

Blood sports, politics and the Constitutional Convention

With her streak of attention-grabbing “pretty flamingo pink” hair, Moira Rayner was a high-profile player at the Constitutional Convention in Canberra in February.

But her description of the bullying, backroom backbiting, wheeling and dealing and compromise that passed for democracy over the two weeks of the event is enough to turn most people’s hair white.

Moira Rayner is no stranger to the bruising hurly-burly of the blood sport that often passes for politics.

She survived a savage shirtfront from the Kennett government which knocked her out of play as the Victorian Commissioner for Equal Opportunity in 1994.

Yet, despite this and a career spent lobbying on political and social issues, the highly regarded 49-year-old solicitor was completely unprepared for the thuggery she says passed for due process at the Constitutional Convention.

“I am savvy politically but I saw thuggery on a scale I’d never seen before,” Ms Rayner said.

“And it may sound naive [but] I didn’t believe people would lie to you quite as obviously as they did.”

As elected delegates, Ms Rayner and fellow Melburnian and Real Republic representative, the Reverend Tim Costello, went to the Convention to broaden its agenda.

They saw the gathering as the perfect chance for national public debate on issues including government accountability, indigenous rights, reconciliation, multiculturalism and social circumstances.

“We actually wanted to see if it was possible to talk about things like citizenship without having schoolchildren vomiting in the gutters, you know. It’s a very unsexy subject, but so is the Constitution,” Ms Rayner said.

Real Republic formed part of the unaligned individuals and small groups labouring in the shadows of the major combatants – the Howard government, the ALP and the Malcolm Turnbull led Australian Republican Movement (ARM).

Of the 152 delegates who flocked to old Parliament House for the Convention, half

were publicly elected, the others appointed by the federal government.

While the sound and fury generated by individuals like RSL Victorian president Bruce Ruxton or firebrand WA academic Paddy O’Brien made great television, the real headbutting, arm wrestling, kicking and gouging went on behind the scenes.

In particular, the gloves came off in the strategically crucial resolutions group, of which Ms Rayner was a member.

Here, the oft loosely worded wishes of delegates were made into motions to be formally voted on by the Convention.

As any political operator knows, from the local branch level up – control the minutes and you control the party.

“You’d go to bed at night and come back in the morning to find it [a motion] had been changed,” Ms Rayner said.

■
“The number crunching, the lobbying, the deal doing, the squabbles and the betrayals were classic nineteenth century politics.”

Moira Rayner

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“Not only changed, but on the second last day in the resolutions group we’d met three times, agreed on a statement and resolutions to go to the Convention at 2pm and I came back at 5pm to find Malcolm Turnbull had rewritten it and added his own favourite bits which weren’t agreed to by the original mover of the motion or indeed by the convention.

“He’d not only added his own bit with Gareth Evans’ assistance, he’d distributed it so it was a formal document. That was clear, blatant bloody manipulation.

“I was very cross about that. There was a real blow up but it was done by then, a done deal. Those sorts of things just happened all over the place.”

Similar strategies were used to force through the voting pattern for the repub-

lican model on the final days of the Convention.

The pattern originally agreed on by the delegates was “completely reversed”, Ms Rayner said.

Playing the woman or man rather than the ball was also a part of the bigger players’ tactics, especially those on the resolutions group.

“The two worst offenders for interrupting, excluding myself, were Gareth Evans and Malcolm Turnbull and they’d top each other and get shirty with each other and it was very undisciplined,” Ms Rayner said.

“Gareth also had an unfortunate propensity. He sat next to me, and whenever I was speaking would go [Ms Rayner makes budgerigar kissing noises].

“It was calculated to make me cross. I put up with it for two meetings and on the third I asked him to stop it and asked the chairman [Barry Jones] to stop it. It was boys’ own stuff.

“Gareth laughed and thought it was highly funny. It really was off-putting.”

Mr Turnbull said he completely rejected this version of events.

“A lot of people resented the ARM delegation because it came to the Convention both well-informed and well-organised,” he said.

“You’ve only got to look at the sort of contortions this direct election group, so called, went through as they went from one version to another, all disagreeing with each other and finally ending up with something that succeeded in combining the worst attributes of every model.”

Mr Evans also rejected Ms Rayner’s criticisms.

“There was a lively process of give and take both in backroom committees and on the Convention floor,” the deputy Opposition leader said.

“As I recall it, Moira was pretty capable of looking after herself, and I don’t think it serves much purpose to track over petty differences when we so obviously had a common cause which was extremely successful.”

It is not surprising that any discussion with Ms Rayner will include gender issues. Her past experience as Victorian Commissioner for Equal Opportunity coupled with her present work, which includes acting as a consultant for Dunhill Madden Butler on



■ Fighting fit – Moira Rayner prepares for her next round of engagements.

discrimination and industrial justice, makes her highly suited to do so.

Yet, at the Convention, Ms Rayner found herself up against a form of “men-only networking” she could do little about.

“Tim [Costello] went off to the loo and came back saying he’d had a discussion at the urinal with Malcolm Turnbull on the

Senate’s power to block supply and I thought – hell, there’s no way known I’m going to be able to have those sorts of discussions,” she laughed.

Mr Turnbull was just one of the many larger than life characters crowded into the cramped and labyrinthine old Parliament House.

Neville Wran, Lady Flo Bjelke-Petersen (who arrived on day one on a local bus), Bill Hayden, Poppy King, Geoffrey Blainey, Gatjil Djerrkura, Richard McGarvie, James Killen, Brigadier Alf Garland, Janet Holmes a Court, Steve Vizard, Hazel Hawke, Don Chipp, Nova Peris-Kneebone – and more.

“There was a mad hatter element to it – huge personalities and eccentrics – but rubbing shoulders with the famous and infamous in old Parliament House is a great leveller,” Ms Rayner said.

“There’s something about the way it was set up, the lobbies where you all had to mingle in together, which really had you feeling you could be as rude as you liked to somebody in debate and it didn’t matter what their position was.

“The number crunching, the lobbying, the deal doing, the squabbles and the betrayals were classic nineteenth century politics.

“Yet very few people seemed to have inflated ideas of their own importance apart, of course, from Malcolm Turnbull. He can’t help it, that’s just him.”

A mad hatter experience indeed to encourage Ms Rayner, not known as a fan of the Victorian government, to doff her hat to its Premier, Jeff Kennett.

“His was a very good speech, as a matter of fact, and he was good. It was a positive

LEFT: NSW Maze. GEM CLARK PHOTOGRAPHY

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contribution," Ms Rayner said of Mr Kennett's flying visit to the Convention.

"This is why you can't damn the man because occasionally he does [something good]. It's infuriating. I'd love to say he's an incompetent ratbag but on this I think he had a useful contribution to make."

Irrespective of the tactics and quality of the opposition, the marathon length and intensity of the Convention left many delegates, Ms Rayner included, often feeling punch-drunk.

"I knew it was going to be hard work but I did not realise I would live, eat and breathe this Convention for two weeks," Ms Rayner said.

"The only time I had off was when I was dreaming about the Convention at night."

Not that there was much time for sleeping.

The official day started at 9am and finished around 7.30pm but there was also flesh to be pressed, egos to be massaged, lobbying to be done, media releases to be drafted, press conferences to call and attend.

"I'd get up anytime between 20 to 4 [am] and the latest was about 6 and that was after a very late night," Ms Rayner said.

"By the end of it I felt I'd aged a lot. Certainly, I looked it."

"We got through three mobile [phone] batteries a day. It was red hot all the time and we had another phone in our little office."

One of the hottest issues was how the head of state under a republic would be elected.

Ms Rayner and many other unaligned delegates wanted a publicly elected head of state, but the position was opposed by the major political parties and Mr Turnbull's ARM.

On the second day of the Convention, the major players indirectly shut down the option of a directly elected president by excluding from discussion any consideration of the codification of presidential powers.

"It was a prearranged deal that meant you could never talk about directly electing the president because you have to codify powers in that circumstance," Ms Rayner said.

"It was such a smart arse thing that after the end of that vote we said [to the major players in private]: 'Well, we'll walk out. We'll leave, you'll have a half-empty house and that means the Convention has no legitimacy.'"

The threat had the desired effect and led to the resolution that any motion from the

floor receiving 25 percent or more of a vote had to go to the resolutions group to be prepared for formal consideration.

On the final day of the Convention, Friday, 13 February, the majority of delegates voted that the Convention:

- supported, in principle, Australia becoming a republic;
- supported the adoption of a republican system of government based on the bipartisan federal appointment of the president in preference to there being no change to the Constitution;
- recommended that the bipartisan appointment of the president model, and other related changes to the Constitution supported by the Convention be put to the people in a constitutional referendum; and
- recommended that a referendum for change to a republic or for the maintenance of the status quo be held in 1999 and if the referendum is in favour of a republic, that the new republic come into effect by 1 January 2001.

Delegates also decided other issues including a need for an education program on the republic to precede any vote and the need for a further constitutional con-

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vention within five years of Australia becoming a republic.

Despite failing on issues such as the direct public election of a president, Ms Rayner said many other objectives such as a follow-up constitutional convention had been achieved

"We knew it was going to be hard and I didn't imagine for one moment you'd go to the Convention and come out with a Bill of Rights or any of those things," she said.

"But Tim and I came out with the things we said we were going to get – including [discussion of] a new preamble, a commitment to ongoing constitutional discussions, broadening the debate and a referendum question on the republic going to the people.

"We also created a national network of like-minded people."

"So I don't have a sense of failure, especially since I didn't go [initially] campaigning for election on the basis of directly electing the president. I went campaigning on the basis of increased power to the people."

Like a good team player, Ms Rayner spoke with studied modesty of her role in securing these wins.

"I'm not sure how much of an influence I had on the outcome given the vast institutional forces arrayed against us," she said.

"The role I played was to link up non-aligned appointed members and talk about the issues in a way that people understood and agreed with.

"And, as a flashy woman it helped." Ms Rayner doubts Australia will embrace the "dog's breakfast republican model" it will be asked to vote on towards the end of 1999.

"The model has serious flaws. There is no element of election at all. It is not only left to the Parliament, which by definition is really the political party with the majority of seats, but the president can be dismissed instantly by the Prime Minister. That's really pathetic," she said.

"The indication is that Australians want to elect their president and if they're given a choice between the status quo and a model where they can't, then they'll stick with the status quo.

"I voted nonetheless that it should be adopted and sent to the people because no other model of a republic was available."

Looking to the future, Ms Rayner said an all-embracing constitutional review was vital to overcome the "fakery" of the Australian system with its vaguely defined powers and omissions, including the failure to mention the Prime Minister or Cabinet.

And when it happens, it is more than likely Moira Rayner will be there – despite

her descriptions of the political thuggery associated with the February Convention.

"The real high was the vote on Friday in favour of a republic. You had to be there," she said.

"When the vote was whether or not this Convention in principle supported the establishment of the republic and we stood

up and realised how many of us there were and we started clapping, the next thing the public gallery stood up and clapped and cheered.

"I realised the significance then of what we'd achieved and it was just wonderful." ■

MICK PASKOS

What the attorneys-general said

The *Journal* sought final comments on the outcome of the Constitutional Convention from the country's attorneys-general and received the following responses.

Victorian Attorney-General Jan Wade said: "I would support Australia becoming a republic if the model incorporates the same safeguards as the existing system.

"Of the models put forward at the Constitutional Convention, the McGarvie model was the most satisfactory on this test. I would prefer a model which has no substantive effect on the law.

"There are other issues which, in my view, are far more pressing than becoming a republic, such as taxation reforms and defining the appropriate responsibilities for state and federal governments to avoid the current overlap and fiscal imbalance.

"These issues [were] the focus of the Victorian government's Constitutional Convention held in Melbourne from 2-5 March. The Convention will also consider the effect of globalisation and the need to encourage investment in Australia."

ACT Attorney-General Gary Humphries said Australia should not "ditch" the Queen as head of state.

"A change to a republic is more than simply a question of altering nomenclature," Mr Humphries said.

"An Australian president, whether elected by the people or appointed by Parliament or the Prime Minister, becomes a player on the national stage in a way which the Governor-General is not.

"The potential for conflict, and for a shift in the balance of power in the

Australian political arrangement – not only federally but in each state and territory – is considerable.

"Even a small risk of such a shift to instability is too high a cost to pay for the symbolism of Australia ditching the Queen as head of state."

Mr Humphries said Australia's British heritage had to be protected against faddish and misguided ideas of multiculturalism.

"Such an emphasis [on multiculturalism], however, comes at the expense of Australia's British tradition, a tradition which is the strongest strand of Australia's present make-up," Mr Humphries said.

"Multiculturalism as an institution will be stronger if it is able to accept the value in symbolism of all strands of the Australian cultural fabric, not merely 'minority' ones."

The ACT Attorney-General said the effects of a republic on the law were difficult to determine.

"A good reason not to proceed down this path," he said.

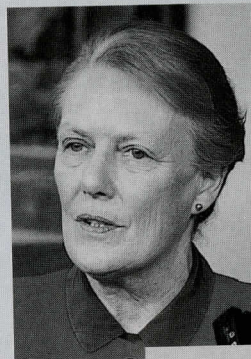
NT Attorney-General Shane Stone QC said he supported a republic and favoured direct election of the president.

"The Australian people need to have ownership of the republic otherwise it will fail in a referendum."

Mr Stone, who attended the Convention, said an Australian republic would have no effect on the law.

The only other response to the *Journal's* inquiries received before going to press came from WA Attorney-General Peter Foss who said, through a spokesman: "No comment."

MICK PASKOS



■ Victorian Attorney-General Jan Wade (top); NT Attorney-General Shane Stone QC (above);