Foreword

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The eleventh Conference of The Samuel Griffith Society was held in Melbourne, and this Volume of the Society's Proceedings, *Upholding the Australian Constitution*, contains the papers, and Dinner addresses, delivered to that Conference, together with the brief concluding remarks of our President, the Rt Hon Sir Harry Gibbs.

Although, like all its predecessors, this Conference covered several themes, the impending Referendum to transform our Constitution to a republican one warranted some degree of concentration of the agenda on that matter. Similarly, the then possibility (now confirmed) of a second Referendum at the same time to insert a new Preamble into our Constitution gave grounds for covering that matter also.

As this Volume goes to press, the Parliament has finally agreed on the wording of the question to be put to the people on the Republic matter on 6 November next, namely: "An Act to alter the Constitution to establish the Commonwealth of Australia as a republic, with the Queen and the Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament".

This so-called "compromise" proposal, the product of a parliamentary Joint Select Committee almost totally made up of republicans and a Cabinet seemingly incapable of standing by a principled position on almost anything, yields ground to the Australian Republican Movement's xenophobic demand that the people should simply be asked whether they want to "get rid of a foreign Queen". Moreover, while it retains the reference (also objected to by the ARM on the basis of its private polling) to the method of appointing a President, it is entirely silent on the even more important matter of the proposed new power of the Prime Minister to dismiss the President at any time, without any reason given, and without any effective sanction. As Professor David Flint, the National Convenor of the "No" campaign (and himself a member of the Board of this Society) says in his opening Dinner address, under this provision it will be easier for the Prime Minister to sack the President than to sack his driver!

The real malevolence of the dismissal power, however, goes far beyond the enormous enhancement which it would produce in the already excessive power of the Prime Minister of the day, serious though that consequence would be. By rendering the President subject at any time to instantaneous dismissal, it reduces him or her (to the extent that the bogus appointments procedure has not already done so) to the status of "the Prime Minister's poodle" – or, as has been said, makes him or her nothing more than another member of the Prime Minister's staff.

In thus rendering the President (unlike our present Governors-General) a mere creature of the Prime Minister of the day, the dismissal provision also effectively removes the "reserve powers" provisions from our present Constitution. On any future occasion on which the exercise of those powers might be surmised, the Prime Minister would be able simply to remove the President in advance of that occurring. Thus, although the Referendum Bill purports to retain those powers (while rendering them for the first time justiciable, itself an extremely worrying development), passage of the Referendum would have the effect, *in practice*, of erasing them from our Constitution. No wonder the ARM wants no mention of the dismissal procedures in the question; and no wonder they, and their journalistic

collaborators, were so enraged when the Minister for Workplace Relations, Mr Peter Reith, brought them so prominently into public view.

All that being said, I remain unrepentant in my view that the Republic referendum will not, in the event, pass the test of scrutiny by the Australian people. If I should prove wrong in that regard, Australia will enter the 21st Century a sadly diminished nation; one in which the money, and street-theatre techniques, of the ARM have prevailed over experience and common sense. We shall see.

If the Republic proposal is a constitutional turn-off, however, what can be said about its companion proposal for a brand new Preamble to a Constitution already nearly 99 years old?

The original proposal on this matter, emerging from the February, 1998 Constitutional Convention, was in the nature of an appendage to the main concerns of that gathering – namely, the proposal for a Republic itself. A new republican Constitution should, it was said, be accompanied by a new republican Preamble, which would express all manner of "feel good" thoughts – and, in the process, help to gather up some more votes for the ARM's republican constitutional camel when it came to the voting in the Convention itself.

In the outcome, we have a "stand alone" proposal which, if agreed in the referendum , will import into our Constitution, almost 99 years later, and irrespective of whether that Constitution becomes a republican one or not, a 152- word waffle which, if it were not being advanced with an apparently straight face by our Prime Minister and his Coalition parties, could only be described as a joke. That is indeed the view taken of it by Mr Michael Warby in his *Preambulations* paper. Unfortunately, however, as Sir Harry Gibbs points out in his magisterial contribution, *A Preamble: The Issues*, it is not really (or not only) a joke, but a potentially serious matter. Moreover, although this proposal also undoubtedly should be voted down, it is by no means clear that it will be; indeed, one of the chief arguments (sic) of its proponents has been, from the outset, that if we vote "Yes" for the Preamble we shall feel less regretful over a "No" vote for the republic. For myself, I can only say that the only appropriate response to both the politicians' Republic and, equally, the politicians' Preamble is a two-fingered one: "No" and "No". Again, we shall see.

These two matters aside, there is much else in this Volume to repay study. In particular, in his paper *Judicial Tidy-up or Takeover? Centralism's Next Stage*, Dr John Forbes provides a valuable follow-up, as witty as it is informative, to his earlier paper to the Society on the Federal Court; Malcolm Mackerras, against the background of the Senate voting procedures introduced almost 50 years ago, examines the complaints of the Liberal Party's "Senate reformers", and finds them characteristically lacking; while the Hon Gary Johns and his Honour, Justice Roderick Meagher of the NSW Court of Appeal, are in broad agreement that Bills of Rights, whatever their past history may have been, are nowadays chiefly an(other) instrument whereby the chattering classes seek to make their writ run judicially, in the face of the people's steadfast opposition to having it do so legislatively.

These, and other papers, contain a wealth of material which deserves to be widely read, and widely debated. It is to that objective that this Volume, like its ten predecessors, is dedicated.