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Tracking the push for an Australian republic

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Introduction

In the Australian Senate on 23 June 2003, the South Australian Senator Stott Despoja, also on behalf of Senator Bolkus, moved:

> (1) That the following matters be referred to the Legal and Constitutional References Committee for inquiry and report:
>
>> (a) the most appropriate process for moving towards the establishment of an Australian republic with an Australian Head of State; and
>>
>> (b) alternative models for an Australian republic with specific reference to:
>>
>>> (i) the functions and powers of the Head of State,
>>>
>>> (ii) the method of selection and removal of the Head of State, and
>>>
>>> (iii) the relationship of the Head of State with the executive, the parliament and the judiciary.
>
> (2) That the committee facilitate wide community participation in this inquiry by conducting public hearings throughout Australia, including in rural and regional areas.

This was the first serious national move to reignite debate about an Australian republic since the failed 1999 referendum on the matter.

This Background Note explores developments in the Australian republic debate since the referendum, drawing on key books, articles, events and commentary. It suggests how the debate might unfold.

Background

Referendums in Australia have generally had limited success. Of the forty-four attempts to amend the Constitution only eight have been successful. In order to succeed, a referendum must be approved by a majority of electors overall, and by a majority of states (i.e. four out of six).[1] Referendums are regulated under the *Referendum (Machinery Provisions) Act 1984*.

The 1999 referendum on an Australian republic had been preceded by several years of formal activity initiated by Prime Minister Paul Keating in 1993 with the establishment of the Republican Advisory Committee.[2] In 1996, Prime Minister John Howard formally confirmed his government's

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1.   For an overview of referendums and how they are conducted see *Australian Electoral Commission (AEC),* 'Types of referendums', AEC website, http://www.aec.gov.au/Elections/referendums/types.htm, viewed 10 January 2013.

2.   Senate Legal and Constitutional References Committee, *Inquiry into an Australian republic: discussion paper,* December 2003, p. 5, viewed 2 November 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/completed_inquiries/2002-04/republic03/index.htm

intention to proceed with a Constitutional Convention on the matter.[3] A convention was held in February 1998 at Old Parliament House, to consider various issues and proposals and to put forward a model for public and parliamentary scrutiny.

Half of the 152 delegates at the 1998 Convention were elected (through a non-compulsory postal vote) and half were appointed by Federal and state governments. Convention delegates were tasked with considering the following questions:

- whether or not Australia should become a republic

- which model for a republic might be put to the Australian electorate to consider against the current system of government, and

- in what timeframe and under what circumstances might any change be considered.

> The central debate within the convention was how to replace Australia's current head of state structure with an Australian president. This raised a number of complex and divisive issues. In particular, the method of appointment of a president sparked considerable debate. Suggestions ranged from Prime Ministerial appointment to a US-styled electoral college, appointment by a parliamentary majority and direct election by the people. The Constitutional Convention settled on the "minimalist" model which was agreed by both Houses of Parliament and then put to the people in the referendum of November 1999.[4]

More details of the 'minimalist' model are included in Appendix A. [5] Of the three questions considered, the Convention:

- supported, in principle, the idea that Australia should become a republic (This resolution was carried by 89 votes to 52 with 11 abstentions.)

- supported the Bipartisan Appointment of the President Model by 73 votes in favour to 57 against with 22 abstentions (While this was less than an absolute majority it was declared carried by the chair and a motion of dissent in the chair's ruling was overwhelmingly defeated.)

- voted to recommend to the Prime Minister and Parliament that this model be put to a referendum by 133 votes to 17 with two abstentions. (It recommended that the referendum be held in 1999 and that if successful the republic should come into effect by 1 January 2001.)[6]

The subsequent referendum was held on 6 November 1999.

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3.   Ibid.
4.   Ibid.
5.   A transcript of the convention's proceedings are available at:
      http://www.aph.gov.au/Parliamentary_Business/Hansard/~/media/02%20Parliamentary%20Business/23%20Hansard/con0202.ashx
6.   Senate Finance and Public Administration Legislation Committee, *Plebiscite for an Australian Republic Bill 2008*, The Senate, Canberra, 2009, pp. 6–7.

Republic Question

The question on the republic put to electors at the 1999 referendum was whether they approved of:

> A proposed law: To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament.

Preamble question

Electors were also asked to vote on a second question at the 1999 referendum which asked whether they approved of:

> A proposed law: To alter the Constitution to insert a preamble[7]

The referendum outcome

The Australian Electoral Commission reported the results of the republic question as follows:

Summary of Results – Republic Question

National Summary

State	Result	Enrolment	Yes	%	No	%
New South Wales	No	4 146 653	1 817 380	46.43	2 096 562	53.57
Victoria	No	3 164 843	1 489 536	49.84	1 499 138	50.16
Queensland	No	2 228 377	784 060	37.44	1 309 992	62.56
Western Australia	No	1 176 311	458 306	41.48	646 520	58.52
South Australia	No	1 027 392	425 869	43.57	551 575	56.43
Tasmania	No	327 729	126 271	40.37	186 513	59.63
Australian Capital Territory	Yes	212 586	127 211	63.27	73 850	36.73
Northern Territory	No	108 149	44 391	48.77	46 637	51.23
National Total	**No**	**12 392 040**	**5 273 024**	**45.13**	**6 410 787**	**54.87**

Source: AEC website

http://www.aec.gov.au/Elections/referendums/1999_Referendum_Reports_Statistics/summary_republic.htm

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7.   Ibid. A preamble had been officially commissioned from Australia's renowned poet Les Murray. It appears at Appendix D.

The Australian Electoral Commission reported the results of the preamble question as follows:

Summary of Results – Preamble Question

National Summary

State	Result	Enrolment	Yes	%	No	%
New South Wales	No	4 146 653	1 647 378	42.14	2 261 960	57.86
Victoria	No	3 164 843	1 268 044	42.46	1 718 331	57.54
Queensland	No	2 228 377	686 644	32.81	1 405 841	67.19
Western Australia	No	1 176 311	383 477	34.73	720 542	65.27
South Australia	No	1 027 392	371 965	38.10	604 245	61.90
Tasmania	No	327 729	111 415	35.67	200 906	64.33
Australian Capital Territory	No	212 586	87 629	43.61	113 293	56.39
Northern Territory	No	108 149	35 011	38.52	55 880	61.48
National Total	**No**	**12 392 040**	**4 591 563**	**39.34**	**7 080 998**	**60.66**

Source: AEC website
http://www.aec.gov.au/Elections/referendums/1999_Referendum_Reports_Statistics/results_preamble.htm

Of the nearly 12.4 million electors on the Commonwealth electoral roll at the close of rolls for the 1999 referendum, just over 20 per cent had never voted in a federal referendum before. For the remaining electors it had been 11 years since the last referendum.[8]

The vote had been preceded by a 'Yes/No' campaign that had become increasingly strident in tone as referendum day approached. The Federal Government had convened independent committees to articulate the 'Yes' and 'No' cases, which were published as part of the official information distributed to voters.

Heading the 'Yes' campaign was the Australian Republican Movement led by the barrister and merchant banker (now Federal MP) Malcolm Turnbull. The 'No' campaign was driven largely by Australians for Constitutional Monarchy (ACM) led by Kerry Jones, who replaced Tony Abbott as ACM's leader when he stepped down to enter the Federal Parliament in 1994.

Within both camps there was a range of opinion. Some republicans favoured a minimal change that would simply remove the monarchy; others wanted a popularly elected head of state and some wanted a major overhaul of the system. The monarchists ranged from the traditional to the pragmatic, but all were firmly committed to the status quo.[9]

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8.   Ibid.

9.   For a helpful overview of the referendum campaign, see B Cross, 'The Australian Republic Referendum, 1999', *The Political Quarterly,* vol. 7, no. 4, October-December 2007, viewed 6 November 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22library%2Fjrnart%2FSUFP6%22

The failure of the 1999 referendum

Recriminations abounded in the wake of the referendum's defeat on 6 November 1999. The reasons for its failure were canvassed at length by academics, political journalists and lawyers.

The prominent constitutional scholar and republican Helen Irving considered three hypotheses:

- referendums have no chance if they lack wide cross-party support and especially that of the Prime Minister—hypothesis 'probably right'[10]

- the referendum addressed the aspirations of the 'elite' and alienated 'the people' / 'the battlers'—hypothesis 'seems intuitively correct', but it is unclear whether the 'battlers' wanted to change the Constitution or were opposed because they preferred a direct election model

- insufficient voter knowledge (of the issues and implications)—hypothesis 'has greater credibility' given that 'a positive correlation between formal education and support for a republic has existed over a number of years'.[11]

Irving also highlighted the considerable work that would need to be done to 'clean up' the Constitution, even under a minimalist model, and argued that 'the likelihood of a referendum success for an effectively new Constitution would appear low'.[12] Perhaps, suggested Irving, the minimalist approach was itself an impediment to change:

> On the other hand, it may emerge from analysis of the 1999 referendum campaign that the fear of appearing grand and 'visionary' … itself contributed significantly to failure. [13]

Professor Ian McAllister concluded from his 1999 Australian Constitutional Referendum Study that:

> The most important influence on voting was views about whether or not to sever the link with Britain, followed by the positive and negative aspects of the proposed change, and the cues presented by the leaders of the respective 'yes' and 'no' campaigns. Voters' knowledge of politics was also important.
>
> Overall, the interaction between compulsory voting and lack of political knowledge among large sections of the electorate served to divide republicans, and caused the proposition to fail. Pairing the republic with an unpopular change to the preamble of the Constitution also depressed the 'yes' vote.[14]

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10. Note, however, that on the 'preamble' question there was support from the Prime Minister, the Leader of the Opposition and the Australian Democrats, but it, too, was rejected.
11. H Irving, 'The republic referendum of 6 November 1999', *Australian Journal of Political Science,* vol. 35, no. 1, 2000, pp. 112–3.
12. Ibid., p. 115.
13. Ibid.
14. I McAllister, 'Elections Without Cues: The 1999 Australian Republic Referendum', *Australian Journal of Political Science,* vol. 36, no. 2, 2001, p. 247, viewed 11 December 2012,

In emphasising lack of voter knowledge, McAllister explained that:

> Although the government, for the first time, funded the 'yes' and 'no' campaigns, providing them with A$7.5m each, as well as a neutral public education campaign costing A$4.5m, there was still considerable lack of knowledge. The ability of voters to understand complex political changes has long been a problem with referendums, and with the potential for direct democracy more generally (Budge 1996; Lupia 1994).
>
> When voters receive differing cues from the political parties and the mass media, and where the issue is a complex one, as was the case here, it is hardly surprising that many voters, while supportive of the principle underlying the change, chose the cautious approach and voted 'no'.[15]

McAllister also pointed to 'a significant relationship between aspects of party support and voting in the referendum', especially at the electorate level, where he reported a 'major effect com(ing) from One Nation voters …(whereby) each additional percentage point of the first-preference vote that One Nation attracted in the electorate in the 1998 election reduced support for both the republic and the preamble by around one percentage point—a substantial effect'.[16]

Justice Michael Kirby, a noted constitutional monarchist, suggested that the referendum's failure emerged from ten 'errors' of process, politics and timeframe:

- the partisan error

  'The lesson of formal constitutional alteration in Australia is that, without affirmative support by the major players in the political debates, there is little or no chance of securing the majorities required to amend the Constitution'.

- the haste error

  'To change the Australian Constitution in such a significant respect, within the space, effectively, of five years, was an endeavour to impose requirements of comprehension and adaptation to change which proved unacceptable to the majority of the Australian electors. … Both sides were influenced by considerations of Olympic, millennial and federationist deadlines'.

- the elitist error

  'Referenda are inevitably "elite driven". However, to secure the requisite support amongst the electors of Australia the proponents of change must somehow secure the understanding and support of a wide range of citizens. On big issues this is a big ask'.

- the patriotism error

  'Some republican advocates, before and after the vote, denigrated their fellow citizens who did not agree to the proposed change as somehow less patriotic and even un-Australian. … To upbraid half the people of Australia, or at

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http://parlinfo.aph.gov.au/parlInfo/download/library/jrnart/K4Q46/upload_binary/k4q467.pdf;fileType=application%2Fpdf#search=%22library/jrnart/K4Q46%22

15. Ibid., p. 266.
16. Ibid., p. 255.

least a good proportion of them, as "un-Australian" because they do not happen to agree with a proposal, is a sure way to alienate them'.

- the convention error

'The Constitutional Convention which finally but narrowly settled the republican model that was put to the Australian people obviously operated within significant constraints. … The vision of a compromise proposal, hastily worked out in the committee rooms of the Constitutional Convention, was precisely the kind of constitutional alteration likely to engender popular suspicion. … Ideally, from a republican point of view, there should have been an in principle plebiscite, followed by a less hasty procedure and a more intense period of public education and debate'.

- the model error

'This is not the occasion to canvass all of the criticisms of the republican model which was put to the 1999 referendum. Critics certainly raised many false issues. The opponents played on fear about some of these. … To those who urged acceptance of the model, even if defective … the spectre of the difficulty of securing later change loomed large. Even electors generally sympathetic to the idea of a republic could therefore rationally reject the proposed model'.

- the pundit error

'The ARM strategy, linked with that of the Conservatives for an Australian Head of State, involved calling upon a number of "names" well known to the Australian people to support their cause. … It seems clear from the general irrelevance of party allegiance in the pattern of voting in those city areas which favoured the republican proposal that the advocacy of the heroes of earlier times did not reach down to the grassroots... A constant theme of explanations for the negative response to the change was the feeling that the electors were being taken for granted, talked down to, condescended to by the use of jingles but not provided with basic and detailed information of what precisely was involved in the change'.

- the small state error

'In most of the smaller states the affirmative vote was little more than 40%. This leaves a very large gap to be made up if electors' votes are to be changed in the near future... It is obvious that any future attempt to change the Constitution in Australia on this question will need to pay closer attention to the electors in the smaller States. Sometimes their disinclination to change the Constitution appears to stem from their suspicion of politicians in Canberra and of the power which Sydney and Melbourne are thought to wield upon the fortunes of the rest of the continent'.

- the media error

'There were no real exceptions to the strong editorial line on the republic followed by the Australian media... (which) exhibited substantial bias in favour of the republic proposal and against the constitutional status quo. … This was not confined to an editorial opinion in which a distinction was carefully preserved between the editors' opinions and news coverage. It extended into the factual reportage …and the photographs, cartoons and other depictions that were published. Most of these showed the Queen and her supporters in a bad light and the republicans as the only cause which patriotic Australians could possibly support'.

- the republican problem

'The opinion polls indicate that 70% of Australians insist that if Australia is to move to a republic, the President should be directly elected. This is said to be in harmony with Australia's basic democratic traditions. Yet if such a change to the Constitution were made, the office would be fundamentally different from any in our present system. The chances of

political instability and a popular distaste for radical change are such as to discourage the prospects of electoral acceptance'.[17]

One argument that appeared to have had considerable influence in shoring up a 'No' vote was that urged by (now Federal Opposition Leader) Tony Abbott, among others—namely, to reject the concept of a president 'picked by politicians'.[18] Mr Abbot told a town hall meeting that the proposed procedure by which an Australian president would be chosen amounted to a 'Mickey Mouse public nominations committee comprising politicians and mates of politicians'.[19]

The prominent republican and legal academic Professor George Williams offered several reasons for the referendum's failure, several of which concurred with those offered by Justice Kirby. Professor Williams argued that:

- in trotting out a litany of famous figures 'mostly professionals and politicians … the message the yes campaign in fact conveyed to many people was that the model was fundamentally elitist'

- people 'did not buy the argument that constitutional reform was necessary because a constitutional milestone (the centenary of Federation) was approaching'

- not enough people 'felt ownership over the republic model for which they were being asked to vote'

- lack of bipartisan agreement was fatal: 'The opposition of the prime minister John Howard was important. 'No' referendum has ever succeeded without bipartisan support, let alone over the prime minister's dissent. In the words of Turnbull: 'There is only one person who could have made … November 6 a landmark in our history, and that of course is the prime minister.'[20]

- the parliamentary appointment model put to the people 'had basic defects. The most significant was a mechanism by which the president could be dismissed unilaterally and without reason by the Prime Minister. Parliament would have been required to approve the dismissal, but could not overturn the decision, nor reinstate the president'.[21]

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17. M Kirby, 'The Australian Republican Referendum 1999 - Ten Lessons', address, University of Buckingham, 3 March 2000, viewed 2 November 2012,
http://www.lawfoundation.net.au/ljf/app/&id=DF4206863AE3C52DCA2571A30082B3D5

18. G Henderson, 'The truth about politicians', *Sydney Morning Herald*, 25 January 2000, viewed 4 November 2012,
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F17P06%22

19. Ibid.

20. G Williams and D Hume, 'Convincing a nation of naysayers', *Sydney Morning Herald,* 11 September 2010, viewed 2 November 2012, http://www.smh.com.au/opinion/politics/convincing-a-nation-of-naysayers-20100910-154ux.html

21. G Williams, speech to ALP Central Branch, 23 November 2009, viewed 2 November 2012,
http://www.independentaustralia.net/2010/australian-identity/republic/george-williams-speech-for-a-republic/

Another comprehensive analysis of the referendum results is to be found in Bruce Tranter's 'The Australian Constitutional Referendum of 1999: evaluating explanations of republican voting'.[22]

Following the defeat of the referendum, a conference met to recommend steps towards a republican form of government. The Corowa Conference of December 2001 was convened 'to explore and harness opinions of Australians in respect to the Head of State issue for Australia'.[23] The Conference was held in Corowa, NSW because it was the Corowa Conference of 1893 which put forward the process that enabled Australia to decide on Federation. The 2001 Conference considered 19 proposals and recommended one. The Conference formally adopted a process involving a parliamentary committee, multi-question plebiscite, an elected constitutional convention and a referendum.[24]

The 2004 Senate Legal and Constitutional References Committee report, *The road to a republic*, which is discussed further below, noted of the 1999 referendum:

> The Committee received a considerable amount of evidence which suggested that lack of "ownership" was one of the problems associated with the 1999 referendum. The Committee acknowledges this evidence and considers that the Australian people should be fully consulted and involved in any process leading towards a future Australian republic. This process should be inclusive and democratic, and should engage as broad a cross section of the Australian public as possible. [25]

One opinion writer probably expressed the doubts of many about the chances of constitutional change, writing:

> What seems certain is that if we continue the way we are—compulsory voting, a significant majority knowing comparatively little about the way the country operates, and the Constitution itself making change very difficult—we shall find virtually impossible the attaining of change of any kind.[26]

22. B Tranter, 'The Australian Constitutional Referendum of 1999: evaluating explanations of republican voting', *Electoral Studies 22,* 2003, viewed 13 December 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22library%2Fjrnart%2F8NQA6%22

23. Archived website, viewed 4 November 2012, http://pandora.nla.gov.au/pan/25111/20020524-0000/www.corowaconference.com.au/The%20Peoples%20Conference/Conference%202001/Conference%202001.htm

24. Senate Legal and Constitutional References Committee, *The road to a republic*, The Senate, Canberra. August 2004, p. 23.

25. Ibid, p. 133.

26. R Poke, 'We must learn the lessons of republic poll and try again', *The Canberra Times,* 9 January 2000, viewed 4 November 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22media%2Fpressclp%2F3TL06%22

The 'direct election' factor

Early in the 1999 referendum campaign, rifts had emerged within the republican camp between those favouring a direct election model for the head of state (such as independent MPs Ted Mack and Phil Cleary) and those (like ARM chair Malcolm Turnbull) advocating a more conservative approach:

> Together these groups fractured the debate and placed the ARM leaders in an untenable position, which resulted in the demise of the republican advance and the failure of the .. campaign.[27]

In the wake of the referendum, Professor John Uhr opined that 'future notions for a republic … would require a ceasefire and eventually an accord between minimalist and direct election republicans'.[28]

Ian McAllister's Australian Constitutional Referendum Study showed that advocates of direct election outnumbered those favouring bipartisan appointment by more than two to one:

> When we disaggregate the 'no' vote on the republic by the form of government they preferred, almost half actually wanted a directly elected President, slightly more than those who voted 'no' because they wanted the retention of the monarchy.[29]

Analysis by Curtin University's David Charnock—drawing on the Australian Constitutional Referendum Study 1999—confirmed that 'the votes of direct electionists were as important as those of monarchists in the defeat of the republic referendum'.[30] Charnock also considered the question of whether the defeat of the referendum indicated more a preference for the direct election of a head of state than a desire not to change the Constitution.[31]

His analysis—that 'the republic referendum was defeated only because of the votes of a large proportion (almost half) of the direct electionists'—reconfirmed McAllister's finding.[32] Charnock argued that 'some kind of direct-election method will eventuate in due course (with sufficiently tightly circumscribed roles and powers for the President to satisfy the political elites)'.[33]

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27. G Barns and A Krawec-Wheaton, *An Australian republic*, Scribe Books, Melbourne, 2006, p. 27,
28. J Uhr,'After the referendum: the future of constitutional change', *Public Law Review*, vol. 2, no. 1, March 2000, p. 7, viewed 16 November 2012,
    http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F66I16%22
29. McAllister, op. cit.
30. D Charnock, 'National identity, partisanship and populist protest as factors in the 1999 Australian republic referendum', *Australian Journal of Political Science,* vol. 36, no. 2, p. 271, viewed 15 November 2012,
    http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FQ4Q46%22
31. Ibid.
32. Ibid., p. 289.
33. Ibid., p. 290.

Reports later emerged that the Australian Republican Movement was planning 'sweeping changes' to its constitution that would 'avoid wedding itself to a particular model for a republic'.[34] Meanwhile, it appeared that surveys were indicating that the public preference for an elected president was '"rusted on" and cannot be shifted'.[35]

But as the ANU's Nicole Mitchell pointed out in an article in 2002, the partly-elected 1998 Constitutional Convention, held prior to the referendum, decided:

> ... that the 'President appointed by two-thirds of Parliament' model was preferred to the direct-election model. If the Constitutional Convention's decision is held to be in some sense 'representative' of the electorate's opinion then, together, these judgements on the republic issue set up a conundrum.[36]

Mitchell speculates about the differences between the Convention's view and the popular view, and the way in which people weighed their preferences. Did the Convention members engage in serious deliberation of a type not available to, or pursued by, the voters generally? Did the Convention severely misjudge public perceptions about the republic issue? Did the ''Yes'' campaigners misjudge their ability to alter the view of the direct electionists? Did many voters regard a direct election approach as moderate, rather than as radical?[37]

The Senate inquiry into an Australian republic

An inquiry into an Australian republic by the Senate Legal and Constitutional References Committee was undertaken following a vote in the Senate on 26 June 2003 to refer the matters set out in the following terms of reference for report by mid-2004.[38]

> (1) That the following matters be referred to the Legal and Constitutional References Committee for inquiry and report:
>
> (a) the most appropriate process for moving towards the establishment of an Australian republic with an Australian Head of State; and
>
> (b) alternative models for an Australian republic, with specific reference to:
>
> > (i) the functions and powers of the Head of State,
>
> > (ii) the method of selection and removal of the Head of State, and

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34. D Snow, 'Republic push to start from scratch', *Sydney Morning Herald,* 10 January 2000, viewed 4 November 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F5RL06%22

35. H Evans, 'Australia: The republic referendum', *The Table*, vol. 68, 2000, pp. 28–30.

36. N Mitchell, 'The 1999 Republic Referendum: Is there a cycle?, *Australian Journal of Political Science,* vol. 37, no. 1, 2002, viewed 12 December 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FVDF66%22

37. Ibid., pp. 149–150.

38. Australia, Senate, *Journals,* No. 85, 26 June 2003, p. 2017.

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

(2) That the committee facilitate wide community participation in this inquiry by conducting public hearings throughout Australia, including in rural and regional areas.[39]

In December 2003 the Committee released a discussion paper to facilitate discussion and to focus debate. The Committee received over 700 submissions from various individuals and organisations and several public hearings were held.

The Committee's report *The road to a republic* identified three key themes arising from the evidence that might guide any future progress toward a republic:

• the importance of Australians engaging in and feeling ownership of any future process

• the need for an information campaign to ensure Australians are fully educated in the options that may be put to them, and

• the timeframe for any future process.[40]

The Senate report was described by one analyst, Allison Henry, as 'the most tangible advancement in the republican debate since the 1999 referendum'.[41]

The process dimension

On the matter of the best process for facilitating a move towards a republic the Senate Committee canvassed numerous issues:

Plebiscites

Some argued that plebiscites were a very expensive opinion poll, others that they facilitated early and informed engagement with the issue. Many submissions argued in favour of a 'threshold question' to gauge support for a republic. Others proposed a second plebiscite question with a choice of models, and these questions might be held either concurrently or separately. There was also the question of whether the plebiscite(s) should be held in conjunction with elections; whether the plebiscite vote should be compulsory; and whether the vote should use a preferential or 'first past the post' ballot.[42]

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39. Senator Stott Despoja, 'Legal and Constitutional Affairs References Committee reference', Senate, *Debates,* 26 June 2003, p. 12651, viewed 6 December 2012, http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/2003-06-26/toc_pdf/2629-4.pdf;fileType=application%2Fpdf#search=%22chamber/hansards/2003-06-26/0000%22

40. Senate Legal and Constitutional References Committee, *The road to a republic*, The Senate, Canberra, August 2004, p. 9.

41. A Henry, 'Another step in a republican direction', *New Matilda,* 10 September 2004, viewed 6 November 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F23QD6%22

42. Senate Legal and Constitutional References Committee, *The road to a republic*, op. cit., pp. 23–35.

Constitutional conventions

There appeared to be broad support for constitutional conventions, justified largely in terms of their educative and deliberative value. Questions on the timeframe for a convention, its location and whether it should be a fully-elected convocation were also considered important.[43]

Guiding constitutional change

The Committee received suggestions including an incrementalist approach, first codifying the powers of the Governor-General; or creating a Constitutional Commission with status similar to the High Court; or embarking on an extensive research exercise to identify other potential models.[44]

The functions and powers of the head of state

The evidence received by the Committee 'overwhelmingly supported the retention of a separate head of state'.[45] Also, it seemed that there was 'little general support in the Australian community for a combined head of state and head of government'.[46]

The role of the head of state was often expressed in terms of a 'symbol of national identity' and a promoter of unity and proper pride, while many favoured 'a largely ceremonial and non-executive role for a republican head of state'.[47]

As far as the powers of a republican head of state were concerned, 'the general consensus appeared to be that these should be similar to those … currently exercised by the Governor-General'.[48] Such 'ordinary powers', according to the general rule, may be 'exercised … only on the advice of responsible Ministers, but this rule is largely an unwritten constitutional convention'.[49] Several witnesses thought that this rule should be formalised and entrenched in the Constitution.[50]

The Governor-General's so-called 'reserve powers' may be exercised independently and include the power to:

- appoint and dismiss the Prime Minister (section 64 of the Constitution);

- refuse to dissolve Parliament (including a double dissolution under section 57 of the Constitution).[51]

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43. Ibid., pp. 35–39.
44. Ibid., pp. 41–45.
45. Ibid., p. 54.
46. Ibid.
47. Ibid., pp. 55–6.
48. Ibid., p. 56.
49. Ibid., p. 57.
50. Ibid., pp. 58–9.
51. Ibid.

Several witnesses emphasised the role of *circumstances* in relation to the exercise of the reserve powers, and there were differing views on the extent to which the reserve powers could or should be codified.[52] This also raised questions as to whether the exercise of the reserve powers could be reviewed by the High Court.[53] The prospect of a 'constitutional council' to guide the exercise of the reserve powers was also raised.[54]

There was a general consensus that 'it would be more important, if not vital, to clarify and codify the powers in the case of a directly elected head of state, or to provide some other mechanism to limit those powers'.[55]

Selection and removal of a head of state

The consensus view was that the head of state should be a citizen eligible to vote and not disqualified pursuant to provisions along the lines of those contained in section 44 of the Constitution.[56]

The Senate Committee believed that 'methods of selection can be broken down into two separate, but probably interdependent parts: nomination and short listing of candidates, then the actual selection of the head of state from these candidates'.[57]

There were numerous mechanisms proposed for nomination—from open nomination by any citizen to nomination by a joint parliamentary committee to nomination by petition secured by a threshold number of signatures.[58]

On the matter of electing a head of state, most of the evidence received by the Committee related to the following options for the final stage of the selection:

•   appointment by the Prime Minister;

•   appointment by Federal Parliament (for example, by a two-thirds majority of both Houses);

•   appointment by an elected 'presidential assembly' or 'electoral college';

•   direct election with parliamentary involvement; or

•   direct election.[59]

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52.   Ibid., pp. 63–4.
53.   Ibid., p. 65.
54.   Ibid., pp. 67–70.
55.   Ibid., p. 71.
56.   Ibid., pp. 75–80.
57.   Ibid., p. 84.
58.   Ibid., pp. 84–87.
59.   Ibid., p. 88.

Alternative models for a head of state

The Senate Committee described and analysed, but did not endorse any of the republican models that had been considered during and after the referendum process. The Committee did, however, present a few general observations arising from the evidence it received. In particular there seemed to be strong agreement that a focus on the *process* by which a model emerged should take precedence over a focus on specific models.[60] The Committee nevertheless explained, and explored the arguments for and against, numerous alternative models, from a minimalist approach, to direct election models, to various hybrid models.[61]

The Senate Committee's conclusions

The Committee's conclusions were predicated on its belief that 'the process of community involvement and consultation should be done in a considered and measured way, and that the time to begin preparing for that process is now'.[62]

The Committee made 24 recommendations, including:

• establishing a Parliamentary Joint Standing Committee on Constitutional Education and Awareness to oversee and facilitate education programs to improve the level of awareness and understanding of the Australian Constitution and promote engagement of the Australian people in on-going discussion of constitutional matters and developments [63]

• a three-stage consultative, non-binding process for moving towards an Australian republic, followed by a fourth stage of a Constitutional referendum to amend the Constitution, and that such a process be enshrined in legislation[64]

• the wording of the initial plebiscite question should enable Australians voting 'Yes' to cast that vote on the condition that a future plebiscite would be held, where the type of republic would be decided by a majority of Australians[65]

• that the *Referendum (Machinery Provisions) Act 1984* should be amended to allow the preparation and dissemination to voters of independent information, rather than partisan arguments for the 'Yes' and 'No' cases, and that such preparation be overseen by the proposed Parliamentary Joint Committee on Constitutional Education and Awareness.[66]

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60. Ibid., pp. 102–3.
61. Ibid., pp. 103–131.
62. Ibid., p. 133.
63. Ibid., p. 134.
64. Ibid., p. 137.
65. Ibid., p. 139. Note that a plebiscite is advisory and non-binding.
66. Ibid., p. 142.

The 2020 Summit and the republic

On 3 February 2008, the recently-elected Prime Minister Kevin Rudd announced that he would convene a Summit of 1 000 prominent Australians:

> The gathering, he declared, would discuss shared ambitions and capture ideas — both large and small—to shape into policy actions.[67]

According to its initial report, the 2020 Summit 'was designed to harness the best ideas from across the nation and apply them to the challenges before us, to create a better future for Australia'.[68]

The Summit was organised by theme, and 'The future of Australian governance' stream devoted considerable attention to the question of Australia becoming a republic. Its 'top idea' was to:

> 9.1 Introduce an Australian Republic via a two stage process:
>
> 9.1.1   Stage One: That a plebiscite be held on the principle that Australia becomes a republic and severs ties with the Crown.
>
> 9.1.2   Stage Two: This is to be followed by a referendum on the model of a republic after broad and extensive consultation.[69]

The word 'republic' had not appeared in the opening Summit address by Mr Rudd, but Home Affairs Minister Bob Debus urged participants to commit to a move towards a republic within two years:

> Delegates in the governance group originally agreed to a 12-year target but, when Mr Debus challenged them to commit to a shorter time frame, he was cheered and clapped. "I want us to say that we will proceed to a republic by 2010," Mr Debus said. Summiteers in the stream voted three to one to endorse the ambitious target.[70]

Mr Rudd had made it clear that he would not commit himself to any of the particular proposals emerging from the Summit, but 'promised to give all fair consideration and report back to participants by the end of the year':

> "I don't want to wake up one morning in the year 2020 with the regret of not having acted when I had the chance; that's why it's important to plan ahead," Mr Rudd said.

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67.   G Davis, 'One Big Conversation: The Australia 2020 Summit', The 2008 Garran Oration, *Australian Journal of Public Administration,* vol. 67, no. 4, p. 379, viewed 7 November 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22library%2Fjrnart%2FR9ES6%22

68.   Australia 2020 Summit, *Initial Summit Report,* April 2008, p. 1, viewed 6 November 2012, http://www.safecom.org.au/pdfs/2020summit-initial-report.pdf

69.   Australia 2020 Summit, *Final Report,* May 2008, p. 307, viewed 16 November 2012, http://pandora.nla.gov.au/pan/81461/20080610-0000/www.australia2020.gov.au/docs/final_report/2020_summit_report_9_governance.pdf

70.   K Walsh and L Hall, 'Republic, treaty and tax reform top the list', *Sydney Morning Herald*, 20 April 2008, viewed 6 November 2012, http://www.smh.com.au/news/national/republic-treaty-and-tax/2008/04/19/1208025546893.html

> "I don't want to have to explain to my kids, and perhaps their kids too, that we failed to act, that we avoided the tough decisions, that we failed to prepare Australia for its future challenges.
>
> "We can either take command of the future or we can sit back and allow the future to take command of us."[71]

While Mr Rudd had previously said that a republic was not high on his list of priorities he said that 'the summit push was "a big step forward"' and 'indicated that he would proceed cautiously to build the case for change':

> "We lost the last referendum 10 years ago," Mr Rudd said. "We don't want to lose the next one. So we'll be building this one up very carefully."[72]

The Summit's co-chair, Professor Glyn Davis, told *The Australian* newspaper that the Rudd Government 'would be taking a high political risk if it chose to ignore new ideas that emerged from the weekend's Australia 2020 summit' and that 'the measure of the summit was whether it produced new ideas and whether the government took them up'.[73]

At the time of the Summit, prominent constitutional lawyer and avowed republican, Professor Greg Craven, believed he had witnessed 'the most significant advancement for the republic's cause in a decade', and he told ABC Radio National that he held high hopes for the two stage process that had been endorsed:

> GREG CRAVEN: For the first time in nine years, we can actually see our way clear to a process that is highly likely at the end of the day to produce an Australian republic.
>
> LISA MILLAR: So talk me through this two-step approach that was agreed to on the weekend.
>
> GREG CRAVEN: Well we've finally got a process that puts the horse before the cart. Usually what we do is we run immediately to arguing about models and we never actually get to decide the head question of whether we want a republic.
>
> Now this is strikingly simple and it has two parts: first of all, a plebiscite or a poll on whether or not we want to be a republic, the head question - not legally binding, doesn't change the Constitution but determines what we want. And that gives an opportunity for all republicans, everybody who believes in a republic to be on the same side, and for the monarchists to have to argue the single thing they have to sell, the monarchy.
>
> Then, after we've resolved that question in our own minds, and only then, do we go to trying to work out what the model is, what sort of a republic we want.

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71. 'Kevin Rudd told to act on 2020 summit ideas', *The Australian,* 21 April 2008, viewed 7 November 2012, http://www.news.com.au/top-stories/rudd-told-to-act-on-2020-ideas/story-e6frfkp9-1111116116680
72. Ibid.
73. Ibid.

>Now that's a process we haven't had before. It's strikingly better than any process that's been put on the table, and it is no wonder the monarchists are so loudly and noisily frightened.[74]

But a year later another prominent republican, Greg Barns, expressed disappointment at what he saw as the low level of commitment to moving ahead with constitutional change:

>Kevin Rudd's 2020 Summit was a dud and those who participated have been taken for a ride by the Prime Minister. The Summit overwhelmingly endorsed what the majority of Australians have wanted for over a decade now, an Australian Head of State. But Mr Rudd cannot even commit himself to a modest and leisurely timetable for achieving this important constitutional and nation building reform. So much for the hype about the 2020 Summit being about thinking big and laterally about Australia.[75]

Another leading republican, Professor George Williams said early in 2009 that those who had participated in the Summit 'would feel let down if the Prime Minister does not hold a plebiscite on a republic by the end of 2010'.[76] Meanwhile, Malcolm Turnbull, former head of the ARM (and later Opposition Leader) said that a move would be premature, saying 'you have to get the time right to ask the question … the right time will be after the end of the Queen's reign'.[77]

The Government officially responded to the 2020 Summit Report in 2009. In his Foreword, Mr Rudd declared his Government remained 'strongly committed' to engaging with the Australian community and stated his 'strong belief that we must continue to talk about the future and be unafraid to engage in a robust conversation about the direction our country should take over the coming decades'.[78] The word 'republic', however, did not appear in his Foreword, nor in the published response. With respect to constitutional reform, the Government's response stated:

>The Government recognises the priority placed on constitutional reform by the community. The Government is committed to ongoing reform of our constitution where appropriate and will draw on the input of the Summit in thinking about future possible proposals for constitutional change.[79]

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74. G Craven, '2020 summit boosts republic cause', quoted on *ABC Radio National,* 21 April 2008, transcript of interview, ABC website, viewed 7 November 2012, http://www.abc.net.au/pm/content/2008/s2223413.htm
75. G Barns, 'An Australian head of state is what the people want', *Crikey,* 23 April 2009, viewed 6 November 2012, http://www.crikey.com.au/2009/04/23/an-australian-head-of-state-is-what-the-people-want/
76. M Grattan, 'Rudd reminded of 2020 Summit call on republic', *The Age,* 3 January 2009, viewed 7 November 2012, http://www.theage.com.au/national/rudd-reminded-of-2020-summit-call-on-republic-20090102-794p.html?skin=text-only
77. Ibid.
78. *Responding to the Australia 2020 Summit,* Department of Prime Minister and Cabinet, p. 1, viewed 16 November 2012, http://pandora.nla.gov.au/pan/81461/20110310-0438/www.australia2020.gov.au/docs/government_response/2020_summit_response_full.pdf
79. Ibid., p. 226.

The ALP's National Platform—determined by the delegates elected to the 45th National Conference held in Sydney, 30 July 2009 to 3 August 2009—declared the following commitments concerning the governance of Australia:

> 17. Labor believes that first and foremost our Constitution should reflect Australia's status as a parliamentary democracy and an independent nation.
>
> 18. Labor believes that the preamble to the Constitution should explicitly recognise Indigenous Australians and the core elements of Australia's history and democracy and appropriately expresses the values, aspirations and ideals of the Australian people.
>
> 19. Labor believes that modernising Australia's Constitution also entails a transition to an Australian Republic, with an Australian head of state, who can fully represent our traditions, values and aspirations as a nation.
>
> 20. Labor is committed to consulting with the Australian people, other political parties, the states and the territories as to the form that the Republic should take. Labor will promote community debate about the advantages and disadvantages of the various republican models.
>
> 21. Labor will conduct plebiscites to establish support for an Australian head of state and the preference for different forms of a Republic. When a preference has emerged Labor will initiate an appropriate referendum under section 128 of the Constitution.[80]

Bills proposing a plebiscite for an Australian republic

Following the defeat of the 1999 referendum, various private members' bills were introduced into parliament with a view to initiating a plebiscite on the question of whether Australia wished to become a republic.

The first of these was the Republic (Consultation of the People) Bill 2001, a private Senator's bill sponsored by Senator Natasha Stott Despoja. The bill provided for electors to be consulted by way of a plebiscite at the same time as a general election for the House of Representatives. The bill was explained as follows:

> With this Bill, the Australian Democrats are proposing to begin the process towards a second republic referendum with a plebiscite at a general election after 2001. The plebiscite would ask two questions. The first is: Do you want Australia to become a republic? The second is: If most Australians decide they want a republic, do you want the opportunity to choose from different republic models? [81]

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80. Australian Labor Party, 'National platform', 2009, viewed 6 March 2013, http://parlinfo/parlInfo/download/library/partypol/1642945/upload_binary/1642945.pdf;fileType=application%2Fpdf#search=%22Labor%20policy%22

81. Senator Natasha Stott Despoja, Second Reading Speech, Republic (Consultation of the People) Bill 2001, Senate, *Debates,* 26 September 2001, p. 27 983.

The bill remained on the Senate notice paper until 2010, but was never debated.

The Plebiscite for an Australian Republic Bill 2008 was introduced into the Senate by Australian Greens Senator Bob Brown on 11 November 2008 and was referred to the Senate Standing Committee on Finance and Public Administration for inquiry and report.

The Selection of Bills Committee stated of the reasons for the referral:

> The issue of Australia becoming a republic is an extremely important one for the Australian Parliament and public. It is important that the process by which this issue is progressed now has appropriate public input and is properly scrutinised and debated.[82]

The Plebiscite for an Australian Republic Bill 2008 provided for a plebiscite to be held to give the Australian people an opportunity to vote on whether Australia should be a republic. The bill set out one simple question: Do you support Australia becoming a republic? It required a simple yes or no response. It also specified that the plebiscite be held in conjunction with the next House of Representatives election.

The Senate Committee made no recommendation as to whether the bill should proceed, recommending only ongoing public engagement and education about Australia's constitutional arrangements.[83] In the event, the bill was not further debated, and lapsed with the calling of the 2010 Federal election.

Following the 2010 election, Senator Brown re-introduced it on 30 September 2010 as the Plebiscite for an Australian Republic Bill 2010.

In his second reading speech Senator Brown specifically raised the issue of costs of a plebiscite:

> The cost of conducting a referendum or plebiscite is significant and it is imperative that money spent on this produces a result that accurately reflects the desire of the majority of the electorate. There is a compelling financial argument for holding the plebiscite in conjunction with the next federal election.
>
> According to information from the Australian Electoral Commission and the Parliamentary Library, the 1999 referendum cost $66.8 million. The statistics section of the library calculates this at approximately $87.5 million in current (2008) dollar terms. The general federal election held in 1998 cost $61.7 million, suggesting that the cost of holding a discrete referendum or plebiscite is approximately the same as the cost of an election.
>
> When a referendum or plebiscite is held in conjunction with a general election, the cost is approximately one-eighth of the total cost. For example in 1984, the total cost of the

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82. Senate Finance and Public Administration Legislation Committee, *Plebiscite for an Australian Republic Bill 2008*, The Senate, Canberra, 2009, p. 1.
83. Ibid., pp. 35–6.

election was $31.7 million, with the referendum component of $4 million. The Statistics section of library calculates that amount at $8.9million in current terms.[84]

The bill remained on the Notice paper throughout the 43rd Parliament.

A decade of reflections on the referendum and a republic

Since 1999 several articles and books have been written about the referendum and more especially the potential emergence of an Australian republic—but very little has been written since the mid-2000s. The following is a selection of published works that address the issue.

The Australian National University's Professor John Uhr had been heavily involved in the preparation of the official *'Yes'* case for the referendum. *Making sense of the referendum* was a paper presented by him as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 22 October 1999—that is, a fortnight before the referendum took place.[85]

Uhr declared that his purpose in the lecture was 'to rise above the partisan fray and to focus on process as distinct from the substance of the referendum':[86]

> My theme is that the 1999 referendum will break the mould of Australian referendum practice and that future referendums will be more open and participative—but also less predictable and manageable by elected representatives than those of the past. So be warned: I take issue with the conventional wisdom among referendum experts that we are yet again facing a wrecked referendum—collision between voter misunderstanding and partisan misrepresentation. My story is one of hope and of the promise of more open community deliberation arising from this referendum.[87]

His optimism proved unwarranted. In other papers, published shortly after the referendum's spectacular, if unsurprising, failure, Uhr focused on strengths and limitations of the whole referendum process, including those supplementary mechanisms—such as the Constitutional Centenary Foundation—which were intended to inform and enhance the debate over constitutional change.

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84. Senator Bob Brown, 'Second reading speech: Plebiscite for an Australian republic bill 2010', Senate, *Debates,* 30 September 2010, p. 380, viewed 30 November 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber%2Fhansards%2F2010-09-30%2F0048%22

85. J Uhr, 'Making sense of the referendum', *Papers on Parliament No.35,*The Senate, Canberra, June 2000, viewed 6 December 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FEKU16%22 At the time, Professor Uhr was also involved in managing a major deliberative exercise involving a sample of 350 citizens who had assembled at Old Parliament House.

86. Ibid., p. 2.

87. Ibid.

In an article published in *Public Law Review* titled ['After the referendum: the future of Constitutional change'](#), Uhr described the 1999 referendum process as 'an experiment in process as well as form' [88] that:

> … tested to the limits existing approaches which, despite important modifications, still failed to give Australia a constitutional change process that measures up to the best standards of a "deliberative democracy", defined as a democracy striving to maximize reasoned public deliberation and to minimize partisan deception.[89]

Although 'far from perfect', the 1999 referendum was 'distinctive' and 'at least … broke the mould of conventional practice'.[90] But in Uhr's view, the new approach was still inadequate to the task of protecting the integrity of the debate and enabling effective public deliberation about such a significant and controversial constitutional change.

Uhr praised in particular the (underutilised) work of the Constitutional Centenary Foundation (CCF), which had been established in 1991 to educate and inform Australians about the many issues surrounding the centenary of Federation, not only the republic:

> Had the CCF been officially invited to play the role of honest broker, it might have done much to protect the integrity of the referendum debate. As the many referendum audits will soon reveal, the conventional referendum process has blown out the deliberative deficit to alarming proportions, making it urgent that Australia devise a less partisan process for constitutional deliberation.[91]

In yet another article, Uhr said that the referendum 'provided a valuable test of an established democracy's capacity to manage reasoned public deliberation over quite controversial proposals for regime change'.[92] He believed that 'the 1999 debate tested to the limits the Australian referendum routines', and that the success of any subsequent republic referendum 'will require a great shift by republican activists in the direction of a popular rather than parliamentary election of the president'.[93] He also expressed the view that Australian voters 'want to know more, not less, about change proposals'.[94]

Turning to what he described as 'dealing with the deliberative deficit' in Australia, Uhr noted the consensus on all sides that the 1999 referendum process was 'substantially flawed'.[95] His paper

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88. J Uhr, 'After the referendum: the future of Constitutional change', *Public Law Review,* vol. 2, no. 1, March 2000, p. 9, viewed 7 December 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F66I16%22 .

89. Ibid., p. 7.

90. Ibid., p. 9.

91. Ibid., p. 10.

92. J Uhr, 'Testing deliberative democracy: the 1999 Australian republic referendum', *Government and Opposition*, vol. 35, no. 2, 2000, p. 190, viewed 6 December 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FYGK16%22

93. Ibid., p. 91 and p. 194.

94. Ibid., p. 196.

95. Ibid., p. 206.

concluded with a plea to acknowledge the 'deeper set of tensions in the framework of constitutionalism in Australia' and to urge Australians to enhance their capacities for public deliberation by drawing on the theories and models developed by scholars of deliberative democracy, many of which have already proven very successful in their application to specific policy and political challenges.[96]

The 'tensions' in Australia's constitutional framework also exercised the mind of American scholar Alan J Ward, whose critique of the referendum focused on its enabling legislation, the Constitution Alteration (Establishment of Republic) Bill 1999. In Ward's view, the definition of the executive in proposed sections 59 and 64, namely:

> … a Federal Executive Council … chosen and summoned by the President …[that] shall hold office during the pleasure of the President. … The President shall act on … advice … but … may exercise a power that was a reserve power … in accordance with the constitutional conventions relating to the exercise of that power …

'would have been the oddest definition of the executive in any parliamentary constitution in the world'.[97]

Ward criticised the failure to spell out the reserve powers and the conventions, arguing that 'every parliamentary country with a modern constitution, and there are a great many, has committed the rules of parliamentary government to law very successfully, including the core Australian conventions'.[98] He finished with a stinging rebuke:

> I conclude from all this that the Australian constitutional debate, with its inability to codify an unnecessarily complex set of conventions, its addiction to reserve powers, and its distrust of politicians and democratic politics, is mired in the politics of the nineteenth century. Furthermore, it is parochial and often misinformed.
>
> Overseas precedents make clear that the core conventions of parliamentary government can be written into constitutional law and there is no universal appetite for reserve powers. That Australia's voters could not agree that the country should enter the twenty-first century as a republic may be cause for regret, but that those who drafted the proposed constitutional amendments could not redefine the executive in a modern way and allowed the Constitution Alteration (Establishment of Republic) bill, with its calculated constitutional incoherence, to go forward is more than simply regrettable. 'No' one should shed any tears that this bill went down with the republic on 6 November 1999.[99]

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96. Ibid., pp. 208–9.
97. A J Ward, 'Trapped in a Constitution: The Australian Republic Debate', *Australian Journal of Political Science*, vol. 35, no. 1, 2000, p. 118, viewed 11 December 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FWTE16%22
98. Ibid., pp. 119–20.
99. Ibid., p. 123.

In 2001, the Australian Republican Movement published <u>Six models for an Australian republic</u>.[100] In its introduction, the ARM posed two key questions (a) what sort of head of state do we want, and (b) should the powers of the president be codified. The ARM described the discussion about codification 'an important and valuable one', arguing that there was 'a strong case for codifying the conventions even in a minimal republic, just as there is a strong case for codifying the conventions today'.[101] In the models where the president is directly elected the ARM proposed a complete codification of the constitutional conventions and proposed the code set out in the Report of the Republic Advisory Committee in 1993.[102]

The six models included in the ARM list were:

1. The Prime Minister appoints the president as is currently done for Governor-General.
2. Parliament appoints the president from a publicly nominated shortlist, and the president is removed by the vote of the House of Representatives.
3. A 48-member, popularly-elected presidential assembly chooses a president from public nominations.
4. Direct, popular election of the president, with the president's powers being codified.
5. Nominations for the president are made by the people, with seven nominations being selected by a two-thirds majority of a parliamentary joint sitting, followed by a popular election of one of the seven candidates.
6. US-style Executive presidency involving a move away from a Westminster-style system.[103]

Also in 2001, Senator Andrew Murray commissioned a series of essays from seven notable contributors titled *Trusting the people: an elected president for an Australian republic.*[104] The essays drew on both constitutional history and contemporary politics to describe Australian republicanism and the issues leading to the 1999 referendum, as well as to explain its fate. In the final chapter, Senate Clerk Harry Evans opines that the Australian electorate has shown a 'sound, instinctive understanding' of the 'quintessential republican elements of popular sovereignty and safeguards against undue concentrations of power'.[105]

Evans acknowledges some people's fears that a directly elected president may prove a rival to the prime minister, or may seek to use a personal 'mandate' to exercise power improperly. But for Evans this problem 'is related to the lack of specification in the Constitution of the rules of cabinet

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100. 'Six models for an Australian republic', Australian Republican Movement, 2001, viewed 12 December 2012, <u>http://dpl/Books/2002/6ModelsAustRepublic.pdf</u> . See also G Winterton, 'Six republican models for Australia', *Public Law Review* , vol. 12, December 2001, viewed 12 December 2012, <u>http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FZMY56%22</u>

101. Ibid., p. 3.

102. Ibid.

103. Ibid., p. 4.

104. A Murray (ed.), *Trusting the people: an elected president for an Australian republic,* printed by Optima Press for Andrew Murray, 2001.

105. Ibid., p. 231.

government as it actually operates'.[106] Evans rejects the idea that the codification of powers is a lengthy, difficult and disputatious task, and sets out four provisions that he believes would achieve it:[107]

> These provisions are not novel. Most of them were contained in a bill to amend the Constitution which was passed by the Senate in 1982 but which was refused passage by the then government in the House of Representatives, the Constitution Alteration (Fixed Term Parliaments) Bill 1982.[108]

Evans discusses nomination, election and removal of a president, and how to handle a sudden presidential vacancy. The provisions he proposes 'would provide a truly republican republic'. [109]

Early in 2002 the republican issue was given an interesting twist with the eruption of a controversy embroiling the Governor-General Dr Peter Hollingworth, who was said to have failed to pursue allegations of sexual abuse by clergy in his former diocese. His eventual resignation in May 2003 sparked new calls for an overhaul of the way that the Governor-General is selected.[110]

In a 2002 article Stephen Mills, a former political staffer, reminded his readers that 'the republican reform project was not defeated for lack of words or time. The debate had run for nearly a decade, spanning three federal elections'.[111] Like Evans (and several other analysts) Mills nominated the method for selecting the president and the definition of the president's powers as 'crucial' problems.[112] Unlike Evans, however, Mills remained pessimistic, saying that direct electionists 'have done little to explain how in practice their rebalanced political structure would work – in particular, how the inevitable conflicts between executive and elected president would be resolved'.[113]

Professor John Warhurst has had a long association with the Australian Republican Movement and has been a senior office bearer. He provided an account of the past, present and future of the republican campaign at the Australasian Political Studies Association Conference in Hobart in 2003—an event held shortly after the Senate's resolution to establish an inquiry into the republican issue.[114]

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106. Ibid., p. 221.
107. Ibid., p. 22.
108. Ibid., p. 223
109. Ibid., p. 231.
110. M Wade and others, 'Unbending PM insists: I will make the choice again', *Sydney Morning Herald*¸ 27 May 2003, viewed 13 December 2012, http://www.smh.com.au/articles/2003/05/26/1053801339033.html
111. S Mills, 'The Australian republic; the failure of the minimalist model and the next steps forward', *Australian Journal of Public Administration,* vol. 61,no. 2, June 2002, p. 10, viewed 12 December 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F3OT66%22
112. Ibid., p. 11.
113. Ibid., p. 17.
114. J Warhurst. 'The republic campaign in Australia: past, present and future', paper presented to the Australasian Political Studies Association Conference, University of Tasmania, 29 Sept-1 October 2003, viewed 12 December 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FGOUA6%22

Warhurst opened his address by telling the audience 'just how rare chances for constitutional reform are and just how tough it is to achieve a second chance':[115]

> The word 'inevitable' should be cast out of the lexicon of all republicans. It is like a kiss of death.[116]

He noted a lack of republican consensus about both model and process; the divided views within the major parties; the disappointing Labor republican vote; and 'a combination of lack of bipartisanship, public ignorance and/or apathy, and the difficulty of achieving a double majority whatever the question'.[117] Warhurst also highlighted 'public distrust of politicians in particular and elites in general'.[118]

Warhurst explained that after the 1999 defeat, the ARM produced a new constitutional and organizational structure and a new national committee was elected in August 2000.[119] The aim was to 'grow the grass roots' and become 'inclusive of all republicans'. By September 2002 a 'sea change of sorts had occurred'.[120]

Warhurst noted that a comprehensive November 2002 *Newspoll* showed:

- a majority of Australians favour Australia becoming a republic (51 per cent to 35 per cent)

- an overwhelming majority still favour a president directly elected by the people if Australia does become a republic (79 per cent)

- 54 per cent think that another referendum should be held within five years and 77 per cent within 10 years.[121]

Warhust was hopeful that the recently announced Senate inquiry into the republic would give a substantial impetus to the republican debate.

The ARM also directed energy into preparing *Six preambles to a republican constitution of Australia,* a project that was launched at the Museum of Sydney on 8 June 2003. Six prominent Australian writers and thinkers offered individual statements reflecting their vision for Australia, its land and people:

> The Preamble Project began as a conversation between the writer James Bradley and other republicans about the need to provide some imaginative foundation for the ongoing debate about an Australian Republic. In the course of that conversation the idea was floated of inviting several writers to draft preambles to a republican Constitution as a way

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115. Ibid., p. 2.
116. Ibid., p. 3.
117. Ibid., pp. 3–5.
118. Ibid., pp. 5–6.
119. Ibid., p. 10.
120. Ibid., p. 11.
121. Ibid., p. 12.

of giving voice to some of the deeper impulses an Australian Republic might embody ... It must, in other words, tell us the story of who we are.[122]

In 2004, Curtin University's Professor Greg Craven published 'The developing role of the Governor-General: the goldenness of silence'.[123] Craven's arguments rest on three declared assumptions:

- Australia will remain a monarchy in the near to mid-term

- Australia will move in a 'leisurely' way towards becoming a republic

- When Australia becomes a republic 'it will enjoy substantially similar constitutional arrangements to those subsisting under the existing monarchy. By this is meant, chiefly, that the executive apparatus of the Commonwealth will continue to operate within a framework of parliamentary democracy, embodying a symbolic head of state - however chosen - and a politically powerful head of government'.

Craven noted that, from the 1980s, there had developed a notion that the Governor-General 'should take part in the fundamental public debates of the day, and perhaps that he or she should be a sort of public moral force in Australia'.[124] Craven warns of risks in such a development, arguing that:

> … the legitimacy of the Governor-General and his or her status as a figure of national unity depend critically upon the incumbent of that office maintaining an apolitical character. As soon as the Governor-General becomes 'political' he or she will lose that character, and become, in effect, merely another politician. Importantly, this will be relatively easy to do. Public statements on controversial topics upon which there are at least two strongly held views within the community inevitably will polarize views of the Governor-General concerned.[125]

Craven sees the potential for serious conflict between the head of state and the (parliamentary) executive, producing instability and also tending to result in the appointment of Governors-General who were 'congenial and attractive … [who] would support the relevant government positions' and 'propound government policy with seeming objectivity'.[126]

Craven concludes by stressing that the office of Governor-General does have 'a high constitutional dimension':

122. J Bradley and others, *Six preambles to a republican constitution of Australia,* Australian Republican Movement, viewed 12 December 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FUXW96%22 . Commentary on the preambles is also available at http://republicanfiction.blogspot.com.au/2009_08_07_archive.html

123. G Craven, 'The developing role of the Governor-General: the goldenness of silence', *Federal Law Review*, vol. 32, 2004, pp.281–290, viewed 13 December 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F7S7E6%22

124. Ibid., p. 286.

125. Ibid., p. 287.

126. Ibid., p. 287.

> Fundamentally, that dimension is to facilitate a separation between legitimacy and power within our constitutional system, so preventing a close identification between politicians and the state itself and its interests. This dimension is not easily consistent with an adventurous understanding of the office of Governor-General. It also is enormously important that, as Australia contemplates its future as a republic, this aspect of the Governor-General's role be translated intact to any future office of President.[127]

Australian republicanism: a reader, edited by Mark McKenna and Wayne Hudson, was published in late 2003.[128] It sought to 'transform the way Australians understand republicanism'.[129] The book assembles a host of original documents—essays, speeches, newspaper articles, parliamentary debates—to explore the history of the republican debate in an Australian context, and to 'provide a map of future possibilities and prospects for the debate'.[130] McKenna believes that it is 'not unfair to suggest that [the 'Yes' camp] campaigned for a republic without having any clear, coherent or sophisticated conception of what a republic might mean. Beyond the prospect of an Australian Head of State, there was no positive vision of change articulated by republicans'.[131]

McKenna argues for the conceiving of a republic in maximal, not minimal, terms that would involve substantive political reform to empower citizens and facilitate reconciliation with Indigenous Australians.[132] However, he finds 'no instructive or inspirational narrative that points clearly to the future direction of the republic'.[133] He distinguishes the 1990s republicans from their predecessors in that they strived to be apolitical and to 'isolate the republic from the political context in which they operated':[134]

> The republic was neither a ship of dreams nor a vessel of political reform. Instead it was reduced to a slogan—resident for President. Cast against the history of republicanism, contemporary republican philosophy can easily appear shallow.[135]

In 2004 McKenna also published *This country: a reconciled republic?* in which he elaborated his views that, if a republic is to be a 'genuine re-founding of our nation, then the constitutional position of Aboriginal people is its starting point, not the residential address of our head of state'.[136]

The year 2004 appears to have raised the profile of the republic issue, most likely in the wake of the Senate's resolution to establish an inquiry into the matter.

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127. Ibid., p. 290.
128. M McKenna and W Hudson, *Australian republicanism: a reader*, Melbourne University Press, 2003.
129. Ibid., p. 1.
130. Ibid., p. 2.
131. Ibid., p. 2.
132. Ibid., pp. 8–9.
133. Ibid., p. 273.
134. Ibid., p. 274.
135. Ibid.
136. M McKenna, *This country: a reconciled republic?*, UNSW Press, 2004, pp. 7–8.

In October 2004, under the leadership of Mark Latham, the ALP issued 'Labor's plan for an Australian republic'. It stated that:

- the push for a republic will not succeed if shaped by politicians, journalists and academics alone—it must be much broader

- we will hold a plebiscite to ask the simple question along the lines of — "do you want a republic with an Australian head of state?" If the public say no, the debate is dead. If they say yes, we will hold a 2nd plebiscite on the type of republic that Australians want — giving people options to choose from.[137]

In an opinion piece responding to Latham's initiative, the academics Peter van Onselen and Wayne Errington argued that popular appointment 'represents the only realistic chance of a republic in the foreseeable future', and they commended a mechanism whereby 'the Prime Minister would put forward a single candidate for president, and the people would approve (or reject) the choice. This proposal represents an elegant compromise between popular sovereignty and parliamentary government'.[138] They also suggested that the ARM was hostile to a direct election approach.

The ARM was quick to deny those suggestions, saying that three of the six models it had put forward in 2001 involved direct election.[139] The ARM shared some common ground with Latham's views, as was evident from its submission to the 2004 Senate inquiry:

> The ARM advocates a three-plebiscite process: first, a plebiscite on the threshold question of whether Australia should become a republic; a second plebiscite asking Australians their preferred model and a third asking Australians to choose the title of the Head of State. A fully elected Convention would then draft the model, according to the plebiscite results, to be put to the Australian people in a referendum.[140]

In *The Sydney Papers* (Summer 2005) the constitutional academic Cheryl Saunders stated her belief that 'the Australian debate on a republic has been unnecessarily complicated by smart arguments and slick points on both sides, and that the time has come for straight talking, which neither exaggerates nor understates the issues and options'.[141] The title of her paper 'Common sense' was a

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137. T Gartrell, 'Labor's plan for an Australian republic', policy statement (not dated) Australian Labor Party, viewed 14 December 2012,
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fpartypol%2FW58L6%22

138. P van Onselen and W Errington, 'Popular appointment versus popular election: a solution to the republican impasse?', *Online Opinion*, 13 May 2004, viewed 14 December 2012,
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F6EKC6%22

139. R Fidler and A Henry, 'Focus on the consultative process, not particular republican models', *Online Opinion*, 4 June 2004, viewed 14 December 2012,
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FPNRC6%22

140. Ibid.

141. C Saunders, '*Common Sense*—in relation to the Constitution', *The Sydney Papers*, Summer 2005, p. 97, viewed 14 December 2012,
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22library%2Fjrnart%2F7XXF6%22

reference to the famous pamphlet by the American revolutionary Thomas Paine, aspects of which she believed had some relevance to Australia's republican dilemmas.

Saunders concerns herself with three main issues— the preamble to the Constitution, the removal of spent clauses, and whether the Constitution would be easier to understand if it were written in 'plain language'.[142] She discerns several problematic features that do not suit a contemporary Australia:

• the Constitution was and in form remains a section of an Act of the British Parliament

• the Constitution entrenches the position of Monarch and her representative in the Commonwealth, the Governor-General

• the Constitution makes no provision for the status of Australian 'citizen', and

• the institutions of executive government are described in the Constitution in a manner that is brief and opaque.[143]

Saunders regards the removal of some of the spent clauses in the Constitution to be 'potentially more controversial than might appear at first sight'.[144] She argues, however, that the exercise would be 'an opportunity to consider whether the Constitution should recognise the status of Australian citizen and identify and protect citizenship rights, as an acknowledgement of the source from which Australian government derives its legitimacy: the acquiescence of the Australian people themselves'.[145]

Saunders disapproves of the minimalist model of a republic, preferring either an election of the head of state by elected representatives, or by direct election—although she regards direct election as 'unduly cumbersome for an office that is essentially formal in character'.[146]

Saunders sees merit in including the following features in any republican model:

• both the Commonwealth and the States break their links with the Crown at the same time

• recognition in the design of the model of the fact that Australia is a federation, and that the President will play a national rather than a purely Commonwealth role

• specified grounds for the early removal of a President, and a dignified procedure for so doing

• a statement in the Constitution of the powers of the President and whether they are discretionary or required to be exercised on government advice

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142. Ibid., p. 98.
143. Ibid., pp. 98–9.
144. Ibid., p. 100.
145. Ibid., p. 101.
146. Ibid., p. 102.

- affirmation of the Australian people as the source from which the Constitution draws its legitimacy, to mark the symbolic passing of sovereignty from the Crown.[147]

In February 2005, coincidentally during the week of a visit to Australia by Prince Philip, the then National Director of the ARM, Allison Henry, addressed The Sydney Institute on the topic 'An Australian Head of State: where are we at?'[148]

Noting that the term 'head of state' does not appear in the Australian Constitution, nor in any state's constitution[149], Henry cites the advice of the Constitutional Centenary Foundation that the Queen is Australia's head of state and a head of state 'represents the country as a whole, especially when visiting overseas countries. In some countries, the same person is both head of state and leader of the government. In others, including Australia, there is a separate head of state'.[150] Henry also notes that, under section 2 of the Constitution, the Governor-General is the Queen's 'representative in the Commonwealth', holding office during her 'pleasure', and is someone to whom no oaths of allegiance are made by any member of Parliament or official. Thus, Henry contends, 'the Governor-General cannot possibly be the role at the top of our constitutional system, our Head of State'.[151]

Henry supports the establishment of 'a fully resourced parliamentary committee … to oversee and facilitate education programs on constitutional matters'.[152] She acknowledged that republican infighting was 'one of the most significant causes for our defeat in the 1999 campaign'[153] but says that the ARM has 'taken this lesson to heart' and embarked on extensive collaboration with 'republicans of all hues'.[154]

The conservative publication *Quadrant* devoted a three-page editorial to the republic in May 2005.[155] Strongly opposed to those it called 'the fanatics of the Australian Republican Movement', *Quadrant* equates the executive with 'the Crown', but nevertheless considers that the republican issue will remain a live one, that the preference for a popularly elected president will persist, and that it is perfectly feasible to carry out 'some redesign of our system' to constrain a president who might seek to abuse his or her position.[156] The problem is posed as essentially one of how to have an elected president who, despite a popular mandate, will be 'sufficiently constrained'.[157]

147. Ibid., pp. 102–3.
148. A Henry, 'An Australian head of state: where are we at?', *The Sydney Papers,* Autumn 2005, viewed 14 December 2012,
    http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F834H6%22
149. Ibid., p. 22.
150. Ibid.
151. Ibid., p. 23.
152. Ibid., p. 29.
153. Ibid., p. 31.
154. Ibid.
155. 'What kind of republic?', editorial, *Quadrant,* May 2005, viewed 14 December 2012,
    http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22library%2Fjrnart%2FHHZYF6%22
156. Ibid., p. 3.
157. Ibid.

After the Senate Committee's 2004 *Road to a republic* report, little was published about republican matters until Glenn Patmore sought to revive debate with *Choosing the Republic* in 2009.[158] Drawing on interviews with a range of people who had been prominent in the republic debate, Patmore called for 'renewed political, legal and policy debates' and offered 'a straightforward guide to republican reform for the general public'.[159]

Patmore traverses the familiar grounds of constitutionalism, popular sovereignty, ways of choosing a head of state, the powers of the head of state, and how to preserve political stability. He highlights the tensions involved in achieving both participation and neutrality in electoral processes, and affirms the absolute necessity of bipartisanship by political leaders if the transition to a republic is to be achieved:

> They ought to agree on a framework for the development of a viable proposal for a republic. The framework should allow time for widespread public consultation and education, and eventually a referendum, and permit productive disagreement even between the political leaders over the desirability of various models. But ultimately the framework should allow the leaders to reach an agreement to support the referendum proposal.[160]

As 2012 drew to its close, an opinion piece by the republican and former Queensland premier, Peter Beattie, captured the essence of the republican state of play. Under the headline 'So long as the Queen reigns, an Australian republic is on ice', Beattie opined:

> Strong republicans like me bow in the face of the Queen's charm and ability to win the hearts of those she meets; I fully understand how difficult it is to convince Australians to vote to amend our Constitution while the Queen is so popular. Her standing in the eyes of Australians has firmly sidelined the republican debate.
>
> …
>
> As Prince William and the Duchess of Cambridge capture the imagination of another generation of Australians, the British government has now moved to modernise the monarchy by recognising female heirs' line to the throne.
>
> …
>
> In my view, Australians are not going to trust politicians to appoint the president; they want to have a say. Those who argue otherwise misjudge the Australian psyche.
>
> In January 2006, Labor legend Gough Whitlam wrote to me following similar comments in my book Making a Difference, saying "I now agree with you that Australians will only vote for a republic if they can elect the president. I make two suggestions to you. The rights and duties of the president must be set out in the Constitution, as they are in the constitution

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158. G Patmore, *Choosing the republic*, UNSW Press, 2009.

159. Ibid., p. 3.

160. Ibid., p. 205.

of Ireland. The head of state could still be called the governor-general; as the USA shows, governor can be a republican term and need not be a monarchist term."

It makes sense to have a two-stage process on the way to a republic. The first step is to ask Australians if they want a republic. If they do, step two puts the models to choose from in a referendum.

In reality, there are only two real choices for an Australian republic: the direct election of the president, as in the Irish model, or the governor-general simply appointed as president by federal parliament.[161]

The republic debate from 2013

On 31 January 2013, the ARM held a Q&A-style youth forum at Victoria University on the theme 'Our identity, our community, our place in the world in 20 years time'.[162] It featured ARM National Director David Morris and young leaders from various organisations: Foundation for Young Australians, Australian Young Labor, Institute of Public Affairs, Australian Youth Forum, Our Say and the National Indigenous Youth Leadership Academy.

On the eve of Australia Day 2013, the Deputy Prime Minister (Wayne Swan) published an opinion piece in which he used the analogy of Test cricket encounters between Australia and England to urge a hastening of an Australian republic, 'even if it has fallen from the national agenda over the past decade'.[163] Speaking on ABC radio, Mr Swan said he wrote the piece to 're-energise' the discussion about becoming a republic:[164]

> I want to see a very respectful conversation about a future Australian republic in the years ahead, but I don't think it's something that's going to happen anytime soon. I, as a life-long republican, don't believe in inherited privilege.[165]

Malcolm Turnbull, a former leader of the ARM, criticised Swan's contribution as 'a Pom-bashing, anti-British, anti-English, let alone anti-Royal family type of argument', saying that:[166]

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161. P Beattie, 'So long as the Queen reigns, an Australian republic is on ice', *The Australian,* 17 November 2012, viewed 18 December 2012, http://www.theaustralian.com.au/national-affairs/opinion/so-long-as-she-reigns-the-republics-on-ice/story-e6frgd0x-1226517741078

162. ARM, *Our Australia 2033,* website, viewed 7 February 2013, http://www.ouridentity.org.au/node/859

163. W Swan (Deputy Prime Minister), 'Forged in fair play - 80 years on from bodyline', press release, 25 January 2013, viewed 6 February 2013, http://www.treasurer.gov.au/wmsDisplayDocs.aspx?doc=pressreleases/2013/005.htm&pageID=003&min=wms&Year=&DocType=0

164. S Cullen, 'Wayne Swan reignites republic debate', *ABC News,* 25 January 2013, website, viewed 6 February 2013, http://www.abc.net.au/news/2013-01-25/swan-reignites-republic-debate/4483868

165. W Swan, quoted on *ABC News,* op. cit.

166. M Turnbull, quoted on ABC News, op. cit.

> It has to be a thoroughly pro-Australian argument. It's about saying: we rejoice in and revel in and love this country so much, and respect and love our fellow countrymen and women so much, that only one of them is good enough to be our head of state.[167]

Greens leader Christine Milne endorsed a revival of the republic debate, saying her party looked forward to advancing the discussion, and suggested that 'if Mr Turnbull is committed to an Australian republic he should talk to his leader about changing their policy'.[168]

Australia Day 2013 also saw the launch of the Australian Sporting Flag by Ausflag, an organisation seeking to secure the popular support of the Australian people for the adoption of 'a truly Australian flag'.[169]

The prominent BBC foreign correspondent Nick Bryant penned an op-ed that called for a prime ministerial speech 'offering a clearer and more impassioned expression of where the country stands and where is it going. An occasion, absent the pomp, religiosity and grandiloquence of the [US] inaugural, focused not so much on national renewal as national definition'.[170] He continued:

> Australia Day has also had to contend with Anzac revivalism and the sense that the commemorations of April 25 serve as a more rightful - and righteous - national day. But Anzac Day has its drawbacks, too. It illuminates the past rather than animating the future, and nurtures what the historian James Curran calls "sentimental nationalism" as opposed to something more dynamic. For many older Australians, Anzac Day helps maintain the link with an essentially Anglo-Australia at a time of disorientating change. Its appeal for the young, who flock to Gallipoli in such huge numbers, is more intriguing.
>
> One explanation is that the commemorations have come to fill a vacuum: the void left by the failure to define Australia in a less maudlin, sepia-tinted or mateship-orientated manner. Put another way, whereas for older generations Anzac Day has become a firm anchor, for the young it shows their sense of national identity to be somewhat adrift.[171]

Former WA Premier—now chair of ARM—Geoff Gallop, joined the post-Australia Day debate with an opinion piece titled 'Let's plan for a plebiscite on the republic'.[172] He argued that:

> Last time around, the people weren't asked whether they wanted a republic but rather whether they wanted a particular proposal that had emerged from a convention which captured the nation's attention and interest at the time, but which lacked the authority to

167. Ibid.

168. J Swan, 'Swan calls for new republic debate', *theage.com.au,* 25 January 2013, viewed 7 February 2013, http://www.theage.com.au/opinion/political-news/swan-calls-for-new-republic-debate-20130124-2d9tj.html

169. *AUSFLAG,* 'Ausflag launches the Australian Sporting Flag', media release, 25 January 2013, viewed 7 February 2013, http://www.ausflag.com.au/MediaAlert_Jan2013.asp

170. N Bryant, 'Vision thing needs some American oomph', *The Australian*, 26 January 2013, website, viewed 6 February 2013, http://www.theaustralian.com.au/opinion/vision-thing-needs-some-american-oomph/story-e6frg6zo-1226562145688

171. Ibid.

172. G Gallop, ''Let's plan for a plebiscite on the republic', *WAtoday.com.au*, 29 January 2013, viewed 7 February 2013, http://www.watoday.com.au/opinion/lets-plan-for-a-plebiscite-on-the-republic-20130129-2di2c.html

lock in all the participants to its conclusions. Indeed both the Prime Minister on the one side and prominent republicans on the other campaigned for a no vote despite what the convention had concluded.

It was a recipe for defeat and this is what happened, despite the strong effort put in by supporters of change. It follows that what the republicans want from their parliamentary supporters today is not a commitment to a fast-tracked referendum but rather to a plebiscite and in a way and with a timetable that allows for proper debate on the question. Indeed a timetable for a plebiscite would focus our attention and create the conditions for all sides to have their say. It is the best way to re-ignite and facilitate a meaningful debate within the community on Australia and its future.[173]

Australian lawyer Cal Viney focused on questions of sovereignty in a piece he penned for *New Matilda.* Noting that 'we have more "liberty" from the monarchy now than at any other time in our history'—and that in legal and cultural terms 'Australia has already repatriated about as much sovereignty as it can without becoming a republic'—Viney argued for a republican referendum as an exercise of Australia's 'social contract':[174]

While I strongly support an Australian republic, and cannot stand the idea of our Constitution existing in a section of an Act of the UK Parliament, without the pervading sense of a loss of sovereignty to another power (whether it be a state, regional or institutional power), the republican dream is hardly likely to strike the populist chord required to win a double majority in an Australian referendum.

Indeed, the true republican challenge is to convince Australians of the need to explicitly renew the social contract; in essence, to explicitly formalise an already implied view of Australia as a truly sovereign, independent nation already free from the vestiges of a colonial past.[175]

In an overview of the current republican debate also published in *New Matilda* on 1 February 2013, journalist Adam Brereton drew the following conclusion:

It's hard to say whether the ARM's reframing of the debate can succeed, but it is already having an effect on how the republic is conceived. One wonders what effect an Australian head of state would have on issues like public education, Indigenous health and reducing carbon emissions …

[The 2013 ARM Youth Forum articulated] a vision of a republic where nobody is excluded and nobody loses. Could such a model defeat the resentment that surrounded the failed referendum of 1999, or bridge the divide between city and country? …

By reframing the republic debate as an issue of personal identity, and using the language and tools of advertising, the ARM, Ausflag and the like are attempting to avoid conflict

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173. Ibid.
174. C Viney, 'The monarchy—Are we in or out?', *New Matilda,* 31 January 2013, viewed 7 February 2013, http://newmatilda.com/2013/01/31/monarchy-are-we-or-out
175. Ibid.

altogether—with both the royals and local critics. By trying hard to please everybody, the new republican movement may end up pleasing nobody.[176]

At least since 2010, Prime Minister Gillard has consistently taken the position that, while she is pro-republican, she does not regard the issue as a priority, and that further moves should wait until Queen Elizabeth is no longer on the throne.[177]

Treasurer Wayne Swan revisited the republican theme in an address on 1 March 2013.[178] He said that it was 'absurd' that an Australian could not be the nation's head of state:

> "I'm well-versed in the counter argument 'if it ain't broke, don't fix it'," Mr Swan told the Mick Young Scholarship Trust dinner in Sydney on Friday. "I must say, the longer I'm in public life, the more that simplistic idea jars with me. Because the fact is, by any credible yardstick, it is broken."
>
> …
>
> "So I do think the time has come that we renew a respectful national conversation about us moving to become an Australian republic."
>
> He said he understood the issue - which was voted down in a referendum in November 1999 - was not on the minds of Australian families and would not be solved overnight. "But after a long decade of inertia on this matter, I do believe the time has come to revisit our relationship with Britain on the cusp of the Asian Century," Mr Swan said.
>
> "It's unfinished business that we must have the courage to complete."[179]

In April 2013 it was reported that Malcolm Turnbull was to be a speaker—along with ARM President Geoff Gallop—at an ARM fundraising dinner in Sydney on 10 May 2013.[180] Prominent monarchist and ACM convenor Professor David Flint retorted: 'Why has Malcolm Turnbull decided to demonstrate to the world that the frontbench is divided on the fundamental question of a politicians' republic?'.[181]

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176. A Brereton, 'Rebranding the nation', *New Matilda,* 1 February 2013, viewed 7 February 2013, http://newmatilda.com/2013/02/01/rebranding-nation

177. J Saulwick, 'Once Queen goes, let's have a republic: Gillard', *The Age*, 17 August 2010, website, viewed 6 February 2013, http://www.theage.com.au/federal-election/the-leaders/once-queen-goes-lets-have-a-republic-gillard-20100817-127ef.html

178. P Osborne, 'Swan appeals for new republic debate', *the west.com.au*, 1 March 2013, viewed 11 April 2013, http://au.news.yahoo.com/thewest/a/-/national/16279019/swan-appeals-for-new-republic-debate/

179. Ibid.

180. M Steketee, 'Turnbull gets back on republican bandwagon', *brisbanetimes.com.au,* 6 April 2013, viewed

181. Ibid.

Conclusion

The February 2013 announcement by Prime Minister Gillard that a Federal election was scheduled for September 2013 removed any likelihood that debate on the republic would emerge more forcefully into Australian politics. The outcome of the 2013 election will likely have a considerable effect on whether the prospects of progress towards a republic are diminished or remain at their current tepid level. A Liberal government under the staunchly monarchist Tony Abbott would almost certainly preclude any official action being taken towards a republican Australia. Whether a Labor government would revive a republican agenda seems unlikely.

It seems clear—from the various polls and remarks by key politicians canvassed above—that any agitation for an Australian republic is extremely unlikely to occur until after the death or departure of the current monarch, Queen Elizabeth II.

Should an Australian republic once more find its way into citizens' consciousness and politicians' priorities, the lessons of the 1999 failed referendum would need to have been heeded well in order to achieve a successful process of sound education, wide consultation and enlightened debate sufficient to enable the transition to a republic to be realised. A very clear articulation of what is meant by the term 'republic' in an Australian context—its values, aspirations and institutional apparatus—and indeed a widely understood and broadly embraced narrative of an Australian republic seems to be required.

As long as there remains an absence of bipartisan commitment to achieving an Australian republic, the prospects of its being realised will remain close to zero.

Appendix A: Republic Model B (the model put to the 1999 referendum)

The Head of State is to be known as the 'President'.

Qualifications

Qualified and capable of being chosen as a member of the House of Representatives. The President must not be a member of an Australian parliament or a member of a political party.

A person with dual nationality would have to take all reasonable steps to renounce that other nationality.

Appointment

The Prime Minister would be required to consider the report of a 32-person committee on nominations for appointment before putting forward a nomination:

> 16 of the committee to be appointed from the community by the Prime Minister and 16 drawn from the nine state, territory and federal parliaments.

> the committee would invite public nominations before reporting to the Prime Minister with a shortlist.

The Prime Minister would present a single nomination seconded by the Leader of the Opposition. The nomination would need to be affirmed by a two-thirds majority of Members and Senators at a joint sitting.

Term of office

Five years. A person could serve more than one term. If the position of President were to fall vacant the longest-serving State Governor 'available' would act as President. The amendment also provided for the President or the Parliament to appoint deputies and for their acting as President.

Powers

The power to govern was to be vested in the President. However, the Federal Executive Council was to advise the President, who would be required to act according to the advice of the Executive Council, the Prime Minister or 'another Minister of State'.

The amendment also recognised that the President might independently use a power which was formerly 'a reserve power of the Governor-General'. It stipulated that any use of such a reserve power must be done in accordance with the constitutional conventions relating to the exercise of that power.

Removal

The Prime Minister could remove the President with instant effect by an instrument signed by the PM. The Prime Minister would have to seek the approval of the House of Representatives within 30

days unless an election were to be called. If a majority of the House refused to approve the Prime Minister's action the President would not be reinstated.

Appendix B: Public opinion concerning an Australian republic

In August 2001 the Melbourne Institute of Applied Economic and Social Research published a post-referendum analysis of public opinion regarding the republic. It found:

- the referendum's failure produced no backlash against the republican idea, with 62 per cent of people still in favour

- age has no effect, although gender has a 'small significant effect with men being a little more in favour'

- highly educated people 'are a little keener on a republic than are early school leavers'

- Australian national identity 'is not strongly implicated in supporting or opposing a republic'

- anti-British feeling 'is the single most important source of support for a republic' and 'is more than twice as important as any other variable'.[182]

In a *Newspoll* published 6 January 2004, 57 per cent of respondents wanted a new referendum to decide whether Australia should become a republic.

Voters' opinions about Australia's constitutional status as a republic or a constitutional monarchy continued to shift as the years progressed. In mid-2012, the Morgan Poll reported:

- As celebrations take place in the United Kingdom to mark Queen Elizabeth's Diamond Jubilee (60 years since her coronation) a clear majority of Australians (58%, up 6% since October 2011) want the Australia to remain a Monarchy — this is the highest since the bicentennial in 1988 — while only 35% (down 2%) now want a Republic with an elected President.

- Now more Australians (48%) also support Australia remaining as a Monarchy when Prince Charles ascends to the throne compared to 43% that would then favour a Republic and Australians are even stronger supporters of the Monarchy. If Prince William were to be crowned King instead — 58% favour the Monarchy under a future King William compared to 34% that would favour a Republic under that scenario. [183]

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182. 'Public opinion on an Australian republic: changes since the 1999 referendum', *Australian Social Monitor,* vol. 4, no. 2, August 2000 ,Melbourne Institute of Applied Economic and Social Research, pp. 41–43, viewed 11 December 2012, http://parlinfo.aph.gov.au/parlInfo/download/library/jrnart/PIZ46/upload_binary/piz469.pdf;fileType=application%2Fpdf#search=%22library/jrnart/PIZ46%22

183. G Morgan, 'Increased majority of Australians support monarchy (58%) during Queen's Jubilee celebrations. Republic support falls to 35%', Finding 4788, Morgan Poll, June 2012, viewed 5 November 2012, http://www.roymorgan.com/news/polls/2012/4788/

Q1. Should Australia remain a Monarchy?

All Australians aged 14 and over were asked: *"In your opinion, should Australia remain a MONARCHY – or become a REPUBLIC with an elected President?"*

	Total Respondents													
	Jun 1953*	Oct 1969*	Dec 1975	Apr 1977	Aug 1981	Jan 1983	Jan 1984	Jul 1988	Jul 1991	Mar 1992	Apr 1993	Dec 1993	Nov 1994	Jul 1995
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Monarchy	77	64	61	62	59	60	62	64	56	49	38	48	40	39
Republic	15	24	28	26	28	28	30	29	36	44	52	44	50	49
Undecided	8	12	11	12	13	12	8	7	8	7	10	8	10	12
TOTAL	100	100	100	100	100	100	100	100	100	100	100	100	100	100

*Electors 18+.

	Total Respondents												Electors
	Jun 1996	Sep 1997	Dec 1997	Feb 1998	Nov 1999	Apr 2000	Feb 2005	May 2008	Nov 2010	May 2011	Oct 2011	June 5/6, 2012	June 5/6, 2012
	%	%	%	%	%	%	%	%	%	%	%	%	%
Monarchy	42	37	38	37	38	39	40	42	48	55	52	58	60
Republic	47	53	51	52	54	49	51	45	42	34	37	35	34
Undecided	11	10	11	11	8	12	9	13	10	11	11	7	6
TOTAL	100	100	100	100	100	100	100	100	100	100	100	100	100

	Total Electors								Analysis by State					
	Nov 1999	Apr 2000	Feb 2005	May 2008	Nov 2010	May 2011	Oct 2011	June 5/6, 2012	NSW	VIC	QLD	SA	WA	TAS
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Monarchy	39	40	40	42	48	55	51	60	59	60	61	48	59	68
Republic	54	49	52	46	42	35	39	34	35	32	32	43	30	32
Undecided	7	11	8	12	10	10	10	6	6	8	7	9	11	-
TOTAL	100	100	100	100	100	100	100	100	100	100	100	100	100	100

	Total Electors					Electors by Party Voting Intention					
	May 2008	Nov 2010	May 2011	Oct 2011	June 5/6, 2012	Electors	ALP	L-NP	Greens	Others	Can't say
	%	%	%	%	%	%	%	%	%	%	%
Monarchy	33	47	55	51	60	60	47	72	43	57	36
Republic	56	42	34	39	34	34	48	23	55	26	40
Undecided	11	11	11	10	6	6	5	5	2	17	24
TOTAL	100	100	100	100	100	100	100	100	100	100	100

Source: Finding 4788, Morgan Poll, June 2012, viewed 5 November 2012,
http://www.roymorgan.com/news/polls/2012/4788/

Appendix C: Chronology of events leading to 1999 referendum

3—5 April 1991

Constitutional Centenary Conference, Sydney and subsequent establishment of the Constitutional Centenary Foundation to encourage public discussion, understanding and review of the Constitution in the lead up to the centenary of federation in 2001

7 July 1991

Australian Republican Movement launched, Sydney

4 June 1992

Australians for Constitutional Monarchy first public meeting, Sydney

28 April 1993

Republic Advisory Committee established

5 October 1993

Republic Advisory Committee reports

7 June 1995

Paul Keating commits his government to a republic by 2001

8 June 1995

John Howard proposes a People's Convention

26 March 1997

Constitution Convention (Election) Bill second reading

3 November—9 December 1997

Voting for Elected Delegates to Constitutional Convention

29—30 January 1998

Women's Constitutional Convention, Canberra

2—13 February 1998

Constitutional Convention meets in Canberra

19 February1999

'Yes' and 'No' campaign teams announced

9 March 1999

Release of Exposure Drafts of the Constitutional Alteration (Establishment of Republic) Bill 1999 and of the Presidential Nominations Committee Bill 1999

6 November 1999

Referendum

This chronology is drawn from a comprehensive account of the history of the lead-up to the referendum, the Parliamentary Library publication *From Constitutional Convention to Republic Referendum: A Guide to the Processes, the Issues and the Participants* by Professor John Warhurst.[184]

The wording of the referendum questions was the prerogative of the Federal Government. The 1999 referendum was announced on 12 August 1999 in a joint statement by the Commonwealth Attorney-General (Daryl Williams MP) and the Special Minister of State (Senator Chris Ellison).[185] They announced that two proposed constitutional changes would be put to the direct vote of Australian electors:

• whether Australian voters approved the proposal to establish Australia as a republic and

• whether they approved the proposal to insert a preamble in the Constitution.[186]

Republic Question

The question on the republic put to electors at the 1999 referendum was whether they approved of:

A proposed law:

To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament.

Preamble question

Electors were also asked to vote on a second question at the 1999 referendum which asked whether they approved of:

A proposed law:

To alter the Constitution to insert a preamble.[187]

184. J Warhurst, *From Constitutional Convention to Republic Referendum: A Guide to the Processes, the Issues and the Participants,* Research Paper No. 25, 1998–9, viewed 2 November 2012,
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2FN0C06%22

185. '1999 Referendum', Australian Electoral Commission, website, viewed 2 November 2012,
http://www.aec.gov.au/Elections/referendums/1999_Referendum_Reports_Statistics/1999.htm

186. Ibid.

187. Ibid. A preamble had been officially commissioned from Australia's renowned poet Les Murray.
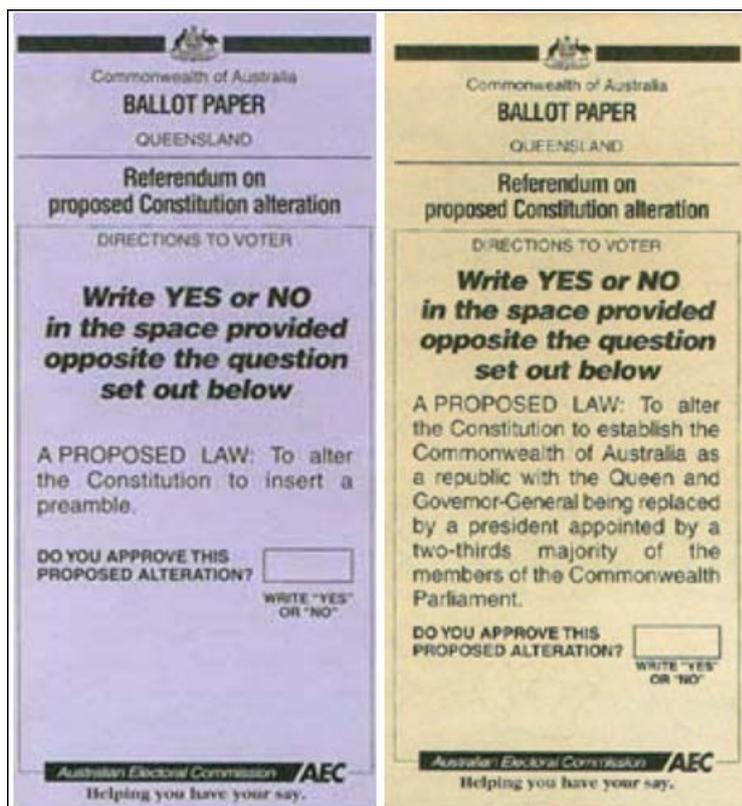
Appendix D: Preamble for the Constitution (Les Murray)

With hope in God, the Commonwealth of Australia is constituted as a democracy with a federal system of government to serve the common good.

We, the Australian people, commit ourselves to this constitution

- proud that our national unity has been forged by Australians from many ancestries

- never forgetting the sacrifices of all who have defended our country and our liberty in time of war

- upholding freedom, tolerance, individual dignity and the rule of law

- honouring Aborigines and Torres Strait Islanders, the nation's first people, for their deep kinship with their lands and for their ancient and continuing cultures which enrich the life of our country

- recognising the nation-building contribution of generations of immigrants

- mindful of our responsibility to protect our unique natural environment

- supportive of achievement as well as equality and opportunity for all, and

- valuing independence as dearly as the national spirit which binds us together in both adversity and success.