

HOW MAY THE PEOPLE BE HEARD? - PLANNING FOR A NEW REPUBLIC REFERENDUM - PROCESS AND CONTENT

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INTRODUCTION

The success of the Olympic Games in Sydney has shown Australia at its best: technologically sophisticated, organisationally efficient and informed by attitudes of tolerance, good humour and egalitarianism. Above all, the spirit of the Sydney Games was confident and open; emanating from a nation apparently full of self-belief, with no doubts about its independence and sovereignty. How difficult it is to believe that the same country less than a year earlier could not find a way to express the majority will to elevate an Australian to Head of State.

It is an exercise in paradox to contrast the international negativity at the failure of Australia to declare itself a republic, with the international celebration of this Country's sophistication following the successful Games. Indeed, Australia's own attitude to its Constitution and nationhood is full of paradoxes. Our national mythology is characterised by larrikinism and a skeptical attitude to authority. Yet at the apex of government we accept an unelected Governor-General with substantial but unclear vice-regal powers, drawn from a distant monarch in a foreign country.

Ours is a remarkably adaptable country; whose take up of new technology is among the fastest in the world; whose universal education aims have been admired world wide; and yet our people continually resist attempts to strip the barnacles from a 100-year old Constitution. Over the last century, the people have agreed to only eight changes to the Constitution, out of forty-four proposals put by government for change. Our Constitution has none of the ringing confidence of America's declaration:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.¹

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1 The Constitution of the United States of America

Reflecting our more peaceful transition to nationhood, enacted by Westminster statute instead of armed rebellion, our preamble begins with a legalistic proposition:

Whereas the people of New South Wales, Victoria, South Australia, Queensland; and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland and under the Constitution hereby established . . .²

Parts of the Australian document make for quaint reading with references to 'the Colonies',³ 'the Queen's pleasure',⁴ the centrality of our posts and telegraphs,⁵ the control of 'fermented, distilled, or other intoxicating liquids',⁶ and its 'ten thousand pound'⁷ limit on the Governor-General's salary. There is, however, no doubt at all that the bare bones of the document, setting up the structures of a federal system of government, have proved enduring and well-crafted; underpinning one of the most stable democracies in the world.

There are many anomalies and redundancies whose removal would be desirable, but to my mind there is really only one major basic structural difficulty: where the Australian Constitution unequivocally states that 'the executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative'.⁸ Whilst it is true that conventions have grown up that operate to limit the exercise of the Governor-General's constitutional powers, it is undoubtedly the case that what is said in the Constitution in black and white is not a reflection of the way our political system really operates and has not been for a great many decades. There is no mention in our most fundamental national document of the position of Prime Minister which, I confidently predict, would be nominated as head of executive government by almost every Australian. It is no wonder that many people have difficulty following the complexities of Constitutional arguments when the Constitution itself is not an inviting document to read or understand.

Is it because of the wording of the Constitution, or in spite of the wording of the Constitution, that Australia's remarkably resilient political system has developed? I believe this to be at the heart of the republican

² *Commonwealth of Australia Constitution Act 1901* (Cwth) (Commonwealth Constitution), preamble

³ See generally the Covering Clauses and Chapter V of the Commonwealth Constitution

⁴ Commonwealth Constitution, Chapter I, Section 2

⁵ Commonwealth Constitution Chapter I, Section 51(v)

⁶ Commonwealth Constitution Chapter V, Section 113

⁷ Commonwealth Constitution Chapter I, Section 3.

⁸ Commonwealth Constitution, Chapter II Section 61

debate and it is no secret that Labor's respect for the structure of the Constitution does not preclude our vigorous support for important amendments, including provisions to become a republic. Poll after poll has shown us that the only question in most peoples' minds is what sort of a republic we should have. Yet the first major hurdle to clear is the undoubted fact that many Australians have difficulty in understanding the way the Constitution would need to be amended in order to get the changes they desire.

In the large numbers of town meetings, community forums and public events attended by politicians during the republic debate, one thing was very clear: people were crying out for more information about the rules underlying the current political system. Those opposed to the Republic were able to run a very effective campaign based around the proposition that 'if you don't know, vote No'⁹ Later in this paper I want to explore in further detail the effect of our lack of civics knowledge, coupled with the deep antipathy to what is perceived as self-interest among politicians I aim to propose some reasons why this is the case, and how we can try to do something about it. This is an essential point for this discussion today, because the result of last year's referendum made it clear that Australians simply will not accept a proposal for constitutional change which they perceive as being imposed upon them from on high. Unless all Australians are equipped with enough information to make an informed judgement, attempts to amend our Constitution - even if only to reflect the reality of everyday politics - will continue to falter.

LABOR'S PLAN TO REVIVE THE REPUBLIC

Whilst Australians have long discussed the replacement of the constitutional monarchy with a republican constitution, even before the Federation of 1901, republican supporters have been in the minority until the 1990s. Surveys of Australian attitudes have shown that support for a republic increased from about 25 per cent in the 1960s to about 30 per cent in the 1970s. It was not until the 1990s that a majority for a republic began to be recorded consistently,¹⁰ propelled perhaps by changes in Australian society, increased activism by political parties on the republic¹¹ and nationalism associated with the 1988 Bicentenary celebrations.

⁹ See for instance, Shadow Attorney-General Robert McClelland's account of the myriad of questions he received during public meetings, on the Governor-General's current powers in his speech *Amending Our Constitution* 13 November, 1999 3.

¹⁰ Warhurst, J *From Constitutional Convention to Republic Referendum A guide to the Processes, the Issues and the Participants*. Australian Parliamentary Library, 29 June 1999.

¹¹ Labor's official support for the republic began in its 1982 policy Platform document

It was the Labor Government of Paul Keating that really pushed the issue along, with the establishment of a Republic Advisory Committee in 1993.¹² Its report concluded that a republic was achievable without major changes to the Constitution or the system of Government. In 1995 Prime Minister Keating gave a televised address to Parliament¹³ in which he set out a timetable for a republic by 2001, the centenary of Federation. Whilst Labor wanted to move the process forward with an indicative national plebiscite on the simple question of whether there was support in principle for a republic, the conservative coalition was promoting a people's convention to discuss the issue.

It is a lesson from history that any process towards constitutional change, including moves to create a republic, will only succeed if it has broad community and bipartisan political support, including that of the Prime Minister of the day. In this case Prime Ministerial support was never there. Prime Minister Howard followed through with the convention, although it was always clear he opposed moves towards a republic. The process he set up failed to deliver Australians a republican model they could accept. The Constitutional Convention was marred by controversy over its membership and its voting system: there were 76 elected candidates and another 76 being appointed by the Prime Minister. Less than 50 per cent of eligible voters turned out to vote for membership of the Convention. With this lack of public participation in the membership process of the Convention, there were always going to be doubts about its ability to allow people to feel that they participated in proposals for constitutional change.

In the event, the Convention supported in principle the idea that Australia should become a republic by 89 votes to 52 with 11 abstentions. It also decided to come up with one preferred model to put to the people. This model would have allowed the Parliament to appoint the president of a republic, in spite of a substantial group of republican supporters preferring a model in which the people would directly elect a president. The parliamentary appointment model was supported by 73 votes, but with 57 opposed and 22 abstentions.

The appointment model was put to the people in November 1999 and, as we know, failed to garner either the majority of the overall national vote or the further requirement of a majority of votes in a

¹² See the Report: Australia Republic Advisory Committee. (Turnbull, M. Chairman) *An Australian Republic The Options*. Canberra: Australian Government Publishing Service. 1993.

¹³ Australia. Parliament House of Representatives. *Parliamentary Debates*, 29 June 1995, 2639-2678; also Keating P. *An Australian Republic The Way Forward* Australian Government Publishing Service 1995.

majority of States.¹⁴ It was opposed by an alliance of 'dyed-in-the-wool' monarchists who ran a well organised campaign and 'direct-elect' republicans who did not like the model on offer in which the president would be appointed by a two-thirds majority of the Parliament.

Several clear reasons for the failure of the mainstream republican campaign emerged:

- The Prime Minister intervened late in the debate to campaign actively against the model his Government was putting before the people. We know that even with bipartisan support it is still very difficult in Australia for referenda to succeed. In some ways it is remarkable that in spite of Prime Ministerial support for the No campaign the Yes campaign still garnered 45 per cent of the national vote.
- The public education campaign was inadequate in terms of fulfilling the desire, often expressed in the community, for real information on the issues. The lack of detailed public awareness of the provisions of our existing Constitution paved the way for the success of a scare campaign.
- The single, most important point, to my mind, was that as there was *only one option* put to the people, their fears that it was 'the politician's republic' were reinforced. People felt that the model on offer was handed down from on high, without any choice or adequate community participation.

Labor learned many lessons from the campaign. Probably the major one is that we need a consultative process to advance the republican cause. People need a choice at each stage of the process. They will not accept a process in which they feel their views are being ignored. We need a process to give all Australians a greater sense of ownership over, and genuine involvement in, any proposal for a republic. All options must be put on the table, including the option for a direct election of the President. If it emerged from a thorough consultative process that there was a majority in favour of a direct elect option, who would have the right to forbid that?

A major symbolic change of this kind in our Constitution must have the people's confidence. In the absence of a national plebiscite on the

¹⁴ In fact the referendum failed to win a majority in any of the States although it did win a majority in the Australian Capital Territory which did not count in the States tally. The overall national vote was 45.13 per cent Yes and 55.87 per cent No. The second question on a proposed preamble to the Constitution, which was actually supported by the Prime Minister, also failed both tests. The result for that vote was 39.34 per cent Yes and 60.66 per cent No. Source: *Australian Electoral Commission*.

threshold question of whether or not we should become a republic, the republican movement was vulnerable to the argument that no popular consent had been involved. People would be less likely to take the view that they are being misled by some undefined or nefarious intention to change the fundamental features of our democracy if they had some sense of ownership of the issue; ownership that would flow from an initial indicative plebiscite.

Labor plans a three-step consultative process:

- To begin with, a plebiscite would be held on the threshold question: do we want a republic in which an Australian is the Head of State or do we want to continue as a constitutional monarchy in which the Head of State must be the British monarch;
- Secondly, if a majority of the people want a republic then a second plebiscite would follow to determine the preferred model; and
- Finally, a constitutional referendum would be held based on the outcome of the two plebiscites.

If the first plebiscite determines that Australians do want a republic, as we believe will occur, we believe a second stage plebiscite is the appropriate way to determine what sort of republic the people want. This is because, having once rejected a model that came from a parliament/convention process, there are still likely to be deep suspicions about the intentions of the government with regard to the constitutional arrangements around the Head of State. We would see the presentation of several models, and perhaps subsets among them, discussed in the lead-up to the second plebiscite. Among them might be the McGarvie model, the Parliamentary Appointment model and a Direct Election model or models. The aim of the second plebiscite would be to get majority support for one model.

There is a paradox concerning the role of politicians in this process. While it is imperative that the people are given a genuine choice – after genuine consultation and debate – so that they do not think it is a case of “the politicians’ republic”, it is also important that politicians accept their responsibilities as the Constitutional custodians of government authority. This goes beyond simply observing that a referendum is much more likely to succeed with bipartisan political support. While the Republic cannot be imposed by politicians from on high, it would not help the cause to have political leaders vacate the stage completely. I think the 1999 referendum campaign indicates that there is a greater likelihood of success for a Yes case led by a broad coalition of elected political representatives than by a more informal gathering of republicans outside the mainstream political process.

Probably the most difficult phase of our three-stage process would be the period between the second plebiscite and the referendum. It

would be necessary to put in place some processes for further public consultation and inter-party discussion on what might turn out to be potentially difficult questions that could sidetrack argument on the main themes. These processes may involve constitutional lawyers, conventions, parliamentary committees, public forums and the like. Issues such as the codification of the President's powers and the processes of his or her dismissal would come to the fore during this time. Whilst these were potent issues in earlier debates, their potency may well have been amplified by the ready capacity to demonise the proposal at the referendum as the politicians' republic, rather than a process owned by the people.

If a proposal went through careful iterations before the public, mistrust would be minimised and people might see that there was enough goodwill and commonsense behind the proposals to overcome nagging doubts. In the lead up to the final draft of the Australian Constitution during the 1890s, there were many opportunities for the anti-Federalists to come up with scare campaigns on sections that were something of a step into the unknown for the colonists. Yet ten years of campaigning, and a number of Constitutional Conventions substantially drawn from the politicians of the day, provided enough public trust for voters in the main to ignore doomsayers.

A number of critics of any proposals to put an option of direct election of the President before the people say that it would invariably produce an unworkable clash between the Head of Government and the Head of State which would be difficult to resolve. Certainly a successful passage of such a proposal in the second referendum would mean that there would have to be substantial work on the codification of powers between the passage of the plebiscite and the referendum. In spite of warnings about these difficulties, I do not believe a referendum would be successful that has not entailed an opportunity for the public to look at all options, including an option to directly elect the president.

The measured process proposed by Labor would resolve the issue in a way which is consultative and democratic and which does not seek to shut out one side of the debate. This is the way to achieve the legitimacy and broad-based community support needed for a referendum to carry. I don't want to be too prescriptive about the timetable for this process, as the pace must be generated by the desire of the Australian people for change. Our goal, however, would be to achieve a republic by 2010.

CIVICS EDUCATION

I do not wish in any way to suggest that the Australian people were governed by ignorance when they rejected the republic option last November. But I do think it is vitally important to obey the wishes of the

people, expressed in many forums during the 1999 campaign, for better information on the current workings of our system of government as set down in the Constitution

In 1994 the Government set up a Civics Expert Group¹⁵ to come up with a strategic plan for a non-partisan program of public education and information on the Australian system of government, the Constitution, citizenship and other issues associated with that task. At that time ANOP¹⁶ market researchers were tasked with a national survey to inquire into the extent of the knowledge gap. The survey found that the majority of Australians admitted to having scant knowledge on the details of our system of government and the Australian Constitution:

Only 19 per cent of people have some understanding of what Federation meant for Australia's system of government. Only 18 per cent know something about the content of the Constitution. Only 40 per cent can name the two federal houses of parliament and only 24 per cent know that senators are elected on a state-wide basis. Sixty per cent lack knowledge about how the Constitution can be changed despite having voted in referendums.¹⁷

This situation had not improved much five years later when a Newspoll survey in May 1999 prepared for the government's Referendum Taskforce¹⁸ showed 'that people's knowledge of the current system is often patchy and this is reflected in the quantitative findings'. The Newspoll said:

'In preparing the public education programme, it will be important that the Referendum Taskforce acknowledges that it is starting from a relatively low base of public knowledge about the forthcoming referendum and the change which will result if Australia becomes a republic. Very few people know a lot about the issues. Furthermore every second person feels they do not have enough information on the referendum to be able to cast a vote.'¹⁹

15 In June 1994 Prime Minister Keating announced the formation of the Civics Expert Group consisting of Professor Stuart Macintyre (Professor of History, University of Melbourne) as Chair, Dr Ken Boston (Director General of the NSW Department of School Education) and Ms Susan Pascoe (Co-ordinating Chairperson, Policy, of the Catholic Education Office, Melbourne). See also the Report: Australia Report of the Civics Expert Group (Macintyre, S. Chairman), *Whereas the people ... Civics and Citizenship Education* Canberra: Australian Government Publishing Service 1994.

16 ANOP Research Services Pty Ltd

17 *The Australian Community and its Governments, the Constitution, Citizenship and Civics. Community Knowledge and Understanding*; ANOP, cited in *Civics and Citizenship Education Report of the Civics Expert Group* Australian Government Publishing Service, 1994, 19.

18 *Referendum Public Education Research* prepared for the Referendum Taskforce, Department of the Prime Minister and Cabinet, by Newspoll Market Research Yann Campbell Hoare Wheeler, May 1999.

19 *Referendum Public Education Research* prepared for the Referendum Taskforce, Department of the Prime Minister and Cabinet, by Newspoll Market Research Yann Campbell Hoare Wheeler, May 1999.

It is well known that the public education program that accompanied the referendum was anything but informative for those starting from a low base of knowledge. In truth, it is a huge challenge for even the most well motivated of governments to prepare material that is both digestible and educative on some of the most complex issues known to constitutional lawyers. Nevertheless just such an education program is the very least that a government should provide if there are to be meaningful constitutional debates in the future.

There were widespread fears, encouraged at some points by those associated with the monarchist cause, that the republican model that was put to the people would result in changes to the coat of arms, to the number of parliamentarians, to the flag, and to Aboriginal rights. Also, there were widespread fears about the costs of the transition and about the Australian president being able to assume the powers of an American-style president, leading to fundamental changes in our political system. It is difficult to see how people can be reassured about plans for constitutional change without a good grasp of the checks and balances, indeed the terminology and major documents, of the current system.

The Howard Government has moved forward, albeit in a fairly modest way, with the civics education proposals of the 1994 group, inasmuch as schools are concerned, although civics education for migrants, in IAFE, and more broadly in the community has been allowed to languish. About 40 per cent of schools are using civics education materials, such as the excellent *Discovering Democracy*²⁰ series. Nevertheless, there is obviously a lot more that needs to be done in this area to assist Australians, in the detail they want, to explore constitutional and other questions about our political system and its history.

CENTENARY OF FEDERATION

There is a good opportunity in connection with the Centenary of Federation celebrations next year to pursue civics education aims. It has been interesting to see the television campaign promoting the Centenary highlighting the widespread gap in knowledge about Australia's early leaders, reinforcing our views that civics education is a very important missing element in the development of Australia's public debate. "What sort of country does not know the name of its first Prime

²⁰ In May 1997 the Howard Government demonstrated its strong support for a national program of civics education by announcing *Discovering Democracy*. The program reflects many of the recommendations made by the Civics Expert Group. Under the guidance of the Civics Education Group (formerly the Civics Expert Group) the Curriculum Corporation is developing a curriculum framework to implement the program. See Hirst, J (Chairman) *Introducing Discovering Democracy Schools Material Project*. Carlton: Curriculum Corporation 1997.

Minister?" was the theme of the first series of advertisements for the Centenary Perhaps the real question should be: "What sort of country tries to change its Constitution without its people receiving adequate information on the workings of the current Constitution?"

Nevertheless we should be heartened about our future when we look back at the Federation of the Colonies into the one nation in 1901 Federation was a momentous change, greater even than would be entailed in the move to a republic It required six separate colonies to agree to giving up their sovereignty to form a greater whole, with all the various rivalries and arguments that was bound to cause Then it took the difficult business of colonial leaders working the system in London to get the Federation they wanted from the British Government

I hope that the spirit we have seen at work during the Olympic Games; particularly with the torch relay, a spirit of a confident and proud Australia; will carry through from community to community with our celebrations for the Centenary of Federation I have high hopes that we can add lustre to our Olympics triumphs through a good look at the highlights of our history and institutions, to be celebrated next year

CONCLUSION

If a Labor victory occurs at the national level at next year's election, I can promise that the Olympics and Centenary celebrations can be capped, after due consideration of the issues, by a national vote on the simple question of whether or not we will become a republic. Once that national vote is taken, and I have little doubt it will succeed, I think we will find ourselves in a better position to start the real debate: what sort of republic we want

It will assist the debate enormously to have a Government, and hopefully even an Opposition, serious about expressing the national will for a change that will truly reflect Australia's place in the world at the beginning of the 21st century But the most important point is this: we have to trust the people, we have to make any move for change something that genuinely emerges from the Australian people themselves The process may be lengthy, it may be exhaustive and perhaps exhausting, but as the heirs of the Federation founders, and as the generation that brought the world the best ever Olympic Games, we know for sure that we have it in us.