

# SUBMISSION TO SENATE INQUIRY INTO AN AUSTRALIAN REPUBLIC

## LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE MARCH 2004

**The Hon Michael Beahan, Former President of the Senate**

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### INTRODUCTION

#### **Strong Public Support for a Republic**

I start from the premise, as the Senate appears to have done in framing its reference for this inquiry, that there is majority public support for a republic with an Australian head of state. Successive public opinion polls support this view and the 1999 referendum itself indicated that a sizeable proportion of the voting public supported the proposal put to them at that time; this despite a strong negative campaign, open opposition from the Prime Minister, the perception of division among supporters of a republic, the traditional conservatism of voters on constitutional issues, and the distraction of the direct election model, which accounted for at least some of the 'no' vote.

#### **Constitution in Need of Change**

I start also from the view that the constitution needs more substantial reform than is being proposed by the relatively simple changes to bring about a republic. The constitution is a prosaic and incomplete document. It is neither uplifting, nor is it a comprehensive or definitive guide to governance in Australia. There is, for example no exhortation to a grand vision for Australia, nor is there any mention of the basic rights of its citizens. At a more instrumental level, there is no mention of the role of ministers nor of political parties, nor of the concept of government being formed in the House of Representatives. There is no reference at all to the third tier of government. All in all it is a pretty patchy document, deficient in its conception and long overdue for revision.

#### **Community Reluctance to Change**

In light of Australia's historical reluctance to change its constitution – of the 42 constitutional referenda put to the people only 8 have succeeded and none without bipartisan support – I accept the fact that constitutional change must be cautious and minimal. It was for this reason that in 1999 I supported the minimalist model for a republic. This is also why I now support changes to the constitution, which focus on the popular demand for a republic without calling for the many other overdue constitutional reforms demanded by contemporary circumstances and changing standards.

#### **The Role of Government**

Contrary to those who assert that it is not the role of government to seek constitutional change, I believe strongly that this is a central role for governments. Governments should be in the business of anticipating change and attempting to place the nation in a position, which facilitates adaption to such change; governments should explore alternatives and show leadership by indicating directions.

Australia has, for example, made numerous adjustments to position itself to gain maximum advantage from the globalisation of the economy and the information age. Things might have been comfortable before the advent of international markets and borderless, global investment; before satellites, fibre-optic cable and digital compression. But we would be pretty silly if we did not prepare for a future, which will be quite

different from that comfortable past. This process is, in effect, a sort of national preventative maintenance and it is very much the role of government.

And this is all that the supporters of a republic are proposing; some preventative maintenance to bring Australia into line with a contemporary world and with evolving community sentiment; maintenance which will reflect Australia's independence, our unique place in Asia, and our multiculturalism. Symbolic changes yes, but national symbolism is an important thing in a nation's self-confidence and sense of identity, and in framing the image we want to project to other nations.

It seems to be forgotten in this debate that the monarchy itself has undergone continuous evolution, adaption and deliberate, planned change by government in response to the changing nature of British society. To suggest otherwise is to deny history. The present day monarchy is fundamentally different in its role and image from that under Queen Victoria, and it is now undergoing further change as a result of the tragic death of Princess Diana and other internal problems.

The history of the monarchy prior to Queen Victoria is one of a long struggle to adapt to the emergence of democratic forms. The British historian E J Hobsbaum argues in *The Invention of Tradition*<sup>1</sup> that the modern British monarchy is largely a deliberate creation of the late 19<sup>th</sup> Century, designed to overcome the then unpopularity of Queen Victoria and the Prince of Wales. Republicanism was popular in the 1870's and 80's and was of serious concern to Disraeli, who was Prime Minister for most of that period. In response, the monarchy was virtually 'reinvented' in the latter part of last century and the early part of this century. Thus was born the concept of the Empress of India, the mystique of empire and its corollary the 'white man's burden'. Great Royal occasions were organised. There were two jubilees, weddings and funerals, all previously poorly conducted and private, now sumptuously and well presented and public. Uniforms, drills, pomp and ceremony were designed, so that many of the events and procedures which we now regard as timelessly British were in fact invented in the last part of the last century and the early part of this century.

Australia's constitutional relationship with Britain has similarly been evolving since 1788. We should remember that we were a series of colonies that contested British authority. We established local self-government, refused to take any more convicts, adopted parliamentary practices, electoral franchises etc far ahead of British precedent. Women were given the vote much earlier than in England and many other parts of the world. The property franchise was abolished here much earlier than elsewhere. In 1901 we federated and gained partial independence. The Statute of Westminster in the 1930's further asserted our independence, ending Australia's reliance on Britain in defence and foreign affairs. In the 1940's, against the wishes of the British, we withdrew our troops from Europe to fight in our own region. And in recent years the rejection of the Privy Council as the final court of appeal, the creation of the title 'Queen of Australia' and the move to our own national anthem moved us further away from filial dependence.

All of these stages have asserted the growing independence of Australia, gradual, evolutionary but substantial change. The changes, which the supporters of an Australian republic now seek are part of this process of gradual change.

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<sup>1</sup> Hobsbaum EJ Ranger T (Eds), **The Invention of Tradition**, Cambridge (Cambridgeshire); New York: Cambridge University Press, 1983

### **Process Paramount**

In any consideration of proposals for a republic the emphasis should now be on process rather than specific models. The public must be given the opportunity and the information to make judgements about whether or not they want a republic and then about what sort of republic they want.

The following comments relate more directly to the Committee's discussion paper.

### **AUSTRALIA'S HEAD OF STATE**

#### **Who is Australia's Head of State?**

One of the early questions raised in the Committee's discussion paper is who is Australia's head of state? Quite apart from the Constitution's clear references at Sections 1 and 2 to the Queen and her successors as head of state, the perception by other nations must also be taken into account. I am here reminded of the difficulty experienced by Australian diplomats in convincing the Indonesian Government that our then Governor General, Bill Hayden should be afforded 'head of state' status in a planned official visit to that country. This has been a consistent problem, particularly in Asia, where many countries find it particularly difficult to understand the fact that a country, which they know to be independent, should have a head of state from another country. But it is a problem not only in Asia. When plans were being made for a visit by the Governor General to the United Nations on the occasion of their 50<sup>th</sup> anniversary, UN officials were perplexed at what status and security he should be afforded. They sought advice, not from the Australian Embassy but from the British High Commission!

These sorts of experiences probably account for why so many Australian diplomats are republicans. They are more frequently exposed to these anomalies and to the negative image they project of Australia's independence and self-reliance. It is, for them, a question of national pride. As President of the Senate I travelled widely representing the Parliament. I encountered the same confusion wherever I went. I continued travelling overseas as International Secretary for the Australian Labor Party after I had left the Senate and found that a regular topic of casual conversation among political leaders and business people wherever I travelled was the republican question and whether Australia would sever its colonial ties. It should be noted that most of my interlocutors, but particularly those who had experienced colonial rule, saw our links with Britain as the vestiges of colonial control. There is no doubt also that they regard the Queen as Australia's head of state, even if this bemuses them.

#### **Head of State and Head of Government?**

I oppose the notion, posed in Question 1 of the discussion paper, of Australia's head of state exercising executive powers such as in the USA or France. This is, I believe, a much too radical change for a constitutionally conservative country such as Australia. It would involve substantial cultural and political change and would present numerous practical problems in transition.

I oppose also the notion that the head of state role might be exercised in a Westminster-style system by the Prime Minister of the day. My experience in the Senate has led me to a realization that in the parliamentary context, there are both administrative and ceremonial roles, which are inappropriate for the prime minister of the day. In the parliamentary context it would not be appropriate for the Prime Minister to argue for resources for the parliamentary departments or to represent the parliament (as opposed

to the government) either to overseas visitors or on overseas visits. In the interests of the independence of the parliament over the executive, these roles are better carried out by the presiding officers of the Parliament.

There is, I believe, a parallel at the level of head of state. There is a public expectation that the nation will, at certain crucial times, be represented by a non-partisan figure who is seen as both above the cut and thrust of politics and able to personify Australian values. The controversy surrounding Governor General Hollingworth demonstrated how far the public's expectations have moved in this direction in the past fifty years. We used to blandly accept coldly aloof, retired English military figures as local representatives of our head of state, but we now not only demand that Australians fill the position but we also expect more of the position. Recent events have also demonstrated how much the personality of the head of state defines the position. The capacity of Sir William Deane both to inspire the nation eg in his pleas for reconciliation with indigenous Australians and to represent the nation's collective soul on occasions such as the tragedies at Interlaken in Switzerland or at Childers in Queensland, demonstrated how effective the position can be.

The role of head of state in Australia, I believe has emerged over time from the passive acceptance of the Queen's representative in Australia to the community's apparent need for the presence of a respected, non partisan figure who embodies the values and sensibilities of the people, who is seen as above politics and who is trusted as the sometime arbiter of the Constitution.

In our adversarial Westminster system and against the backdrop of a (perhaps justly) cynical electorate, the elected leader will always be seen as acting out of self- interest and to gain political advantage. So, on balance I support the separation of the two roles and the continuation of the role of head of state.

It follows from the above that I favour a largely ceremonial role, similar to that of current governors general for Australia's head of state, whichever model is chosen by the people, and that advice to the holder of the position should be exclusively from the prime minister of the day.

### **Powers of Head of State**

In essence I have no objection to the current non-reserve and reserve powers and their transfer to the head of state under a republican model in which he/she is elected by the Parliament or a delegated body, although I do think that retention of these powers should be accompanied by removal of the Senate's capacity to block supply.

Should a direct election model with a non-executive head of state be chosen, I would favour codifying the reserve powers. Unlike many participants in this debate I do not believe it is beyond the wit of the Parliament to do this effectively and without grave danger to the polity.

### **Selection of Candidates**

In any but the direct election model I would favour selection by a two-thirds majority of both houses of Parliament. If a direct election model is chosen by the people I would favour a preselection model similar to that used in Ireland. This would avoid the potential for a populist figure emerging, who might see herself as an alternative focus of power to the elected Prime Minister. I do not believe that politicians should be excluded

from consideration as candidates for the position. I do not subscribe to the popular view that politicians are somehow not to be trusted. Politics is a noble profession, which prepares many well for other high offices. There are many politicians who have served with distinction in the position of governor general.

As for the title, I favour 'president of the Commonwealth of Australia' and believe that the transition to an acceptance of this title would be swift and uneventful. The title 'governor general' has overtones of colonial representation, which would create confusing imagery. The current term of five years with the capacity to extend this works well and I can see no reason why this should not be continued.

### **Removal of a head of state**

The recommendation of the Republican Advisory Committee for removal by a prescribed number of members and senators at a joint sitting of the Parliament provides a reasonably safe mechanism without the need for spelling out grounds for dismissal and with inbuilt political protections against its capricious use. The filling of a casual vacancy where a head of state has been directly elected could be facilitated either by the pro-tem appointment of the most senior state governor as at present or by a two-thirds majority vote of a joint sitting of the Parliament. The Parliament could have the right to decide that an election be called to decide a replacement.

## **ELECTIONS AND CAMPAIGNS**

The question of elections, campaign assistance and political party support applies only to a direct election model. Were such a model to be chosen by the people and assuming that this would include a preselection mechanism, which would limit the number of candidates to two, I would support a first-past-the-post system of voting with a run-off if a candidate fails to attract 50% of the first vote.

In any system likely to result in more than two candidates, a preferential system of voting would be both fairer and more appropriate, since it would avoid the situation in which a candidate with a minority of total votes is elected because he or she has proportionately more votes than any of the other candidates individually.

I believe that any elections should be conducted by the Australian Electoral Commission, who have a record second to none for fairness, impartiality and efficiency in the conduct of a wide variety of elections run under a variety of voting systems. I do not believe that public funding of campaigns would be either appropriate or practical, but I would support the provision of compulsory free time on all free-to-air TV channels for schedules of campaign information slots of no less than two minutes duration under conditions set by the Parliament.

I see no reason why political parties should not be involved in such an open, direct election. Political parties are an integral part of the community and have a right to be involved. If their involvement were proscribed, a number of other institutions would also have to be considered for similar treatment. It would be difficult to agree on the criteria for such proscription.

## **MODELS AND PROCESS**

One of the problems with the 1999 referendum, a problem which has effectively left the issue unresolved, was that the question of models merged with the fundamental question of whether the community wanted to move towards a republic. As indicated above a combination of a strong negative campaign, open opposition from the Prime Minister, the perception of division among supporters of a republic, a traditional conservatism among voters on constitutional issues and the distraction of the direct election model, combined to result in a majority 'no' vote. This occurred, despite the fact that opinion polls then and since have shown clear majorities for those wanting a republic. It is therefore important in any future consideration of the matter to separate the two questions. As a consequence, while I have personally favoured the minimalist model for essentially practical reasons, I am open minded about the model which will emerge from a process involving the public and would be prepared to support any model, provided I am satisfied with the integrity of the process.

The six-stage process suggested by the Australian Republican Movement has merit, but I would be comfortable with any process involving a plebiscite to determine the threshold question of whether or not the public wants to move towards a republic followed by the development of a limited number of models, but culminating with one model, which is put to referendum. This is one case where process is just as important as product.

I would be happy to support these comments before the Committee and wish the Committee well in its deliberations on this important matter.

**MICHAEL BEAHAN**  
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