



AUSTRALIAN SENATE

LEGAL AND CONSTITUTIONAL

REFERENCES COMMITTEE

INQUIRY INTO AN AUSTRALIAN REPUBLIC

DISCUSSION PAPER

December 2003

Senate Legal and Constitutional References Committee
Inquiry into an Australian republic

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Inquiry into an Australian Republic

On 26 June 2003 the Australian Senate referred to the Senate Legal and Constitutional References Committee an inquiry into an Australian republic. The matters to be examined are listed in the Terms of Reference on the right.

The Committee is keen to consult widely and to hear from all sectors of the Australian community. This paper is intended to stimulate discussion of the key issues. The issues and options considered in this paper are for the purpose of encouraging public comment, and no particular options are recommended by the Committee.

The Committee welcomes submissions from individuals and groups on this matter. There are questions throughout this paper to provide a focus for the discussion, and it would be helpful to the Committee if comments addressed specific questions.

The closing date for submissions is **31 March 2004**.

Please clearly note your name and contact details so your comments can be acknowledged. Submissions should be in writing and sent to:

The Secretary
Senate Legal and Constitutional
References Committee
Parliament House
CANBERRA ACT 2600
Fax: (02) 6277 5794
Email: legcon.sen@aph.gov.au

Electronic submissions are encouraged. Submissions become Committee documents and are only made public after a decision by the Committee. Unauthorised release of submissions is not covered by parliamentary privilege. Further assistance can be obtained by phoning the secretariat on (02) 6277 3560.

Terms of Reference

- (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.**

Recent history of moves towards a republic

Then Prime Minister Paul Keating put the republic debate firmly in the public spotlight during the 1993 election campaign when he pledged to let "... the Australian people decide by referendum later in the decade whether Australia should become a republic by the year 2001." Following the election, the Prime Minister established the Republican Advisory Committee, which published an issues paper, held public hearings, and produced a report in 1993. The report concluded that the Commonwealth Constitution would need to be amended to establish the office of a new head of state, provide for the powers of the office, and provide for the Australian states (as the Queen is also the head of state of each state).

The Commonwealth Constitution specifies the composition and powers of the three arms of government: the legislature, the executive and the judiciary. Under section 128 of the Constitution, a proposed Constitutional change must first be agreed by an absolute majority of each House of Parliament before it can be put to the electors of each state and territory. The proposal must then be approved by a "double majority": a majority of voters in a majority of States, and a majority of voters overall.

Following a change of government in 1996, Prime Minister John Howard formally confirmed his government's intention to proceed with a Constitutional Convention. A convention was held in February 1998 at Old Parliament House,

to consider various issues and proposals on a republic and to put forward a model for public and parliamentary scrutiny. Half of the 152 representatives were elected and the other half appointed. The convention comprised a wide variety of people, including former Prime Ministers, Governors-General, judges, federal and state politicians, as well as identities from the media, arts and sports communities. The views of both supporters of the status quo and supporters of change were represented.

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 other issue that caused much debate was the powers that would be conferred upon the president. Should the president retain the same powers as currently reside with the Governor-General, or should they be widened perhaps to an executive style of presidency? This debate was in some ways closely related to the method of appointment as it is generally considered to be essential for an executive president to have the legitimacy of being popularly elected.

The Constitutional Convention settled on the "minimalist" model which was agreed by both Houses of Parliament¹ and then put to the people in the referendum of November 1999. More details of this model are included in Appendix A.

The referendum was defeated, as it was not carried in a single state and attracted only 45% of the total vote. Only nine federal electorates recorded “yes” votes of greater than 60%.²

Some commentators have suggested that the result of the referendum reflected the rejection of the proposal not only by those who favoured the status quo, but also by those voters who preferred a directly-elected head of state.³

Following the defeat of the referendum, a conference met to recommend a practical process for the move towards a republican form of government. The Corowa Conference of December 2001 considered 19 proposals, and recommended one.⁴ More details of the proposals are given in a later section of this paper.⁵

Recent polling suggests that a majority of Australians now support the move to an Australian republic.⁶ There is a lack of agreement, however, as to the preferred process for progressing towards a republic, and about the form the republic would take.

Issues to be considered

In the debate over an Australian republic, there are a number of issues in relation to which there are alternate viewpoints, ideas and proposals. This section of the discussion paper addresses these issues.

Who is the current head of state?

A focus in the debate over Australia becoming a republic has been on replacing the Queen as head of state of Australia with an Australian head of state. Some have argued that Australia already has an Australian head of state, the Governor-General. On this interpretation, the Queen is the sovereign, is not referred to in the Constitution as head of state, and has never performed the duties of head of state.

Others point out that the Constitution defines the Parliament as ‘the Queen, a Senate, and a House of Representatives’ and that the Governor-General is appointed to represent the Queen, not Australia.

Is a separate head of state needed?

Although the Committee's terms of reference assume the existence of a designated head of state, the Republic Advisory Committee appointed by former Prime Minister Keating noted that some people might advocate dispensing with a separate head of state. In nations such as South Africa and the United States of America, the roles of head of government and head of state are combined.

However, the Republic Advisory Committee noted that combining the offices of head of government and head of state would involve a 'major departure' from Australia's existing system of government. That is, it would involve moving from a system where executive government is conducted by a Prime Minister (and a ministry) who depend on majority support in the House of Representatives to hold office, to a system where executive government is carried out by a popularly elected president, and law-making by a separately elected legislature.

Question 1 *Should Australia consider moving towards having a head of state who is also the head of government?*

Powers of the head of state

Under the Constitution the Governor-General has a range of powers, sometimes known as the non-reserve powers, which by convention are exercised only with advice from government. They are spelt out in the Constitution, and include the power to:

- sign legislation which has been passed by Parliament, in the name of the Queen (s. 58);
- issue writs for general elections (s. 32); and
- appoint Ministers (s. 64).

The Governor-General also has discretionary powers that can be exercised without advice, and these are known as reserve powers (or prerogative powers). Constitutional experts do not agree on their precise extent or on the nature of the exceptional circumstances in which these reserve powers may be exercised. Most controversial are the circumstances in which a Governor-General has the power to dismiss a Prime Minister.

There is a view that in an Australian republic with a non-executive head of state, these reserve powers should be explicitly described, or codified. Others argue that the lack of definition of the existing arrangement is advantageous, because it allows for situations which cannot be anticipated.⁷

There are also questions as to whether the reserve powers should be justiciable; and whether the head of state should retain the power to dissolve the

Parliament after the refusal of the Senate to pass appropriation bills.

Other republican models have suggested that the head of state have full executive authority (along the lines of a US-styled model). A head of state in this style of republic would invariably have to be directly elected by the people to have the legitimacy to exercise such powers.

Question 2 *What powers should be conferred on the head of state?*

Question 3 *What powers (if any) should be codified beyond those currently specified in the Constitution?*

Selection

One of the most critical and complex issues is the method for selecting the head of state. One view is that direct election of a head of state would give the people a say in who would represent them as head of state.

Some argue against direct election because they are of the view that it would result in the head of state being a politician, as only the major political parties would have the organisation, expertise and resources to win a nationwide election. This viewpoint reflects a preference for a non-political head of state. Another argument is that direct election may lead to a situation where a head of state emerges as a competing centre of democratic legitimacy.⁸ Some believe that this situation could be avoided by codifying the powers of the head of state.

On the other hand, a head of state selected exclusively by a Prime Minister is seen by many to reinforce partisan politics. The 1999 referendum proposal where a head of state was to be selected by a two-thirds majority of both Houses of Parliament was considered by some as a compromise.

A number of options for the selection of a head of state have been put forward:

- appointment by the Prime Minister;
- appointment by the Prime Minister and the Leader of the Opposition;
- appointment by the Federal Parliament (eg by a two-thirds majority of both Houses);
- appointment by an elected Presidential assembly; and
- direct election.

The option of direct election would raise issues concerning campaign financing and method of voting.

Campaign financing

Should assistance be given to the candidates? There might be no obvious justification for doing so. However, if it is judged to be appropriate, how might this assistance be given?

Should there be prohibitions on the participation of political parties in campaigning or in campaign financing? Some have suggested such restrictions are easy to circumvent and therefore not realistic.

Method of voting

A suitable method of voting would need to be determined. Possibilities include:

- the **'first past the post'** system (that is, just a single mark on the ballot paper). This system would suffice if there was only one candidate and could also work if there were a limit of two candidates. It would not work as well if there were three or more candidates, due to the possibility of the leading vote-getter attracting a small percentage of the vote;
- **preferential voting** is familiar to Australians, but would be irrelevant if there was to be only one candidate and only barely relevant if there were to be a limit of two candidates; and
- **the run-off method**, whereby if a candidate fails to get 50% on the first ballot, there is run-off between the top two candidates (used in Brazilian, Chilean and French Presidential elections).

Question 4 *Should some form of campaign assistance be available to nominees, and if so, what assistance would be reasonable?*

Question 5 *Should/Can political parties be prevented from assisting or campaigning on behalf of nominees? If so, how?*

Question 6 *If assistance is to be given, should this be administered by the Australian Electoral Commission or some other public body?*

Question 7 *If the Australian head of state is to be directly elected, what method of voting should be used?*

Question 8 *If direct election is the preferred method for election of a non-executive president, will this lead to a situation where the president becomes a rival centre of power to the Government? If so, is this acceptable or not? If not, can the office of head of state be designed so that this situation does not arise?*

Nomination

Prior to selection, there would need to be a method for nomination of potential candidates for head of state. Some proposals put forward include nomination:

- by the Prime Minister;
- by a nominations committee established by Federal Parliament (including Parliamentary and community representatives);
- by a joint vote of the Senate and the House of Representatives, or of any state or territory parliament;
- by a petition of voters with a minimum number of signatures (eg 3000 nominators, one percent of electoral roll), with Parliament to select short-list; and
- by open nomination.

Question 9 *Who should be eligible to put forward nominations for an appointed head of state? For an elected head of state?*

Question 10 *Should there be any barriers to nomination, such as nominations from political parties, or candidates being current or former members of parliament?*

Question 11 *Should there be a maximum and/or minimum number of candidates?*

Question 12 *Should there be a minimum number of nominators required for a nominee to become a candidate?*

Title of head of state

The term 'President' seemed to gain wide usage during the debates surrounding the 1999 referendum and is used very widely around the world.

Retaining the term 'Governor-General' has the advantage of being familiar and suggests that the change does not involve a major departure from Australia's existing system of government. Some might see 'Governor-General' as an antiquated term, redolent of Australia's British colonial past.

Question 13 *What should the head of state be called, Governor-General, President of the Commonwealth of Australia, or some other title?*

Term of office

The Republic Advisory Committee considered anything between four and seven years as 'reasonable'. An alternative is to have no defined term but an agreement with each incumbent to serve for a specified period, for example five years. Limits on re-election may also be imposed.

Question 14 *What should be the length of a term of office for head of state?*

Question 15 *Should a head of state be eligible for re-appointment/re-election?*

Question 16 *Should there be a limit on the number of terms an individual may serve as head of state?*

Removal

By whom?

There is a range of views on when and by whom the head of state might be removed from office. Options include action by the Prime Minister alone; action by the Prime Minister with ratification by the House of Representatives; action by a Constitutional Council on advice from the Prime Minister; or removal by the Parliament.

Question 17 *Who or what body should have the authority to remove the head of state from office?*

On what grounds?

At present there are no guidelines for the removal of the Governor-General. Should there be specific guidelines laid down stating grounds on which the head of state could be removed such as 'proven misbehaviour or incapacity' or 'on the grounds of stated misbehaviour or incapacity or behaviour inconsistent with the terms of his or her appointment'?

The Republic Advisory Committee suggested that if a prescribed number of Members of Parliament in a joint sitting resolved that the head of state should cease to hold office, then that should be cause in itself for his or her removal, without the need for proof of particular misbehaviour or incapacity.

Question 18 *On what grounds should the removal from office of the head of state be justified? Should those grounds be spelt out?*

Casual vacancy

Provision needs to be made where the office is vacated before the end of a term. One option is the appointment of a caretaker for the balance of the term by an absolute majority of the House of Representatives. Alternatives include beginning a new term, or the balance of the previous holder's term being served by a new appointment. The method for filling casual vacancies would be strongly influenced by the method of selection of the head of state.

Question 19 *How should a casual vacancy be filled?*

Eligibility/disqualification

Eligibility requirements and any grounds on which a person would be judged to be ineligible need to be considered.

Eligibility

Presumably, it would be specified that a candidate for the office must be an Australian citizen. Some republic models have suggested a specification that 'every Australian citizen qualified to be a member of the Commonwealth Parliament' should be eligible. Some models add the requirement that the citizen 'has foresworn any allegiance, obedience or adherence to a foreign power'.

Other issues are whether there should be a requirement that the person is born in Australia or resident in Australia for a certain length of time. Some jurisdictions also have a minimum age (35 years in the United States of America and Austria, 40 years in Greece).

Question 20 *What should the eligibility requirements be for the head of state?*

Disqualification

It has been argued that certain matters should disqualify a person from being head of state:

- being a member of parliament (whether federal, state or territory);
- membership of a political party, as the Constitutional Convention determined;
- other factors relating to the current constitutional provisions (section 44) disqualifying persons from election to the House of Representatives, including the exclusion of persons having 'allegiance, obedience or adherence to a foreign power', and persons who are undischarged bankrupts or convicted of an offence punishable by imprisonment by one year or more.

Question 21 *On what grounds should a person be disqualified from becoming of head of state?*

Relationship of head of state with executive, parliament and judiciary

Executive

A key issue in the relationship between the head of state and the executive is the powers that will reside with the head of state. Another important influence is the method of appointing and removing the head of state, particularly if these powers reside with the Prime Minister.

Alternatively, if the head of state is elected directly by the Australian people, there will be implications for his or her relationship with the executive if he or she is seen as a competing centre of power.

Parliament

Section 1 of the Constitution vests the legislative power of the Commonwealth in 'a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives'.

Questions to be considered include whether the head of state in an Australian republic should retain this relationship with the Parliament, or whether there should be a division akin to the US model, and whether the head of state should retain the powers of prorogation and dissolution of Parliament. Any powers vested in the Parliament to nominate, appoint or remove the head of state will also influence the nature of the relationship.

Judiciary

Formally, the Governor-General has little relationship with the judiciary. The Governor-General in Council appoints judges of the High Court and other federal courts, removes such judges

following an address by both houses of the Parliament and has prerogative powers in relation to 'the exercise of the Royal prerogative of mercy', thus giving the office a tangential relationship to the court system.

There have been at least four cases (1909, 1914, 1915, 1975) when the Governor-General sought constitutional/political advice from the Chief Justice of the High Court. Should such advice be available to the head of state, or should it be specified that the sole source of advice comes from the Prime Minister, and that the head of state is barred from seeking such advice from the judiciary?

Question 22 *Should the head of state have power to appoint and remove federal judges?*

Question 23 *Should the head of state have the prerogative of mercy?*

Question 24 *Should the head of state be free to seek constitutional advice from the judiciary and if so, under what circumstances?*

Position of the states

The monarchy is an integral feature of state systems of government. A state governor occupies much the same position in relation to his or her state as the Governor-General does in relation to the Commonwealth.

If an Australian republic is to be established, the place of the states must be considered. On its face, the breaking of the link with the monarchy would seem to mean a break for all parts of the Australian federation. However, since 1926 it has been held that the Crown is

divisible (that is, the Queen of Australia may do one thing, the Queen of the United Kingdom may do another thing, the Queen of New South Wales may yet do a third).

Accordingly, it is necessary to consider this matter if the question of how to institute a republic is being discussed. The Republic Advisory Committee noted that it was 'almost inconceivable that the Parliaments of any State, a majority of whose electors had voted for the change, would seek to retain the monarchy at the State level'. However, it did not deny that such a development could occur. The Republican Advisory Committee also noted that under Queensland's Constitution an additional referendum would be needed before that State could break its links with the Crown.

There are two opposing views as to the appropriate action. The first is that it is fundamental in a federal system that the states are free to make their own decision on such a matter. The second view is that it would be anomalous for there to be a national republic where the monarch was still recognised as part of the governmental system by some states.

Question 25 *What is the best way to deal with the position of the states in a federal Australian republic?*

Models for a republic

Many alternative models for an Australian republic have been put forward over the last decade. This paper addresses five models as outlined below. Models labelled A, B, D, and E were discussed at the 1998 Constitutional Convention. Model C is included as an example of an ‘in-between’, ‘indirect election’ model.

Model A:

“McGarvie Model”, where a three-member Constitutional Council would appoint and dismiss the head of state but would act only on the advice of the Prime Minister.

Model B

Bipartisan appointment model.

The proposal put forward at the 1999 referendum, based on the model which emerged from the 1998 Constitutional Convention. The model involves bipartisan parliamentary appointment following the recommendations of a committee appointed by Parliament.

Model C

Appointment by an elected 48-member presidential assembly, or electoral college, at every second federal election.

Model D

Direct election model, involving voting by the Australian people on no less than three candidates short-listed by the Commonwealth Parliament.

Model E

“Hayden” direct election model, which proposed a national poll of all candidates supported by at least one per cent of voters.

The following table below compares the features of the models. Further details of each model are provided in Appendix A. Appendix B also contains details of the Irish President, the head of state position that perhaps most closely approximates the ‘minimalist’ idea heard during the 1999 referendum debate.

A model not addressed in this paper is that of a full executive presidency such as that of the United States. This discussion paper does not rule out such an option, however, and views for and against such a system are welcomed.

MODELS FOR A HEAD OF STATE IN AN AUSTRALIAN REPUBLIC					
	Model A (Prime Minister - McGarvie model)	Model B (model put to referendum)	Model C (Electoral College)	Model D (Direct Election A)	Model E (Direct Election B – Hayden model)
Powers	Same as Governor-General, but (except for reserve powers) powers may only be exercised on the advice of the Federal Executive Council or a Minister.	Same as Governor-General. Powers to be exercised on the advice of the Federal Executive Council, the Prime Minister or another Minister. Same reserve powers as Governor-General.	Same as Governor-General	Same as Governor-General. Partial codification of existing reserve powers. Constitution to state that non-reserve powers should only be exercised in accordance with the advice of the Government.	Same as Governor-General. Partial codification of existing reserve powers. Constitution to state that non-reserve powers should only be exercised in accordance with the advice of the Government. Obsolete powers to be removed, existing conventions to be referred to in Constitution.
Nomination	Chosen by Prime Minister	Single nomination by the Prime Minister after consideration of report of a 32-person committee (half appointed by the PM from the community; half drawn from all parliaments).	Requires 1000 nominators	By any Australian citizen qualified to be a member of the Cwllh Parliament; the Senate or the House of Reps; either house of a State or Territory Parliament; or any local government body. Shortlisting of at least three candidates by a joint sitting of the Cwllh Parliament.	A person who is endorsed by one per cent of voters (by petition) enrolled on all Federal Division rolls. No voter to endorse more than one candidate.
Appointment	By three-member Constitutional Council bound to act on the Prime Minister's advice	Nomination by the Prime Minister, seconded by the Leader of the Opposition and approved by two thirds majority of a joint sitting of the Cwllh Parliament.	By a 48-member Presidential Assembly, elected at every second federal election.	Direct election (preferential voting)	Direct election (preferential voting)
Eligibility	Australian citizen	Australian citizen qualified to be a member of the Cwllh Parliament and not an MP or member of a political party at time of appointment.	Australian citizen not an MP at time of nomination	Australian citizen qualified to be a member of the Cwllh Parliament, who is not an MP at the time of nomination and not a member of a political party during office	Australian citizen of voting age and enrolled on federal division rolls.
Tenure	At pleasure (no defined term)	Five years. More than one term possible.	Five years	Two terms of the House of Representatives. Not eligible for re-election.	Four years, with maximum two terms.
Removal	By the Constitutional Council within two weeks of the Prime Minister's advice.	By notice in writing signed by the PM, approved by the House of Reps within 30 days unless an election is called.	By a resolution of both Houses of Parliament for proved misbehaviour or incapacity.	By an absolute majority of the House of Reps for stated misbehaviour, incapacity or behaviour inconsistent with the terms of appointment.	Only for proven misbehaviour or incapacity. Resolution supported by absolute majority of joint sitting of Cwllh Parliament.

A process for moving towards an Australian republic

Since a referendum is required to change the Constitution, one option is to simply move to a referendum (as has usually been the case with earlier attempts to amend the Constitution).

Most republic models have suggested a **plebiscite** (that is, a non-binding indicative national vote) prior to the referendum, to test the Australian people's preparedness to accept the idea of a republic (by a simple 'yes/no' vote). Some have also suggested there should be a second plebiscite, either at the same time or at a later stage, to test public views on broad details of what model might be adopted, since a referendum will be a vote only on a single model.

A third possible component of the process could involve a **convention** and/or public **committee of inquiry**, comprising either specially-elected representatives, parliamentary representatives or a blend of the two. One view, however, is that any convention should be properly resourced, given sufficient time, and advised by constitutional experts if it is to be an effective forum for deciding important constitutional issues.

As mentioned earlier in this paper, the Corowa Conference of December 2001 met to recommend a practical process by which the Australian community could decide whether the move to a republic should resume.

Of 19 proposals put forward for consideration at the conference, three

were considered on the last day, and these proposals are outlined below. They are given as examples of how the next moves towards another republic referendum might be made. The conference formally adopted the first of the proposals below. The proposals are identified as A, B and C for convenience.

Question 26 *Should there be an initial plebiscite to decide whether Australia should become a republic, without deciding on a model for that republic?*

Question 27 *Should there be more than one plebiscite to seek views on broad models? If so, should the plebiscites be concurrent or separated?*

Question 28 *Should voting for a plebiscite be voluntary or compulsory?*

Question 29 *What is the best way to formulate the details of an appropriate model for a republic? A convention? A parliamentary inquiry? A Constitutional Council of experts?*

Question 30 *What is the preferred way for a process to move towards an Australian republic?*

Corowa Proposal A - a Parliamentary Joint Committee, plebiscite, elected Constitutional Convention, referendum

1. A multi-party Commonwealth Parliament Joint Committee should be established to consult the community and constitutional experts in order to prepare a plebiscite asking the following key questions:

- (i) Should Australia become a republic with an Australian Head of State?
- (ii) Should the Head of State be called the President or the Governor-General?
- (iii) Should selection be: by the Prime Minister; a 2/3 majority of the Parliament; chosen by an Electoral College; or elected by popular vote with codified powers?

2. A Commonwealth Parliament Joint Committee should outline the core features of the models and prepare neutral information for the plebiscite.

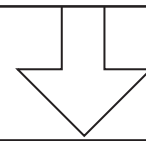
3. An elected Constitutional Convention should be convened to draft a constitutional amendment reflecting the will of the people as expressed in the plebiscite.

4. A referendum should be held to give effect to the amendment.

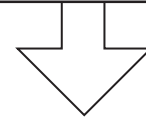
Corowa Proposal A

Multi-party Parliamentary Joint Committee to prepare plebiscite

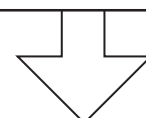
1. Australia to become a republic, with Australian head of state?
2. Title to be President or Governor-General?
3. Selection by PM, 2/3 Parliamentary majority, electoral college or popular vote?



Plebiscite



**An elected Constitutional
Convention drafts
Constitutional amendment
reflecting plebiscite result**



Referendum

Corowa Proposal B – State and Territory parliamentary committees, report of Commonwealth parliamentary committee, plebiscite (State/ Territory and Commonwealth) on detailed models, referendum

The Council of Australian Governments (COAG) would coordinate implementation of the process. Each parliament would set up an all-party committee to investigate and report on:

- (a) the model which would best preserve or improve our democracy if the federation separated from the monarchy; and
- (b) the method of deciding the head of state issue that would least strain the federation.

Each state or territory committee would invite submissions and hold hearings in its regional areas and capital city. The committee in the federal parliament would report on the two questions after considering the state and territory reports. In the reports, the majority or minority supporters of a model would describe it in detail and give full reasons for preferring it.

A conference would be held to recommend that each committee consider recommending the following steps for deciding the issue with least strain on the federation:

First a national plebiscite in which the voters of each unit of the federation (ie the Commonwealth, each state and territory) vote on the model they prefer for their unit:

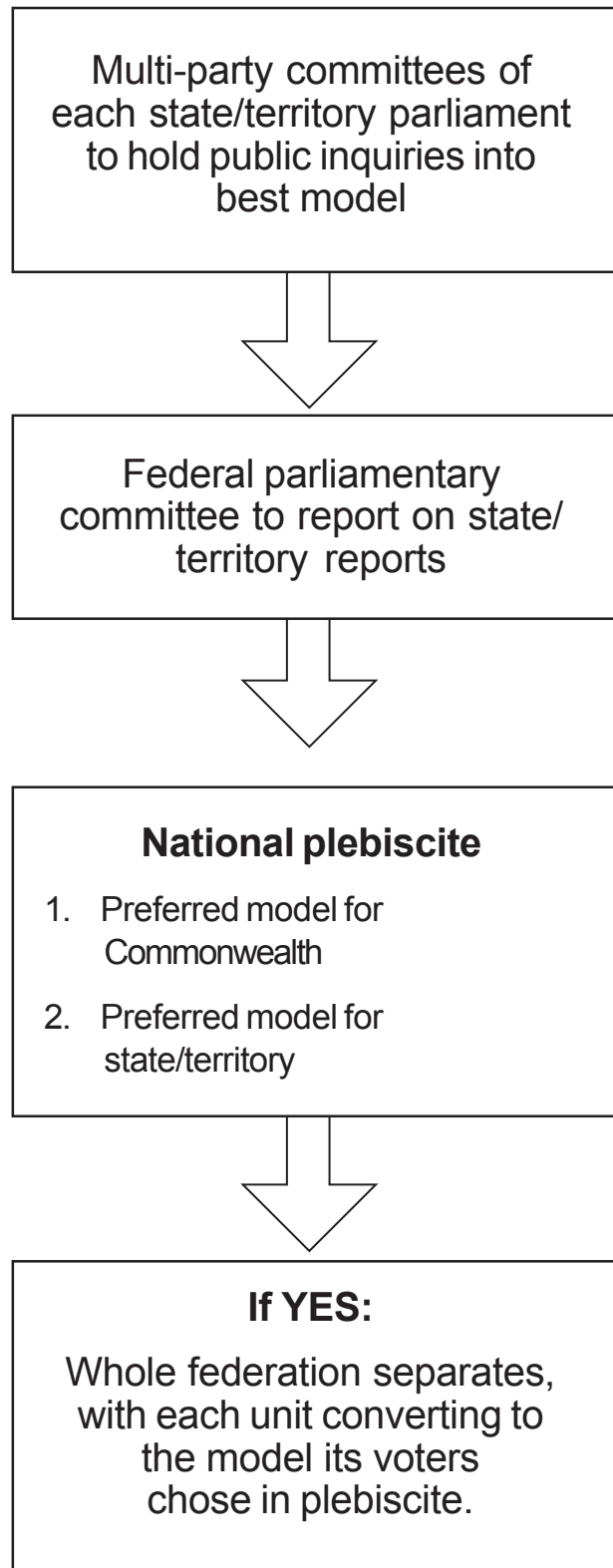
- All Australian voters will mark a ballot paper showing their preference for the Commonwealth and another showing their preference for their state or territory.
- Each of the detailed models with majority or minority support in the report of the committee in the federal parliament will be included in the ballot papers.

Finally, all Australian electors to vote in one referendum on the one question whether the whole federation separate from the monarchy. If supported by the overall majority of voters, a majority in a majority of states and a request from each state parliament, the whole federation would separate from the monarchy at the same time with each unit converting to the model its voters chose in the plebiscite. If that support were not obtained there would be no change.

There should be a conference to appoint a non-partisan drafting committee to prepare legislation for the parliaments to pass to set up the parliamentary committees.

At each stage government and opposition leaders, presiding officers of parliaments and the people through media and internet to be fully informed of reports and decisions.

Corowa Proposal B



Corowa Proposal C – national poll, Parliamentary Committee, elected Constitutional Convention to draft bill, referendum

This proposal was for a process that would not only be democratic, but open, unhurried, non-directive and effective. The Australian people are entitled to an on-going dialogue on arrangements for their head of state. They should own this process, and it should not be short-circuited. Critically, what this means is that this dialogue should not fail because a given Commonwealth Government (of whatever complexion) refused to embrace a specific part of a proposed process.

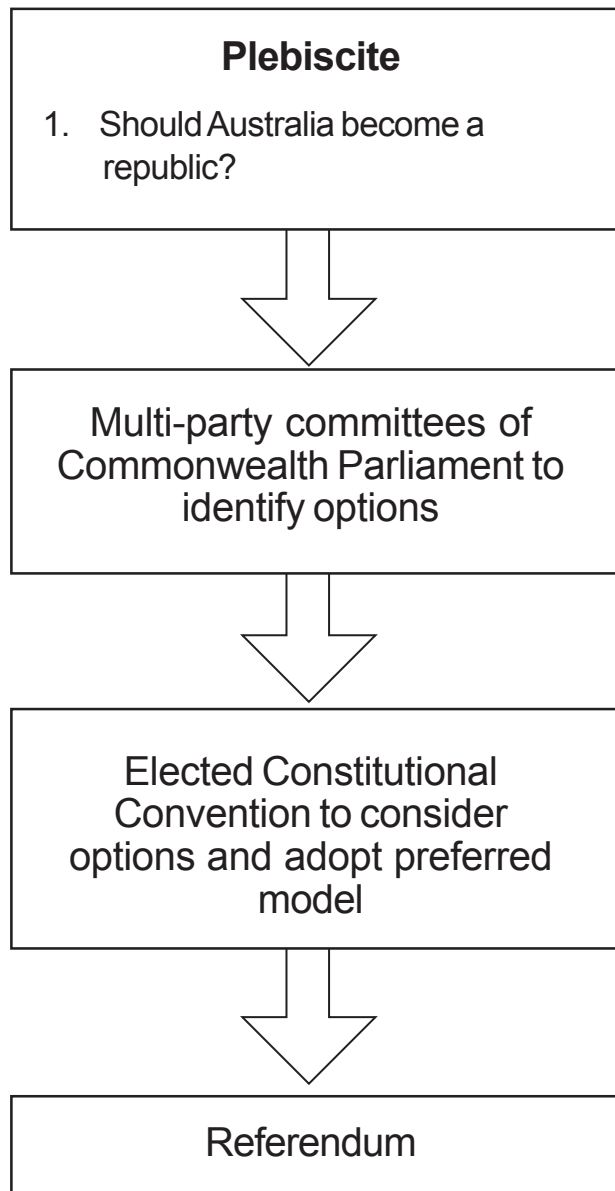
In particular, there would always be a chance that a Commonwealth Government would object, on grounds of cost or ideology, to conducting the proposed national poll, while being much more open to the establishment of the Parliamentary Committee and Constitutional Convention. This should not be allowed to derail the entire process. Instead, if the Commonwealth Government refused to conduct an initial national poll, the process would still proceed with the establishment of the parliamentary committee, the election of the Constitutional Convention etc. The proposal would make it clear that wherever consultation was to occur, it should include (in addition to State Parliaments and Governments) local communities and youth.

The process would comprise:

1. an initial national poll on the question of whether Australia should become a republic;
2. a multi-partisan Committee of the Commonwealth Parliament to identify and disseminate all possible options;
3. the election of a Constitutional Convention to debate all such options;
4. the Constitutional Convention to fully elaborate and document options with significant support, before further debate and consultation, leading to the adoption of one of those options as its draft in principle;
5. extensive dialogue and consultation on the draft in principle before its final adoption as a draft bill by the Convention; and
6. a referendum upon the draft bill adopted by the Convention.

Throughout, the process was premised upon the need for a thorough, open and inclusive debate on all possible options, from the initial point of the holding of the national poll, to the final conduct of a referendum.

Corowa Proposal C



Endnotes

- ¹ Constitution Alteration (Establishment of Republic) Bill 1999, together with the Presidential Nominations Committee Bill 1999.
- ² As well as failing in all six states, the referendum proposal was also not carried in the Northern Territory. Only the ACT voted in support. The seat recording the highest YES vote was Melbourne, with 70.9%.
- ³ Bach, Stanley, *Platypus and Parliament: the Australian Senate in theory and practice*, Department of the Senate, Canberra ACT, 2003, p. 314, cites post-referendum survey results published by the Australian Social Science Data Archive that 'combining those who wanted a directly elected President with those favouring appointment by Parliament - a large majority of the electorate were in favour of a new system of government. Indeed, according to the survey, just 24% of those interviewed favoured the retention of the current system'.
- ⁴ There were 418 registered attendees at the Corowa Conference, both by invitation (including Government representatives, constitutional experts) and by application. The conference was initiated by Jack Hammond QC and the late Honourable Richard McGarvie.
- ⁵ Also in 2001, a private senator's bill was introduced by Senator Natasha Stott Despoja (Republic (Consultation of the People) Bill 2001), which provided for electors to be consulted, at the same time as a general election for the House of Representatives, on whether Australia should become a republic and on whether they should vote again, if applicable, to choose from different republic models.
- ⁶ A Newspoll survey published in The Australian of 15 November 2002 showed that 52% of those surveyed in July 2001 were in favour of Australia becoming a republic.
- ⁷ Trish Luker, *A Republic?*, Legal Information Access Centre (LIAC). Hot Topic No. 22, Issue 22, May 1999, p. 10.
- ⁸ Bach, op cit, p. 317.

Details of models for an Australian republic

Republic Model A (McGarvie Model – appointment by three-member Constitutional Council acting on advice of Prime Minister)

A President chosen by the Prime Minister and appointed or dismissed by a Constitutional Council that is bound to act in accordance with the Prime Minister's advice.

Nomination

Any Australian citizen may at any time nominate any other Australian citizen to be listed for consideration by the Prime Minister when choosing a President.

Appointment

The person chosen by the Prime Minister is to be appointed by a Constitutional Council in accordance with the Prime Minister's advice (ie binding request). The Council can only appoint or dismiss a President on the Prime Minister's advice, and on receiving that advice is bound to do so by a convention backed by the penalty of public dismissal for breach.

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

Removal

Dismissal within two weeks of the Prime Minister advising the Constitutional Council to do so.

Powers

The President will have the same range of powers as the Governor-General, but, except for the reserve powers, they can only be exercised on the advice of the Federal Executive Council or a Minister. Otherwise there will be no codification of the constitutional conventions. The conventions which are now binding in practice because they are backed by an effective practical penalty for breach remain equally binding, because the system remains the same.

Qualifications of President

The President must be an Australian citizen but otherwise no qualifications are specified.

Term

As with the current office of Governor-General, the Constitutional Council will appoint the President at pleasure, without any defined term and legally liable to be dismissed at any time.

The President, like a Governor-General, will have the political security of tenure which comes from public knowledge that the President has arranged informally with the Prime Minister to serve for a period, usually five years, and the adverse political reaction against the Prime Minister which would follow the dismissal during that period of a President the community regards as complying with the conventions and meeting expected standards.

A President who did not comply with the constitutional conventions and those standards would lose public and political support.

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.

Republic Model C (Head of state elected by a directly-elected Presidential Council or Electoral College (Australian Republican Movement's Model 3 of the 'Six models for an Australian Republic'))

Eligibility

Every Australian citizen qualified to be a member of the Commonwealth Parliament, provided that he or she is not a member of the Commonwealth Parliament or a State or Territory Parliament at the time of nomination.

Nomination

A nominee must have no less than 1000 nominators, of which at least one hundred must be from each State.

Election

The President to be appointed from the list of nominees by a specially convened electoral college to be known as the Presidential Assembly. The Presidential Assembly acts as a standing body and convenes solely for this purpose. Elections for the Presidential Assembly shall be held simultaneously with every half Senate election. Each elected member would hold office for six years, with elections for half the Assembly to be held every three years.

One year from the end of the incumbent president's term, the chair of the Assembly shall call for nominations. Some months later, nominations shall be closed and the full list of nominees published for public scrutiny before being presented to the Presidential Assembly.

The Presidential Assembly convenes after close of nominations to begin the process of appointing the new president (or re-appointing the incumbent, if they so choose) from the list of nominees. Appointment is to be carried by a simple majority of votes in the Presidential Assembly.

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

Tenure

Five year term of office. Limit of two terms.

Removal

Same as for federal judges. The President may be removed from office by a resolution of both Houses of the Parliament in the same session on the ground of proved misbehaviour or incapacity.

Casual Vacancy

To be filled by the most senior state governor until a new president can be appointed by the Presidential Assembly.

Powers

Not codified. Non-reserve powers: same as the Governor General - incorporated by reference. Reserve Powers: same as the Governor General.

Republic Model D (Direct Election A)

Eligibility

Every Australian citizen who is qualified to be a member of the Commonwealth Parliament and who has forsworn any allegiance, obedience or adherence to a foreign power shall be eligible for election and to hold office as the Australian Head of State, providing that the nominee:

- is not a member of the Commonwealth Parliament or a State or Territory Parliament at the time of nomination, and
- is not a member of a political party during office.

Nomination

Nominations may be made by any Australian citizen qualified to be a member of the Commonwealth Parliament; the Senate or the House of Representatives; either House of a State or Territory Parliament; or any local government body.

Shortlisting

A joint sitting of the Senate and House of Representatives shall by at least a two-thirds majority choose no fewer than three candidates from the list of eligible nominees for an election of the Head of State by the people of Australia.

Election

The election of the Head of State shall be by the people of Australia voting directly by secret ballot with preferential voting by means of a single transferable vote.

Parliament shall make laws to regulate campaign expenditure by and for candidates contesting an election for Head of State and to provide advertising and campaign support through a single body authorised and funded by the Parliament.

Tenure

The Head of State shall hold office for two terms of the House of Representatives and be ineligible for re-election.

Removal

The Head of State may be dismissed by an absolute majority of the House of Representatives on the grounds of stated misbehaviour; incapacity or behaviour inconsistent with the terms of his or her appointment.

Casual Vacancy

A casual vacancy in the office of Head of State shall be filled by the appointment of a caretaker by an absolute majority of the House of Representatives until the election of a new Head of State at the time of the next House of Representatives election.

Non-reserve powers

The existing practice that non-reserve powers should be exercised only in accordance with the advice of the Government shall be stated in the Constitution.

Reserve powers

Existing reserve powers shall be partially-codified as generally provided in the Republic Advisory Committee's 1993 report where the Head of State retains appropriate discretion.

However, the Head of State shall not dissolve the House of Representatives by reason of the rejection or failure to pass a money bill unless and until the procedures under section 5A of such report have been followed or unless an absolute majority of the House of Representatives has requested such dissolution.

Republic Model E (Direct Election B - Hayden model – national poll)

Nomination Procedure

A person who receives the endorsement of one per cent of voters, by way of petition, enrolled on all Federal Division rolls at the time of nominating should be nominated to stand for direct election. No voter should be able to endorse more than one candidate for election as the Head of State.

Appointment

A national poll at which all voters enrolled on Federal Division rolls should be eligible to vote. Election should be on an optional preferential voting system.

Dismissal

Dismissal should only be for proven misbehaviour or incapacity. A resolution moved by the Prime Minister or his or her deputy and supported by an absolute majority of a joint sitting of the Commonwealth Parliament would be required.

Powers

The powers of the Head of State should be the same as those of the Governor-General. The Constitution should expressly provide that non-reserve powers should only be exercised on the government's advice.

There should be a partial codification of the reserve powers. The exercise of the reserve powers, whether codified or not, should be non-justiciable. The existing conventions applying to the Governor-General should govern the Head of State. These conventions should be provided for, by way of reference, in the Constitution. Obsolete powers should be removed.

Qualifications

An Australian citizen of voting age and enrolled on the Federal Division rolls.

Term

A term of 4 years, with a maximum of 2 consecutive terms.

Details of the Irish head of state

The head of state for Ireland is a popularly elected non-executive president. Details of this office are given here to illustrate one model for head of state from which Australia might draw.

General comments

- According to the Constitution the President 'shall take precedence over all other persons in the State'. In fact, the office is largely ceremonial.
- It is quite clear that the Irish Presidency is a secondary political office.
- There are no expectations that the President should exercise any political leadership.
- Even were the President a senior political figure before election, the incumbent has few constitutional powers to call upon: as one text states, 'the President's room for manoeuvre is not just limited, it is altogether absent'.
- Even when there is some apparent freedom to act, the President is constrained. In 1991 President Mary Robinson was asked by the government not to give a particular lecture, and in 1993 not to chair a Ford Foundation committee on the UN, and she accepted the advice on both occasions without demur.
- The Taoiseach (PM) must keep the President informed on public matters. However, there is no indication of how much information needs to be passed on—Prime Minister Cosgrave reportedly met President O Dalaigh only four times in 1974–6.

Qualifications of President

- A candidate has to be 35 or older to be able to hold office.
- The President shall be eligible for re-election, but only once.
- The President shall not be a member of either House of Parliament.
- If a member of either House of Parliament is elected President, he or she shall be deemed to have vacated his or her seat in that House.

Nomination

- Nomination is by
 - twenty or more members of one of the Houses of Parliament, or
 - by the Councils of not less than four administrative Counties (including County Boroughs).
- Former or retiring Presidents may become candidates on their own nomination.

Election

- The President is elected by direct vote of the people.
- The voting is by means of proportional representation by means of the single transferable vote (i.e. Preferential Voting).

- In the event of the removal from office of the President or of his or her death, resignation, or permanent incapacity, an election for the office of President shall be held within sixty days.
- Where only one candidate is nominated for the office of President it shall not be necessary to proceed to a ballot for his or her election.

Term

- The President holds office for seven years.

Removal from office

- The President can be removed from office.
- The President can leave office if permanently incapacitated, such incapacity being established to the satisfaction of the Supreme Court consisting of not less than five judges.
- The President may be impeached for stated misbehaviour.
- The charge shall be preferred by either of the Houses of Parliament. There must be a notice of motion in writing signed by not less than thirty members of that House.
- There must be support from at least two-thirds of the total membership of the House.
- When a charge has been preferred by either House of Parliament, the other House shall investigate the charge, or cause the charge to be investigated.
- The President shall have the right to appear and to be represented at the investigation of the charge.
- A two-thirds majority in the House which investigated the charge is carried 'resolution shall operate to remove the President from his office'.

Absence from the Irish State

- The President shall not leave the Irish State during his term of office save with the consent of the Government.

Functions and powers

- The President shall, on the nomination of the House of Representatives, appoint the Prime Minister.
- The President shall, on the nomination of the Prime Minister with the previous approval of the House of Representatives, appoint the other members of the Government.
- The President shall, on the advice of the Prime Minister, accept the resignation or terminate the appointment of any member of the Government.
- The House of Representatives shall be summoned and dissolved by the President on the advice of the Prime Minister.
- On the other hand, the President may refuse to dissolve the House of Representatives on the advice of a Prime Minister who has ceased to retain the support of a House of Representatives majority.

- Every Bill passed by both Houses of Parliament shall require the signature of the President to become law.
- The supreme command of the Defence Forces is vested in the President.
- The exercise of the supreme command of the Defence Forces shall be regulated by law.
- The right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction is vested in the President, but such power of commutation or remission may, except in capital cases, also be conferred by law on other authorities.
- The President
 - may communicate with the Houses of Parliament by message or address on any matter of national or public importance
 - may address a message to the Nation at any time on any such matter.
 - but any such message or address must have received the approval of the Government.
- The President shall not be answerable to either House of Parliament or to any court for the exercise and performance of the powers and functions of his office.
- The powers and functions conferred on the President by the Constitution shall be exercisable only on the advice of the Government, save where it is provided by the Constitution that he or she shall act in his absolute discretion.
- Additional powers and functions may be conferred on the President by law.
- No power or function conferred on the President by law shall be exercisable or performable by him save only on the advice of the Government.

Absence of the President

- In the event of the absence of the President, or at any time at which the office of President may be vacant, the powers and functions of the office are exercised and performed by a Commission.
- The Commission is composed of the Chief Justice, the Chairman of the House of Representatives, and the Chairman of the Senate.