort of change upon it?

Rather, we must ask: first, will not the candidates for an election under a popular system, whether endorsed by political parties or not, conduct a popular campaign in which they seek public support for what will ultimately be political programs? Will not the popular election of a head of state create another focus of power to rival the Prime Minister in government? If so, how then are we going to resolve the ongoing conflict between the two? To date, I believe that no adequate answer has been given to these questions by the proponents of that model.

Secondly, the Australian Republican Movement proposes the election of the head of state by a two-thirds majority of the Commonwealth parliament. This model has long been regarded and said to be the minimal republic but yesterday Mr Turnbull conceded that the model is not the most minimal, that the proposal for a constitutional council appointed in accordance with the strict formula established in the Constitution itself, as proposed by the Hon. Richard McGarvie, is the model which most replicates the current system.

What the Australian Republican Movement presents is the image of a well formed, long thought out, internally consistent method of appointing and dismissing a head of state. But when we examine the proposal in more detail, we find that, first, the revisions to allow the dismissal by a two-thirds majority of parliament have now been abandoned by the Republican Movement and the actual method of dismissal is uncertain; secondly, the rationale of bipartisan support for the head of state is compromised by removing the power or the ability of those people who are represented by the opposition and the minor parties in the Senate to have a say in the dismissal of the head of state; thirdly, the proposed candidate is exposed to possible scrutiny of his or her

public life, and perhaps private life and reputation, in parliamentary inquiry and debate; and, fourthly, an inconsistency manifest in one body—that is, two-thirds of the parliament—being designated as the most appropriate body to make the appointment but the assertion that this same body—two-thirds of a joint sitting of a Commonwealth parliament—is inappropriate to undertake the more important task of dismissing the head of state.

We are told that the appointment by a two-thirds majority will ensure that the candidate is not beholden, nor seen to be beholden, to the Prime Minister or any particular political party. But this, I submit, is merely a facade, a sop to the notion that the people should decide upon the occupant of the office because the candidate will still be put forward by the Prime Minister. Only one candidate will be put forward for the election. Even though the opposition parties may disagree with the choice of candidate, they are unlikely to voice any more than the mildest expression that other suitable candidates exist.

If this is true, given the fact that opposition parties have an aspiration to form a future government and therefore will have to work with the chosen head of state, the fact is that the candidate is in reality and in perception the candidate chosen by the Prime Minister of the nation. But if this is not the case, if it is otherwise, then we have the prospect of another ministerial candidate being put forward and the unedifying disuniting spectre of a parliamentary debate into the suitability for office of the proposed candidate. Do we want in this country the sort of political witch-hunts that accompany the appointment of Supreme Court judges in the United States of America? How, I ask, can this outcome attract suitable candidates, enhance the role of the head of state and promote the office of the head of state as a unifying institution in our nation?

When we turn to the dismissal of the head of state, the logic for the proposal is exposed for nought. If it is important to have a two-thirds majority of parliament to appoint a head of state in order to improve the system—the words which Mr Turnbull used yesterday—that is, to ensure that the fullest national endorsement to the appointment of the head of state involves a two-thirds majority of both houses of parliament, why is the much more important power of dismissal not also subject to the fullest possible national endorsement by a two-thirds majority of a joint sitting of the Commonwealth parliament? The answer is simply that the model, as originally proposed by the Australian Republican Movement, is unworkable, that a head of state dismissible by a two-thirds majority of parliament effectively would be unable to be dismissed. In other words, an alternative focus of power would be established in the nation.

This shift away by the Republican Movement from a majority of two-thirds of the parliament being able to dismiss the head of state compromises the rhetoric, I believe, of the ARM about the position of the head of state being bipartisan. Consider for a moment the situation in which the minor parties in the Senate ensured the appointment of the head of state by contributing their numbers, perhaps with the government, to the two-thirds majority but then had no say

whatsoever in a possible dismissal of that head of state. Unless Mr Turnbull can adequately respond to these queries, then I am forced to conclude that what he offers is a shimmering, alluring mirage that, upon closer inspection, starts to break up and disappear little by little from our vision.

Let me turn to the McGarvie model. The suggestion for the appointment of a head of state by a constitutional council on the advice of the Prime Minister has received, I believe, little technical criticism. This is possibly because it seems to me to be the most thoroughly argued model. Indeed, the only real criticism voiced to date is that it is elitist or that the members of the council could be subject to outside pressure to act in a certain way. Neither objection seems to me to be substantial. The constitutional question, though, that I have for proponents of this model is whether, by allowing retired judges to be members of the Constitutional Council, the constitutional convention about the separation of powers is endangered.

I put these questions to the advocates of each model. I am concerned about the proposals to elect the head of state or to appoint by a two-thirds majority of parliament, that those proposals involve flaws so substantial that they are ultimately unsustainable. As delegates, I believe we have a duty to seek answers to these questions. Only then can we decide whether a particular model is the best to put to the Australian people as an alternative to the current system. I look forward to detailed responses.

**CHAIRMAN**—The third speaker this morning is Professor Patrick O'Brien, who was unable to speak yesterday for various reasons.

**Professor PATRICK O'BRIEN**—I want to make four very quick responses to some points raised before delivering my particular defence of the idea of the popular election. There is a scare-mongering campaign being conducted that somehow or another an elected head of state is incompatible with the powers of the Senate. That is just nonsense. Of course, some people want to reduce the powers of the Senate, and that is a long argument in Australian history. But it is just simply nonsense to say that.

Secondly, I am quite horrified by these people who have been arguing here at this Convention and in the press and in articles for several years that we must not subject so-called eminent people to character scrutiny, to checks on their public affairs and public life, because, the poor souls, it would be humiliating for them. The taxi driver who brought me here this morning was expressing similar views to mine. He said that to get a taxi and to drive people in a taxi you have to have character searches done. He was a member of Neighbourhood Watch. His whole life and record were searched by the police. They went around checking with neighbours. He said that he did not mind that because he wanted his children to be protected by people of good character. So I cannot understand this awful argument, the secret people argument, that we must not subject the person seeking the highest office in the land to scrutiny. Of course he must be or she must be.

Another point is this idea that somehow or other an elected president would represent the power of money. Here is the power of money, to my right. You cannot buy all the people. Of course you can buy small groups of people, but the narrower the focus of power the easier it is to buy influence. Indeed, an elected head of state helps to minimise the possibility of the rich, mighty and powerful buying their way and selling favours.

As to the argument that somehow or other an elected head of state would rival the Prime Minister, dear me, poor Prime Minister! Here we have an office that has absolute powers. I wonder how many people in the gallery realise that our Australian Prime Minister has far greater powers than an American President. An American President is almost powerless compared with an Australian Prime Minister. The former's power derives from the simple fact that he is the head of government and head of state of one of the most powerful nations militarily and economically that has ever existed on the face of this earth. But imagine an American President that had the unrestricted power to declare war. Imagine an American President that could sign treaties without reference to the congress. Imagine an American President who could appoint all the judges he wanted. Imagine an American President who could just send troops off to a theatre of war. They are the powers, my fellow citizens, of an Australian Prime Minister.

They need to be checked and balanced, particularly if we take the Crown out of the Constitution, which has been the institution which has acted as the balance. That balance, as Mr Bill Hayden pointed out yesterday, if we become a republic, must come directly through the people through their elected president. Yet remember what Mr Keating said in an interview with Laurie Oakes published in the *Bulletin* about 1992 or 1993. Mr Keating said that, thankfully, as far as he was concerned, anybody designing in Australia a modern democratic constitution would not give to a Prime Minister the awesome powers that a Prime Minister has under the Westminster-type system. Let us finish those nonsense arguments.

I have only a few minutes left. Concerning the matter of appointment, as we know, all contemporary public opinion polls suggest that, if the Commonwealth parliament gave the Australian people the say, they would support overwhelmingly a direct democratic say in the choosing of their head of state. They would do so by a comfortable majority. Being of our own choice, we, the people of Australia, could justly and genuinely claim that office as our own. We could claim the Constitution as our own and not as a document belonging to those who exercise power over us.

It is ludicrous to argue that having an Australian as head of state would somehow mark Australia's coming of age while at the same time denying the Australian people the most fundamental democratic right of all, which is to choose the means by which one is governed and how those who govern in the people's name are themselves chosen. To be dictated one option is to be given no choice at all. In fact, it is an absolute denial of the right to choose and thereby of democracy itself. Also civility is denied.

It has been argued that republicanism is about the national identity of Australia's head of state and that Australians need one of their own to fill that position—a person who embodies what it means to be an Australian, someone with whom all Australians can identify and who is representative of all the Australian people, and so on the argument goes. However, if an Australian head of state is to appeal to and represent all the Australian people from all walks of life, of all ages, of all cultural backgrounds, of all class backgrounds, the hierarchical means that are being proposed through both the McGarvie model and the ARM's model, and variations of it by ruling politicians, simply will mean that we will get yet another establishmentarian elitist as remote from the people in lifestyle as a far-distant monarch.

One person out of the population of this country of approximately 18 million people, one person under the ARM model will nominate a single candidate. Then approximately only 233 people—that is, roughly the combined membership of both houses of parliament—will get a say in that candidate. But they won't be allowed—'Oh no, we can't subject him to scrutiny; he'd be humiliated.' The upshot is that approximately 150 people out of 18 million Australians—that is, the two-thirds majority—will decide who our representative head of state is.

Please listen to this, you people in the gallery and people who are listening on the electronic media. Is that democratic? Could such a person be representative of all of us? Of course not. So, contrary to ARM's schemes and scheming and Mr McGarvie's model, the only means of getting a head of state who is representative of and accountable to us, the Australian people, is through the constitutional entrenchment—not in a preamble but the constitutional entrenchment—by the people of our right, the right of every Australian citizen qualified to vote, to have not only the further right to cast a direct ballot in an open contest for the office but also the constitutionally entrenched right to nominate candidates for that office and the constitutionally entrenched right to contest direct elections.

If we do not do that, we will finish up with a sham and a shambles. If we do not do that—if we make the move to a republic—the proposals will divide the nation. You will not get anything like sufficient support from the people of Australia to have a constitution that all Australians, despite our cultural diversity and despite all our differences, can identify with. If you do not put that into the Constitution, you are constructing a constitution with which most people will not be able to identify.

**CHAIRMAN**—I call on Mr Jason Yat-Sen Li, to be followed by the Hon. Tony Abbott.

**Mr LI**—Mr Chairman, fellow Australians, it warms my heart to be able to address all of you as my fellow Australians. Australia has come a long way since a century ago to becoming a truly diverse polyethnic nation. When launching the issues paper 'Multicultural Australia: the way forward', the Hon. Phillip Ruddock, federal Minister for Immigration and Multicultural Affairs, proclaimed that Australia is a multicultural nation. Our cultural diversity has been

a strength and an asset in our development as a nation. I would like to thank Mr Cocchiario for his magnificent speech last night, which I endorse fully.

I too wish to bring the perspective of ethnic Australians and Australians from a non-English speaking background to bear upon this issue. That is my mandate at this Constitutional Convention. I stood for election on the platform of representing ethnic Australians and all those believing in the value of an ethnically and culturally diverse society. My election articulates a clear message. It affirms that ethnic Australians have an undeniable interest in the future of our nation. They have put me here to speak for them. I believe that all Australians should be given equal opportunity to attain the honour of being Australia's head of state—all Australians regardless of their ethnic descent.

Fellow Australians, allow me to put to you a proposition, not just those of you are assembled here with me today but all Australians who may be watching these proceedings. How would you feel, what would be the reading on your internal barometers if tomorrow an Australian head of state were appointed who was of Asian ethnicity? The comments and the reaction of a certain federal member in Queensland upon the announcement of this year's Young Australian of the Year, Vietnamese born Miss Tan Le, spring immediately to mind.

I perhaps credulously would hope that all of you would applaud this appointment as a celebration of Australia's diversity, as an affirmation of the harmony with which a multitude of diverse ethnic groups work in concert for the good of our country. Perhaps more interesting, however, is whether any of you have reservations. Allow me then to ask: what is the basis for these reservations? What lies beneath them? I suggest that the reservations lie in the ingrained sentiment that an Australian head of state of Asian ethnicity does not reflect the proper image of Australia. Here lies precisely, profoundly, the power of symbols. This is a question of our Australian identity.

Without wanting to digress to the broader issue of whether Australia should become a republic, I applaud the Australian Republican Movement for their emphasis on symbols, for the forging of a national identity within which all Australians can feel a sense of belonging, a sense of fitting in and a sense that this land is their home. Symbolism is of the utmost importance.

Let me reiterate that all Australians should have equal opportunity to attain the office of Australian head of state. This necessarily impacts upon the appropriate model for appointment and dismissal. Having opened up an avenue through which those people who elected me can communicate their views directly to me, I have found that those views have been remarkably consistent. An overwhelming majority of ethnic Australians desire a direct input into who their head of state should be. They do not want to leave the decision in the hands of a body—a parliament or otherwise—in which they are staggeringly under-represented.

I therefore say that, in addition to the existing criticisms levelled against the McGarvie model and

appointment by a two-thirds majority of parliament of a government nomination, neither of these models will do justice to the legitimate dreams of this generation's ethnic Australians to become Australia's head of state. The problem, as I said before, is the hopeless under-representation of ethnic Australians not only in parliament but also in all positions of high office. The lack of role models, the lack of a motivating tradition of mainstream political involvement and the inherent conservatism among the elite in Australia will mean that this under-representation will doggedly withstand correction for many decades. That is too long to wait.

Popular election from a small group of nominees chosen by parliament suffers from the same deficit. I wish to make it very clear that I am not concerned with giving ethnic Australians an unfair advantage; I am concerned with placing them on an equal footing. As two legal and moral philosophers John Rawls and Ronald Dworkin have argued, justice requires removing or compensating for undeserved or morally arbitrary disadvantages, particularly if these are profound, pervasive and present from birth.

I am not entirely happy with any of the three existing models for appointment and dismissal. These three models have divided the republican camp into three entrenched blocs, each pitted bitterly against the other. This is jeopardising not only the credibility of the republican initiative but also the credibility of the Convention itself. We must not let this happen.

As an independent delegate unaligned to any particular group, I grappled last night with whether today in this speech I should lend my support to any existing model or whether I should propose a compromise of my own. I have chosen the latter course—not because I am so presumptuous to think that I can solve all the problems or I can untie the Gordian knot and overnight be proclaimed the national hero for devising the ingenious Li model. I have done so because I would like to set an example that we all at this stage have to think laterally to find a compromise capable not only of achieving consensus but also of having the greatest chance of success at a referendum. We must be guided by this principle. We must give credence to the wishes of the Australian people, because this is the mechanism for constitutional alteration under section 128. Otherwise, a referendum will fail.

Let me turn now to my compromise proposal. Compelling criticisms may be levelled against each of the existing models. However, each model also has its strengths. I am concerned with preserving the strengths of each model while somehow at the same time discarding its weaknesses. With respect to direct election, the problems are many and have already been eloquently ventilated. The strength of direct election, however, is that it allows popular participation consistent with our democracy.

With respect to election by a two-thirds majority of parliament, the problem is that the Australian people have clearly voiced their distrust of parliamentarians. The strength of this model lies in its ability to deliver a bipartisan, apolitical head of state. With respect to the McGarvie model, it is perceived to be too elitist. The strength of this model lies in its preservation of

the existing mechanism of dismissal as an effective sanction against the head of state who fails to comply with convention.

I believe that the strengths of these models may be combined without their weaknesses. My proposal begins with resolution 1 of Working Group F but then diverges from it. A two-thirds majority of parliament elects a selection body that is gender balanced, composed of people who have the respect of the Australian people and who reflect Australians in all their diversity. That selection body receives nominations from the general public and, according to a set of transparent criteria, selects a candidate—in the same way that the Australian of the Year is selected. That candidate must then win the support of an absolute majority of parliament to be appointed head of state.

Fellow Australians, this model is non-elitist. It ensures ease of dismissal by absolute majority of parliament—the same majority as that which appoints. It will produce a bipartisan, apolitical head of state. It allows for popular input without creating a massive mandate, and it removes the actual selection of the head of state from the hands of the parliamentarians, thus allaying distrust. In addition, I believe this model affords an equal opportunity to all Australians to be elected head of state.

I was born in Australia 26 years ago. I am as Australian as anybody here. Look beyond the colour of my skin. Regardless of their origin, all Australians have a unifying commitment to Australia, to democracy and to equality. The value of ethnic diversity in Australian society now is beyond contention. The challenge, however, is for a more tolerant and inclusive democracy. Fellow Australians, I have a vision for Australia in which an ethnic Australian may be elected head of state. It will be as absolutely normal and uncontroversial as if an Australian of any other ethnic descent were appointed. I ask all delegates and all Australians to join me in that vision.

**CHAIRMAN**—Thank you, Mr Jason Yat-Sen Li. Before I call the Hon. Tony Abbott, I table a proxy from Jennie George, President of the ACTU, who has nominated Jennifer Doran as her proxy at certain times and places. I also note that the next speaker, Ms Clare Thompson, is not in the convention room. I urge her to come in as soon as possible. If not, she will forgo her place to Senator Natasha Stott Despoja.

**Mr ABBOTT**—Thank you, Mr Chairman, for the opportunity as a mere proxy to address the Convention. May I say that the dismissal issue is the key to this debate, as recognised by the Hon. Richard McGarvie. Dismissal is the only effective sanction on the head of state. Without an effective sanction the conventions will not work and without the conventions, as Mr McGarvie has pointed out, the head of state is at least a potential threat to our democracy. So this is the key issue. We cannot assume that it would not arise in the future. In fact, under any republican system, the desire of the Prime Minister to dismiss a head of state is more likely to arise given the fact that the head of state will be more likely to test the rules in any new system.

A fully elected presidency obviously requires a full set of rules because such an individual would be the modern equivalent of a priest, prophet, king, seer, sage and embodiment of the spirit of the nation. The only successful candidates to be elected presidents would be politicians, billionaires or saints. Politicians, as we know, are able to slide around rules; billionaires, as we know, are able to buy their way around rules; and saints, almost by definition, refuse to be bound by rules. If a saint ever got elected as president and Ted Mack found himself in that office, it is hard to imagine that he would be able to refrain from giving advice to the Prime Minister and the Prime Minister would have absolutely no leverage whatsoever on him. He could not even threaten his superannuation because he would refuse to accept it.

Dismissal is absolutely the key issue. There must be a means of dismissal of a popularly elected president, yet popular recall or parliamentary impeachment would be a recipe for national paralysis and chaos. The difficulty with prime ministerial dismissal is that the turmoil of 1975, when a non-elected Governor-General dismissed an elected Prime Minister, would be as nothing compared with the turmoil if a Prime Minister tried to dismiss an elected president. Short of medical incapacity or criminal conviction, any elected president would be there for the duration. There would be enormous potential for deadlock between Yarralumla and The Lodge.

The Australian Republican Movement has recommended appointment by a two-thirds majority of both houses of parliament. This is supposed to guarantee that any president would be a great Australian with bipartisan support. But it assumes in the first place the entrenchment of the existing Senate voting system. So it is unlikely that any one party would have a two-thirds majority. It also most significantly assumes goodwill on the part of the contending parties in the parliament. This, as anyone who has sat in the parliament knows, cannot be assumed. It is possible that an opposition would simply refuse to cooperate and that Australia would be left without a head of state.

I am sure that Phil Clearly supports popular election because he realises what members of parliament would do to any government nominee who came before the parliament. It needs to be pointed out that no recent Governor-General would have become our head of state under a parliamentary process such as the ARM recommends. Stephen, Cowen and Deane would never have run for such an office. They would never have exposed themselves to this kind of partisan scrutiny in the parliament. Mr Hayden, of course, would never have got a two-thirds majority because we only discovered the greatness of the man after he left politics. Quite simply, if such a person were not a politician at the beginning of this process, they certainly would be at the end.

The Australian Republican Movement has, in the course of this Convention, modified its ideas on dismissal. It now says that the head of state should be dismissible by a mere simple majority in the House of Representatives. I find it enormously strange that, in wanting desperately to entrench bipartisanship in the appointment of a president, they are indeed

entrenching partisanship in the dismissal of a president. As Tim Fischer so shrewdly pointed out yesterday, in a comparable situation to 1975 we could have no Prime Minister because he had been dismissed by the president, no president because he had been dismissed by the Labor majority in the parliament, no election because there would be no-one to manage such a process and no head of state, no president, because it would be impossible to find a two-thirds majority in a situation of such chaos to replace the incumbent.

The beauty of our existing system of government, our existing system of selection of the Governor-General, is that it gives us a selection system which is much more like that for a judge than that for a politician. The key advantage of the McGarvie model is that it preserves the political detachment of the existing system. The Prime Minister could be expected to make worthy nominations lest he suffer electoral retaliation. Members of the Constitutional Council could be expected to take their duty seriously lest their reputations be destroyed. The head of state could be expected to act in accordance with the Convention lest he be dismissed for improper conduct. Under the McGarvie model, codification seems least necessary.

But it is impossible to exactly reproduce the detachment and the impartiality of the monarch. It is, it must be pointed out, impossible to lobby the Queen, yet the Constitutional Council proposed by Mr McGarvie would comprise distinguished citizens, to be sure, but citizens who have been involved in the hurly-burly of public life. They would have friends and critics; they would have sponsors and proteges; they would be subject to lobbying, influence peddling and last-minute appeals—not in anything like the same way that a parliament is but much greater than the existing system. There would be the problem of unanimity and the problem of confidentiality. There is also the problem pointed to by Bob Carr the other day of the head of state having a power base, no matter how limited, independent of that of the Prime Minister.

For generations perhaps under the McGarvie model the existing culture would preserve the existing system, but time passes and cultures change. Under the McGarvie proposal, the head of state can dismiss the Prime Minister. The Prime Minister can dismiss the head of state. But no-one, it seems, can dismiss members of the Constitutional Council. What sanctions would hold them to their duty when their memories of the existing system had passed?

These cannot be dismissed as mere quibbles, because a constitution that might last for a hundred or a thousand years has to be gotten right. It is possible, even under the McGarvie option, that a future head of state might see himself as being more involved in day to day power and might see his Constitutional Council as something more resembling a presidential cabinet, which of course brings us back to the morass of the sanctions issue which so bedevils the direct election and the parliamentary election model. McGarvie has proposed by far the best and by far the most workable republican alternative to our existing system, but it has to be said that it is the best of an unsatisfactory bunch.

I acknowledge in this chamber those republicans who have paid tribute to our British heritage and suggest that their generosity should also extend to those who believe that that heritage of freedom under the law, of compromise and of evolutionary change belongs just as much to our future as to our past. This country owes a great debt of gratitude to the men and women of Australians for Constitutional Monarchy, who have consistently reminded us of the strengths of our existing system when others, who perhaps should have known better, have become its critics. Finally, I congratulate Richard McGarvie for his brilliant insights into how our system really works and for his shrewd recognition that any alternative must build on the strengths we have got.

**Ms THOMPSON**—Last week over 300 women met at the women's convention at new Parliament House to discuss broad-ranging issues to do with constitutional reform. High in the thoughts of all of the people who attended that convention was the need to be more inclusive—particularly in including more women in the process of the appointment of our head of state. Across the political spectrum from republicans to monarchists, women from the Aboriginal and Torres Strait Islander community, women from non-English speaking backgrounds and women like me agreed that women should participate fully in the process and the outcomes of a head of state for Australia.

It is this point that I wish to address this morning and examine and test the models against. Outcome 5 of the Women's Constitutional Convention says that the 'selection or appointment process for the head of state must guarantee that women's chances of occupying the position are substantially equal to those of men'. The question is how best to achieve this. Clearly, a system which is based on heredity which favours males over females cannot meet this criterion.

We then turn to the proposals put forward by the various working groups this week. The proposals of Working Groups A, B and F, all of which are proposals for popular election in some form, are initially very attractive. They are attractive because they rely on a system of compulsory voting which sees, in theory at least, as many women as men enfranchised in this country. The theory goes that if you have a popular election women will have as great a say in the appointment of the head of state as men. Women will have, so the theory goes, an equal chance of rising to the position of head of state.

However, I do not believe that women would be more likely or even as likely to become a head of state under a popular election system. I say this because of the role that women play in politics generally. The women who are in parliaments have fought very hard to get there. Generally, women in politics, as many members of my own Liberal Party would know, tend to be the organisers in the background, tend to be the ones who do the work and do not take the glory. In that respect, there is no way that we can guarantee that a popular election would be at least as likely to provide us with a female head of state.

The second criticism I have of this model is that it opens the process up to the sort of nasty public scrutiny that we have seen Ms Kernot, Ms Lawrence and Ms Kirner undergo in recent years of their private lives, their dress and all the rest of it. Anything that avoids this, in my view, is a positive thing. It is not a pretty picture.

I could be convinced perhaps of the attractiveness of this model if only we had more detail. This morning Professor O'Brien, who was vociferous in his views, theatrical in his gestures, was very concerned about the rights of the people but light on detail.

The proposal of group D is attractive because it is closest to our present constitutional system, and that is a system which most of us here today agree is on the whole a very good system. However, by appointing a council to undertake the appointment process of a head of state I see a number of problems. First and foremost, it assumes that lawyers, judges and former governors-generals and governors are the repository of all knowledge and wisdom in this area. As a lawyer, I dispute that. I put on record my belief that the wisdom of the wider community is more valuable than the wisdom of an elite legally trained few.

Secondly, this proposal from Working Group D is bad for women. It is bad because the process does not include women from the beginning and, more importantly, it is bad because of what the outcome will be. We all know that we are far more comfortable with people who look like us, who speak like us and who share our views. One of the great challenges of late 20th century Australia is to be more inclusive and more accommodating of diversity, and I am delighted to be part of a group here this week and next week that recognises that and places that as an important criterion. But the problem is, if we ask a council of elderly former members of the legal elite to choose someone as their head of state, what is the most likely outcome? The most likely outcome, in my view, is that they will choose someone who looks like them, who sounds like them and with whom they are comfortable. That may not be a very good outcome for this country.

The proposal by Working Group C is, to my mind, the best solution. This is the proposal that would see a joint sitting of both houses of parliament appoint a president by a two-thirds majority. It is a proposal that would be bipartisan and it is a proposal which has a great deal of merit. It is a proposal that requires a group of people who have been democratically elected by the all too frequent ballot box in this country to make a decision based on the input of all of us.

Parliament reflects increasingly the great diversity in our society. There are far more women now in parliament than there are likely to be in the ranks of former governors-general, former High Court judges, Federal Court judges and governors for the next 100 years. That is today—let me tell you it gets better at every election. Parliament is very conscious of its responsibilities in the need to reflect the hopes, dreams, desires and aspirations of the great Australian population. My experience with parliamentarians is that they are extremely conscious of the world at large. They are very clear in making sure that their

decisions are in the best interests of the public, the best interests of this country and that a whole range of views are taken into consideration when making their deliberations.

This is not to say that the Working Group C proposal could not do with some refining. I would personally like to see a process where ordinary members, every member, of the Australian population had an opportunity to have some input into the nomination process. Whether this is by writing in to a select committee or simply talking to your local member of parliament, I have not really thought too clearly about, but I do think there is merit in that proposal and we as a Convention should explore it.

I support a two-thirds appointment because I believe it will best deliver the aspirations of the women's convention with which I heartily agree. It will be the only system to guarantee that women's chances of occupying the position of head of state are substantially equal to those of men. On this basis, I commend Working Group C's proposal to this Convention.

**CHAIRMAN**—Thank you, Ms Thompson. I now call Senator Stott Despoja, to be followed by the Hon. Neville Wran, who switched places with Ms Linda Kirk.

**Senator STOTT DESPOJA**—Thank you, Mr Chairman, fellow delegates. It is an honour to rise in this chamber for the first time. It is a somewhat cosier chamber, it is much nicer. I am honoured to be representing the federal parliamentary wing of the Australian Democrats at this Convention, and I am glad to be joined by my state colleague Mike Elliot, who is the Leader of the Australian Democrats in South Australia.

I am a proud republican and always have been. Like many others here, I place on record the willingness of myself, on behalf of my party, to participate in this Convention, to listen to different models, to assess the worth of different arguments. At the risk of getting a point of order for relevance from Mr Bruce Ruxton—

**Mr RUXTON**—Never to you.

**Senator STOTT DESPOJA**—I will restrict my comments today, Bruce, to the issue at hand, and I look forward to elaborating on why I believe we should be a republic when I get the opportunity to speak on Monday.

If we are to become a republic, if we are to achieve one that has popular support, then we must begin to grapple with the public's desire to play a role in that process. My personal preference, my ambit claim if you like, is for a popular election for a president. This view is reflected by some of my Democrat colleagues, but the one thing that we all have in common is that, if there is to be an elected head of state, that must come with unambiguous safeguards in our Constitution. So my support for a popularly elected head of state is conditional. It is conditional upon broader constitutional reform, changes to the powers of the Senate and the codification of the powers of a head of state.

Many of the most successful heads of states around the world are popularly elected. We have heard about the President of Ireland. True, each of the political

parties sponsors a candidate, but the Irish electorate has made clear that it will only support and vote for candidates of the highest calibre, and that is what they have had. The most recent President of Ireland, Mary Robinson, left her term of office with an 80 per cent approval rating. It is also worth pointing out that the longest serving head of state in Europe—the enormously popular female President of Iceland since 1981—is also popularly elected, but in both cases the powers of the President are prescribed in the Constitution.

The initial failure of this Convention to seriously consider the idea of codification of a head of state is a grave one. I think it is a failure that could doom any ballot on a future republic. Certainly, without codification of powers, an elected presidency cannot work. I would suggest that any head of state—even one elected by a parliament without codified powers—may not work either.

The reserve powers of the Governor-General are extensive. They have been used in the past and they can be used again. We can draw on overseas examples, of course. I note that the President of Pakistan is appointed by a parliament. That has not stopped the President sacking the last three elected Prime Ministers before the completion of their terms. So whatever the model, the problem will not go away.

I acknowledge the Prime Minister has signalled his support for the McGarvie model—where a president is chosen by a Council of Elders on the advice of the Prime Minister. It is the last rider—on the advice of the PM—that worries my party. I am not too big on the Council of Elders bit, either.

In 1969 John Gorton appointed the man he beat for the PM's job, Bill Hasluck, as did Bob Hawke in 1988, with Bill Hayden—with all due respect to those Governors-General. Indeed, this country has only had three totally non-political appointments to the position of Governor-General, all three being eminent jurists since 1975, and indeed we have had no female Governor-General in this country.

It remains the case—I think the appalling case—that the head of state in this country is still within the gift of the Prime Minister of the day. More worryingly, the head of state can effectively be removed by the Prime Minister of the day because the Queen usually acts on the Prime Minister's advice.

Under the McGarvie model, the council likewise would act on the Prime Minister's advice. Thus, if a head of state becomes too critical of government—insists that, say, some constitutional forms be pursued, refuses to consent to a piece of legislation or declines to follow perhaps an inappropriate or obviously partisan demand by the PM—they could be sacked by the Prime Minister on his given advice. What sort of constitutional safeguard would that be? So the Democrats reject the McGarvie model as too open to political manipulation.

The Democrats do recognise some of the positive features of the two-thirds model: that it would encourage bipartisan cooperation, that it would not necessarily create a rival political position to the Prime Minister and that, theoretically, the parliament is representative of the people. But we know that the

House of Representatives, by virtue of its voting system, does not reflect the true voting intentions of the Australian people. You have only to look at the current arrangement, where the government has two-thirds in the House although they received only 47 per cent of the popular vote. Ten per cent of voters—nearly one million Australians—are denied representation in the House of Representatives altogether, whereas the Senate is more representative because it is based on proportional representation. The fact that the House is twice as big as the Senate and that its numbers will dominate the vote brings into question whether or not the two-thirds model will indeed be representative. If, in fact, the House were elected by a PR, as is the case in many European countries where the parliament chooses the president, I think the two-thirds model would be much more valid.

There is a strong argument that the two-thirds model and parliamentary election would be more likely to generate a non-political head of state. It would almost certainly mean that a head of state required bipartisan support. But that decision would involve little, if any, consideration of the minor parties and independent candidates that may be in the parliament, elected by all those many millions of voters who are taken for granted by the major parties in the three years between one election and the next.

The Democrats recognise flaws in all models. Nevertheless, it is important that this Convention comes up with a workable model with some sort of preposition. On behalf of the Democrats I indicate that we are prepared to support a resolution in favour of a head of state appointed by a parliament only if some of the essentially undemocratic aspects of this scheme are removed. We believe strongly that the nominations must come from the people, not from backroom deals.

I support a process that excludes members of parliament from the nomination process. I support one that enables Australians to nominate candidates, say, to a short list from which parliament could choose the president. This is a model that has been mooted previously by the Democrats. There is an idea that we could use a petition system, which is in line with some other countries where each nomination is supported by around 25,000 signatures. This would at least ensure that the people had a say in the choice of the head of state. I acknowledge that this model is second best to a popularly elected president with codified powers. But if a majority of republicans and others at this Convention believe that a head of state should be elected by the parliament—and I acknowledge that this has been a workable model in many other countries—then let us do it in a way that maximises the role of the people and minimises the opportunity for political backroom deals.

I wish to refer, as Ms Thompson did, to the Women's Constitutional Convention. I note that one of the resolutions of that conference was that we should ensure that women's chances of occupying the position are substantially equal to those of men. I endorse that and I would like to go one step further. I would like the first president or head of state of an Australian republic to be a woman. I think this would symbolise Australia's move into the next millennium

as a nation committed to equality between the sexes and to having women in positions of power. I hope that she will preside over a democratic and representative parliament, one in which the voices of previously underrepresented groups are heard, including women, different ethnic groups, young people, indigenous Australians and those from different socioeconomic backgrounds. I look forward to continued constructive debates about the methods of appointment and dismissal at this Convention. I am happy and willing to listen to all arguments and I will be guided by my party room, by my party and by its members when I vote on this issue.

**CHAIRMAN**—Thank you, Senator Natasha Stott Despoja. I now call on the Hon. Neville Wran QC, to be followed by Ms Mary Delahunty.

**Mr WRAN**—Like so many delegates who have addressed this Convention in the past few days, I feel honoured to be here as a delegate and privileged to have the opportunity to address the Convention. I also consider myself extremely fortunate that I was one of a handful of foundation Australian Republican Movement members in 1991 and so able, as its ranks grew in the ensuing years, to pursue the cause of an Australian republic—an Australia with an Australian citizen as our head of state, a head of state with substantially the same powers as the Governor-General and powers limited and defined in much the same way as they are presently.

I can tell you, Mr Chairman, that back in 1991 the exercise seemed so much more simple than it does today. After all, the aim was merely to have an Australian republic up and running by the year 2001. That gave us 10 years to examine the various options, to persuade governments to acknowledge growing republican opinion and, finally, to seek the binding view of the Australian people by way of referendum.

Delegates, in the past few days as the debate has proceeded on various issues, including the arrangements for the appointment and dismissal of a new head of state, as that debate has swung from the constitutional monarchists 'do nothing' stance to the general election model focused on by some of our republican candidate colleagues, my emotions have swung from exultation to frustration and back again. There is no doubt that some of the models presented to the Convention by the various working groups are light years apart in concept and methodology. The challenge for the Convention is to resolve the difference.

There are many accomplished and distinguished Australians at this Convention, some practised and some not practised in the art of politics. In the past few days, incidentally, a lot of rather nasty things—indeed at times bordering on the offensive—have been said about politicians. In the result, it is with some humility that I have to confess that for the best part of 15 years I was a politician—a calling which I have learned here is a lowly one better not mentioned in polite company. In the event, whilst occupying this lowly station, I improved considerably my understanding of the values and judgments of the Australian electors and, perhaps more importantly, how to analyse and assess their significance.

In my years in politics perhaps the most critical thing I learned was that influencing change was the art of the possible. That is to say, where an objective was to be achieved or a vision was to be fulfilled, it was not always possible to obtain the perfect result. Do any of us really believe that the founding fathers walked away from the final convention that produced the Australian Constitution satisfied that a perfect result and one without compromise had been achieved? Of course not. And a cursory perusal of the records and writings of the convention make that clear beyond doubt. The Australian Constitution was not hammered out at one sitting or several sittings; it was the result of negotiation and compromise extending over a period of several years in and outside the conventions.

Over the years since 1991 it has become increasingly obvious that Australians—or, more correctly, a majority of Australians—wanted or at least preferred an Australian citizen as their head of state. To reach that point, of course, needs a referendum, and our record of passing referendums is rather abysmal. I might add that it seems to me that no-one has the perfect answer as to the method of appointing an Australian head of state. After all, the range of options extend from appointment on the sole decision of the Prime Minister to popular election with the accompanying complexities as to powers, codifications and so on.

I must confess, I thought a collegiate system involving the vote of two-thirds of both houses of the national parliament, which gave the people at least an indirect involvement in the process, was a sensible compromise capable of being approved by the people. Obviously a number of other republicans have so far not been prepared to share that view. I can understand that. The two-thirds approach is not perfect and it is not the only model; it just happened to have the attractions I referred to.

Delegates, let me say this as earnestly as I can. We are all aware of our responsibilities as delegates in this historic Convention. We are aware that in the months leading up to this Convention there has been a growing expectation amongst Australians that something positive and permanent in the dynamic of our constitutional framework will come out of this Convention. In the proceedings of the Convention so far, as particularly evidenced by the votes taken in plenary session on Tuesday in relation to the powers of the proposed head of state, it is apparent that a strong republican sentiment is emerging. This Convention has several days yet to run, time enough to settle the Gulf War, let alone to bridge any gulf between us on important issues such as appointment or election.

There are, of course, delegates here committed to the perpetuation of the constitutional monarchy for ever. Some are intransigent and others are quite extravagant in their assessment of the consequences of having an eminent Australian, man or woman, as the head of state. One delegate even suggested that it might represent the first step down the road to a Nazi regime. Others again are less intransigent and inclined to the status quo. On the other side of the fence there are republicans who are committed to an Australian

head of state with appointment or election by various methods and, finally, but just as importantly, there are non-aligned delegates who, by and large, are open to be persuaded by the force and logic of argument presented in these debates.

In this debate I impute no malice or lack of bona fides to any group. No-one has a monopoly of love of country or integrity of decision making when it comes to matters of this kind. Having said that, people can be intransigent in their attitude or just plain wrong in their conclusion. Delegates, if ever there was a time to be right in our decisions, that time is now. Republicans have striven for years for the chance to put a republican model altering the Constitution to the Australian people for their approval. We are on the very cusp of success. The opportunity must not be squandered.

In the various models relating to appointment and dismissal there is plenty of room for compromise and accommodation. I hope that the Convention will share this view when it votes later in the day to allow the recommendations from each of the Working Groups A to F to go ahead for final consideration next week. I include in that the submission from the constitutional monarchists. In the meantime, the opportunity for compromise and accommodation can be explored with goodwill and good heart, and for a good cause—the future of our country.

Delegates, if we miss the day, then heaven alone knows when we will get the next opportunity. If we miss the day, then this chance to begin and maintain a process of constitutional review and reform may well be lost. The outcome is in our own hands, hands that treasure this country for what it is and for what it can be. Let's seize the day. If we fail, we will only have ourselves to blame.

**CHAIRMAN**—Thank you. I call on Ms Mary Delahunty, to be followed by Councillor Bunnell.

**Ms DELAHUNTY**—Thank you. Fellow delegates, you know that there is a big birthday about to be celebrated. It is not mine; it is certainly not the Chairman's—as far as I know. I am talking about Australia's 100th birthday—the centenary of Federation in 2001. It is a mighty milestone in our nation's narrative. It is a story that should be told and learned by all of us because ours was a nation not born out of revolution; our Constitution came from the civic model not from the might of the gun.

Last century when the momentum for Federation bogged down, People's Conventions kick-started it again. Men of moment, men with status, property and the vote, of course, gathered in Corowa, Bathurst, Adelaide, Sydney and Melbourne and crafted a Constitution that created a nation. In the twilight of this century with a new millennium beckoning, we, as delegates to this Constitutional Convention, have the honour and, indeed, the demanding duty to complete the job began at Federation. We will give this nation one of its own citizens as constitutional head of state.

To be or not to be a republic is no longer the question. Once the conversation moved out of the academy and onto the airwaves a substantial and increasing majority of Australians are saying, 'En-

ough—thank you, Mr Waddy—enough of a distant monarch we must share with competing nations; enough of a Constitution of mirrors; enough of a document that does not reflect the way we are. We want cemented into our Constitution one of us, an Australian citizen, steeped in our culture and our character, at the apex of our political pyramid.' Fellow delegates might well say, 'That is not news.' We heard this clamour as we campaigned around our states for election to this Convention. We have heard the now daily coming out for a republic of Liberal premiers and ministers. 'It is time for a change,' they have said as they have joined Democrat and Labor advocates. Also, at this dais, appointed and previously undeclared delegates have argued eloquently for an Australian head of state. So you are right, this is not news: Australians want a republic. That is the headline: 'Australians want a republic.'

Now let us look at the text. As a republican—probably by genetic inclination, but certainly by intellectual disposition—I have grappled with the form, the tone and the texture of an authentically Australian republic—constitutional umpire or purely ceremonial figurehead?; appointed or elected?; and all the permutations that are offered by these models.

I was elected as No. 2 candidate for the ARM in Victoria—I think if I had been a bloke I may have been No. 1—on my preference for the appointment of a president by a two-thirds majority of federal parliament. So I was propelled into this place with a preference but also with an open mind. I came here imbued with a sense of history. I came up those front steps past the ghost of Gough, walked through the corridors and saw the pictures of the past—there is a particularly jaunty one of Billy Hughes, and a more hirsute Robert Menzies.

I came with the challenge of working with you to effect a workable and palatable change that Australians will embrace. I came with a tremendous sense of possibility. I came to listen. I came to be convinced, not to conquer. Most particularly, I wanted to hear, and I still want to hear, the detailed arguments for direct election. We know direct election is an option, a serious option. Direct election is alive at this Convention. The wisdom of this Convention means that this proposal is well and truly on the table. So let us hear the detailed arguments for it. Let us hear, for example, proposals to give women a fair go at the contest, proposals to cap the cost, proposals to encourage candidates of real worth.

In the ARM there has been a lot of work to try to ensure public ownership of this process, including a specific proposal for public nomination. I have to tell you I have been charmed by the advocates of direct election. I have been moved by their passion and their belief. I have laboured cooperatively, and constructively, I hope, on a proposal in a working party a couple of days ago for a nominating panel from our various parliaments of the Commonwealth to nominate candidates for popular election. It was a joy. But what we did not do, except in a cursory way, was argue the case for and against direct election.

Chris Gallus, I must say, yesterday certainly got the ball rolling with some detailed explanation of her

ideas about how direct election might be working. So I have asked myself and others, 'What is this romance with direct election? Why is it just so seductive?' I hope it is no risk to the courtship to turn on the lights and take a look.

There are two cries, it seems, cementing the case for direct election. Firstly, it is the will of the people. Secondly, and perhaps more darkly, we do not want another politician as our head of state. The will of the people—how do we know it? Polls, public comment and, yes, in the imperfect way of democracy we take the pulse of the nation in the election of representatives to our parliament. We do not want a head of state who is a politician.

I know this has a delicious larrikin ring of a defiant Henry Lawson. It also reveals I think the cruel contradiction embedded deep in the notion of direct election. So in the spirit of seeking a compromise, a workable solution, at this Convention, I ask: please convince me that a public contest for the top job requiring money—lots of money—campaign, media and strategic skills will not produce a politician, perhaps a very bruised politician.

Convince me that a public contest for the votes and affection of the Australian people will not produce a president owing debts. Convince me that it is not only political parties or big corporations with the resources to mount a national campaign for president. Convince me that a jurist with the soul of a poet, a writer with the insights of an angel or just a citizen of independence and skill could compete in the public contest against the might of a media mogul or the tyranny of celebrity.

It is no secret that my heritage is part Irish. My name is Mary, and Mary Robinson is a legend. So convince me that a ceremonial, legally powerless president like that of Ireland's is superior to the notion of constitutional umpire and would work in this country. (*Extension of time granted*) My sense is—and it is not the least bit romantic—that at the heart of the appeal for a direct election is mistrust. I think it is more than that. I think it is almost some sort of crisis of civic confidence.

Direct election proponents declaring that they do not want a politician are echoing the increasing chorus of denigration of our parliaments. It is true: many Australians feel shut out of the political process, they feel denied of active citizenship, and they feel frustrated by corporatised managerialism in modern government. Could it be, then, that direct election gains its strength through the hope that somehow the people's champion, the president, will single-handedly whip the recalcitrants of the parliaments into responsive and unerring representatives of our will? Could it be that through some miracle mutation, a combination of the avuncular discipline of a Weary Dunlop or the gentle guidance of a Mary MacKillop, the president will right the wrongs of our system? Could it be too romantic a notion the state of grace that the successful aspirant would arrive at once they stopped being a candidate and assumed the job of president?

I am also curious to know when and how this metamorphosis would take place—the metamorphosis from competitive candidate to a symbol of national

unity, even for those Australians who did not vote for her. Convince me that we are not seeking a saint, that we are not asking too much of one single human being.

Delegates, it would be a shame—indeed, it would be a failure of imagination and I think a diminution in the dignity of the office—if we choose a method of election for the head of state by default. Direct election of our president will not cure the dark side of our democracy or of ourselves. It will not solve the problem of our parliaments by surrendering to those problems rather than confronting them. We will not solve the problems of our parliaments by washing our hands of them and hoping the president will conquer or quell them.

If our civic culture is slumbering under some sort of doona of apathy, if we refuse to confront our feelings of impotence in holding our MPs to account, convince me that the head of state will change all that if he or she is directly elected. A republic, the republic that we want, serves the individual but, in turn, holds out the hope that individuals will serve it.

Delegates, these questions challenge us today at this historic Convention. They must be resolved, agreed upon and celebrated at our birthday, our 100th birthday, in the year 2001. Thank you.

**CHAIRMAN**—Thank you. I call on Councillor Ann Bunnell, to be followed by Mr Michael Kilgariff.

**Ms BUNNELL**—As a member of the Clem Jones team, we formulated a codification of the proposed powers and functions of the president. Mr Jones will table that code during his address later this morning; it includes the proposal for appointment and dismissal. This morning, I wish to address the Convention on issues of the republic and events as they have developed over the last three days of this Convention. Firstly, the question I ask is: should Australia become a republic? My response is emphatically, yes.

The system of a monarchy, especially one with powers to dismiss an elected government, is anathema to the spirit of egalitarianism that is Australia. Australia as a democracy is held in international esteem, but as for the monarchical link with Britain, its time has come. Australia has grown and matured into a country that we are all proud of. But, like any growth and development, it is time for an Australian independence.

I am not surprised that Peter Costello's Australia has always seemed independent to him, as he mentioned the other day on the floor of this Convention. He is one of the fortunate class; one of those men who by position, education, and now political power, looks at Australia through a far different window from other Australians, such as the poor and disadvantaged, either by gender, race, disability or ethnic grouping. Some of these groups may look at Australia through much the same window as Mr Costello, but the majority do not—certainly not the million or so children living below the poverty line.

Mr Chair, I am not suggesting for a moment that an Australian head of state elected by the people would change the life of the poor and the disadvantaged. But I do suggest that all Australians would feel a sense of

empowerment if they could directly elect their first person in the land.

Many Australians currently feel disempowered in terms of our political, social and economic life. The majority of the Australian public have demonstrated clearly—and I think I would refer Mary to the recent polls taken over the last three months, if she wants clarification of this—that their preference is for a popularly elected head of state.

It was on this platform that the Clem Jones team, of which I am a member—the only elected delegate from north Queensland—achieved a significantly higher Convention vote in Queensland than did the ARM. As a comment on the ARM campaign and with the money and political power behind its candidacy, it is a wonder that any other republican candidate achieved delegate status. That we did is reflective of the determination of Australians to have in their republic of Australia their choice for a head of state.

On day two of this historic Convention we saw the ARM, led by Malcolm Turnbull, attempt to block republican delegates other than themselves from this Convention floor and the forthcoming important discussions and outcomes. The ARM and the monarchists achieved this end. I had never met Malcolm Turnbull before this Convention, but I had seen him as an objective head of one republican movement; to see on days one and two his many visits to and constant seating on the front bench of the Prime Minister caused me very curious thoughts.

Early on day three many political commentators were suggesting that Malcolm Turnbull and his group 'will deliver to the Prime Minister an outcome that the PM desires'. Of course, the Prime Minister has stated clearly that he is a monarchist. But Mr Howard is an experienced politician and knows that 82 per cent of Australians calling for a directly elected head of state cannot be ignored and some model must be offered to these people. The Australian Republican Movement is offering such a model.

I have sat opposite ARM delegates. Some of them are my colleagues and friends from the Labor Party, and I respect them greatly. But I have sat opposite them and they have said on an ABC forum, in fact, that a popularly elected head of state is a great idea but that, if the public only knew the dark issues behind direct election for the head of state, the public would change its mind. How arrogant is that? The ARM has been around for at least a year and I am sure for much longer. If they have not convinced the people of the lurking dangers of direct election, they should perhaps change their message.

In Queensland, when the success and magnitude of the Clem Jones team vote became obvious, the ARM became all inclusive and suggested that they did not have a closed mind to the direct election model and were happy to negotiate. Negotiate they did and all inclusive they were, until day two of this Convention.

Though I am a passionate republican, I have the greatest respect for the monarchists. Although some of the caterwauling near my appointed seat up near Mr Ruxton and Brigadier Garland has been less than impressive behaviour, I still maintain a great respect. I see them, on the whole, content with an Australia as

it is. I respect their single-mindedness on the issue, and I am happy to debate my point of view with them. One must admire the strength of their convictions. Their commitment to our country is without doubt.

The debate between the republicans and the monarchists is an essential milestone in this stage of Australia's history. It is the political manoeuvring that has occurred with the ARM against other republicans that has filled me with dread. It is the very political power play that happened on the floor of this Convention on day two that causes the Australian people to state over and over that they do not want the politicians choosing the head of state. The power blocs, the political manoeuvring, the behind-the-scenes deals are exactly what people are tired of.

Yesterday I heard a man for whom I have the greatest respect—Neville Wran; I know he spoke earlier, and I apologise, but I do not know whether he will contradict what I will say. He said that it will be a hard message to sell to the Australian people that only the politicians and not the people of Australia can elect the republican head of state. Mr Wran—as do many people of great political acumen, such as Clem Jones—knows that the people of Australia want the opportunity to choose. I strongly suggest to the ARM that, even if they should achieve their end on this Convention floor, this is little chance of their model being accepted by the people of Australia.

Day three, of course, brought greater joy to me in terms of the Resolutions Committee's decision to put back on the Convention floor the model of direct head of state election. Further joy came when such a diverse group of Australians, both here at the Convention and throughout Australia, rallied behind this model to ensure a thorough debate on the issue during this Convention. The public will be given a right to vote—and this is my most fervent hope—on what will be the most significant person in this century.

Mr Chair, there is such a list of speakers that I feel I may not have another chance to speak. So, as the only elected representative from north Queensland—an area larger than some Australian states—I must have it on record that my only reason for leaving my flood devastated city of Townsville is that I passionately believe in the Australian will for a directly elected head of state.

I thank our leader, Clem Jones, for the opportunity to join his team. My other colleague David Muir, who will speak later, is simply a great person. Queensland is well represented by these people.

More and more I am coming to the conclusion that I will not support change for change's sake. I will not support a head of state appointed by politicians. If Mary wishes to know why that is, she should talk to people who are in the political area. As an elected and successful politician of 10 years and four hard campaigns, I am well aware of the politics of power blocking that engenders an organisational elite.

Since Federation there has been no greater issue than that of this republic issue and how we will achieve our head of state. Wherever one is, from all corners of Australia the people have said clearly that they want to elect their head of state. This Convention

must put to rest the fears and propaganda promulgated by some of our members.

To codify the head of state is not difficult. The Senate issue is the business of parliament; it has no bearing on the issue of direct election. I said on day one in a working group that to combine the issue of the Senate is to ensure a failure of the people's desired outcome. Politicians of all flavours have said that the referendum will not succeed unless both parties agree. This may be the only time in Australia's history when the will of the people will prevail—we can only hope.

In closing, I thank you, Mr Chair, for the opportunity to speak. I thank the people of Queensland for giving me a chance to be present at this historic Convention. I, like Mary Delahunty, when walking up those stairs here, felt an overwhelming pride and a deep longing for this country of Australia. There are many wonderful stories in this Old Parliament House, and I think it most appropriate that this Convention be held here. I remind my fellow delegates that we have a great responsibility over the next six days and in the many challenges ahead. Thank you, and good morning.

**Mr MUIR**—Thank you, Ann, for your kind words. The good Australian dictionary, the *Macquarie* dictionary, defines a republic as 'a state in which the supreme power rests in the body of citizens entitled to vote . . .'. The same dictionary defines a democracy as a 'supreme power . . . vested in the people . . . under a free electoral system.' Which is more democratic—that the politicians appoint a president or that the people elect a president? You would have to say the latter, of course.

The people of Australia have consistently expressed their opinion that they wish to elect their president in the event of a republic. This Convention has been billed as the people's convention. One half of the delegates to the Convention have been elected by the people. It would be farcical for this Convention not to give full and due consideration to the views of the people of Australia in considering a move to a republic.

Mr Malcolm Turnbull says that the ARM wanted powers to be discussed early in the Convention so that the so-called weakness of the popular election model could be exposed and put out of the way so that the other models for a republic could be given full consideration. I do not believe that the ARM model or the McGarvie model for the appointment of the president would be acceptable to the Australian people. I believe that these models for the appointment of the president will fail at referendum with the effect that the republican cause will be set back many years in Australia.

How can you explain to the people of Australia that they cannot vote for the president but that the politicians can? Over the last couple of days I have had many people from hotel receptionists to taxi drivers and unknown correspondents urging us at this Convention to fight for a popular election of the president. They want to vote for the president. We should not forget Lady Florence Bjelke-Petersen's bus driver the

other day, who said to her that she wanted to vote for the president.

Mr Turnbull has dragged a red herring across the path of those who advocate that Australians should elect their president. This red herring is that the Labor Party in Australia will suffer from a directly elected president working against the interests of a Labor government in the event of the Senate blocking supply. This is a red herring, because a Labor government, or any other government for that matter, faces the same circumstance whatever model of the republic is chosen. In fact, this very thing occurred under our present system of government in 1975. I believe that the popular election model is likely to be a safer model in that the powers would be properly set out in the Constitution and leave less room for argument than that which presently prevails.

One could take this even further and set out in the Constitution that the president could not act in the circumstances where the Senate blocked supply. This would mean, of course, that it would be up to the parliament to resolve the impasse. Why not let the parliamentarians accept responsibility for their actions? The use of an umpire in such circumstances could be a cop-out for the parliamentarians.

Despite the debacle at the end of day two of this Convention, where Working Group 7's resolutions A and B were not carried forward, being resolutions most closely identified with the popular election model, I believe that this Convention should take every step to bring back on to the agenda for full consideration any resolutions which relate to the popular election model.

The people of Australia deserve to have their opinions taken into account in this Convention. Those elected to the Clem Jones Queensland Constitution republic team especially feel duty bound to the people of Queensland and Australia to do whatever they can to ensure that full consideration be given to the popular election model.

Some legitimate concerns have been raised with respect to features of a popularly elected president. We believe that these concerns are met by the provisions set out in the Clem Jones Queensland constitutional team discussion paper distributed at this Convention. An important part of the process of popular election is the nomination process. We propose that there be a presidential nomination council representing interests across state and territory boundaries made up of organisations including the Business Council of Australia, the Australian Council of Trade Unions, the National Farmers Federation, the Aboriginal and Torres Strait Islander Commission, the Students Union of Australia and others. Members of the judiciary and representatives of the various parliaments around Australia would also be included.

Support from 30 out of 100 of these persons will be required to go forward as a candidate. In order to address any concerns with respect to party political involvement of candidates, it is proposed that, at the time of issuing of writs for election, such candidates not be parliamentarians or a member of a political party. It would not be lawful for a candidate to elicit support from a political party.

The popular election method has been criticised for allowing rich candidates to become president. We envisage that the government would fund the campaign of candidates to the extent necessary for the qualifications and individual electoral submissions of the candidates to be properly placed before the electors. Limitations will be imposed on advertising to ensure equality of exposure for all candidates. Campaign advertising would be limited by law so that all candidates should have equal exposure in all media, with the limitation of advertising size in the print media and equal time on television and radio. The publication of material advertising a political party on behalf of and in support of a presidential candidate will be unlawful.

The removal of head of state is often seen to be more problematical than the method of appointment or election. We provide under our model that the president may be impeached for stated misbehaviour. The charges would be referred to either of the houses of parliament of Australia. Effectively, one house of the parliament would prosecute the case and the other house would adjudicate. A two-thirds majority would be required in impeaching the president.

Denver Beanland, the Queensland Attorney-General, has suggested that a Queenslander could not be elected as a head of state under a popular election model. He refers to the appointment of the former Governor-General Bill Hayden and says that such circumstances are not likely to arise again. The reality is that any person elected by the people to be head of state will have a national profile. Whether that person is a Queenslander or from any other state will make no difference as to whether that person has a national profile. Furthermore, we have enough faith in the Australian people to elect the candidate of the highest calibre. Whether that person is a Queenslander, or a Tasmanian for that matter, is not the issue. We are appointing a person to a national position and we want a person of the highest calibre, irrespective of the state in which they reside.

In the early part of our history members of the aristocracy were appointed as Governors-General, including earls and barons. We then went through a period of appointing military personnel, such as brigadiers and field marshals. In the latter part of our history we have appointed lawyers or judges and expoliticians. It is now time to move on to elect persons from a wider spectrum of our society, persons of the highest calibre who can truly represent our nation as head of state. We want somebody who the nation can embrace, somebody who can elevate our nation onto the world's stage. This can only be achieved to its fullest potential through popular election. Let us take a full-hearted approach to the republic and elect a president by the people. Do not take a half-hearted or minimalist position. Let us embrace change as an opportunity to govern our country better. Thank you.

**CHAIRMAN**—Thank you, Mr Muir. I call on Ms Karin Sowada to be followed by Linda Kirk.

**Ms SOWADA**—Thank you for the opportunity to speak today on this important question of the appointment and dismissal of the head of state. We have heard a number of proposals over the last day or so.

I think we are starting to whittle them down to some workable ideas. I hope that we can reach a consensus at the end of the day on the best possible model for an Australian republic.

The Australian Republican Movement support the option of appointing the head of state by a two-thirds majority of the parliament. This proposal has been further developed by Working Group C. A number of speakers have elaborated in some detail on the merits of this proposal, so I will not labour the point again. However, I will say this: it is one of the safest methods for ensuring that the position of president retains the same powers enjoyed and exercised by the present position of Governor-General. It creates an open and transparent process whereby the parliament, the representatives of the people, make a considered and bipartisan decision.

Contrary to what some have already said, the two-thirds parliamentary appointment model will not result in a US Senate-style scrutiny of potential candidates. The Prime Minister would make one nomination to the parliament, which would undoubtedly have the support of the opposition to guarantee success. The level of debate about potential candidates would be no greater than the current scrutiny of potential High Court judges and potential governors-general. Certainly we could expect much less public debate and scrutiny than an election for archbishop in the Anglican Church.

We had three working groups discuss and consider the option of direct election. I oppose this model, not because I want to shore up the power of politicians but because I believe a direct election is unworkable and unwise within the Australian context. Despite our best efforts, a direct election would have the outcome that those who are fed up with politicians would dread—a politician would certainly end up in the job. The Irish presidential system is often held up as a model for direct election here. It should be noted in the words of the RAC report that, 'Every candidate nominated since 1938 could be said to belong to the political elite in so far as each had previously either sought election or been appointed to the Irish parliament.'

Phil Cleary in his election campaign speech the other day highlighted the candidacy of former Irish President Mary Robinson. Most agree she was an outstanding president, but she was a member of the Irish Senate for 20 years prior to her election. What is more, according to the RAC report, she was approached to run by the Irish Labour Party. Surely this outcome would be an anathema to those here and in the wider community who support the cause of direct election.

As in the American system, election campaigns would become the domains of political parties and those with money who could afford to run. It would ensure that with a popular base of support, the office of president would come to rival that of the Prime Minister's. In time, with political parties involved, the campaigns themselves would inevitably become politicised.

Is this what the Australian people want? It is for them to decide ultimately, but such an outcome is at

odds with a general desire to depoliticise the process. Under such a circumstance, without complete codification of the reserve powers of the head of state, direct election is at odds with our system of government. It is probably unfortunate that the term 'president' has been used in this debate because it is, in the minds of many, synonymous with the American political system. I have no problem with retaining the term 'Governor-General', particularly if in an Australian republic state governors retain their own title.

But the American system of direct presidential election is one with which most Australians are familiar. American elections receive wide media coverage to be sure they are unique events. I had the privilege of attending the Democratic Party National Congress in Chicago last year. There is surely no greater spectacle or celebration of democracy at work, but we should not let a superficial understanding of the American system delude us into believing that this model is right for Australia. Their system of government is very different from ours, as the president occupies a different role as both head of state and head of government. However, this does not mean that this option should not be put on the table here and examined, particularly as a large number of Australians find it attractive.

What we need to have is a proper model for debate. Working Group F has made a serious attempt to do so, but neither of the reports from the direct election of Working Group A, of which I was a member, and Working Group B discuss the method that might be used to dismiss the head of state. Neither report addresses the question of how the election process might produce a result.

Firstly, the direct election supporters have to address the question of how the process will not deliver a politician or an ex-politician without a punitive exclusion clause. Secondly, we have to ask the question whether it is fair to include such a provision at all. Is it fair to exclude politicians or ex-politicians from the process, in the same way that section 44 of the Constitution currently excludes public servants—a provision that many people feel is manifestly unfair? I hope that the groups considering further constitutional change might address this. An exclusion clause for politicians or ex-politicians would be at odds with the general desire to have a preamble reflecting Australian values of equity and a fair go.

A journalist covering this Convention has already highlighted a paradox of what people say they want and what Australians vote for. A large number of ex-politicians put themselves up for election to this Convention, including me. People have the option of not voting for those candidates. But the reality is that they were supported in large numbers. How many of the elected delegates here are former state or federal MPs currently serving or former members of local government? I counted at least 27 at a quick glance.

So how do we move forward? How do we reach agreement on a model which embraces the aspirations of Australians to have their say in selecting a head of state without creating a fundamental power shift in the Australian model of government? Perhaps we should look at a process of public consultation and nomina-

tion which might produce a name worthy of support by a two-thirds majority, or a 75 per cent majority, of a joint sitting.

The method of dismissal could be in accordance with the McGarvie model, and certainly this latter suggestion of dealing with the dismissal process is very attractive to many delegates. I note that Working Group C decided against this idea, but I would like to place it on the table again at this forum.

How might the nomination process work? Nominations could be made to a specially constituted, bipartisan parliamentary committee, with representatives drawn from the states, to sift through the nominations made by the public. Such a council has already been floated by Working Group C. Nominations could be made in the form of a petition, with a minimum number of signatures, say, 50 or 100, or it might be proper to take single nominations from individual members of the public. It would then be the task of the committee to examine these nominations to arrive at a short list for consideration by the Prime Minister and the Leader of the Opposition.

There would be no public hearings or official investigations of candidates, thus avoiding the US style ratification system, which I believe most delegates would find unsupportable. A single nomination would then be moved by the Prime Minister and seconded by the Leader of the Opposition at a joint sitting.

I urge delegates to consider this as an additional model for appointment and dismissal. It allows for an element of public participation; it allows for a selection of a head of state which will not fundamentally alter the powers of that office; and it provides for a non-political method of dismissal.

At the end of the day, all republicans present at this Convention may have to accept 60 per cent of something rather than 100 per cent of nothing. There is a range of views represented here, and we must earnestly seek the option which best fits our current system. The process of direct election of head of state does not. The two-thirds parliamentary appointment model, proposed by Working Group C, amended to include a process of public consultation, might be the way forward we have all been looking for.

**Ms KIRK**—Mr Chairman, delegates: this Constitutional Convention presents a unique and exciting challenge to those delegates who wish to see Australia move from a constitutional monarchy to a republic. There is an opportunity to develop a republican model which will not only divest the British monarch of the executive power of the Commonwealth but serve this nation for the new century and beyond.

As a constitutional lawyer, I am honoured to be participating in what is undoubtedly the most important event in our constitutional history since Federation. In developing a republican constitution, we must ensure not only that the strengths of the present system are reproduced but also that we improve upon and enhance existing arrangements. I am confident that, at the end of this Convention, we will have developed a republican model which will be embraced by the Australian people at a referendum.

My remarks today will be limited to the method of dismissal of the head of state under a new republican constitution. I would first like to acknowledge a number of eminent constitutional lawyers who have assisted me enormously in the development of these ideas. The work of Professor George Winterton and the Hon. Richard McGarvie, and the eloquent addresses of Professor Greg Craven at this Convention have been most helpful to me. History will no doubt recognise the great contribution they have made to the debate.

The strength of our present system is that it provides for a stable and secure democracy. The Governor-General is vested with many significant powers under the Australian Constitution, including the power to appoint and dismiss a Prime Minister and to summon and dissolve parliament. In practice, these powers have been uncontroversial because their exercise is tightly constrained by constitutional convention. This requires that the powers are exercised only on the advice of the ministers of the elected government. The conventions are not rules of law and are not enforceable in the courts. The sanction for a breach of the convention that the Governor-General acts on advice is dismissal by the Queen on the advice of the Prime Minister.

If the powers of the head of state in a republic are to be substantially the same as under existing arrangements, then there must be an effective procedure to dismiss a head of state who acts without, or contrary to, advice. While a great deal of time and energy at this Convention has been devoted to discussion of the various methods of appointment of the head of state, a lot less attention has been paid to the important question of how that head of state is to be removed. It is often assumed, for no apparent reason, that the method of removal of the head of state must mirror that of appointment. For example, the Keating model provided for appointment and removal of a head of state by a two-thirds majority of a joint sitting of parliament. This has been the preferred model of dismissal of a head of state of the Australian Republican Movement. However, most people have recognised that this is most unlikely to be effective to remove a head of state as no federal government for 50 years has had a two-thirds majority and it is political practice in Australia for oppositions to vote against governments. It is even less likely that a motion to remove a head of state would be supported in circumstances in which he or she is acting contrary to the government's interest.

There has been very little discussion by those who support a popular election of a head of state as to how that head of state would be removed. If the method of removal were to mirror that of appointment, then a referendum of the people would be required. Apart from the delay that this would involve in a referendum if it were to be similar to the process in section 128, it would first require the passage of legislation through both houses of parliament. Such legislation would be most unlikely to pass in the event that the government faced a hostile Senate which supported the actions of the head of state.

If the method of removal of the head of state is by either a special majority at a joint sitting of parliament

or by the people, the head of state may be, effectively, undismissible in circumstances in which he or she refuses to act on government advice. The extensive powers exercised by the Governor-General now could, if transferred to a republican head of state who is effectively undismissible, lead to obstruction and frequent constitutional crisis. A head of state elected by the people could decide that he or she is bound to act contrary to advice in circumstances where he or she perceives it to be against the interests of the people: for example, by refusing to assent to legislation.

It is for this reason that there must be a mechanism in a republican Constitution to ensure the prompt dismissal of a head of state who acts to obstruct or collude with a government to subvert the democratic process. In his most eloquent address yesterday in the chamber, Professor Craven outlined the three republican models that he believes should be seriously considered by delegates in their deliberations. These are the McGarvie model, the ARM's preferred model and the so-called hybrid model of appointment.

Beginning with the McGarvie model, the republican model proposed by former Governor of Victoria Richard McGarvie has been outlined by him in the chamber here and has been discussed by many other delegates at this Convention. It is the method of dismissal of a head of state to which I will direct my comments in relation to this model. Under the McGarvie model, the Constitutional Council is bound to act on the Prime Minister's advice to appoint or dismiss a head of state. The sanction for failure to act within 14 days of receipt of the advice is automatic dismissal of the members of the council.

The advantage of the McGarvie model is that it takes the vital power of dismissal of a head of state out of the hands of a foreign monarch with little knowledge of Australian politics and gives it to a body comprised of Australians with recent experience in these matters. With respect, the disadvantage of the model is that it provides little more than a rubber stamp of the Prime Minister's decision to appoint—and, more significantly, to dismiss—a head of state. Although the Constitutional Council can provide advice and counsel to the Prime Minister, it must act on advice or face instant dismissal. This model gives exceptional power to a Prime Minister who seeks dismissal of a head of state for inappropriate, if not unconstitutional, reasons. As Professor George Winterton has observed, the model gives exceptional power to a Prime Minister who seeks dismissal of a head of state who warns of an intention to exercise reserve powers. This is not unlike existing arrangements if it is the case that the Queen would consider herself bound to act on the advice of the Prime Minister to dismiss. However, unlike the council, the monarch is not subject to dismissal should she exercise her recognised prerogative right to refuse to act on the advice of the Prime Minister to dismiss a Governor-General.

I will now turn to the Australian Republican Movement's model. The Australian Republican Movement has recognised the weaknesses in a method of removal of a head of state which requires a two-thirds majority of a joint sitting of federal parliament.

Our preferred method of removal of a head of state is by simple majority of the House of Representatives. We believe that this model promotes prime ministerial government without jeopardising the position of a head of state who warns of an intention to exercise reserve powers. A head of state who acted contrary to advice would be advised of the Prime Minister's intention to recommend a motion to the House to remove him or her.

Under this model there would be need to make provision to prevent a head of state from acting to dismiss a Prime Minister or a government who warned of an intention to dismiss the head of state. For example, there may be a provision to suspend the reserve powers of the head of state pending dismissal in the House of Representatives and/or a removal of the existing power of the Governor-General to prorogue parliament. Under this model, in circumstances where a head of state warns of an intention to exercise the reserve powers as occurred in 1975, dismissal of the president by the Prime Minister alone could not be effected to prevent the exercise of the reserve powers, as is the case under the existing arrangements and also the McGarvie model. The parliament would have the opportunity to hear the reasons for the dismissal of the head of state and the Australian people could make their judgment as to its appropriateness at the next election.

*(Extension of time granted)*

The third option suggested by Professor Craven yesterday is the hybrid model. This provides for appointment by two-thirds majority of a joint sitting and removal by the Constitutional Council. There is no logical reason why appointment and dismissal of a head of state need be by the same or similar body or method. In fact, there is an argument that the body that appoints should not remove a head of state.

Under the McGarvie model, it is conceivable that the Constitutional Council could appoint a head of state who refuses to act in accordance with government advice and who must therefore be removed by it. If this were to occur shortly after the head of state's appointment, the same men and woman would be involved in the decision to remove.

Delegates may be persuaded to consider limiting the role of the Constitutional Council to providing advice to the Prime Minister before a decision was made by the parliament to remove a head of state. If this model were adopted, the council would be limited to act only in times of constitutional crisis. This is a variation on what Professor Craven suggested yesterday. The council would not make the decision to dismiss; it would merely provide advice to the Prime Minister before a decision was made by the parliament—the House of Representatives—by simple majority to dismiss a president. This would promote prime ministerial government and the supremacy of parliament.

The knowledge and skills of the members of the Constitutional Council, being former governors-general, governors and justices, would be applied to provide counsel and guidance to a Prime Minister in delicate and difficult circumstances. Under this model, the council would not be involved in the decision as

to who should be chosen as head of state. This should meet the criticisms of many delegates that the council would be an unrepresentative—even elitist—body. Its composition would not be of such significance if its role were limited to counsel and guidance in the decision by the parliament to dismiss a head of state. Delegates may even consider widening the role of the council to include a power to advise a head of state who was considering an exercise of the reserve powers. The Constitutional Council would be likely to be seen by the public as an impartial umpire due to its constitution and automatic selection.

I conclude by saying that there is room for creativity in the design of a model which will replace the existing system with procedures that are uniquely Australian. I urge delegates to take up this challenge.

**Mr GREEN**—If what we have seen in the newspapers over the last few days can be believed, and if what we have heard being said in the chamber can also be believed, then the spiritual road to Damascus is extremely busy. There is traffic congestion. We have people moving up, people coming back, people moving on to Baghdad and people moving down to the Dead Sea. I think we all need to consider whether or not we are going to take this journey down the road to Damascus. If we do, once we start we should not look back.

During the election campaign in Tasmania, the question often put to me by republicans and others was which model did I favour. The choice put to me was the direct election of the president or a parliamentary election. Not to disregard the views of such people, I stated that I have always believed in the parliamentary process and in the appointment and dismissal of the president. This view is consistent with the position of the ARM. But, importantly, I stated that it would be interesting for the case for direct election to be fully explored at the Convention and that options should not be closed off.

The case for direct election needs to be judged on its merits, as with any other case, including the case for the status quo. The issue of direct election creates problems, and I need not go through them as they have already been dealt with by speakers. However, at present there is insufficient detail coming from the advocates of direct election to persuade me that that is the preferred model at this stage.

The Convention now I think is getting back on track and it is hoped that all the recommendations from the working groups can be proceeded with. As mentioned, of the three models I prefer, the option advanced by Working Group C is preferred. The McGarvie model certainly is attractive. I want to thank the Hon. Richard McGarvie for forwarding to me his proposal, along with accompanying correspondence. I am of the opinion that the opportunity to advance Australia to a republic should not be lost because of some blind and uncompromising commitment to a preferred model.

As I said, the McGarvie model is attractive, but there are problems I see with a triumvirate assuming the role of Her Majesty in the appointment of the head of state. Unfortunately judges do not always get it right, and the hierarchy of courts I think demon-

strates that. Indeed, governors-general and governors do not always get it right. The triumvirate is not necessarily a bad idea, but perhaps it could be more broadly based as regards skills and qualifications. The McGarvie model is certainly workable and should not be lost if at the end of the day an impasse is to be created as to which preferred model of republicanism in Australia is to advance.

Preferred models can be adopted with modification if such modifications are constitutionally sound, workable, have public endorsement and do not remove the role of the states or territories. I contend that, whatever republican model is adopted, public involvement is essential to keep faith with the people and to give the public some participatory role. Involvement of the states, I stress, is also essential. Working Group C involves the federal parliament and therefore involves the states and territories through their elected representatives. Over the years, the states have struggled to have a voice in consideration of treaties that the federal government proposes to enter into which affect the states. The states have struggled to be consulted about High Court appointments. Surely there should be a mechanism to involve the states in the important question of who is to be the head of state.

An advance on the Working Group C proposal by some consideration of public involvement and particularly involvement of the state and territory parliaments seems to me desirable. Indeed, such a method or process could also be considered in relation to expanding the model advanced by Richard McGarvie. The position of the states and territories needs to be considered. It is important that the states are carried by this Convention in determining a preferred model if the status quo is not to prevail. Recommendations for the working groups should go forward.

**Ms MARY KELLY**—As you know, I support and give preference to full codification and popular election as a package. But I want to pick up on a thread that runs through all of our debates. For me, the thread which connects the powers question to the election and appointment question is the Australian people's alienation from the political process. It is also a thread that, if teased out, drives us all in a certain direction on the appointment and dismissal question.

How did the idea of popular election take hold in the community? For a while I found it puzzling. Where did this longing come from? It is not as though people already had a direct say in the Governor-General now or even that they were overwhelmed with love for that position. Many people are barely aware of it. No, it is because we were offered two choices. Who should choose the head of state: two-thirds of parliament or all citizens? That was no contest out there. People did not trust their own elected representatives to choose for them. In fact, they actively opposed it on the grounds that those representatives would just pick someone like themselves, a politician.

People's alienation from their representatives has been noticeable for about a decade and has been

increasing over that period. This alienation has increased their sense of aloneness and vulnerability. They feel without a champion or protector, and troubled economic times has fuelled and reinforced that feeling. No wonder they want to reinvent a champion and protector in the position of the head of state.

This is a state of affairs that worries me deeply. I want to make it clear that I do not want to capitalise on people's dislike for politicians; I want to reverse it. I see it as part of a broader social malaise which I call the slow death of active citizenship. I have spent most of my life trying to reverse that—for 10 years as a high school teacher getting students to engage in citizenship activities and civic duties, for 10 years as an elected union official getting teachers around the country to engage in public policy formation both professionally and industrially, and in a different way now in my own job.

I have America in my peripheral vision where the 'government as enemy' mantra has led to violence in some cases. Part of why the popular election idea has taken hold in the public mind is also because the head of state is being considered in an artificially separated way from the rest of parliament—the two houses—and this has served to iconise the role and lead people to invest all their hopes and aspirations in it. It may be that if reforms to the two houses were also on the agenda, both this one and the public agenda, people's focus on popular election would be less intense. This Convention, however, chose not to broaden the agenda. In any case it is too late, the horse has bolted and people have it in their heads. If the option is taken away from them, they will experience it as theft and their cynicism and alienation will increase, and the slow death of active citizenship will be given another boost along.

I am not a populist. I am deeply distrustful of populism. For example, it would not matter to me how many polls showed people overwhelmingly supported, say, capital punishment. Nothing would make me vote for it. I think popular election with codification is the way to go, not just because people want it but because it will help to reverse the slow death of active citizenship. People's desire for popular election can be seen not just as a barrier to the perfect model but as a gift to be used for good. Accompanied by full codification, popular election could be used to reconnect people to their governance structures. There would be a ripple effect into the two houses of parliament. I believe that it would assist people to feel again part of Australia's major decision making structures. If we followed it up at the next convention or like discussion with some overdue reforms to the two houses, we would have the whole picture about right.

When the motion for full codification, which for many is part and parcel of popular election, was so briskly and brutally knocked off on day 2, I was angered. It is the sort of factional blocking behaviour which people recognise and dislike about their politicians and would have sent a very negative message out. It caused delegates like me, whose support for popular election has always been conditional, to become loud advocates of it, to get it back

in the picture. From a pro-republican point of view, it was also a very high-risk strategy. I agree with Peter Beattie's assessment and that of others that the minimalist republican model is defeatable in a referendum.

In terms of nomination, I support open nomination with some sort of short-listing or filtering process, the values and criteria for which need to be explicit and the decisions non-appealable. For those who point to the reluctance of former Governors-General who have performed well to subject themselves to or nominate for such a process, I point out that the potential for greatness is widespread in our community and not confined to those who are like those who have already displayed it.

I am sure we all struggle in our own way to make the world a better place. I conceive of that struggle in inheritance terms. That is, we take the work of our forebears and build on it and hand it on to our children. Our task then becomes not just to persist in the time we are given in our efforts but to be on the lookout for those moments and turning points that come our way and to use them and not waste them. I have come to the view that people's desire for popular election is one of those gift moments and one of those opportunities for a quantum leap in reform that may not be available again for decades; and I do not want to see it wasted. In the lead-up to the new century people will be more open-minded and adventurous than in the past and that the next few years is an open moment in Australia's history. It is entirely possible, as well as desirable, that popular election with full codification could succeed in a referendum, and certainly in a multiple choice plebiscite.

Out of respect for the dialogue still to be completed, I will be voting for all pro-republican options this afternoon, that is, A, B, C, D and F, but in the knowledge that if we end up in a plebiscite debate all options return anyway.

Finally, I want to say that my pro-republican, pro-popular election and pro-codification views are not driven by worrying about who opens the Olympics. I do not care whether the flag changes and what the head of state is called. I have no objections to former politicians becoming heads of state; I just do not want anyone who becomes a head of state to have political powers to exercise. I do not really care about those symbols and trappings. What engages me is the real life of our citizens and reversing the slow death of active citizenship. The best way to do that is to combine popular election with full codification as represented in resolutions 7A and 7B from day two.

**CHAIRMAN**—Before I call on Dr David Flint, I remind delegates that we still have quite a long list of people to do. Technically we should have been in the speakers from the floor section at this stage but, because we have had so many who have not spoken before, I thought it better to allow the 10-minute speeches. We are due to consider the report from the resolutions committee at 12 o'clock. I will therefore allow 10-minute speeches until then. After Mr Clem Jones we will cut off speakers on the 10 minutes, and immediately after lunch when we resume we will go

back to the speakers from the floor, which means that each speaker will have only five minutes instead of 10 minutes, which will allow more speakers to get on.

So to forewarn you, I give notice that after calling Dr David Flint I will call Mr Clem Jones, and we should then be able to receive the report from the resolutions group and subject to the time taken for that debate, for which we have allowed until 1 o'clock, we will adjourn for lunch. Immediately after lunch we will return and five minutes will be allowed for all subsequent speakers on the same group of issues we have been debating this morning.

**Dr FLINT**—Delegates, Mr Sutherland graciously gave me his place in the list, but he did ask me to draw your attention to page 141 of yesterday's *Hansard* in which he is reported as interjecting, 'What about Keating?' Mr Sutherland asked me to tell you that he did not interject. But he did not ask me to tell you what he thinks about Mr Keating or how often he thinks about Mr Keating.

I take as my test these words from the annals of Tacitus: *re publicae forma laudari facilius quam evenire*; that is, it is easier to praise a republican model than to make it work. The founders of this nation made a remarkable achievement, which is recorded in Quick and Garran:

Never before have a group of self governing independent communities, without external pressure or foreign complications, deliberately chosen to come together as one people from a simple and intellectual conviction of the folly of disunion and the advantages of nationhood.

The great benefit of that constitution is that it gives us a head of state which is, above all, benign and we are here, I hope, to protect that benign head of state from becoming malignant.

Randolph Churchill once underwent an operation for a suspected cancer. Mostly they found that it was benign, about which Evelyn Waugh mischievously observed:

Such are the wonders of British medicine that when they opened up dear Randolph, they found the only part of him that is not malignant.

Delegates, let us open the republican models and, perhaps with Tacitus, we may praise them but we should ask, do they work? Apart from the direct election model, we have two models which Mr Paddy McGuinness describes as the 'stuffed shirt' models. So we have the two stuffed shirt models.

The method of appointment in the Keating version has been well debated here but it lacks, as we know, the informality and speed of our present constitution, although I must say I doubt the proposition made yesterday that Her Majesty would act on the telephone call; certainly she would not after that Quebecois disc jockey telephoned her live on radio posing as the Canadian Prime Minister.

While the two-thirds vote may provide a stuffed shirt, there is no guarantee that it will provide a virtuous stuffed shirt. The new President of Pakistan, elected in the last few weeks, is not the sort of president that you or I would wish. He will be obviously the Prime Minister's man. The new president did not obtain a two-thirds majority; he obtained

a majority in the parliamentary college of 78 per cent, and he is no virtuous stuffed shirt.

The method of appointment proposed in the Keating model would send shivers down the backs of the American founding fathers. As Hamilton argued, there must be no connection between the President and the Congress. If the President is to be fearless in his treatment of Congress, he must not owe his election to them.

But the fundamental weakness of the Keating model is the same as the ARM pointed out in relation to direct election—it desperately needs codification. A two-thirds election is a two-thirds vote and a two-thirds majority is the mother of all mandates. As Bill Hayden says, the president is capable of turning out not only as a first-rate nuisance but worse. What the Keating model will result in is something akin to the French 5th republic, where there is a permanent tension between the Elysee Palace and the Hotel Matignon.

Why should we follow France in 200 years? She has had 16 constitutions, five republics, three monarchies, two empires and a number of revolutionary and dictatorial regimes. The sanction in Westminster is in the dismissal. As Hardin says about parliamentary Westminster systems, they can 'quickly, expeditiously and legitimately replace leaders who have been found inadequate for the occasion'. That is the virtue of Westminster. History tells us that any attempt to graft a republic onto Westminster invariably results in an inferior model.

Does the model proposed by the eloquent Mr McGarvie provide the solution? Let us look at dismissal. Will the judges on the Constitutional Council require that natural justice be given to the president and that the president must have notice that the grounds, the breaches of the Convention which have occurred, are set out in the notice of dismissal? Will the judges on the Constitutional Council ask for proof of the conventions? Have the conventions carried over into the republic? One problem which Mr Evan Whitton points out is that sometimes judges have a strange view of the world. He says that there is something in the common law water perhaps. Others say that perhaps former judges and governors may suffer from limelight deprivation and they may need to prolong the proceedings.

What is the problem? Is there a problem if these models produce delay and instability in the time that a dismissal is proposed and a dismissal is realised? In 1975 the situation was very different. In 1975 Australia was a closed economy. Things are different now. We are a global economy. The judges of what happens in Australia are Messrs Standard and Poor and Moody's, and they are tougher than Texan judges. The decision and the execution will follow very quickly if we are having an unstable period of government. It will be the economy and employment and the dollar which will suffer.

Juan Linz, in his review of East European attempts to establish legitimate democracies, says that crises in Westminster systems are crises of government. Crises in presidential systems are more likely than not to be crises of regimes. Does this mean that we will have

a first republic and a second republic? Will we be like our neighbour, Fiji, which had a bicultural monarchy, moved to a racist republic and is in the process of moving back to a bicultural monarchy?

The worst problem, I fear, with Mr McGarvie's model is the danger of political capture. You have all heard of regulatory capture; this is political capture. The example is Sweden. In Sweden in 1974, it was decided to hand the king's reserve powers to the Speaker. The Speaker before that was a position seen to be above the political battle.

Immediately after 1974, the Convention about the election of the Speaker was torn up. It became a political prize. That is the danger—that, once it is seen that positions lead to positions of power, they will become political prizes, as we have seen in Pakistan. In Pakistan, not only has the President been a political prize but now also the Chief Justice is. The last Chief Justice was ousted a few weeks ago by the other judges because he was seen to be in opposition to the Prime Minister.

The final model is the American model, the direct election model. If the Australian people, after an informed debate, come to the conclusion that they wish to directly elect their president, they should look seriously at the American model.

What is the solution? The solution, I suspect, is in another country—another country which on every economic indicator outperforms us, which sits at the top table in the economic and political councils of the world; a country which has a Bill of Rights; a country whose people and diplomats have no difficulty in explaining to other people whom their head of state is and how the head of state is chosen. That country, of course, is Canada. As Professor Edward McWhinney, the leading Canadian international legal expert, says, anybody who pushed a republic in Canada would be dismissed as an incompetent obsessed with trivia.

**CHAIRMAN**—I am afraid your time has expired, Dr Flint. As we have no time for an extension, I am afraid we have run out of time. We have 10 minutes to get on to what we determined yesterday would happen at 12 noon. I am sorry.

**Mr CLEM JONES**—First of all, I thank you, Mr Chairman, for your indulgence in allowing me to speak at this time. I intended to speak yesterday afternoon and to say something which I probably would not say today. But, unfortunately, I issued my speech to the press before I came in to make it, and you, Mr Chairman, have kindly allowed me to make that speech now.

First of all, I would like to refer to a paper submitted by the Hon. Mike Rann. He said:

Most if not all of us hold strong views about the issues we are charged to discuss during the next two weeks. We would be foolish however to cling to either rigid dogma or to a fixed non-negotiable formula. To do so would be to fail the Australian people and, just as importantly, to fail the test of history. As delegates we must have open minds rather than pretend pompously to know all the answers.

On Tuesday we witnessed a situation which I found totally deplorable. We saw the very antithesis of the republican philosophy which surely guides us in our

other deliberations—the philosophy espoused by Mr Rann when he said it would be foolish to cling to rigid dogmas or a affixed non-negotiable formula.

Perhaps we did not cling on Tuesday to a fixed non-negotiable dogma, but we certainly excluded one of the most vital considerations, one of the major concepts which needed to be discussed at this Convention, the most important aspect perhaps of our deliberations: fundamental to the concept of a republic is the right of people to participate in it. Where should that start? Surely at the very beginning in the determination of the nature of a republic which suits the needs and culture of our society.

On Tuesday the ARM was responsible for a situation whereby no constructive proposal for the election of a head of state by the people could be presented to either this Convention or the people of Australia. Hopefully that will be remedied, but it must be an intentional effort to remedy it and not just a postponement of the same thing.

Malcolm Turnbull may have the numbers to achieve this sort of thing in this chamber; he does not have them in the suburbs of our city in the broadacres of our nation. The people of this country will eventually tell him that. But the sad result is likely to be, as has been so well expressed by others already, that we will not have a republic, or at least a true republic, in this country perhaps for a generation to come.

Even worse, if perchance their model—or indeed any other possible model or now possible model—were accepted, there will never be a change to provide for the say of the people in the choice of their head of state. Once the power has become enshrined in the parliament, politicians will never let it go. The man who has personally been responsible for this, the man who seeks to espouse the cause, the man who seeks to be the father of it, Malcolm Turnbull, has become its potential destroyer. Sadly, had that man done as he promised to do—to take note of the wishes of the people and to meet them—he could have retained the title of ‘Father of the Republic’. Unfortunately, if the path along which he wishes us to tread is successful, I believe that he will become known as the mother of disaster.

**Mr TURNBULL**—Are you proposing a sex change, Clem?

**Mr CLEM JONES**—I do not know, I would not have any knowledge of what happens to mothers of disaster. May I make one of two appeals. The first is to the monarchists, whose integrity of purpose one must admire. We tried to arrange to have the votes on the vital question earlier to enable them to participate in the discussions on the nature of the various other models for a republic. I again appeal to them to support this idea so that we can have input from those people who have vast experience in the government of this country, vast experience in the way this country has developed to play their part in developing these models that we have been talking about over the last few days.

I would like to make a second appeal. I am not quite sure how it can be achieved. Perhaps it should be initiated from the chair or perhaps from the Prime Minister. The plea I make is that we give some

thought to the necessity perhaps of having a plebiscite following this Convention to decide which of the three models generally canvassed should go before the people so that we may let the people decide.

Let me now touch on the most hysterical red herring that Malcolm Turnbull has set swimming in the murky waters of his various presentations in opposition to having the people of Australia make a contribution to this exercise. This is his suggestion: that popular election of the president would mean greater powers for the Senate in relation to the granting of supply. May I submit that this is a total and absolute furphy. I think Professor O’Brien described it as nonsense, but he is more polite than I am.

I am not a lawyer, but I do not believe that it is beyond the capacity of those eminent in that area who are here today and perhaps elsewhere in this nation to provide in our Constitution that the head of state, among other things, should not dissolve the House of Representatives consequent upon the Senate refusing supply unless requested to do so by the House of Representatives or perhaps the Prime Minister. I do not believe that it is not possible to simply provide that in the codification that you have as necessary in the development of a republic.

I do not propose at this time to go through the proposals of the working groups except to refer quickly to the claims made that it is not possible to provide safeguards against conflict between the head of state and the Prime Minister—if the people elect the former that it is not possible to avoid political overtones of various kinds in such an election and so on. You will have noted that there has been a careful avoidance to present in this context of the Clem Jones Queensland Constitutional Republic Team codification of the proposed powers and functions of the president of the Commonwealth of Australia, widely circulated to delegates. We have made it clear that we are not dogmatic in this presentation.

After talking to people from all walks of life, we have come up with a proposal and I will read it. David Muir has already mentioned some of the proposals to you. I will quickly state the conditions which we provide for the election of a president—you will see that it covers the point that has been made so often in this chamber so far: that the candidates for president must not at the time of the issuing of writs for such an election be a member of a house of parliament of the Commonwealth of Australia nor a member of any house of parliament of any of the states or territories; that candidates for president must not at the time of issuing of writs for such an election be a member of a political party; and that the president during his or her term of office shall not be a member of a party.

This is the important one from this point of view: it will not be unlawful and cause the nomination of a candidate for the office of president to be declared invalid if during an election for such office he or she actively seeks support for or from a party or candidates contesting a concurrent election, and we provide for the election to be held at the same time as the

House of Representatives election for the parliament of the Commonwealth of Australia.

It will be unlawful and cause a nomination of candidate for the Senate and House of Representatives to be declared unlawful if during an election for such office he or she actively seeks support for or from a candidate contesting the concurrent election for the office of president in the Commonwealth of Australia. I think that would conclusively deal with it if it were introduced—and it can be—into the electoral act or, where necessary, into the Constitution. We advise that there is no impediment to making that requirement of candidates for election.

I believe we are moving towards a plebiscite at this time. I think the events of the last three days have shown that we are going to have great difficulty in coming to any consensus. If the various factions should, if that is the case, move towards putting their best form of what they believe in not the emasculated form which will come out of the working groups as they are now structured, I suggest the advancement of the idea of a plebiscite should be considered by this Convention. If we are not going—as I believe is the case—to achieve an acceptable consensus, then this would give the people of Australia the best opportunity of choosing the option which would then be presented to them in the best possible form.

I leave you with the thought that there are urgent issues of intent and integrity in the achievement of our goals still before this chamber. They urgently need to be addressed by this Convention. This means a change in direction and I urge you that we take it.

**Brigadier GARLAND**—Mr Chairman, I raise a point of order. During the discussions this morning there have been a number of extensions allowed to various speakers. Indeed, Delegate Mary Delahunty was not only given an extension but also got an extra minute after the extension expired in order to complete her speech. I believe that was discrimination when the vote was not even put to the floor for Dr Flint. I believe that should be remedied. I believe the remarks that he was unable to make in an extension period should be incorporated not just into the proceedings of the day but also into the *Hansard*.

**CHAIRMAN**—Thank you very much, Brigadier Garland. You should note that Dr Flint is here as a proxy, that he was allowed time as a person who had not spoken, although Mr Smith, whose place he is taking, has already spoken on a number of occasions. For that reason, he was allowed on the agenda with 10 minutes whereas those speakers this afternoon are to be allowed only five. In the circumstances, and as we decided yesterday that at 12 o'clock we are going to consider the resolution from the resolutions committee, I believe it appropriate that we should do that.

Brigadier Garland has moved that the balance of Dr Flint's speech be incorporated in *Hansard*. I point out to you that that is not possible because I do not know whether Dr Flint was speaking from a written note. In any event, the basis of incorporation of material into *Hansard* is laid down in our rules of debate. I suspend the debate on the matter before the chair: that is, the working group reports.

In accordance with yesterday's decision, I now propose to receive the resolutions group proposal concerning Convention procedures and role of the resolutions group. This will be considered on the basis of the Attorney-General, Mr Daryl Williams, who will be presenting the report. He will be followed, if need be, by Mr Gareth Evans, within a total allocated time slot of 15 minutes. Subsequently, up to 1 o'clock, if need be, intervention from the floor will be allowed for three minutes per person. The debate will then be adjourned and the vote will be taken at 4 p.m. so that all delegates, having had this opportunity for a debate, will have an opportunity to consider the report between the time of the presentation now and the putting of the vote at 4 o'clock. If there are amendments or if there are other proposals, they will be capable of being put during the period up to 1 o'clock, but no questions themselves nor votes will be taken until 4 o'clock this afternoon. I call on Mr Daryl Williams to present the report on behalf of the resolutions group.

**Mr WILLIAMS**—The report I am presenting, an oral one, is effectively a unanimous report of the resolutions group. The resolutions group has wide ranging representation on it. I therefore anticipate and hope that the time allowed for debate on this will prove unnecessary and that the recommendations will meet with the unanimous agreement of the Convention. Let me start with highlighting that there are three separate resolutions, A, B and C, recommended. You should have had a copy circulated to you on green paper. First, I draw attention to B(2). The role of the resolutions group is seen by that group in the terms of paragraph B(2):

The primary responsibility of the Resolutions Group is to formulate for consideration by the Convention in its Final Plenary Sessions—

that is, on days nine and 10—

a series of draft resolutions—

to be called 'final plenary resolutions'—

which as systematically and comprehensively as practicable expose for debate and decision all those proposals which, in the judgement of the Resolutions Group, have attracted significant support amongst Convention delegates.

The resolutions in A and B address how that result might be achieved. Resolution B(3) states:

In formulating Final Plenary Resolutions the Resolutions Group shall take into account:

- (a) debates that have already taken place;
- (b) all those resolutions which achieve, on a counted vote or in the judgement of the Chairman, at least 25% support in plenary session; and
- (c) any further amendments or proposed resolutions forwarded to the Resolutions Group by any delegate which, in the judgement of the Resolutions Group, assist it in exposing issues for Final Plenary Session debate in accordance with its obligation under Resolution (2).

That gives a fairly wide term of reference in that respect to the resolutions group. It will be able to have access to a wide range of material in preparing the final plenary resolutions for consideration by the Convention. But that will not be the end of it as far as the Convention is concerned because, as noted in (4), the final plenary resolutions will remain subject

to additional amendments, which may even be moved from the floor during the final plenary session.

There has been some debate, and in foreshadowing this motion yesterday Gareth Evans referred expressly to the motions that have been dealt with in the first voting session being excluded if they did not achieve 50 per cent support. Resolution A(1) is designed to achieve a greater degree of flexibility there. In future plenary sessions it is recommended that on key issues all resolutions that achieve a level of support of at least 25 per cent of delegates present and voting, either on a counted vote or, in the absence of a count, in the judgment of the chairman, should be forwarded to the resolutions group with a view to their subject matter being further considered by the Convention.

They represent the distilled wisdom of the members of the resolutions group in relation to the process by which final plenary resolutions are to be developed for consideration in the final plenary session. The group has also considered what might happen at the final plenary sessions and in C, resolution 5, it is proposed to request the Chairman and Deputy Chairman, in consultation with the resolutions group, to bring forward a proposal for a two-stage process for the final plenary sessions, whereby in the event of no clear preference as between options emerging from the deliberations in stage 1, a further opportunity would be given in stage 2 for that preference to be expressed.

The situation that is contemplated there is that there could be a number of results in the final voting. It is contemplated that there will be models prepared of those models which achieve a modicum of support—the popular election model, the parliamentary election model, the McGarvie model and the status quo—and each of those will be considered separately. There will then be consideration, at least among the republican models, as to which is the preferred republican model.

The situation may be reached where there is no majority support for one model. It may also be the case that two models or three models achieve similar levels of support. The object of the Convention being to put a model to the government as a preferred model for a possible referendum, it would be appropriate, in the event that the first stage of voting does not achieve an identification of a preferred model, that there be a further stage of consideration with a view to seeing whether that result can be achieved. On that basis, there would need to be some appropriate procedure developed, which the resolutions group requests the Chairman and Deputy Chairman to consider in consultation with it.

There are two other matters. In the course of Gareth's preliminary report yesterday, mention was made of the possibility of voting on resolutions coming from working groups being sequential. The resolutions group proposes to request the Chairman and Deputy Chairman, in consultation with the group, to bring forward a proposal to the Convention to amend the order of proceedings to require consideration of working group resolutions in plenary sessions on days 4, 6, 7 and 8 to proceed on a sequential basis with voting on each resolution following immediately after consideration for not more than 20 minutes of

that resolution. This would require amendment of the agenda and the time for debate. In the case of day 4—namely, today—it would require the plenary debate and voting to be brought forward by one hour.

It is not suggested that that is a matter for debate by the Convention now; that is a matter for the Chairman and Deputy Chairman to consider and, if appropriate, bring a suggestion to the Convention. If there is to be action to bring forward by one hour the plenary debate and voting today, then it would be appropriate, the rapporteurs suggest, to bring forward the voting on the resolutions that are now being proposed—namely, A, B and C—by one hour.

I have dealt with A, B and C together in one report. It may be appropriate that they be separately debated if it is the wish of the Convention to debate them at any length.

**CHAIRMAN**—Thank you, Mr Williams. There has now been a proposal, firstly from Mr Williams's review, sequentially, of A, B and C. Do you have a question on the general part or on A, Mr Ruxton?

**Mr RUXTON**—I would like to ask you a question. What the Attorney-General has just put forward means that those resolutions on day 2 are now null and void; is that correct?

**CHAIRMAN**—No, what it means is that, as I indicated, in order to accommodate Mr Gifford's remark the other day it would be possible for the Resolutions Committee to come forward on the final day with those resolutions that have been passed. This Convention, when it considers the Resolutions Committee report, will begin with the resolutions that have been passed. Having considered the Resolutions Committee, we will look at the Resolutions Committee report as the basis for further consideration by this Convention of all those resolutions which have been put and passed. So the answer to your question is no. Until such stage as those resolutions are varied by the will of this Convention they remain resolutions, but only provisional resolutions. It has always been the basis that final resolutions will be put before the Convention on day nine.

**Mr RUXTON**—All I can say is that you have an Attorney-General and a former Attorney-General of different political persuasions coming up with a proposition—I have never heard of a 25 per cent majority going forward anywhere. This is real snake oil. It is snake oil by the snake charmers over there. A 25 per cent majority—and that is if it is carried. I am sorry, Sir, I find that as something of risk.

**CHAIRMAN**—Thank you. We will take that as an intervention to which either the Attorney-General or Mr Evans will respond in due course. Are there any further interventions, either as general comment on the whole or in particular on A, B and C?

**Professor PATRICK O'BRIEN**—If I heard correctly, did Daryl Williams say that the vote will be put forward to 3 o'clock this afternoon?

**CHAIRMAN**—I was going to come to that in a moment. We cannot put a vote until we have taken a vote. The time allocated for voting is 4 o'clock. I am afraid it is not possible for us to advance that vote because we have already decided, under our order of

proceedings, that there will be no vote taken until 4 p.m. So the request with regard to day four is not capable of being considered because of the earlier decision.

**Professor PATRICK O'BRIEN**—I believe that we should stick to whatever timetable was announced in today's sheet simply because it is possible that delegates may have made arrangements on that basis. I do not think we should jump around with the times, because it just creates total uncertainty. We should stick to what was circulated this morning.

**Mr GARETH EVANS**—Whatever may be the merits of dealing with it earlier rather than later, just on the process: is it not possible for the Convention at any stage to move that so much of standing orders be suspended as would enable the Convention to do something different from that which is in its standing orders? It is really quite absurd to be locked in if there is a mood to do something that we all want to do.

**CHAIRMAN**—Regrettably, we agreed to an order of proceedings and I would uphold the point that Professor O'Brien made that we agreed that there would be no votes before 4 p.m. Therefore, while you can move it, there can be no vote taken on that suspension of standing orders relating to 4 p.m.

**Mr WRAN**—Mr Chairman, I rise on a point of explanation. Clause B(3)(c) seems to me to give rise to the possibility of ambiguity. It refers to further amendments forwarded to the resolutions group. It is important that we delegates understand, if amendments are moved to the resolutions that go forward, how those resolutions will be dealt with by the committee and in what form they will come to the final plenary session.

For instance—this is very hypothetical—if there were a resolution with the resolutions group that a college of 400 persons be formed and after today there were an amendment that that should be 500 persons, would that amendment come back to the final plenary session or would it be dealt with by the committee and perhaps be incorporated in the original resolution? I think we need to know exactly what happens to amendments that are moved or submitted between now and the final plenary session.

**Mr GARETH EVANS**—You cannot legislate for commonsense. The intention is that the resolutions group nonetheless apply commonsense. The intention of the whole exercise, as explained in (2), is to bring forward at the end of the day resolutions which will assist the Convention move forward to an effective determination of the issues.

Obviously what the resolutions group will take into account is any further material coming to it by way of draft amendments or draft resolutions which do seem to reflect significant currents of view that are running in the Convention that have been the product of further discussion, consultation, negotiation, or whatever, in order to expose clearly the issues for Convention delegates at the end of the day. That is the intention of the exercise.

If, for example, on the one that you put—you have got a model emerging from the votes this afternoon proposing a college of 400—there is discussion over

the weekend by the proponents of that particular thing and they have obviously got together and said, 'It is a better proposal to make it 500, and we are advised in those terms,' it would go forward as 500. If you have got an individual delegate thinking in his own wisdom, but without consultation with anybody else, that it would be better if it were 500, probably, in that example, the resolutions group would say, 'No, leave it in the form in which it was moved originally'-bearing in mind, and this is the final point, that it is always possible for any delegate to move from the floor or indeed, hopefully before we get to the final session, for any further amendment to enable a particular point of view to be exposed.

I add one more thing that I do not think Daryl mentioned in his further report. On the assumption that we will get to the final plenary session on Thursday, day 9, it is the intention of the resolutions group to have these final draft resolutions circulated to delegates the day before, on the Wednesday. Delegates will also be asked, if they have any amendments to the proposals coming forward to them from the resolutions group, to give them to the resolutions group on the Wednesday with a view to those further amendments being actually on the *Notice Paper* in their relevant places to enable again a clearer, less messy debate on the Thursday. That is the way we do it at ALP national conferences. It seems to work quite well, actually. We hope that that will assist. The whole point of the exercise is to have as commonsensical a fashion exposure of the issues.

**Mr HOWARD**—Mr Chairman, could I seek your guidance, and that perhaps of the rest of the Convention, on the question of the way in which the final question is put on day 10. It seems to me that there are two alternatives: you can have either a question generically phrased or the question: 'Should Australia become a republic on the basis that the republic be in this particular form?'

My own view at this stage is that the way in which the final resolution should be handled is to, first of all, deal with the successive elimination of republican options; then that the one that receives the most support should then be pitted against the status quo in the final vote. That would seem to me to more sharply define the views of the Convention.

Obviously, delegates may have different views on that. But I just want an understanding that we are not selling the pass on any particular approach, and that we have an opportunity when we get to the final day to be perfectly clear as to the way in which that is going to be handled. I think it is very important to the conduct, and it is also very important to allowing people who may have a view in favour of the status quo to nonetheless express a view about the least worst alternatives—and I think that is very important in the spirit of a constructive approach.

**CHAIRMAN**—Thank you, Prime Minister. Can I respond by saying that it had been my thinking that, if we are to take the vote at the end of day 9 on the preferred model, whatever the form of the final question, given the undertakings that you have made on behalf of the government, it will, in fact, be measuring the status quo against the model that has

emerged from this Convention—because, as you will all know, the Prime Minister has stated that he intends to consider the report from this Convention having in mind a subsequent referendum. That report, I would have thought, would therefore be predicated on whatever model this Convention might submit. So the final question—whatever its form, it will pick up the fact that it will be the model that emerges from this Convention.

**Mr HOWARD**—Let us assume that there is majority support—and this is just for the purposes of discussion, and I stress that so as not to offend anybody—for, say, the ARM proposal. I would have thought the final question should be: ‘Do you favour Australia becoming a republic on the basis that the head of state shall be chosen by a vote of two-thirds of the Commonwealth parliament, et cetera? Yes or no.’

The previous question has been put on the basis: ‘If Australia were to become a republic, do you favour McGarvie, do you favour a direct election, do you favour two-thirds?’ I think we should vote on those first, and then the victor that comes from that should be pitted against the status quo. I think that is the most authentic way. At some stage, if that is to be the view of the Convention, I would like that to be affirmed so that there is no misunderstanding about it.

**CHAIRMAN**—Thank you, Prime Minister. I call on Dr Gallop.

**Dr GALLOP**—Mr Chairman, could I perhaps just ask the Prime Minister to clarify what he is saying. Just on the first hearing of his proposition, it occurred to me that, in respect of those first votes that you were talking about, all of those people at this Convention who are, in fact, opposed to a republic and believe in the status quo would influence the outcome from that process and then, of course, be able to vote for the status quo. Is that the correction interpretation of what you said?

**Mr HOWARD**—If you believe that everybody should approach this constructively, the answer is that, as a supporter of the status quo, I think some of the alternatives are worse than others. Therefore, I think it is appropriate and democratic and proper that people of that view should be able to express that view during the preliminary votes, yes.

**CHAIRMAN**—In order to accommodate the Prime Minister’s view, can I point out that at the end of day 6 we are quite capable of reaching a point where we then submit for day 7 the question that he has suggested. I first call on Mr Turnbull.

**Mr TURNBULL**—Mr Chairman, the most important question for this Convention to consider, surely, is whether it recommends to parliament that it put a particular republican model to the people in a referendum. I think the view of this gathering on whether Australia should be a republic or not is no doubt something worth having. We have to bear in mind that only half of the delegates have been elected—and, after all, we were elected to come to a convention and consider particular models and come up with a recommendation.

I think we need to perhaps refine what the Prime Minister is actually seeking here; I am not entirely clear. But it seems to me that the key resolution is a recommendation to government that a particular model be put to the people in a referendum. Then they, the Australian people, will decide, in accordance with their Constitution, whether it is changed or not.

**Mr MUIR**—I express the strong opinion that we should stick to the three questions that were, and have been, outlined for a long time; that is, the threshold question about whether there should be a change to a republic, the second question relating to the kind of republic and so on. The suggestion, as I understand it here this morning, is that there be a significant change to that order of business. Delegates have come on the express proviso of preparing for a convention in relation to those issues. I think it is very important that this Convention have the opportunity of taking a poll in relation to the question of whether we should change from a republic to a monarchy.

**Ms HEWITT**—I think it is by no means certain that, whatever this Convention decides on behalf of the people, it is appropriate that only one question go to the people. It may be that the right way to run this referendum is for us to flesh out the models and to put in the referendum a selection of models from which the people choose.

**Ms MARY KELLY**—I would like to refer the issue of the sequence of voting back to the Resolutions Committee because I do not see it in detail before me in C. In doing that, I would ask the resolutions committee to come up with as neutral a process as possible so that the sequence does not give particular advantage to any group over another. For example, I had in my mind the most fair way to do it would be to take the in-principle question first: ‘Should Australia become a republic?’ I might add that the question is on our agenda. Depending on the outcome of that—and say it was carried—we would have a proposition where the various models of a republic are considered as amendments to a stem. In that way, if you deal with the amendments in a particular way, at any point any voter gets to choose between two and ends up with the most preferred.

Anyway, there is a lot of thinking to be done about it. I am sure that thinking needs to be done and the Resolutions Committee should come up with the most neutral process that gives everyone a chance to express preference—because people do have orders of preference on these things. I would also like them to consider that the in-principal question stay the same. When it was attempted to be put earlier to the Convention, it was defeated on the grounds that people did not have time to consider the details and therefore could not vote on the motion of principle. By day 9, the details will be clear and the motion of principle should not be troublesome. I ask that the referral, however handled, might be considered. Thank you.

**CHAIRMAN**—Father Fleming, Kevin Andrews, Professor O’Brien and then Brigadier Garland.

**Father JOHN FLEMING**—I appreciate the Prime Minister’s intervention and am broadly in support of it, but there are those of us who have been elected to

this Convention who cannot vote for any particular model, and for very good reasons. However, I for one would find it easier to assist the Convention if a resolution were put to us along the lines that there be a referendum on a particular model. In that case, I am voting for a referendum on a particular model rather than voting for a model. I would have a great deal of difficulty explaining to people who voted for me that I had actually voted for a model. If that can be arranged, I would think that following that would be the appropriate time to go to the final vote as to whether or not we want to move to a republic. First of all, we have to be able to decide and give those of us who are here—certainly among my friends here—the opportunity to seriously contribute to the outcome of the convention.

**Mr ANDREWS**—I urge support for the proposition put by the Prime Minister. Otherwise, as a matter of logic, it seems to me that we will end up buying a pig in a poke. How can one decide whether or not we should become a republic unless we know what the model is that is being put forward? I would find myself in, I suspect, the difficult position of saying that, unless I know which model is being proposed as an alternative to the current system, I should abstain from that vote simply because I do not know what I am voting on. The reality is that we have to approach it in a manner suggested by the Prime Minister or some slight variation of that; otherwise we are simply becoming absurd.

**Professor PATRICK O'BRIEN**—I would like to remind the Prime Minister, Citizen Howard, and all delegates at this Convention of Citizen Howard's comments in his opening address—that if there is not a clear consensus emerging from this Convention on a particular type of republic he would seriously consider—I do not know whether he said 'promise' or 'seriously consider'—a plebiscite. That becomes terribly important for some sort of procedure that does delineate support for particular models. We do not know what the definition of a consensus will be. Quite obviously, it may be the case that there is not a very substantial majority in favour of any one particular model. On my number counting that is going to be the case. This then opens the gate for what many of us believe should be done in any case, which is that an indicative plebiscite be held on the models. It is very important that this be seriously considered and that we remember that it has to be a consensus. We are not going to get that by any definition. So it does look like we will be moving to an indicative plebiscite to determine which proposition would then be put to a referendum.

**Brigadier GARLAND**—It would appear that splits are already emerging in the republican group. They are not able to come up with a model. I support whole-heartedly the proposition put by Father Fleming, and that is that if something is going to come out of this Constitutional Convention it ought to be that a referendum be held on this particular issue—spelling out the model which has the majority vote on the floor of this place. That gives the Prime Minister the opportunity to take it and put it to the people. If there is no consensus on what the republican model is going to be, we can go through the time and money

wasting efforts of plebiscites and all the other bits and pieces. I support Father Fleming.

**Mr HOWARD**—In response to Mr O'Brien I have confirmed the language I used on Monday. It was very deliberate. I used two expressions: 'clear majority' and 'clear view'. I did not use that hallowed word 'consensus' because there is a debate about what that means. 'Clear view' and 'clear majority' are clear, intelligible English.

**Mr LAVARCH**—I endorse the remarks which Delegate Kelly made. We have heard an intervention from the Prime Minister which proposed a particular course of action. It may well be the course that should be followed. Delegate Fleming has proposed a slightly different form of wording which he finds to be significant in his view of his capacity to participate fully in the process. We have heard other contributions. It is something which should be considered closely by the Resolutions Committee. There has been an expression of views now. The Resolutions Committee should come back to us with some precise form of how this process is to work so that we can put that to a vote and resolve it.

**Most Reverend GEORGE PELL**—I speak broadly in support of the last speaker. The proposal that the Prime Minister has put might be the best way to go forward. But we need time to consider that. It might be that the Resolutions Committee will bring forward to this gathering, to be put to the vote, a suggested procedure. Whether we vote in turn on the three questions that were put to us or in the way the Prime Minister has suggested or according to some other procedure, it might be best for this assembly to decide that procedure. It would be difficult for the Resolutions Committee to bring forward a procedure that is seen by most to be neutral.

**The Right Reverend JOHN HEPWORTH**—Since the plebiscite has now been unleashed a little bit more than it was before, whilst it is obviously something available to us I believe we should pause very carefully. In one sense it will be seen as—and it is—a cop-out, because it is the Convention feeling comfortable at this stage and spending another week not trying to work towards an effective resolution. Much more importantly, before we begin to think comfortably about a plebiscite, let us make ourselves quite aware that that puts every system of government, including that which is currently in force, in a state of virtual suspension for perhaps a period of years, in which case Australia does become less governable—and will be seen internationally to be so—while all systems are up for debate rather than simply the question of a change. That is an enormous responsibility, and I think we should be conscious of the potential consequences.

**Mr GIFFORD**—First of all, detailed resolutions cannot be done just in a matter of moments; this was one of the big problems when we were looking at the eight earlier. I ask the Attorney here, on the other side: when you have adopted a particular one, can you circulate that so that we can consider resolutions progressively? That would help considerably.

**CHAIRMAN**—They will take that on board and respond in due course. I call Mr Waddy.

**Mr GIFFORD**—I had not finished.

**CHAIRMAN**—I am sorry; I thought you had. Please finish.

**Mr GIFFORD**—I would like to submit that it is important that we do not consider the question of whether or not there is to be a republic. We should determine, first of all, what sort we are talking about.

**Mr WADDY**—I rise to support the Prime Minister in this. It seems to me that the only possible way that Australia can become a republic, no matter who resolves what, is to change its Constitution, which will have that effect. Therefore a model is crucial—‘model’ being shorthand for the changes necessary in the Constitution.

I am conscious that there are people who are not delegates—let me take someone like Sir Zelman Cowen, who came out as a republican for the third or fourth time in America but said that if he did not get the sort of republic that he wanted he would prefer the status quo. It seems to me that the selection of the model is crucial to the final question as to whether other delegates wish at this point of time to effect a republic or not.

Therefore the logical thing is to select a model and see which one has the favour, if any, of the Convention, and when one has the favour of the Convention pit that against ‘do we want to make this change or not?’ We can only make one change. We cannot jump into an interim system of Hades and say that we are in a republic but we do not know how to get out or how to effect it. I will not say any more, but I am glad that these things have been raised before the House. The issue probably affects republicans more than it affects us, and a plebiscite is, of course, just another waste of money.

**CHAIRMAN**—Are there any other speakers from the floor before I call on the Attorney to respond?

**Mr WILCOX**—I shall be very brief and simply say that I support what the Prime Minister said and what Mr Waddy said. It seems to me to be clearer than anything else that has been said as a means of procedure, and I suggest that we support it. The Resolutions Committee should take careful note of it because I do not want them going off at too many tangents on their own without the Convention knowing what they are up to.

**Mr TURNBULL**—I agree it must go back to the Resolutions Committee, but I simply want to emphasise and clarify the point I made earlier. The critical question in terms of deciding between the particular models is: which model has the greatest support among delegates in the context of its being put in a referendum? Let us say Mr McGarvie’s model was the favoured one or direct election, for that matter, or ours or whatever; the question would be: if the McGarvie model were put to the people in a referendum, this Convention recommends its adoption by the Australian people. Otherwise you will have people who are committed to the defeat of the referendum voting in favour of the model they regard as being most likely to be able to be defeated by them.

**Mr RUXTON**—Never. Disgusting, just disgusting.

**Brigadier GARLAND**—That is not acceptable.

**Mr GIFFORD**—You ought to be ashamed of yourself, Malcolm.

**Sir DAVID SMITH**—You are out in the open at last, Mr Turnbull!

**Mr HODGMAN**—Weasel words.

**CHAIRMAN**—I think it might be a good idea if you kept the level of intervention down and let Mr Turnbull finish his remarks. Are there any other interventions from the floor? Having vented your emotions, can I ask the members on my left to please yield the floor to the Attorney, Daryl Williams.

**Mr WILLIAMS**—I think I can speak for all members of the resolutions group in saying that this has been a useful debate. The group will take on board what has been said in the formulation of the final plenary resolutions for consideration by the Convention and come back with a proposal.

**Mr TIM FISCHER**—Crystallised.

**Mr WILLIAMS**—Crystallised, as Mr Fischer says. The only point that really requires comment is Mr Gifford’s question as to the availability of the final plenary resolutions before the debate. I thought this had been covered earlier. The plan is that the resolutions group prepare the resolutions for circulation as early as possible on day 8 with a view to amendments required to be lodged with the secretariat by the end of day 8 in order that on day 9, when the debate can begin, there will be a composite document which will include the amendments that have been proposed.

**CHAIRMAN**—I also put to you, Attorney, that your recommendation from the resolutions group to the Deputy Chairman and me needs to come by way of a resolution from the resolutions group to the Convention. As you might recall, there is a request for the time and order of voting to be changed and for the order of proceedings to be amended accordingly. For that decision to be taken, it would require a vote of the Convention and not a determination by us. So it will need a further resolution from the Resolutions Committee which we will put to the Convention later this afternoon. There being no further questions on that item we will resume—

**Mr WILLIAMS**—Before we go on, I think that recommendation has been circulated.

**Mr GARETH EVANS**—No, it has not.

**CHAIRMAN**—You can move it and it will be considered later today and voted on this afternoon.

**Mr WILLIAMS**—I have outlined the resolution.

**CHAIRMAN**—You can bring it back on.

**Mr WILLIAMS**—We can bring it back on and circulate copies in the interim.

**Senator FAULKNER**—I raise a point of order. I seek your guidance, Mr Chairman. I think this would be useful to all delegates to the Convention. I hear what has been indicated by the Attorney and appreciate the advice that he has given the Convention. Given that you have made rulings previously in relation to notice being given of amendments to resolutions that are before the Convention, I ask you what your intentions are, or what your secretariat’s intentions are, to distribute the final views that are developed by the resolutions group and the capacity

for delegates to propose amendments, if they so desire, to the final proposal that comes forward from the resolutions group. It would be useful for all delegates to the Convention to have a clear understanding of how that process will work, given that on a number of previous occasions before the Convention it has been a matter of some consternation to some delegates.

**CHAIRMAN**—It would be my proposal that the Resolutions Committee should be requested to meet as soon as possible, that, at the very latest, they should circulate their proposed amended resolutions immediately after lunch, by 2.15 p.m., if not by 3 o'clock. We could then at 3.30 p.m. allow for a plenary session like this to examine once again those amendments and move on into the voting at 4 o'clock. You have several matters you have taken up which need to be identified by the resolutions group and brought back in an amended form to the Convention delegates.

**Mr GARETH EVANS**—I seek clarification. Are you referring there to the detailed working through of this stage 1 and stage 2 business for next week? If you are referring to that, it would be premature to bring this back at this stage. We really do need to have a lot of consultation about that if there are any amendments to the motions before us now. I think that is what Senator Faulkner was referring to. We are not really contemplating finally determining the process for the final plenary sessions until probably Monday, I would have thought.

**CHAIRMAN**—There are a number of consequential changes as a result of the dialogue we have just had in the Convention which require consideration by the Resolutions Committee. They include some adjustment, as I understand it, to your resolution, recommendation A. They also include inclusion of the recommendations as a resolution, and they need to be distributed to delegates. If there is a feeling that we need to have further consideration, that will be allowed after half past three, prior to the voting at 4 o'clock, so that everybody moving in at 4 o'clock is clear on the resolutions that have been received from the resolutions group. They can all then vote on them on an informed basis. Is there any other intervention from the floor on this matter before we proceed?

**Sir DAVID SMITH**—Is there any provision in our procedures for a personal explanation on the grounds that a delegate has been misrepresented?

**CHAIRMAN**—No, but I will take it.

**Sir DAVID SMITH**—I want to record my rejection and resentment of Mr Turnbull's last intervention. I cannot speak for all of my colleagues but I will speak for myself. I came to this Convention with goodwill. My position on the change of our Constitution is well known, as is Mr Turnbull's. I respect his right to put it and I expect him to respect my right to put my view. I resent the implication that we are trying to organise this Convention in order to produce a predetermined result. Mr Turnbull, of course, can recognise that situation because it is one that he practises extremely well. I came here prepared to state my case and I came to let others state their cases and to listen. I regard his last intervention as a gross

insult. This is not a \$50 million frolic to indulge Mr Turnbull's personal fantasies; it is to enable the people of Australia to consider a very important situation. He has insulted us and he owes us an apology.

**Ms AXARLIS**—We have all come here to achieve an outcome. If we do not have an outcome, it will be disastrous. Therefore we should all put our heads together; work on each others models; have a free, open mind and heart; and work for a model that will deliver a republic, if that is what you want, or the status quo in a way that will enable Australia to progress in this global economy.

With all due respect to Mr Hayden, I am here to achieve a fiasco. I wish to have the sort of result that can go to the public of Australia—all Australians. I consider myself a true Australian, even though I was not born here. I would like to say to those people who continually interject that I am offended by some of the comments. This is not parliament; this is not the place to posture. The purpose of this is to get outcomes. I am sorry I am emotional; I am of Greek origin.

**Proceedings suspended from 12.54 p.m. to  
2.15 p.m.**