

A submission to the

SENATE LEGAL AND CONSTITUTIONAL REFERENCES

COMMITTEE

INQUIRY INTO AN AUSTRALIAN REPUBLIC

from
E. J. Lockett

March 2004

Background

I have had an on-going interest in this matter since being elected as a non-aligned delegate to the 1998 Constitutional Convention. For that election I adopted the title *The Voice of Ordinary Fair-minded, Thinking Citizens* and I have continued to try to fulfil that role.

At the Constitutional Convention I made the following statement:

If the people eventually approve a change, I will happily accept their decision, and I hope the monarchists will too. If the people reject it, I will be no less happy. However, I believe that in that case there should be a moratorium on any further such proposals for at least 10 years. To put it bluntly, the republicans will have spoken up, as is their right, put up, and if they do not get up they should shut up. Let us have an end to the divisions.

I still stand by that statement. An enormous amount of taxpayers' money was spent on the Constitutional Convention and the ensuing referendum. Given the present absence of public demand for such a move, I don't believe that it would be appropriate to put another proposal to the people before 2010 at the earliest. It would be intolerable for such proposals to be repeated every few years until those pushing for change got what they wanted regardless of the lack of public interest in the question. Hence, in spite of the long lead time involved, I really believe that the current inquiry is somewhat premature.

My assessment of the attitude of the person in the street to this issue was summed up in my appended statement to the People's Conference at Corowa in 2001. If anything, I think that interest has declined rather than increased since then. I doubt that an issue of such little consequence to the everyday life of ordinary Australians has ever so preoccupied the power brokers and would-be power brokers of our country. Nevertheless, I am lodging this submission because I believe it is important that discussion of this matter is not left to the academics and the zealots on either side.

I will address the Committee's terms of reference in turn.

Term of reference (a)

the most appropriate process for moving towards the establishment of an Australian republic with an Australian Head of State

Implicit assumptions

This contains two implicit, but crucial assumptions – that we don't currently have an Australian head of state and that it would be desirable to become a republic.

While the Australian Constitution vests power in Federal Parliament, defined as 'the Queen, a Senate and a House of Representatives', the Queen clearly plays no part in the making of Australian laws or the actions of our executive government. In practice, hers is little more than a ceremonial role that she rarely exercises in person anyway.

Although the Governor General acts as the Queen's representative, this does not mean that he is the agent by which the Queen's will is done in Australia. In fact, he is the agent by which the interests of the Australian people are represented to the Queen. It is almost inconceivable that she would require him to act on her behalf in a way that was contrary to his own advice. Doing so would almost certainly bring about an end

to her position as Queen of Australia. Therefore, such powers as are vested in the Crown, including the power to dismiss a Prime Minister are, in reality, exercised by the Governor General.

In matters other than those covered by the 'reserve powers' the Governor General of course acts in accord with the advice of the Prime Minister. These facts lend weight to the argument that, although the Constitution doesn't use the term 'head of state', the functions most closely matching that position are in fact carried out by the Governor General, who nowadays is invariably an Australian. While the argument that the Queen is really our head of state may make for interesting academic debate, it is of no practical significance to the Australian people. The real question is not whether we should have an Australian head of state but whether we should remove the Queen's role from our constitution.

It can be argued with equal validity that, as the Queen has no effective power over Australian affairs, there is no need to remove her from our Constitution, or alternatively, that as she has no such power she may as well be removed, provided that suitable alternative provisions can be devised. The argument in principle comes down to a matter of symbolism. Do we wish to retain the Queen as a symbol of our predominantly British heritage, and all that goes with it, or not? I would not presume to pass judgment on that question for the Australian people and nor do I believe that any committee or parliament should presume to do so. Only the people themselves can provide the answer.

Hence, it was inappropriate for the Senate, in drafting these terms of reference, to make the presumption that we should be 'moving towards' an Australian republic by doing away with the Queen's role. At the most, it should seeking to find whether it is appropriate to now ask the Australian people if they would be prepared for us to become a republic under different conditions from those rejected in 1999 and how this process should best be handled. What conditions the people might find preferable to the present arrangements is of course the most difficult issue to resolve.

Desirable process

At this stage, it would be helpful to leave aside the presumptions in the first term of reference and look at the process that might be followed.

As my brief statement to the Corowa Conference indicated, I believe that the process followed in 1998/99 was severely deficient. The people were not given ownership of the process and hence they rejected its outcome.

I have had different views put to me by members of the public on how the process should have worked. One argument is that the previous proposal was rejected not because people didn't want a republic but because they weren't happy with the model, so the 'in principle' question should be resolved first without being linked to a particular model. This approach seems more popular with those having strong republican tendencies, presumably because they feel that if the required majority was in favour there would be a moral obligation on the remainder to eventually accept some sort of a republic even if they weren't happy with the models eventually put to them. Addressing the 'in principle' question first does have the practical advantage that time and money need not be wasted on addressing the more difficult issue of the nature of the alternative arrangements if the initial proposal is rejected.

On the other hand, some have argued that the 'in principle' question should not be put without attaching it to a particular model, as the nature of the model will inevitably influence their response. This line of thinking is probably more common among those who are not so strongly committed or even opposed to a republic. They may prefer to 'play safe' by voting against an 'in principle' proposal that might eventually produce an outcome unacceptable to them.

With reference to the proposals from the Corowa Conference, I believe that Proposal B unnecessarily complicates the issue by linking changes at state and Commonwealth level. I believe that the states and territories should be left to work out what arrangements they prefer once the people have indicated which of the possible models for the nation is most likely to gain their support. My preferred approach could be seen as a variation on Proposal A, with some of the consultative elements of Proposal C incorporated. It is outlined below.

1. A plebiscite on whether Australia should become a republic, requiring the same double majority as for constitutional change.
2. If the plebiscite passes, delegates are elected to a Constitutional Convention.
3. Local meetings are held with delegates to receive input on possible models from the public. This should include the role, powers and method of appointment/dismissal of the head of state.
4. Constitutional Convention meets to outline perhaps four possible models and draft a plebiscite in the light of public input.
5. A plebiscite to ask:
 - i) What should the head of state be called?
 - ii) What should be the powers of the head of state (choose from 2 or 3 options)?
 - iii) What should be the process of appointment and removal (choose from 3 or 4 options)?
6. Either
 - a) A multi-party Joint Parliamentary Committee prepares draft legislation to give effect to the findings from the plebiscite, then conducts public hearings throughout the country to refine the draft legislation.Or
 - b) The Constitutional Convention re-convenes to prepare draft legislation which is then subject to public hearings as above.
7. Referendum on final proposal

The main feature of this process is that maximum opportunity is provided for public input at all stages. The function of the Constitutional Convention is to receive input from the public and prepare proposals, not to push the views of delegates. It must be made clear that delegates will not have a decision-making role on the principal issue and therefore there is no point in electing protagonists from either side. What is needed are delegates who can objectively and honestly evaluate public input so as to

devise proposals that truly represent the diversity of views in the community. The final choice of a proposal to go to a referendum will be left to the people.

This should overcome the fundamental flaw of 1998 in that the election of delegates was promoted as a de facto plebiscite on a republic and the delegates wrongly acted as though the Convention had a decision-making role on that issue. Hence it became an adversarial contest rather than a cooperative and constructive search for a proposal most likely to be most acceptable to most people.

Term of reference (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.*

Have we learnt nothing from the experience of 1998/99? I believe it is inappropriate for a parliamentary committee of whose existence most Australians are totally unaware to presume to pass judgment on the matters incorporated in this term of reference. They are matters to be resolved by all the people of Australia, preferably through the processes described above.

My assessment of the feeling of the people is that the adversarial nature of the 1998 Constitutional Convention, combined with the presumptuousness of largely ignoring the views of the public until a single proposal that reflected the outcome of that adversarial process (rather than the wishes of the people) was presented in a referendum, contributed substantially to its defeat.

The most that I am prepared to say in response to this term of reference is therefore to give a comment on what I believe the public saw as the main flaws in the 1999 proposal.

Although the Governor General is now chosen by the Prime Minister alone, I believe that the Australian people are reluctant to accept any change that doesn't give them more say in the choice. The proposed Presidential Nominations Committee (which didn't appear in the original proposal but was added during the Convention to garner support) was, in effect, little more than window dressing and the people recognised it as such.

While the Committee was to receive nominations from the public, the views of the public could have all too easily been disregarded in the final outcome. Given that half of the committee members were to have been politicians and the other half were to have been appointed by the Prime Minister, it is hard to imagine that nominees for President from, say the Prime Minister or the Leader of the Opposition would have been excluded from the short list presented to the Prime Minister. As the short list was not to be disclosed, no-one would have known if the Prime Minister then chose his own nominee. And in any case, these provisions would not have been part of the Constitution, so they could have been subsequently changed by parliament.

The one improvement on the present situation was that the Prime Minister's nominee would have had to be approved by a 2/3 majority in a joint sitting of parliament. But

that wasn't adequate to counter the strong argument that the President would have been a 'politician's President'. I believe that only a provision that gives the people more say, and preferably the final say (i.e. at least a right of veto on parliament's choice) would overcome these objections.

I believe that the provisions which would have allowed a Prime Minister to capriciously dismiss the President, but did not specify what would happen if the House of Representatives did not subsequently approve that dismissal, were also unacceptable to the public. This was in conflict with the generally held view of the head of state as an impartial referee put there to ensure that the political process is played by the rules in order to protect the public interest.

I again strongly emphasise that I do not believe that it is appropriate for this little known inquiry to seek to pre-empt the judgment of all Australians on the issues canvassed in term of reference (b).

Eric Lockett

26/3/04

**Text of a brief statement to the People's Conference, Corowa
on the general proposition that the question of becoming a republic
is in urgent need of resolution.**

by Eric Lockett

1st December 2001

Mr Chairman, ladies and gentlemen.

I was elected to the Constitutional Convention as *The Voice of Ordinary, Fair-minded, Thinking Citizens*. As such, I hope to add some reality to this debate.

This proposition implies that there is a pressing need to resolve the head-of-state issue one way or the other – and soon. But, as far as the public is concerned, the minority of ardent monarchists will say that it **was resolved** one way in 1999, whereas that other minority of ardent republicans will say that it **will never be resolved** until it is resolved the other way. And the vast majority will say ‘what’s on the TV tonight’.

At the Constitutional Convention I commented on how unrepresentative of ordinary citizens was the collection of personalities, politicians, professors, priests, poets and pirates (but precious few paupers) gathered there. I am pleased to see that this gathering provides a much broader representation. But there is one thing that separates us all from the crowd. We regard this issue as sufficiently important to give up our time and money to consider it.

I have just completed a Senate election campaign, in the course of which I spoke to many hundreds of people in the street. And how many raised the possible change to a republic as an issue of concern to them? None! Not one, nil, zero, zilch. Even the ALP which had planned to make it an issue was remarkably quiet on the matter.

But while average citizens are indifferent about the need for change, they are rightly resolute that any change should occur only on **their** terms.

The last attempt failed because, as far as ordinary citizens were concerned:

- the issue was not **their** issue – the GST was (and still is) of greater concern,
- the process was not **their** process – they had no say in how it was developed,
- the delegates were not **their** delegates – only half were elected, and those by less than half the people,
- the model was not **their** model – over 1000 submissions lodged in good faith to the Constitutional Convention by the public now lie in some Canberra dungeon, most of them almost certainly read by no-one,
- Consequently, as the referendum campaign brought out, the President would not have been **their** President.

To initiate processes is one thing, but to seek an early resolution is another. There is no urgency to this matter. There is no need for an early resolution. Let’s learn from past mistakes. It is much more important to get it **right** than to get it **done**.