

THE
HONORARY
PRESIDENT

A SUBMISSION TO THE LEGAL AND
CONSTITUTIONAL COMMITTEE OF THE
AUSTRALIAN SENATE

INQUIRY INTO AN
AUSTRALIAN REPUBLIC

31st March 2004

by

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PREFACE

The Legal and Constitutional Committee was referred an inquiry into the Australian Republic on 26 June 2003. This report is in response to the call for submissions.

The submission outlines the Honorary President Republican Model, which is shown to be able to deliver a directly-elected but ceremonial Head of State with the minimum of constitutional change, while preserving the reserve powers and Westminster parliamentary conventions.

The submission provides the principles of the model and an implementation based upon six stated amendments to the constitution. These are drafts, yet to be subject to the scrutiny of experts in constitutional law, but do illustrate the model with an appropriate level of detail. Nevertheless, the draft changes should not be interpreted verbatim.

There are two series of questions found in the submission. The first are the dorothy-dixers to assist readers appropriate the principles and highlight, sometimes develop points buried in the texts. The second series is in direct response to the Committee's discussion paper.

The analysis of the republican model debate and Honorary Presidential model contained within this submission is being submitted for review for the first time.

ABOUT THE AUTHOR

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Canterbury NSW

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EXECUTIVE SUMMARY

The Honorary President Republican Model proposes to alter the constitution to establish Australia as a republic with the Queen being replaced by an Australian Head of State called the Honorary President. The Governor General would remain in the same role.

ELECTION OF THE HONORARY PRESIDENT

- Elected by all citizens as one electorate
- Three candidates taken from largest three public petitions
- Candidates also nominated by state (or the federal) parliaments who may nominate only one former governor (or Governor General)
- Association with (including membership of) political parties in recent years provides a justification for disqualification
- Citizens can vote for multiple candidates without preferencing
- Candidates cannot be renominated for subsequent elections

CONDITIONS OF THE HONORARY PRESIDENT

- Term of five years, extensible in lots of six months to a maximum of eight years for synchronisation with general elections
- No public accommodation – does not need to live in Canberra
- Dismissal mechanism is same as per High Court Judges
- Honorary Vice Presidents chosen from second and third placed candidates, who could assume office of Honorary President and fulfil remainder of term

POWERS OF HONORARY PRESIDENT

- Powers explicitly limited to those found in the federal and state constitutions
- Appoints the Governor General after nomination from the Prime Minister
- Appoints State Governors and Lieutenant Governors after nomination from Premier of the state
- Delegates power to Governor General and Governors (equivalent function to the Letters Patent from the Queen)
- Counter-sign an international treaty with Governor General
- Ceremonial activities

GOVERNOR GENERAL

- No change to conventions or powers, including reserve powers
- Continues to open Federal Parliament and receive foreign ambassadors
- Remains commander-in-chief of the Armed Forces
- Represents the Honorary President in the Federal Parliament
- Cannot be instantly dismissed by Prime Minister. The Honorary President can delay the appointment of replacement Governor General

OTHER ISSUES

- States to be established as republics with Honorary President replacing the role of the Queen. Honorary President links state and federal jurisdictions
- Concept of a *Presidency* refers to whole of executive government, state and federal under a unified federal system. Replaces concept of the *Crown*.
- Queen recognised as Head of the Commonwealth

KEY ADVANTAGES OF THE MODEL

- Head of State directly elected by the people
- Institutionally independent Head of State in a non-political role
- The title *Honorary President* immediately conveys the ceremonial nature of position and the sense of honour bestowed. It is unlikely that citizens will wrongly conclude that the Honorary President is given executive powers
- Discretionary and non-ceremonial powers are codified. The limits to the powers of the Honorary President are reinforced throughout the constitution
- The Head of State is no longer a personification for executive government, so they are not outside the law
- Honorary President can speak freely, that is, as per a normal citizen
- Nomination of former Governors and Governors-General ensures highly distinguished and experienced candidates for election to Head of State
- Nomination by public petition gives any Australian the chance to be elected as Head of State, yet number of names on the ballot paper remains small
- Co-ordination with general election and use of postal voting reduces the cost of the Honorary President election for the taxpayer

- Public information campaign ensures positive election conduct, reduces financial disincentives for candidates or need for political assistance
- Structure of election, backed up by legal prohibitions, limits the interest and influence of political parties
- Dismissal procedures are fair
- Only twenty amendments required to the constitution. Of these only six sections are significantly altered or replaced. One outdated section removed
- Number of amendments is equal to number of sections referring to the Queen
- Could be less wordy than the 1997 Senate Casual Vacancies Amendment.
- The framework and hierarchical structure of the system (including states) remains substantively the same.
- Unified Federal System is maintained at the state and federal level
- The States are not forced to devise alternative methods of appointing their Governor or of making the transition to a republican system
- No State is left remaining as a constitutional monarchy
- Transitional arrangements are straightforward, especially for the States.
- Conventions between Governor General and Prime Minister do not need to be codified, referenced, saved or otherwise established under law
- Conventions remain not justiciable
- Reserve powers remain available to the Governor General
- Continuous membership of the Commonwealth of Nations
- Singular link to Queen can remain via reference to the Commonwealth of Nations to soften the change for citizens who admire the monarchy, are nostalgic about heritage or are in organisations with royal association.
- Referendum question would be uncontroversial

INTRODUCTION

*“ ‘Unless the people elect the president, what’s the point?...’ Phil Cleary ”
Reason 2 – The case for voting NO, 1999 Referendum*

Without an election for the Head of State, there will be no republic. A sufficient number of people agree with the above quotation to defeat any republican proposal with an appointed Head of State. When a typical voter is enlightened with the standard argument against direct-election, they rightly respond “then there is no need to change.”

Similarly, without including an elected Head of State, there would be no point in spending time developing this submission, no point getting a favourable mention by any Senate Committee, no point in seeing the government draft legislation or looking forward to a referendum, because the answer would be no.

So the Honorary President, introduced by this submission, must firstly be an elected Head of State and hence this model, providing the framework for the Honorary President’s selection and powers, passes its initial test.

“ We did not seriously consider [in 1991] a directly elected presidency because it would involve much more far-reaching changes to our political system. If we were to simply to replace the Queen and Governor-General with an Australian Head of State, we should preserve the non-political nature of the office ”

Fighting for the Republic, M. Turnbull (p3)

All the republican models canvassed at the Constitutional Convention propose that an Australian Head of State replace the Queen **and** Governor General together. This assumption was made at the very beginning of the modern republican movement. It was formalised in the terms of reference of the Republican Advisory Committee, to which the McGarvie model was framed in response.

The assumption leaves any direct-election model with the task of codifying the powers of the Governor General.

This model does not make the same assumption, proposing instead that an Honorary President replace the Queen alone and the concept of the Crown be replaced by an equivalent concept called the Presidency. The Governor General and the state governors continue in their existing role – their functions and powers, including the reserve powers, continuing without even transitional interruption.

The task of codifying the Queen’s powers is comparatively simple task and would be undertaken in the federal constitution in one section. This allows the Honorary President

to be elected by the people, with no opportunity of challenging the political authority of the Prime Minister, even in the most protracted constitutional crisis.

The model would, in practice, do no more than expand the number of ceremonial leaders in the nation from seven to eight. The Office of the Honorary President would be smaller in size of that of the office of Governor General but would link symbolically all the parliaments (state and federal) which comprise the Australian federation.

The advantages of the model are numerous – with minimal constitutional change, it delivers a directly-elected institutionally-independent Head of State. There is no practical or theoretical disadvantage to our present democracy. The critical relationship and conventions Governor General and Prime Minister are unaffected to the degree that no further codification of the powers exercisable by the Governor General is required. The Australian version of the Westminster system of parliamentary government is maintained.

With the Honorary President Republican Model now presented, there is a clear and eloquent solution to the problem of constitutional change – a solution that passes all the tests, including the final test of national referendum.

ORIGINS

The origins of the Honorary President Model are with the McGarvie Model. This model proposes to promote the Governor General to that of Head of State with minimal constitutional and political change. Under this model, a Constitutional Council undertakes the Queen's remaining role of appointing the Governor General.

The derision this model attracted in the 1998 Constitutional Convention and elsewhere appeared mostly as a result of the composition of its Constitutional Council. The contradictory nature of the Council, as an extension of the Prime Minister's power yet with the authority to appoint the Australian Head of State, was technically justifiable but emotively unsettling. It could be easily lost whether, under this model, it is the Governor General or Council who is more rightly entitled to be called the Head of State.

Nevertheless, the technical excellence of the McGarvie model was exemplary, and serious issues such as the dismissal of the Governor General were handled judiciously.

The Honorary President model appeared in three evolutionary steps. The first was to have the President of the Constitutional Council elected and declared to be the Head of State. The author sent a letter to delegates of the Convention asking them to consider the possibilities of the McGarvie model in this light. It is provided in Appendix B.

The second step was to do away with the council. Nevertheless, the idea of involving former Governors was incorporated into the parliamentary nomination procedure.

Finally, in the debate subsequent to the referendum concerning the title of Head of State, it seemed sensible to give a President with entirely ceremonial responsibilities with an appropriate title. The term Honorary President exists for many organisations and is used to clearly convey the nature of this proposed role.

From that point, all the advantages of the model started to fall into place and it became clear that the Honorary President was not just a mechanism for establishing a republic, but the basis of what Australians desire in a republican system.

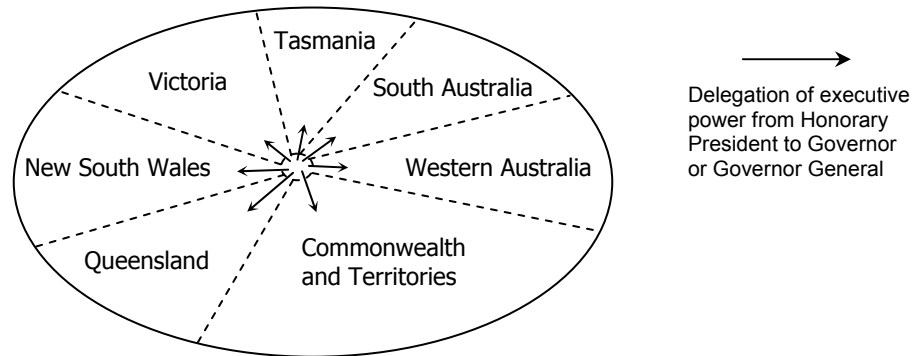
FRAMEWORK FOR AN AUSTRALIAN REPUBLIC

The Honorary President Republican Model replaces the Crown with a Presidency and holds an Honorary President as the highest representative of that Presidency. The Presidency becomes a term meaning the whole of executive government in Australia.

The Federal Parliament and each state legislature shall consist of the Presidency and their upper and lower houses. In the case of Queensland, the legislature would consist of the Presidency and the Legislative Assembly.

The Honorary President holds a ceremonial position elected by the Australian people and represents the Presidency in accordance with the federal and state constitutions. Upon a nomination by the Prime Minister or Premier of a state, they appoint the Governor General and state governors and delegate executive power to these appointees in accordance with the constitution and laws of that jurisdiction.

Aside from this fundamental function, the Honorary President is prohibited from exercising any power of the Presidency directly. Their representation by the Governor General and Governors, means they have no business in any Parliament.



Above: The entire Presidency divided in seven jurisdictions

The Governor General and Governors represent not the Honorary President but the Presidency itself within the jurisdiction assigned by the federal constitution and otherwise by the geographic boundaries of the states. In this regard, the Presidency can be imagined as the entirety of executive power, with the Honorary President in the centre, divided into one federal and six state jurisdictions, each with its own Governor.

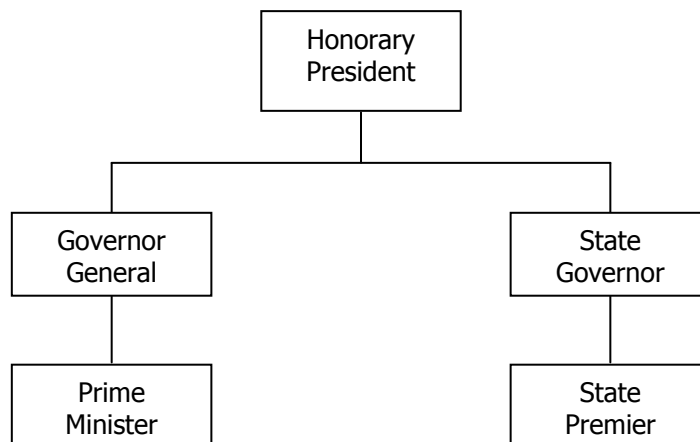
They appoint the Prime Minister and Premiers of the states, in accordance with the constitution and Westminster conventions. The Prime Minister and Premiers must continue to hold confidence of the lower house of Parliament. They sign legislation into law and continue their role as they performed it under the Queen.

The Honorary President, the Governor General and the six state Governors perform important civic and ceremonial functions. They can be patrons and sponsors of charitable and other worthwhile organisations.

The Governor General continues to be the commander-in-chief of the Armed Forces and continues to honour citizens with awards and decorations.

Unlike the Governor General, the Honorary President does not have an official residence in Canberra. They continue to live in the city or region of their choosing. The Honorary

President has more discretion and capacity to support Australian business and interests overseas than the Governor General.



Above: Proposed Hierarchy of Executive Government

The Honorary President Republican Model continues to use the same hierarchical structure as in our existing system of government, the only substantial difference being the establishment of an office of Honorary President, based upon the powers and functions of the Queen. Like the Queen, the office of Honorary President is institutionally independent of the federal houses of parliament and the federal government in general. Part of that independence is in the appointment of Honorary Vice Presidents, who have no role in the system unless the serving Honorary President, resigns, is removed or dies in office.

The Honorary President can be removed using the same mechanism that Federal Court judges are removed. Apart from proved misbehaviour and incapacity, removal can occur if executive powers are exercised improperly, that is, without constitutional direction.

The framework described in this section results in a Unified Federal System, where the state parliaments remain peers of each other and peers of the Federal Parliament, and where the system of government for each jurisdiction remains comparable.

THE CONSTITUTIONAL CHANGES

TWENTY REFERENCES TO THE QUEEN

“In one hundred years, there have only ever been 13 separate amendments to our Constitution. The proposed model will require 69 changes in one hit”
Reason 4 – The case for voting NO, 1999 Referendum

In the Australian Constitution, the Queen is mentioned in 20 of its 128 sections. The minimum number of amendments required to change to a republic must necessarily be 20.

The Honorary President Republican Model changes exactly 20 sections. By this measure, the model must be regarded as the most minimalist of those to-date considered. Furthermore a new model with less constitutional change is now inconceivable.

In fact, the total number of words of the constitution will increase by about the same amount as in 1997, when the Senate Casual Vacancies Amendment was adopted. This means these Republican Amendments could be, depending on the choice of words, the second greatest change to our constitution.

The good news is not simply that the punch will be taken away from one persuasive line for rejecting adoption of a republic, indeed, although it will be difficult to frame an argument quite as pithy as *Reason 4*, there is no avoiding the fact that establishing a republic is a serious constitutional change. The good news is that, of the twenty sections, there are just six sections that will substantively change. The rest are basic word changes, a mere consequence of the idea that the Queen will no longer be there, plus the removal of section 74 which has been ineffectual since the 1983 passing of the Australia Act.

The six essential sections are:

- 2 Appointment of the Governor General
- 4 Powers of the Governor General
- 59 Powers of the Honorary President
- 60 Election and Term of the Honorary President
- 61 Removal of the Honoraries
- 126 Succession of Powers and Functions

In total these sections amount to one and a half pages of text. Each section is appropriate within the context of the whole constitution, with sections 59, 60 and 61 belonging under Chapter II *Executive Government* which is then divided into two parts – *The Honorary President* and *The Federal Executive Council*. This is done not just for the benefit of the reader, but also to distinguish them as two separate institutions of executive government.

SECTION 126

THE SUCCESSION OF THE CROWN

Although it is the last of the six, the new section 126 provides for the transitional arrangements establishing the republic, so for our purposes it needs to be discussed first. One must remember that the constitution belongs more to future generations than to us and they will regard this section as an anachronism, perhaps not unlike a student today reading section 95 on the Customs duties of Western Australia. For this reason section 126 is placed in the Miscellaneous Chapter of the Constitution and it replaces the Queen's power to appoint deputies to the Governor General – a section even more anachronistic.

An explanation of 126 is best prefaced with reference to the existing section 70, where the powers and function of the colonial governors did pass to the Governor General at Federation. The section demonstrates a concise method of establishing authority without problems of continuity.

The Australian constitution did not need to establish colonial governors, more so the Crown or the Queen, through whom they took their authority. Furthermore the powers and functions to be transferred were themselves established and their authority largely determinable. Although the transfer took place in the framework of the British Empire, such authority remains established in the independent nation we have become.

The proposed section 126 seeks to achieve the same result – the transfer of authority from the Queen to the executive government of Australia.

The use of the word “succession” is meant encapsulate all the transitional implications that would otherwise need to be made explicit. In fact, the Australian Commonwealth has completed a number of the successions of the King and Queen and under this model the establishment of the republic is fundamentally another instance of such succession.

The use of succession simplifies the transition from monarchy to republic more than any other model and the chance of uncertainty or legal challenge regarding prerogative powers, privileges and immunities is removed.

Although the role of the Queen has diminished over time, even in the 21st century the concept of Queen or Crown remains a personification of executive government. So, to who (or what) exactly should the transfer these executive powers and functions be made?

The obvious choice is the Honorary President. Although more than acceptable, the author has chosen not to personify executive government and instead chosen a contemporary approach, separating government from its officers.

So the new Crown is the **Presidency**.

In the day-to-day business of government and the courts, the Queen is an entity quite separate from the lady who lives in Buckingham palace. The Crown too is an entity different from the jewelled ornament she sometimes wears on her head. Rather than leave the Honorary President with the same dual nature, the model first separates the Queen (the lady) from what they represent, which is effectively the executive government of, not just the Commonwealth, but also the states.

This difference is analogous to forming a public company from business of a sole proprietorship. The business belongs to the proprietor, but the company does not belong

to the chairperson who is an officer within and representing it. This is not to say that Australia belongs to the Queen – Australia is an independent nation, but the language of the constitution, unaltered for a century, implies otherwise.

Consequently, the Presidency becomes the conception of all Australian government, just as all powers and functions (state and federal) are presently conceptualised as the Queen and/or the Crown. There is an underlying advantage in this for the legal student, who rather than needing to learn about the dual nature of the Queen can instead learn about the Presidency which will have a clear conceptual meaning. The same advantage is there for legal theorists outlining their treatises.

Furthermore, defining the Presidency is not actual change to the constitution, but it is a formalisation and clarification of what already exists in practise.

The author anticipates that there may be a better expression to use than Presidency, *Executive Government* comes to mind, however for the purposes of introducing the model to an able readership, using an original expression provides appropriate emphasis.

The following is a draft of section 126:

126 Succession of the Crown

At the commencement of the term of the first Honorary President, in respect to Australia:

- (i) the Presidency shall be the successor to the Queen and the Crown;*
- (ii) the validity and continued effect of the Queen's powers and functions shall be held in the Presidency; and*
- (iii) the validity and continued effect of the Crown shall be held in the Presidency and where the Presidency is holding this validity or effect it may continue to be referenced as the "Crown" or it may be referenced as the "Presidency."*

However, notwithstanding anything in this section, the Queen shall continue to be recognised as Head of the Commonwealth of Nations and Australia's membership of it shall continue until the Parliament otherwise provides.

The reader may be surprised to discover a reference to the Commonwealth of Nations. A full explanation on the significance of this reference is found later in this submission (*One Remaining Royal Link, page 32*) however, may it be sufficient to say now, that our constitution should not imply the Presidency becomes the new Head of the Commonwealth.

The other point to make is that the constitution would allow, for instance in the courts, the word *Crown* to continue to be used for an indefinite time, but legally it would mean *Presidency*. In practice, the author hopes that many uses for the word *Crown* are not extinguished, for example *Crown Land*, as such anachronisms add to the variety and interest of Australian English. Unfortunately, it would cause confusion to allow the same for the word *Queen*.

SECTION 59

POWERS OF THE HONORARY PRESIDENT

It is common complaint that Australia's written constitution can say one thing and mean entirely something else. No better evidence will be found than in the new title of Section 59. A more accurate title would be *No Power for the Honorary President whatsoever*. In all seriousness, this is exactly what the section aims to achieve.

Section 59 replaces an existing section that allows the Queen to disallow any law. The power has never been used and it is uncontroversial that it can be removed.

To codify or not to codify? This question has haunted the developers of republican models since before the Republican Advisory Committee. Many models have proposed a partial codification, which really means codifying the uncontentious, but leaving the issues which could well decide a constitutional crisis open to wide interpretation. It is undoubtedly a bigger headache for other model builders wishing to institute an elected Head of State. Deep down they must know that without serious codification, their systems will evolve towards power sharing between the Head of State and the Head of Government.

In contrast, section 59 provides for a complete codification of the powers of the Honorary President, limiting the Honorary President to a small set of explicit powers and nothing more. The section is based upon the Queen's existing powers as they apply today. Provided other constitutional actors, including the Prime Minister, acted within democratic and parliamentary norms, none of non-ceremonial powers would involve personal, discretionary or political decision-making. Furthermore, no legislation at the federal level would be able to alter this arrangement without a referendum.

Similarly, and it should be said theoretically, the states could, with respect to their jurisdiction, offer the Honorary President additional powers, but again, they would need to change their state constitutions to achieve this.

The powers are based upon the remaining role of the Queen at the state and federal level:

- appointing the Governor General
- appointing the Governors and Lieutenant Governors of the States
- delegating powers – equivalent to the Letter Patent
- ceremonial activities
- counter-signing an international treaty

Each of the state constitutions, once amended to replace the Queen, would have their own version of section 59, to specify the powers of the Honorary President with respect to their state, or they may simply refer to section 59 as applicable to their state.

Given that there is one Governor General, six Governors, six Lieutenant Governors and few international treaties to sign, over a period of five years this makes for a light official schedule, yet like the Governors themselves, the intention is that the Honorary President is busily occupied with ceremonial activities.

The ceremonial activity powers would allow the Honorary President to make speeches, open buildings and attend memorials. They would be able to award honours and medals at a ceremony but could not decide who was to receive them. More detail on the everyday work of the Honorary President is found later in this submission (see *An Independent Institution* pages 28-31)

A draft of section 59 appears below:

59 Powers of the Honorary President

An Honorary President, chosen by the people of the Commonwealth acting as one electorate shall hold the most senior office of the Presidency, holding all the executive powers and functions of the Commonwealth, however these powers and functions shall only be exercised:

- (i) by representing the Presidency in a lawful ceremony or occasion;*
- (ii) by appointing and removing Governors-General in accordance with this constitution;*
- (iii) by delegating federal powers and functions to the Governor General;*
- (iv) by declaring, by signed instrument, the validity of the Governor General's authority regarding external affairs;*
- (v) by appointing and removing Governors and Lieutenant Governors of a state, in accordance with the constitution of that state; and*
- (vi) regarding a state, as directed by with the constitution of that state.*

Any exercise of power or function by the Honorary President, except in accordance with this section of this constitution shall have no validity and may be regarded as an improper exercise of power or function, however any improper exercise of power or function by the Honorary President shall not, in consequence, affect the validity of any exercise of a power or function by a Governor General or Governor. Furthermore, the Governor General or the Governor of a state may continue to exercise a power or function of the Presidency by precedent, until referenced by a subsequent delegation, and the Governor General shall continuously be able to exercise, on behalf of the Presidency, executive powers of the Commonwealth for the execution and maintenance of its laws and this, its constitution.

Another surprise is the strongly worded sentence invalidating and declaring improper any use of power other than in accord with this section. It is intended to leave no doubt that the limits to the Honorary President's powers are always applicable, regardless of the circumstances. It refers explicitly to *this section* so that no other phrase in the constitution can be used to infer additional powers. The term *improper exercise of power* can also be found in the proposed section 61, which outlines dismissal proceedings.

In contrast, Governors-General and Governors are treated with comparative leniency. The authority of the Governors continues even when there is a problem higher up. The Governors can exercise powers by precedent and the Governor General cannot be denied the power to govern where the constitution or law allows it. The last sentence is a rewording of the existing section 61 on Executive Power.

Furthermore it is not deemed a problem that a Governor General or Governor can have too much delegated power. The assumption remains, just as it remains today, that the power of these positions is entirely nominal and true power lies with the Parliamentary Government lead by the Prime Minister via the Federal Executive Council.

The contrast between the Governor General and the Honorary President reminds us that the nominal exercise of power is the preserve of the former. The result is that the Honorary President entirely removed from the workings of the Australian government.

Conclusion: the Honorary President has no real power.

Section 59 is not all cheerless for the Honorary President. It is here we learn that Australians can vote for their Head of State. And isn't that an objective worth attaining?

SECTION 60

ELECTION AND TERM OF THE HONOURARY PRESIDENT

*“The way Australians choose and change our President will be more democratic and open than the way the Governor General is appointed”
The case for voting YES, 1999 Referendum*

In *Chapter I – the Parliament*, the constitution provides an outline for the election of Senators and members of the House of Representatives. It is surprisingly concise, especially as the drafters of the constitution needed to rely on state law to elect the first parliamentarians.

Drafting section 60, which provides for the election of the Honorary President, is a far easier task. As Parliament already exists, we can rely upon it to pass laws in advance of the first election, and this is exactly what the section asks. Indeed, it would be probably sufficient to leave it to that and provide no outline whatsoever. The political reality is however that without some outline, there would be a perceived weakness in the independence of the office.

A balance needs then to be achieved. The outline should be flexible to allow the electoral process to remain efficient and practical in the long term. It should also present some definitive principles, so the opportunity to undermine the office does not exist.

So what are the principles contained within section 60?

1. That the election should be genuine and free. Any responsible adult citizen can be elected to the office of the Honorary President.
2. That former Governors (including former Governors-General) by virtue of their service, would make excellent Honorary Presidents. To facilitate this, the section allows the federal and the state parliaments to nominate a former Governor as a candidate. This would be the constitutional equivalent of promoting in-house. Such a provision is also an eloquent expression of the principles of federation.

3. That the number of candidates in the election should reasonably small, although the Parliament should not simply shortlist the candidates. As drafted section 60, provides for seven former Governors and three candidates by public petition. Assuming more than three petitions would be presented, the law could ask the Electoral Commission to select three petitions with the most signatures. This ensures that citizens who have not the experience of presiding over an Executive Council meeting can be elected, which is only right and fair.
4. That the law should allow for the disqualification based of candidates upon association with a political party. To have such a rule in the constitution is a public expectation although the precise restriction should be based on parliamentary law.
5. That renomination in successive elections should not be permitted. The rare honour of being the Honorary President should be shared fairly across the generations.

A draft of the Section 60, in its entirety, follows:

60 Election and Term of the Honorary President

The Parliament shall make laws for the conduct of the election and term of the Honorary President providing, but not limited to providing, for:

- (i) *the qualification of candidates*
- (ii) *the nomination of candidates by*
 - (a) *any state parliament, where one former Governor or one former Lieutenant Governor of that state is nominated; and*
 - (b) *the Federal Parliament, where one former Governor General is nominated*
 - (c) *public petition, up to three showing the greatest support;*
- (iii) *the disqualification of candidates who have or in recent years have had an association or membership of a political party;*
- (iv) *limitations on re-nomination;*
- (v) *the appointment of one or more Honorary Vice Presidents from the group of candidates;*
- (vi) *annual salary and expenses;*
- (vii) *a term of five years, extensible in lots of six months to a maximum of eight years for the purpose of co-ordination with other elections;*
- (viii) *restrictions on holding other offices under this constitution;*
- (ix) *resignation of the Honorary President or Honorary Vice President; and*
- (x) *the assumption of office by an Honorary Vice President.*

The previous principles discussed are covered in the first five sub-sections, which are specifically concerned with candidates and their qualifications. As promised the section leaves the Parliament free to introduce additional qualifications. There are a further five subsections dealing with the Honorary President after the election.

Sub-section 5 provides for Honorary Vice Presidents. To maintain the independence of office, these could only be appointed from other candidates of the most recent election.

Sub-section 10 allows the Honorary Vice President to assume office and parliamentary law would specify the circumstances, mechanism and whether this would result in a shortening of the term of office. Ideally, the term would continue, avoiding the necessity for a mid-term election.

It would not be practical to appoint the Governor General as Honorary Vice President. This would violate the independence of the office and subject it to interference from the government in a certain, albeit extremely unlikely, set of circumstances. The better alternative is to appoint the second-place and third-placed candidates, both of whom would be regarded as eminent people in the eyes of the public.

Sub-section 6 provides for an annual salary and budget. There is no reason to include a provision like existing section 3 or 72(iii) preventing the diminution of salary. Fixing the amount to an annual salary offers sufficient protection and is commensurate with community standards. More practically, it is in keeping with the normal budget cycle.

Sub-section 7 provides a flexible term of office of between five and eight years, extensible as provided by the laws in lots of six months. This allows for elections to be synchronised, but does not end the term immediately when the new Parliament begins. The Honorary President would remain in office until the six month long extension was concluded. (*see Timing of the Election page 27*)

Sub-section 8 prevents the Honorary Presidents from accepting a seat in Parliament, becoming the Governor General, accepting a judicial appointment or being employed in the public service.

Sub-section 9 provides for an Honorary President or Honorary Vice President to resign their position. The law would specify an appropriate mechanism – presumably, that the notice would be given to the Governor General.

The new section 60 replaces an existing section allowing the Queen to reserve a law for no more than two years. The section has never been used and the opportunity to reserve a law would be removed from the end of the existing section 58.

SECTION 61

REMOVAL OF HONORARIES

“It will be easier for a Prime Minister to sack the President than his or her driver”
Reason 1 – The case for voting NO, 1999 Referendum

In the case for voting NO from the 1999 referendum, the explanation under *Reason 1* provides an imposing argument for rejecting the bi-partisan appointment model. While it is possible that the average voter may not have grasped the full implications of the argument, technically the dismissal procedure was a flagrant violation of natural justice.

The dismissal procedure under the Honorary President model is entirely consistent with community expectations in that the Parliament can dismiss the Honorary President or an Honorary Vice President for a specific reason and where a defence of the offending action is allowed. The list of valid reasons is stated in the section, so the Prime Minister cannot use threat of dismissal as a weapon in any constitutional crisis.

The dismissal procedure is borrowed from existing sub-section 71(ii) providing for the dismissal of High Court and Federal Court judges.

The reader may ask whether it is appropriate that a judge and Head of State should share the same mechanism, given they perform quite different functions under the constitution, however, the drafters of the constitution repeated the same provision for dismissal of members of the defunct Inter-State Commission in sub-section 103(ii).

It is clear that this provision is appropriate for all actors in the constitution who need to be independent from the Parliament. The advantage is that Australia has some experience in dismissing or trying to dismiss judges, so the same experience will be available if dismissing an Honorary President, the need of which we all hope never arises.

A draft of section 60, in its entirety, follows:

61 *Removal of Honoraries*

An Honorary President or an Honorary Vice President, may be permanently removed by the Governor General, on an address from both Houses of Parliament in the same session praying for such removal on the grounds of:

- (i) proved misbehaviour;*
- (ii) incapacity;*
- (iii) improper exercise of powers;*
- (iv) holding foreign citizenship; or*
- (v) activity in a political party.*

Items (i) and (ii) are taken directly from sub-section 71 (ii).

Item (iii) allows the Parliament to remove the Honorary President should they violate the provisions of section 59 which says ‘any exercise of power or function by the Honorary President, except in accordance with this section [59] of this constitution shall have no validity and may be regarded as an improper exercise of power or function.’

Items (iv) and (v) relate to the qualifications of the Honorary President. Foreign citizenship is not discussed as a qualification of a candidate under section 60, although the Parliament would be permitted to make a law to provide this. Nevertheless to be the Honorary President one must be an Australian citizen without dual nationality. This means it’s theoretically possible to contest the election before such renunciation.

As discussed earlier, the community has an expectation that the Honorary President will not associate with a political party. Sub-section 60(iii) provides this for candidates, while Sub-section 61(v) continues the restriction for the term of office.

This section replaces the existing section 61 on Executive Power and is still current, however the effect of the existing section is now found at the end of section 59.

SECTION 2

APPOINTMENT OF GOVERNOR GENERAL

“If it ain’t broke, don’t fix it ... if we are to change this system any alternative has to be as good as or better than the current system.”

Reason 3 – The case for voting NO, 1999 Referendum

In November 1975, an Australian government was dismissed by the Governor General. Although the constitution was amended to eliminate one of the causes of the dismissal – the long-winded *Senate Casual Vacancies* provisions in section 15, the fundamental issue of whether the Prime Minister can dismiss the Governor General before the Governor General can dismiss the Prime Minister, remains a dubious part of our political system.

This uncertainly affected the actions of both Governor General Sir John Kerr and Prime Minister Gough Whitlam during the 1975 crisis. Although the Prime Minister denied he seriously contemplated advising dismissal, the Governor General was so weary of this possibility he acted without warning. Neither of these two experienced men thought it wise to reveal their strategies to each other, resulting in one greatly surprising the other.

No republican model can afford not to give this issue the most careful consideration and the McGarvie model provides a most sophisticated response, worthy of emulation.

Presently the Queen, on the advice of the Prime Minister, appoints the Governor General. The Queen’s power to appoint is provided by the existing section 2, however the obligation to follow the advice is a convention of British law. The Prime Minister can advise the Queen to dismiss the Governor General at any time and for any reason. The Queen is bound by the same convention to act promptly.

The new section 2 includes the provisions of the existing section plus the existing convention, with the Honorary President assuming the role of the Queen. Furthermore, rather than acting upon advice, the Honorary President accepts a nomination.

The McGarvie solution provides for a delay of up to one fortnight, after which penalties apply to senior members of the appointing authority. The solution under this model is an indefinite delay, with a possibility of dismissing the Honorary President through the Parliament under sub-section 60(iii). It is the author’s opinion that in any crisis involving dismissal of the Governor General, a fortnight would feel as long as forever.

Both models have the similar result that some discretion is available to the appointing authority and if the dismissal is contentious, the Governor General has the advantage.

A draft of section 2 reads as follows:

2 Governor General

After a nomination, by message from the Prime Minister or, in the absence of the Prime Minister the most senior minister of the Federal Executive Council, to the Honorary President, the Honorary President may remove the current Governor General and appoint the nominated person to the office of Governor General.

This would be the only section of the constitution to mention the Prime Minister, so mention is made of *the most senior minister*, connecting the section to established constitutional actors if the Prime Minister is absent or perhaps no longer exists.

The important minimalist features of the model are upheld as the Prime Minister retains the right to choose the next Governor General of Australia. Note that the Honorary President has no opportunity to make the choice or alter the choice of the Prime Minister.

The operative words, which imply the Honorary President the opportunity to delay the appointment process, are “After” and “may”. During that period, the Prime Minister may either insist that the nomination proceed, retract the nomination or nominate another person. The existing mechanism is likely to work the same way, so the only change is that one unwritten convention becomes a clear instruction in the constitution.

SECTION 4

POWERS OF GOVERNOR GENERAL

The final section to discuss of the six changing extensively is an explanation of the role of the Governor General consistent with the principles and mechanisms previously established and those we rely upon in our present system of government. The provision continues the powers of the Governor General with respect to the Federal Parliament, found in the existing section 2, but additionally makes the Governor General a representative of the Honorary President in reflection of the existing section 61.

The section is drafted as follows:

4 Powers of the Governor General

The Governor General shall be the representative of the Honorary President in the Parliament of the Commonwealth and may exercise in the Parliament, subject to this constitution, the powers and functions of the Presidency.

The new clause replaces the existing section 4, provisions relating to Governor General, which appears to be transitional from the time of Federation, but is certainly a dead concept today.

The powers of the Governor General in the section intersect with powers granted at the end of section 60. The difference is merely contextual; section 60 applying to executive powers granted by the constitution and the laws; section 4 applying to all powers of the Presidency with respect to the Parliament, which would include the Reserve Powers.

Combined, the only powers not granted are those external to the Parliament and not granted elsewhere in the constitution or law. To access these powers the Governor General could rely either on precedent or delegation from the Honorary President.

The interesting definition of section 4 is the Governor General as representative of the Honorary President. This echoes the existing section 61, which says power is exercisable by the Governor General as the Queen's representative. The new definition is more strongly put and designed to keep the Honorary President out of the Parliament even though section 1 states 'Federal Parliament shall consist of the Presidency, a Senate and a House of Representatives.'

CONSTITUTIONS OF THE STATES

At the 1998 Constitutional Convention, delegates agreed that there was no need to make recommendations for constitutional change at the state level. The final communiqué declared that 'any move to a republic at the Commonwealth level should not impinge on state autonomy and the title, role, powers, appointment and dismissal of state heads of state should continue to be determined by each state.'

Given the importance of state government, such a declaration was quite unacceptable. The difficult process of finding an acceptable model in the Federal jurisdiction would need to be repeated a further six times over. Had the referendum passed by a slim margin, any states that by majority voted against the republic would have had grave political difficulty deciding which way to go, especially as retaining the Queen was an option.

If there was any constitutional decision that should apply to the whole nation, it should have been the republican decision. The requirements of section 128 are that amendments should be approved by a majority of states. This is the appropriate expression of states' rights with respect to Australian sovereignty.

Furthermore, Australian's do not think of themselves as citizens of their states, in addition to being Australian citizens. There would have been an outcry, if some states had retained the monarchy. Such an outcome would be met with disbelief or ridicule.

There was nothing to fear for states' rights and any acceptable republican model should address the issue of amending state constitutions directly. The model for an Honorary President addresses the issue completely.

Should a state continue with its existing constitution, the combined effect of the proposed section 126, the succession of the Presidency, and the existing section 109, which declares that Commonwealth law prevails over state law, would result in the Presidency taking the place of the Queen within that state. Sub-section 59 (v) allows the Honorary President to appoint the Governors and Lieutenant Governors of each state.

Fortunately, for a state to adopt the Honorary President model, the amendments required to state constitutions are straightforward:

- References to the Queen or the Crown would be replaced with references to either the Presidency or the Honorary President according to its context
- The appointment procedure for the State Governor would be replaced with a similar procedure to section 2, except that the State Premier would make the nominations in the place of the Prime Minister.

- A provision would specify the powers of the Honorary President within the state, including the delegation of powers to the Governor and representing the Presidency in ceremonial functions. Sub-section 60 (vi) allows the state to offer the Honorary President special powers, however do so would not be in keeping with the principles of the model.

The result, once all state constitutions were changed, would be a unified federal system, with the Honorary President as its common core. Each state executive government would be a branch of the one Presidency, on the same footing as the Federal Government.

On a practical level, a unified federal system would mean that citizens and companies could move between states and find the fundamental structures of government are similar. It would mean the interpretation of administrative law would be comparable across jurisdictions. It also would mean that ideas improvements in governance could be adopted between states with less difficulty.

In fact, today we take our unified federal system all for granted, but it is an important facet of our federation. It is something well worth preserving in any transition to a republic. That is why every republican model must provide for the establishment of states in a republican form.

CHOOSING AN HONOURARY PRESIDENT

WHY ELECT THE HONOURARY PRESIDENT

The connection between Australian citizens and the Honorary President will be of a nature both symbolic and social – symbolic, so to execute the constitutional and ceremonial responsibilities as Head of State and social, as the President will be an Australian ambassador-at-large, a role model, the patron of organisations, for some occasions a cheerleader, on others a mourner and councillor.

The Honorary President's ability to command the respect and support of the Australian community will be magnified by the democratic nature of their office.

Symbolically, the President will be the representative of the sovereignty of the Australian people. That representation will be legitimised by the endorsement at the ballot box.

Socially the same is true. When a citizen participates in the choice, a connection to the institution of the Presidency automatically exists. The more citizens with this connection, the greater the social value of the President.

The Australian community will have a tremendous stake in the Honorary President, and as a result of being elected, far more than they do in the Governor General.

The people will have the opportunity to see that all worthy Australians are considered for the office of Honorary President utilising the mechanism under public petition provision of sub-sub-section 60(ii)(c). This means that merit is of over-riding importance and having the right connections or background is inconsequential. Public participation here will also expand the diversity of nominations and raise the selection standards.

The parliaments of Australia, state and federal, have a similar opportunity to confirm that their past choices in appointing worthy people to the position of Governor, Lieutenant Governor and Governor General, can provide experienced candidates for election to this apolitical position.

Empirically, there is ample evidence that Australians do aspire to be involved in the selection of their Head of State. We should be comforted as this personal desire to contribute and participate in national institutions, such as the Head of State, is a healthy expression of our democratic society.

LOW POLITICAL INTEREST

The Honorary President is not a President in the usual understanding of the word. Under the constitution, they have a different role from that of a Parliamentarian. They are not meant to achieve political outcomes. They should have no policy agenda. It should be irrelevant if they are progressive or conservative in their personal outlook.

The Office of Honorary President is not a political prize and offers no political power. The fundamental assumption of this model is that there is no political advantage for major political parties to contest or involve themselves in the election of the Honorary President.

There will be an interest by each state that its governor achieves a satisfactory result. As the number of major political parties is smaller than the number of states, a major party

will be unable to unite behind a single candidate with both its federal and state apparatus. It is also likely that the political interests of all major parties within each state would be best served by bi-partisan support of the official state candidate – the former governor.

There however will be an interest by petitioners in promoting their candidate. There could be minor party support for these candidates as they may imagine the Office could be a platform for their agenda, however candidates with truly broad community support and a chance of winning, will assess that association with minor parties is disadvantageous and under sub-section 60(iii) legally risky.

In consequence, elections for the Honorary President will unfold entirely differently from the political contests at the federal, state and local government level.

Without the resources of the major parties and no policies to promote, candidates will rely upon their existing public profile and any system of public information established by the government. Such a system could ensure that former governors do not need to establish their own campaign.

It is envisaged that the election could be conducted like a plebiscite. The Electoral Commission would produce a booklet with the name, history and experience of each candidate. A television program and website could be commissioned to the same effect.

A satisfactory public information campaign with limits and protocols on other advertising would provide a level playing field for electors to make an informed choice for their Honorary President.

THE ELECTORAL LAW

Under section 60, the Parliament would be required to pass a law to provide the detailed provisions concerning the election of the Honorary President. The provisions within the law would include:

- [A] the qualifications of petitioners under sub-sub-section 60(ii)(c)
- [B] a method of eliminating petitioned candidates based upon the number of signatures.
- [C] the qualifications of nominees (at the time of nomination), including the length of service required as a Governor General, governor or lieutenant governor
- [D] the method of election
- [E] the qualification of electors
- [F] limits on advertising before the election
- [G] holding a public information campaign
- [H] the conduct of the election in general
- [I] the length of term (between five and eight years)
- [J] salary and conditions of the office

- [K] staff to assist the Honorary President
- [L] appointment of one or more Honorary Vice Presidents
- [M] resignation of Honorary President and Honorary President by hand to the Governor General
- [N] circumstances where the most senior Honorary Vice President assumes the Office of Honorary President

Unless the number of states changes, there will be no more than seven parliamentary nominees. The number of publicly petitioned nominees is limited to three. The law would need to proscribe a method of reducing the number of petitioned nominees. This could be simply done by eliminating those candidates with the least signatures. The law could introduce a numerical penalty if the petition did not involve a spread of states.

The method of election must consider that there will be ten or close to ten candidates, most of who are respected members of the community and many of who would have served as a Governor. The author's preferred method would allow electors to vote for more than one candidate, with each vote contributing equally to the candidates tally.

<i>Candidates</i>	Do you approve of this person becoming Honorary President?		
1 Alex Kim Former Governor	[] Yes	[] No	[] <i>Abstain</i>
2 Francis Paul Former Governor General	[] Yes	[] No	[] <i>Abstain</i>
3 Paul Alexandra Founder of Charity	[] Yes	[] No	[] <i>Abstain</i>
.			.
.			.
.			.
10 Kim Francis Former Governor	[] Yes	[] No	[] <i>Abstain</i>

Under this system an elector could acknowledge the community contribution and suitability of several candidates without preferencing. Ballots could also be tallied electronically.

Finally, given that the election of the Honorary President is of no political consequence, it would be appropriate to conduct the election via postal ballot. In their own homes, electors could read the profiles of candidates and complete their ballot as they proceed. There would be no tally room build-up but a sober announcement of the results by the Australian Electoral Commissioner.

TIMING OF THE ELECTION

Under the sub-section 60(vii), there is a constitution provision specifying a term of between five and eight years, extensible in lots of six months. The law either leaves the term at five years or would specify the final length of term by synchronising the election with a general election. Synchronisation is preferred.

The advantage of synchronisation is not simply cost, but ensuring the two nationwide elections do not coincide in an ungainly way. The remainder of this section shows how in practice it could be done.

The law would state that after five years, extensions of six months are automatic until a general election is called. If the extension finishes in the three months after the date of the general election, one further extension is given. The consequence of this is that the term of the Honorary President ends between three and nine months after the general election. Assuming parliamentary terms of between 2 years 2 months and 2 years 10 months, the resulting term of the Honorary President would usually end after 5.5 or 6 years.

The election of the next Honorary President is announced shortly after the announcement of the general election and the date is eleven weeks after the election. Petitioners would have the period from the announcement to four weeks after the general election to collect their signatures. The federal and state parliaments would have until six weeks after the election to nominate a former governor.

The candidate information campaign, through the AEC, commences by the eighth week. Electors make their decision by the eleventh week by post, which is shortly before the three-month deadline, whereby the commissioner must announce the results.

The Honorary President Elect waits until the current Honorary President finishes his or her term at between three or nine months after the general election.

There are significant advantages of synchronisation:

- Prior to the election the political parties will be devoting their energies to winning the general election. It will be difficult for them to justify utilising resources for generating a petition
- In contrast, citizens generally will be thinking about the elections. Those in non-political organisations will have more opportunity to generate a petition in a timely way.
- The time consuming and expensive task of updating the electoral rolls will serve both elections.
- The period after the election is politically calmer than other times in the election cycle. It is at this time that citizens will be making their choice for Honorary President.

Time may erode these advantages or it may be possible to devise more advantageous systems, however sub-section 60(vii) is sufficiently flexible, allowing the law to adapt to changes in the election cycle appropriately.

AN INDEPENDENT INSTITUTION

In the same way that the High Court is established by the constitution as an independent institution with certain protections against the Executive Branch, so too is the office of Honorary President an independent institution at arms-length from both the Parliament and the Federal Executive Council.

The independence of the office would clearly be a positive attribute of the model in the minds of voters deciding whether to support a republic at a referendum. It is also a sign of the minimal change the model brings to the constitution, as we can observe that the Queen is independent of the Australian Government entirely.

Nevertheless, despite the eloquence of its unified federal structure, the fulfilment of the people's demand to elect the Head of State and the ease in which transitional problems are resolved, this model will be criticised for suggesting the introduction of unnecessary and expensive Head of State, who is apparently paid to do nothing.

In this section, we introduce the independent Honorary President as an achiever for the Australian community, costing comparatively little and delivering much in return.

TWO HEADS BETTER THAN ONE

The most likely source of confusion and debate about the Honorary President will not be the powers and functions in the proposed constitutional arrangement, but what will he or she otherwise do. If the Honorary President will perform ceremonially the same role as the Governor General so why would the Australian people desire paying two people to perform one job?

It would be easy to reply that if the people want a safe minimalist republic with an elected Head of State then the price to pay is two ceremonial officials. In fact, this misleading answer would only prove the critics right. So what is the correct answer?

There are both theoretical differences and variation in ceremonial functions between the Honorary President and the Governor General.

Theoretically, the Honorary President is a figurehead for the nation and federation specifically. They are the only elected representative for the entire Australian community. The office is linked symbolically to each Australian jurisdiction through the federal and state constitutions, but it is also an institution independent of all jurisdictions. The office does not involve itself in any parliament.

In contrast, the governors (including the Governor General) are the representatives of the Presidency in each parliament. They remain the constitutional umpires and the ultimate guarantors of responsible and democratic government. They are the enablers of the law for their respective jurisdictions, however they are compelled to follow the advice of their government ministers.

In practice, the Honorary President, Governors and Governors-General will spend the majority of their time participating in worthwhile ceremonies and contributing to civic

society. The difference in their theoretical role helps distinguish the way they make this contribution. As the Honorary President will not live in Canberra, but live in the city or region of their preference, this also provides a further distinction in their ceremonial roles.

A demarcation line between the Honorary President and the Governor General will evolve over time, but we can anticipate approximately where the line will fall.

The Governor General will continue to open Federal Parliament and will preside over all ceremonial occasions involving federal institutions, the military, including veterans and foreign ambassadors. They will continue to manage the Australian honours system. They will be de-facto governor for the ACT, Northern Territory and other territorial possessions. In fact, the above describes about 75% of the Governor General's current activities (as per his public schedule)

The Honorary President will travel more widely both within Australia and overseas. They will attend charity events, science expositions, art gallery openings. Visits to schools and hospitals will be co-ordinated with keynote speeches at business conferences. They would answer correspondence from children and send letters of congratulations to centenarians on their birthdays or couples celebrating their 50th wedding anniversary.

An Honorary President can visit residents in a nursing home and be recognised as a national leader, while the Governor General can visit graduating soldiers and be saluted as their commander-in-chief.

The Honorary President may encourage contributions at a charity dinner, while the Governor General may honour a retiring High Court Judge. The Honorary President may attend a dawn service in Kalgoorlie, the Governor General in Canberra.

Both will continue to be patron of hundreds of organisations and they would encourage the members in any way possible.

Overseas, the Honorary President can promote Australian business, innovation and culture. They would accept the role as an ambassador for Australian goodwill. At short notice they could travel overseas for a commemoration on the anniversary of a famous historical event or for the funeral of an important foreign king. All such visits would be demonstrations of Australian respect or sympathy for the people in other nations.

Ultimately, it is the workload of the current Governor General that most justifies the additional ceremonial role. In a year of 365 days, there are only hundreds of occasions in any year that they can attend. Of those two or three hundred events, presumably thousands of requests are declined. The Governor General is patron of more organisations than there are days to visit them, yet alone provide some form of encouragement.

The situation is not surprising. At federation there were seven governors for less than four million people. Today there are still seven governors for twenty million.

In summary, with a rough demarcation between the Honorary President and the Governor General, it is self-evident that the task of representing the nation will continue to be only ever fractionally fulfilled. There be plenty of work for the Honorary President.

AVERAGE ANNUAL COSTS

No republican model can compete with the Queen in terms of financial cost. She provides her services entirely for free of charge. Although a royal tour is often quoted as being a cost, in reality, this has little constitutional value and we could pay for a royal tour irrespective of whether Australia become a republic.

The model for the Honorary President competes well with other direct-election models, as the cost of running an additional office is far less than holding six state elections for Governor.

The annual salary of the Honorary President should be as significant as the Prime Minister's. Apart from this, the office would require a small team of assistants and advisors. Staff could be accommodated in rented offices anywhere in Australia. The major consumable would be transport and most staff time would be taken up with correspondence. A satisfactory budget for this would be two million dollars per annum

In comparison with the Office of the Governor General, there would be no gardening and property staff, nor an awards unit or Australia Day Council. The budget would be many times smaller than that at Government House.

Expenditure on the election, occurring approximately once every six years, is minimised due to its synchronisation with federal elections and the use of postal ballots. Such an election may cost between ten and fifteen million dollars, with the public information campaign at an additional five million dollars.

Average the election cost over six years, add salary and office expenditure and the result would be less than six million dollars per annum. This is fifty cents per working adult.

FINANCIAL BENEFITS

Naturally, there is a non-financial benefit, through the Honorary President's support of community and charitable organisations. Such a benefit is unquantifiable but has potentially large indirect financial implications.

A direct financial benefit may accrue when the Honorary President travels overseas. On an international tour our Head of State would be in an excellent position to promote Australian business, tourism and culture. Unlike existing arrangements, there could be open co-ordination between the office and business groups to heighten interest in Australia, whenever an overseas opportunity arises. The potential benefit of this to our export income may significantly offset the costs of having an Honorary President.

The comparative benefit over other republican models is that there are no ongoing costs for the states and lower transitional costs. Most republican models leave open, the establishment of republican state governments (the McGarvie model is the clear exception). Consequently the cost of these models is understated by a factor of three.

For example under the bi-partisan appointment model, if the cost of the public information campaign supporting the nomination committee was one million dollars, the cost of the same activity for all six states would be in the order of two million dollars. The total cost would therefore be three million dollars.

FREE SPEECH

*“No Prime Ministerial puppet for President”
Reasons 1 and 8 – The case for voting NO, 1999 Referendum*

The ability of the Honorary President to speak freely will be the litmus test of the Australian people deciding upon the merits of this model. It would decide the claim that the position is “a puppet of the Prime Minister”, as argued repeatedly in the official NO case of the 1999 Referendum

Fortunately, there is no compelling reason why he or she should not be able to speak as any other responsible free citizen.

One might believe that the Honorary President must be constrained to support the democratically elected government of the day. In fact, that is the convention binding the Governor General, who by convention must accept the advice of government ministers.

In contrast the Honorary President is neither the government nor a judge. The limited power of the Honorary President means that they are in no position to implement any personally held view as public policy. There is the natural possibility that they may express a view in apparent disagreement with the government, however the office is established as an apolitical institution and would not be inclined to set itself up for a confrontation with a politically astute Prime Minister and cabinet.

The risk of embarrassing the government, through the words of the Honorary President, is great only when the government has already embarrassed itself. It is at such times that people may insist that the Honorary President speak freely. In response, it is likely that the Honorary President will find words which are reconciling and unifying rather than those which would divide or cause further protest.

OTHER ISSUES

THE REFERENDUM QUESTION

One of the controversies of the 1999 Referendum was the referendum question. The following is the question put to the people and rejected:

A PROPOSED LAW: To alter the constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament.

Do you approve this proposed alteration?

The explanation of the law explains the overall intention, explains who replaces who and how the Head of State is appointed. The YES campaign was fortunate that the method of dismissal was not included.

Under the Model for an Honorary President, the question can be framed without reference to the Governor General. This alone makes the question simpler. If, in other respects, the same form of question is used, the referendum question under this model would be as follows:

A PROPOSED LAW: To alter the constitution to establish the Commonwealth of Australia as a republic with the Queen being replaced by an Honorary President elected by all citizens.

Do you approve this proposed alteration?

There would be little controversy in such a question and it is certainly to the advantage of the Honorary President Republican Model's chances at referendum that such a straightforward question would be asked of the electorate.

ONE REMAINING ROYAL LINK

Under proposed section 126, an exception is made in the succession of the Presidency to state the Queen remains the Head of the Commonwealth of Nations (formerly the British Commonwealth.) The exception is reasonable in that Australians would like to maintain their place in the Commonwealth.

Including the exception in the constitution has one side-effect – that the Queen is not entirely extinguished from our constitution. A die-hard republican may insist that words be found to remove the link and somehow maintain membership, however the author believes leaving that one remaining royal link offers a special advantage.

The monarchist cause is not without merit. The monarchy is an important facet of our national heritage. The Queen is admired by a significant number of people in Australia. Our links with Great Britain are still strong and worth maintaining.

The link can be used to make the republican cause less divisive. It can be made more accommodating to the citizen who looks at the Queen with a degree of affection. It also benefits organisations wanting to keep *Royal* in their names. The same applies for an organisation with the Queen as their patron.

The Commonwealth was an issue in the minds of many people when voting at the referendum. A link to the Commonwealth would reassure voters and suppress any negative campaigning on the issue by the NO case. It would also mean our membership of the Commonwealth would not need to be reapplied for.

Finally, if the Commonwealth of Nations is ever disbanded, the Parliament could *provide otherwise* as to our relationship with the Queen.

HONORARY VICE PRESIDENTS

The proposed section 60 introduces the position of Honorary Vice President. At least two would be appointed from the candidates at the previous election.

The election results would be used to determine which former candidate is appointed. The simplest method could be used, that is to select the candidates who received the second and third most number of votes. The second-placed candidate would be senior to the third placed, for purposes of assuming the office of Honorary President. It is conceivable that the second-placed candidate may choose not to assume office due to availability or personal circumstances.

Honorary Vice Presidents would have no powers under the constitution. Their obligations would be limited to those under section 61 and there would be no ceremonial duties.

They would not receive a salary or special privileges, although they would be able to use the title, if they desired. They would keep their present occupation or continue in their retirement, that is, unless they were asked to complete the term of the Honorary President.

DOROTHY DIXERS

The following series of questions are dorothy-dixers – asked and answered by the author to assist readers appropriate the principles and highlight, sometimes develop points buried in the proceeding sections.

Question 1 *Under the Honorary President Republican Model who will be Australia's Head of State?*

The Head of State will be the new position Honorary President. This is due to the principle that through election the Honorary President represents all the people of Australia. It is also due to his/her constitutional position appointing the Governor General and state governors and the transitional arrangement that the Honorary President succeeds the Queen of Australia.

Question 2 *What is Honorary about the Honorary President?*

It is a convention that persons in Honorary positions have no executive power, yet are regarded as having equivalent status. It is conferred to recognise the contribution of the person to an organisation or to society in general. The concept of an Honorary position communicates the essential elements of the proposed Australian Head of State – no executive power yet a great honour conferred by the Australian people upon an esteemed citizen.

Question 3 *What is the term of the Honorary President?*

The term is five years, extendable by law in lots of six months up to eight years. In practice the term will be approximately the same as two terms of Federal Parliament. If the life of the two Parliaments were less than five years, the Honorary President would remain for the third term.

Question 4 *What are the discretionary powers of the Honorary President?*

The Honorary President has the power to appointment the Governor General, the State Governors and Lieutenant Governors. This power is very limited, as the Prime Minister must first nominate the Governor General beforehand. Similarly, a State Premier must first nominate a State Governor or Lieutenant Governor. The sole discretionary element is the Honorary Presidents right to delaying making the appointment.

Question 5 *What prevents the Honorary President from taking more power?*

The main barrier to the Honorary President taking more power would be the constitution. It absolutely forbids Honorary President from exercising power and gives Parliament the power to remove the Honorary President if he or she attempts to do so.

Question 6 *Who would be the commander-in-chief of the military?*

The Governor General would continue to hold this position.

Question 7 *Why have the Honorary President at all?*

The Australian people continue to support the concept of a directly-elected Head of State, who is above politics and has no political or executive power. The Honorary President

would fulfil this desire. Other republican models attempt to do this through the Governor General, however this can only be done satisfactorily if the powers of the Governor General are codified.

More importantly, the Honorary President fulfils the intent and spirit of this desire. Rather than merely being a republican mechanism, the Honorary President would be an apolitical social leader, patron and role model. The office would be independent from the government. It would be unfettered in promoting common values – tolerance, honesty, generosity and community. Unlike the Governor General, the Honorary President would have more scope to promote charities and worthwhile organisations and to promote Australian business, science and tourism, especially overseas.

Question 8 *What would change for the new Governor General?*

Very little. The constitutional provisions, the Westminster conventions and the other laws and regulations relating to the Governor General would continue without interruption.

Question 9 *Is it not too complicated having both an Honorary President and Governor General?*

The model is no more complicated than having a Queen of Australia and Governor General. The model provides a distinct role for the Honorary President and resolves a number of theoretical questions of our federation and constitution.

Question 10 *Isn't this a radical change from our existing constitution?*

On the contrary, the change is minimal. All the important offices under the constitution continue with no significant alteration and the operation of Parliament and the courts is not affected. The model simply allows an elected Australian citizen to succeed the Queen of Australia and provides mechanism for safely distributing the Queen's powers.

Question 11 *Where would the Honorary President live?*

The Honorary President would continue to live in their own home or be free to rent a property anywhere in Australia, just like any other citizen. The government would not pay for their home nor would they need to live in Canberra. They would only be offered accommodation at Government House or Admiralty House as a visitor.

Question 12 *To whom would ambassadors offer their credentials?*

The Governor General would continue to receive ambassadors at Government House. This is consistent with the Vienna Convention and current practice. The Honorary President would be free to meet with ambassadors at any time during their tenure.

Question 13 *What would be the cost?*

The greatest expense would be holding a national election approximately every six years. This is unavoidable for all direct-election models, but some effort has been made to minimise the cost through synchronisation with general elections and by using postal voting.

The ongoing cost would be the salary of the Honorary President, his/her staff and some transportation and administrative costs. His or her salary would be the same as the Governor General (about \$350,000 before tax) with total costs between one and two

million dollars annually. The amount would be set in the federal budget and paid out of consolidated revenue.

Question 14 *Would it not be better to spend this money on hospitals or schools?*

Probably yes, however these costs are a miniscule compared to the Federal Health and Education Budgets. In contrast, the social leadership of the Honorary President should bring intangible non-financial benefits for the community, where hospitals and schools play an important role. This could be in promoting research, encouraging volunteerism, honouring achievers or simply visiting a community in need.

Many critics of the republican debate ask, “What difference would it make to replace the monarchy?” The Honorary President model is the only republican proposal able to reply to this question positively. In effect, there will be an additional high-profile person able to add to the excellent community work of Australia’s six governors and Governor General.

Question 15 *Is the model consistent with federalism?*

The model creates a unified federal system, with the state and national governments on equal footing with respect to the Presidency. Smaller state parliaments have equal right to nominate former governors in the election of the Honorary President, giving them a fair chance of influencing the outcome. Consequently there is a better chance of a Tasmanian, West Australian or South Australian becoming the Honorary President than becoming the Prime Minister or Chief Justice.

Question 16 *How likely would it be for a women or an indigenous person to become Head of State?*

The likelihood would depend on the State Premiers and Prime Minister choosing women and indigenous persons to the office of Governor and Governor General. In recent years, Premiers have shown greater interest in nominating diversely and there is no reason why this trend would reverse under the model. Up to six candidates for Honorary President would be taken from this pool of former governors. Each would be able demonstrate the qualities wanted and experience required to be a successful Honorary President.

Question 17 *The Honorary President is elected, so wouldn’t that make him/her a politician?*

No. Elections are used throughout the community at all level to choose officeholders few of whom are politicians. The model is constructed so the Honorary President is also not a politician and the law would demand they resign from all political association.

Question 18 *Wouldn’t the election be a contest between the Liberals and Labor?*

Parliaments dominated by the major parties are restricted to appointing former governors and governors-general for election. Prime Ministers and Premiers would be loath to appoint a governor or Governor General who stood little chance of being nominated by the same Parliament in six or more years hence. At election time, rivalry between state parliaments would ensure that a major political party could not unite behind one candidate. The more successful candidate would be the impartial former governor or Governor General with bi-partisan support. Finally, the office offers a major party little political advantage in pursuit of its agenda or policies.

Question 19 ***Perhaps the election would advantage the minor parties?***

Minor parties would be stretched trying to use their limited resources for Presidential election, when an upper house seat offers greater opportunities for legislative influence. It is possible that a minor party could successfully nominate a candidate by public-petition, however the candidate would be unlikely to do well in the election unless they were popular in their own right.

Question 20 ***Wouldn't a former governor reject the idea of contesting an election?***

Australians in high-office are typically capable and experienced individuals with excellent people skills and a belief in democratic processes. Provided the former governor was not contesting in association with a political party and the election was fairly contested there would be no reason of principle why a nomination by Parliament would be turned down.

Question 21 ***I have more questions. How do I have them answered?***

The author would be very pleased to receive your questions and will try to answer them promptly. The author especially welcomes challenging questions, although if you are asking a hypothetical question, try to provide as much contextual detail as possible. For a fast response try to use electronic mail. Contact details are:

Email dlatimer@mail.usyd.edu.au

Address Unit 29, 2 Sugar House Road
 Canterbury NSW 2193

Question 22 ***I am against the republic. How do I show my concerns?***

The author is equally pleased to accept correspondence from all sides of the republican debate. He believes that the republicans should show understanding of the merits of our present system of government, be more realistic about the transitional costs and be more understanding of those citizens who feel loyalty for the Queen.

RESPONSE TO THE DISCUSSION PAPER

THE HEAD OF STATE

The interpretation taken for the development of this model is taken from sections 1 and 2 of the existing constitution. The Honorary President Republican Model provides for a Head of State to replace the Queen of Australia.

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

This is not proposed under the Honorary President model, which provides for an independent and elected Head of State.

POWERS OF THE HEAD OF STATE

Under the model proposed, the powers of the Queen of Australia are transferred to an elected Honorary President through succession. The powers of the office are limited and entirely codified.

The republican succession will have the same affect on the Governor General and state governors as a monarchical secession. They would continue to be bound by constitution conventions which remaining not justiciable or codified. This arrangement will continue existing principles of good government and provide flexibility during any crisis involving executive constitutional powers.

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

The constitution would be amended to create a position of Honorary President to hold all the powers, functions and immunities of the Queen of Australia. Exercise of these powers and functions would be limited to ceremonial activities and appointing and dismissing the Governor General and state governors. The Honorary President would also be subject to legislation by the Commonwealth Parliament which could limit the immunities transferred to the Honorary President from the Queen and provide a number of continuing eligibility requirements, provided the legislation did not interfere with constitutional duties.

The Queen's power to disallow legislation would be removed from the constitution and not transferred to the Honorary President.

Where prerogative powers and ancillary powers and functions held by the Queen are necessary for good government at a state or commonwealth level, the constitution would allow the Honorary President to delegate the power or function to the Governor General and state governors as required. This delegation would be equivalent to the letters patent. The constitution would explicitly state the Honorary President is not permitted to exercise such powers directly.

The powers of the Governor General and state governors, including reserve powers would remain unchanged during the republican transition. They would continue as delegates of the Presidency and be protected by the transferred immunities.

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

The above formula presents a full codification of the powers of the Head of State (Honorary President).

In contrast, there would be no further codification of the powers and functions of the Governor General and state governors. Their reserve powers would be available in their existing form. The constitutional conventions continue as true conventions and remain outside the jurisdiction of the High Court.

SELECTION

Under the model proposed, the Australian people as one electorate would choose the Honorary President. Candidates would be mostly former governors and former governors-general nominated by the parliaments. There would be three other candidates with demonstrable public support across all states.

The conduct of the election would then be directed by federal legislation. The electoral process would be distinguished from that of parliamentarians at every stage, reflection the difference between them in terms of their constitutional duty and position.

Concerning the Governor General, the existing constitutional convention that binds the Queen to accept the advice of the Prime Minister would find a new form in the proposed constitution. This would provide that only the Prime Minister makes nominations for Governor General. The Honorary President is limited to delaying the appointment and would consider doing so only during a constitutional crisis. Similar provisions could be included in state constitutions to codify the same convention at the state level.

In practice, the Governor General would continue to be selected by the Prime Minister, the governors by their respective state premiers. There would be no need to develop eligibility rules for these positions.

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

No campaigning assistance would be provided to individual nominees and legislation could be required to prevent candidates from using commercial advertising and associating with political parties.

The government would be required, by legislation, to provide a fixed amount of information about each candidate to electors in a regulated manner. At a minimum this would include a booklet of all candidates set to Australian households and broadcast on government radio and television and interested commercial stations.

The appointment of the Governor General would continue to be a confidential matter between the Prime Minister, the Head of State and the nominee.

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

This model is designed to make political parties disinterested in the election of the Honorary President.

Major political parties should accept the constitutional fact that the office of Honorary President would be separate entirely from executive government and be no political prize. Unlike the Governor General, the position offers not even theoretical capacity to implement, support, block or frustrate policy or political leadership. This in itself may ensure that the major political parties would have minimal interest in influencing the outcome of the election, for financial reasons alone.

This consideration would be amplified by the nomination restrictions that encourage state governments and oppositions to support their state governor, rather than a federal nominee. An attempt by a major political party to promote one candidate would be stymied in the state branches of the same party, who must also support their state MPs.

Importantly, if the Prime Minister (or Premier) has in-mind an excellent candidate for Head of State, the model offers them the opportunity to appoint that person to Governor General (or Governor) with a better chance of success in a subsequent election

Minor parties may feel more free and have greater interest to support a candidate, however due to their size, they would be exhausted mounting a petition and successful campaign unless the candidate already had personal mainstream support.

Despite these constitutional and practical restrictions, the Federal Parliament would be expected to provide legislative safeguards that would prevent nominees from associating from political parties. As legislation, the government could adapt it to reflect changes in political activities over time with an interest not just in the probity of the position but also in maintaining the political dominance of the Parliament.

The appointment of the Governor General would continue to be a confidential matter between the Prime Minister, the Head of State and the nominee.

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

The Australian Electoral Commission is well placed to administer the legislation and regulations concerning the conduct of the election.

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

Any voting method could be used to select the Honorary President, however ideally the method of voting should be distinguished from that of parliamentary elections. The following explanation details one method of achieving such a distinction.

A voting pamphlet would be sent to each household and completed ballots would be returned via the post. This would minimise costs and reinforce the idea that the Honorary President has little executive power. The election could be held in the months after a general election, avoiding the costs of updating the electoral rolls.

Voters could be given the option to answer Yes, No or Abstain for each candidate, reflecting a typical voter who would either approve or disapprove of a candidate without needing to rank them in comparison with the others. This simple voting method would reduce informal voting, remove the need for how to vote cards and prevent strategic voting. The candidate receiving the highest percentage of Yes responses would win the election

As a whole, the method is distinguished from parliamentary elections in a number of key areas. The intensity of competition between candidates would be reduced and the opportunity for negative campaigning eliminated.

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?***

The powers of the Honorary President are codified by the constitution and limited to ceremonial functions. The only official contact between the Honorary President and the government occurs when the Governor General or a state governor is appointed. The powers would not allow the Honorary President to exercise any executive power at any time, either directly or indirectly.

The title Honorary President conveys to voters the ceremonial nature of the office. This understanding, re-enforced by the guided nature of the electoral process prevents the Honorary President from claiming any mandate or any right to suspend or bypass the explicitly stated restrictions on power under this model.

In contrast, the Governor General would retain reserve powers and the many powers provided by the constitution. As an appointed person, they would be limited by the existing constitutional conventions. If the Governor General exercises power without the advice government ministers, they could be quickly removed by the Honorary President upon the nomination of a replacement by the Prime Minister.

NOMINATION

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

The constitution would provide three methods of nomination of candidates for the election of the Honorary President

- 1) The Federal Parliament could nominate one former Governor General
- 2) Each state parliament could nominate one former governor or lieutenant governor of that state.

- 3) Any group could provide a petition for nomination to the Governor General, however only the most successful petitions with support from multiple-states would be successful. The formula and final number of nominees would be set by federal legislation.

As discussed previously and quite separate from the election of the Honorary President, the Prime Minister could make a nomination for Governor General at any time. Similarly, one nominee for state governor could be made by a Premier. The Honorary President would make the actual appointments.

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

In accordance with section 60, the Federal Parliament would be expected to enact legislation to disqualify nominees who do not meet the eligibility requirements. Section 60 also allows the Parliament to provide other restrictions.

As discussed in the previous section, there are parliamentary and public nomination methods and each is restrictive.

For parliamentary nominations there would be a requirement to serve a minimum term in their position as Governor General, Governor or Lieutenant Governor. Each parliament could only make one nomination. As there are seven parliaments the number of nominations is thus limited to seven.

For public nominations, there would be a minimum number of petitioners. The successful petitions would in be the top three in terms of the number of signatures.

In contrast, there would continue to be no restrictions for the Prime Minister or a Premier when making a nomination for Governor General or Governor.

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

Parliamentary nominations typically would number seven. The constitution would fix the number of successful public-petitions to three. There would be a maximum of ten candidates.

It would be acceptable if no petition with significant support in more than one state was successful. But it would be unacceptable if there were less than three candidates in total.

For Governors-General (and Governors) there is only one nomination, made by the Prime Minister (or Premier.)

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

Yes. For candidates nominated by petition, this minimum number should be set by legislation, be in terms of thousands of petitioners and be distributed across multiple states. For example the formula may be 10,000 signatures with at least 500 signatures from every state and 200 signatures from the territories combined.

With a limit of three nominations by petition, if four or more candidates passed the above test, a second formula could determine the most successful three petitions, for example by simply counting the total number of petitions.

TITLE OF HEAD OF STATE

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

The title Honorary President is proposed. The term Honorary is a familiar one to the English language. It is utilised in many organisations to both honour distinguished persons and given them status without power.

In the context of the Australian Head of State, it conveys to citizens the ceremonial nature of the office and assists in preventing the Honorary President from claiming any form of political mandate.

TERM OF OFFICE

Under the model, the constitution would allow the Parliament to set a term of office of five years, extensible in lots of six months to a maximum of eight years. This gives the flexibility to enable elections to be synchronised with federal elections without necessarily compromising the independence of the position.

The following answers explain one possible implementation of this provision, which the Parliament could adapt as required.

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

For synchronisation with federal elections, the ideal length of term should be the same as a Senator – six years.

When one or more double dissolution elections were held and the minimum five years of the term had not passed, the term would continue until the next election after the fifth year. The term would finish on a six-month anniversary of the terms commencement.

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

No. Becoming Honorary President is in effect an honour bestowed by the people on one of its distinguished citizens. At the end of a term, there would be another ten or so distinguished Australians ready to be nominated. It is only reasonable that the honour of being the Honorary President be offered to one of those candidates.

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

Yes, one term for reasons stated above.

REMOVAL

Although the Honorary President, as proposed, holds a quite a different office to that of a High Court Justice, they would have the same method of removal. Either occurrence would be rarely contemplated, so it would be practical to share the same procedures.

The Governor General can be dismissed in a process commenced by the Prime Minister, who can make a nomination at any time. The Honorary President would then remove the Governor General and appoint the nominee.

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

Dismissal would be carried out by the Federal Parliament in joint sitting after hearing an explanation or plea from the Honorary President in the same session.

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

The Office of Honorary President would be a separate institution from the government and Houses of Parliament. The dismissal provisions for High Court Justices would apply to the Honorary President, that is, proven misbehaviour and incapacity. Additional grounds for removal are holding foreign citizenship, association with a political party and exercising a power of the Presidency outside the directions of section 59.

CASUAL VACANCY

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

At each election of the Honorary President, the results would be ordered in terms of popularity and two or more Honorary Vice Presidents appointed. If the Honorary President died, resigned or was removed, the next most popular and available Honorary Vice President would assume the office of the Honorary President. Under most circumstances, the timing of the next election would be unaffected and the new Honorary President would complete the whole of the remaining term.

Under this model, no other constitutional actor is able to fulfil the role of Honorary President, even on a short-term basis. To function effectively the office must be both independent and continuous. The constitutional conventions underpinning the relationship between the Governor General and Prime Minister (also a Governor and Premier) will depend upon it, just as they do today.

The principle of this mechanism is one of respect to the other candidates, who are all former governors or otherwise persons holding high levels of popular support. All of the ten who make this group would make a satisfactory Honorary Vice President.

ELIGIBILITY/ DISQUALIFICATION

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

In accordance with section 60, the Federal Parliament could enact any eligibility rules as it thought fit. The remainder of the answer follows in Question 21.

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

In accordance with section 60, the Federal Parliament would be expected to enact legislation to disqualify nominees who have or have had in recent years membership or association with political parties. Holding other offices under the constitution would also be a restriction, such as being a member of the House of Representatives or Senate.

Section 60 allows the Parliament to provide other restrictions. These would include foreign citizenship, age, bankruptcy and criminal history.

In contrast, there would continue to be no restrictions for the Prime Minister or a Premier when making a nomination for Governor General or Governor.

RELATIONSHIP OF HEAD OF STATE WITH EXECUTIVE, PARLIAMENT AND JUDICIARY

In principle, the relationship that the Queen holds today with the executive, Parliament and judiciary would be continued through the Presidency. Like the Queen, the Presidency would be a common feature in the federal and state constitutions – the Australian Head of State also being the ceremonial Head of State for each state.

The Governor General and Governors would be the representatives of the Honorary President and delegates of the Presidency with respect to each parliament in much the same way they are the representatives of the Queen today.

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

No. This would continue to be done through the Governor General and Prime Minister.

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

No. Prerogatives, in order to be exercised, must be delegated to the Governor General and Governors who would only act in accordance with existing constitutional conventions.

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

The Honorary President would have the same rights as an ordinary citizen with respect to the High Court and this highlights one of the legal distinctions between the Queen and Honorary President.

Historically, the High Court is a creation of the constitution, which in turn is a creation of the British Parliament, again in turn a creation of the British Monarchy. This means the High Court has no jurisdiction over the Queen and the Queen would have no conceivable place seeking a decision there.

The office of Honorary President would be a creation of the constitution, like the High Court, which would rightly claim original jurisdiction for matters concerning the office and the election to it. Consequently, the Honorary President could seek leave for some type of decision. The High Court would then need to decide how the matter should be handled, either by granting leave or declaring it a matter for the Parliament, for example if the matter concerned impeachment.

If granted, High Court would ably perform its role interpreting the constitution.

Nevertheless, despite the right to do this, it would not happen simply because the Honorary President disliked or thought unconstitutional a particular piece of legislation. The Honorary President would not be granted leave, as in effect, he or she would be acting against the Presidency in which they hold the senior office.

The only conceivable disputes involving the Honorary President and the High Court could be challenges to election results.

POSITION OF THE STATES

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

One of the clear advantages this model has over existing models is that it continues our unified federal system, with a common link between the states and Federal Parliament.

The Honorary President becomes Head of State for the federal and each of the six states of Australia, in the same way that the Queen of Australia is also the Queen of each state. This maintains the historic and legal parity between the parliaments and executives of the nation.

The Honorary President becomes an actor in each state constitution appointing the State Governor and Lieutenant Governor upon the nomination of the state Premier.

Under the model it is not contemplated that any state maintains its links to the crown. The transition would involve the states and commonwealth moving together.

A PROCESS FOR MOVING TOWARDS A REPUBLIC

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

This question is not relevant to presentation of the model, but the personal opinion of the author is that such plebiscite would decide nothing and the effort could be better spent.

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

This question is not relevant to the presentation of a single model, but the personal opinion of the author is that such a plebiscite would not guarantee success at a future referendum unless overwhelmingly in favour of one detailed and definitive model.

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

This question is not relevant to presentation of the model and the author holds no personal opinion on this matter.

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?***

Parliament and the executive have the same responsibility for the development of a republican model as they do for all other important legislative developments. They should use all the resources and systems at their disposal, be it consultants, the public service, parliamentary committees and inquiries, to redevelop or refine models in a responsible manner.

For this model, there are few constitutional changes and an assumption that the role of Governor General will be mostly unaffected. The details will involve constitutional experts reviewing the conventions and testing them under crisis conditions.

The ceremonial role of Honorary President itself may require a call for public submissions to establish suitable expectations. For example: How much do they want the Honorary President to promote Australia overseas or travel domestically? To what degree should the Honorary President support charities, innovation, tourism, science or the arts?

Finally, the courts, military and government need to say how they propose to adapt to the changes. For example: What insignia will military officers wear? What will be displayed on our coins? What will be the terminology changes?

These questions should be answered before any referendum and the referendum should only be put, if confidence in an affirmative result is very high.

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

The move to a republic has been and will continue to be a long-term project. There is no urgency in the minds of most voters and no public pressure to move rapidly forward.

Consequently, the process will depend on parliamentary leadership and organisations such as the Australian Republican Movement. It is unlikely that a process could move forward according to a timetable, until the details of a model with a very positive profile are determined.

Parliamentarians should then know when they are ready to present a referendum to the people and they should move only when they are absolutely sure of the support in every state and with an expectation of the referendum passing by at least 70%.

As the presenter of a new model with many positive advantages, the author has at least shown that new perspectives on republican models are possible. This in itself supports the 1999 decision the people took to hold out for something better.

CONCLUSION

The Honorary President Model incorporates the advantages of direct-election with the conservative features of the present constitution. It provides a constitutional framework that is consistent with federalism, natural law and fundamental freedoms.

The proposed changes to our constitution under the model are minimal and flexible. Of the twenty sections with references to the Queen, there are just six that would need significant amendment. Detailed provisions are left out of the constitution and the Parliament is asked to put this detail into legislation, which is more adaptable over time.

The concepts within the model are readily supportable. There is a Head of State who is independent of the Prime Minister, yet is principally a ceremonial figurehead. The constitutional conventions underpinning our Westminster system of responsible government are maintained and not compromised in any sense – real or perceived.

A strong case can be made that this republic would be better than the status quo. Certainly, it is an improvement over existing republican models.

Finally, this model is a new and unique development in the republican debate. It was developed after learning the lessons of the republican referendum defeat. At the very least it should show that developing practicable new models is not just possible but an absolute necessity.

To date, this model is a draft, developed in isolation. Despite the confidence with which this submission is made, it is expected that this draft be developed further after study and consultation with any interested person or group.

The author thanks you for your time in reviewing this submission

APPENDICES

A **Essay – The Spectrum of Powers**

B **Letter to the Editor – February 1998**

C **Draft Amendments to the Constitution**

APPENDIX A

ESSAY - THE SPECTRUM OF POWERS

The most critical design question when developing a republican model is the amount of power to be offered to the nation's president or head of state from the total powers the constitution grants to its executive government. In the Australian context, this question has rightly centred on proposed distribution of power between the Prime Minister and the Governor General.

It is possible to outline a spectrum of powers within which the power of a proposed President can be compared in various republican models. The objective of this paper is to visualise this key design question of presidential powers.

The success of the bi-partisan appointment model up the referendum will be shown to be due to its position in relation to other models considered by the Australian Republican Movement, Republican Advisory Committee and the 1998 Constitutional Convention. Was it the best position from which to pass the test of a national referendum?

The spectrum involves making assumptions about how a republican government must operate at its most general level, and its in breaking these assumptions that other republican models can be envisaged, one of which could prove to be Australia's republican future.

LEGAL AND POLITICAL POWER

The powers of the existing Governor General, Prime Minister and proposed Presidents must be considered from at least two perspectives:

- Legal power as described in the constitution and laws, which can be limited by political action, convention or precedent.
- Political power derived from the authority associated with how an official obtains their position, their mandate and influence, limited by the constitution, laws and courts.

The United States offers its President a large amount of both legal and political power, the consequence being that no other official in that country compares in terms of executive authority. The political dominance achieved there is clear and incontestable.

Many democratic republican nations and true Constitutional Monarchies such as Ireland and Great Britain, offer their Heads of State moderate legal power but little political power. The consequence is that the Prime Minister holds more executive authority, although they are not quite in the incontestable position as their counterpart across the Atlantic.

Republican models builders have reflected that the relationship between the Governor General and the Prime Minister in Australia, is generally equivalent to the relationship between the Queen and the Prime Minister of the United Kingdom. With the exception of a few proponents of an executive presidency, all republican models attracting a minimum level of support at the Constitutional Convention have used these relationships as archetypes.

Their conclusion has been that the Australian President should be conferred with similar legal powers to the present Governor General.

Despite the constitutional fact that these legal powers are consequential, to reduce or mechanise them would involve codification of constitutional conventions and reserve powers, reducing their effectiveness in event of constitutional crisis and opening the possibility of the repeal of Presidential decisions in the courts. Model designers have sought to avoid the complexities of codification, legal and political, and accepted the reasonable conclusion that the changes could make the constitution inflexible, perhaps even unworkable.

As a consequence, these republican models assume the essential powers of the Governor General are transferable to the new President and have used the appointment and the dismissal provisions of their model to limit the level of the President’s political power.

For example, the appointment provision in the bi-partisan appointment model involved community consultation, a nominations committee, the Prime Minister, the Opposition Leader and finally a joint sitting of Parliament, the effect of which was said to bind the President to the Parliament and the people without an election or mandate and give the President a similar level of authority to the present Governor General without politicisation. The dismissal provision was said to ensure the President observes the same conventions as the Governor General.

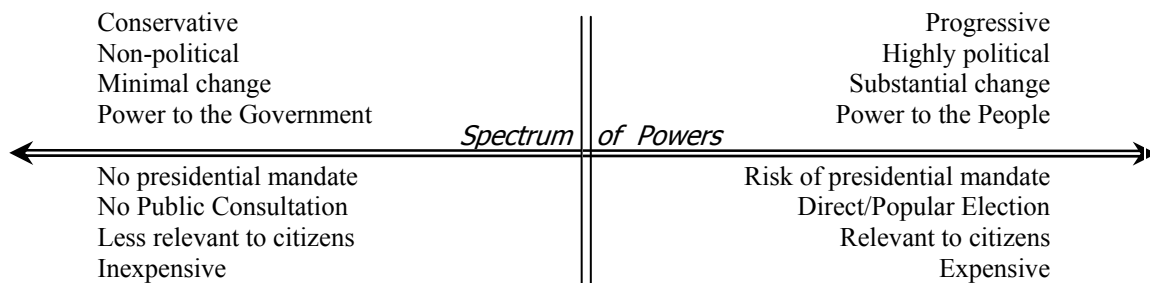
Critics of various republican models have noted that assigning power to the President occurs to the cost of the Prime Minister’s authority. In the case of the dismissal provisions of the bi-partisan appointment model, some critics concluded that the Prime Minister was offered more power at the cost of the proposed President.

An exception to this has been some of the individual efforts to completely redraft the constitution, which either codify the powers of the President or assign them to another constitutional actor such as the Chief Justice of the High Court or the Speaker of the House of Representatives. None of these has yet developed into a popular model due to, in the former case, the complexities of codification. In the later case, transferring power to another actor complicates understanding of the model and the implications.

CONSTRUCTION OF THE SPECTRUM

The spectrum of powers diagram attempts to make linear the distinctions between the popular models for an Australian Republic. The assumption behind the linear nature of the analysis is that the models are distinguished far more significantly by the political powers assigned to the President (as described previously) and less so by the respective legal powers.

The first diagram shows the spectrum in terms of its conservative and progressive extremes. A number of general terms are used to describe the extremes of the spectrum.



Above: Introduction to the Spectrum of Powers

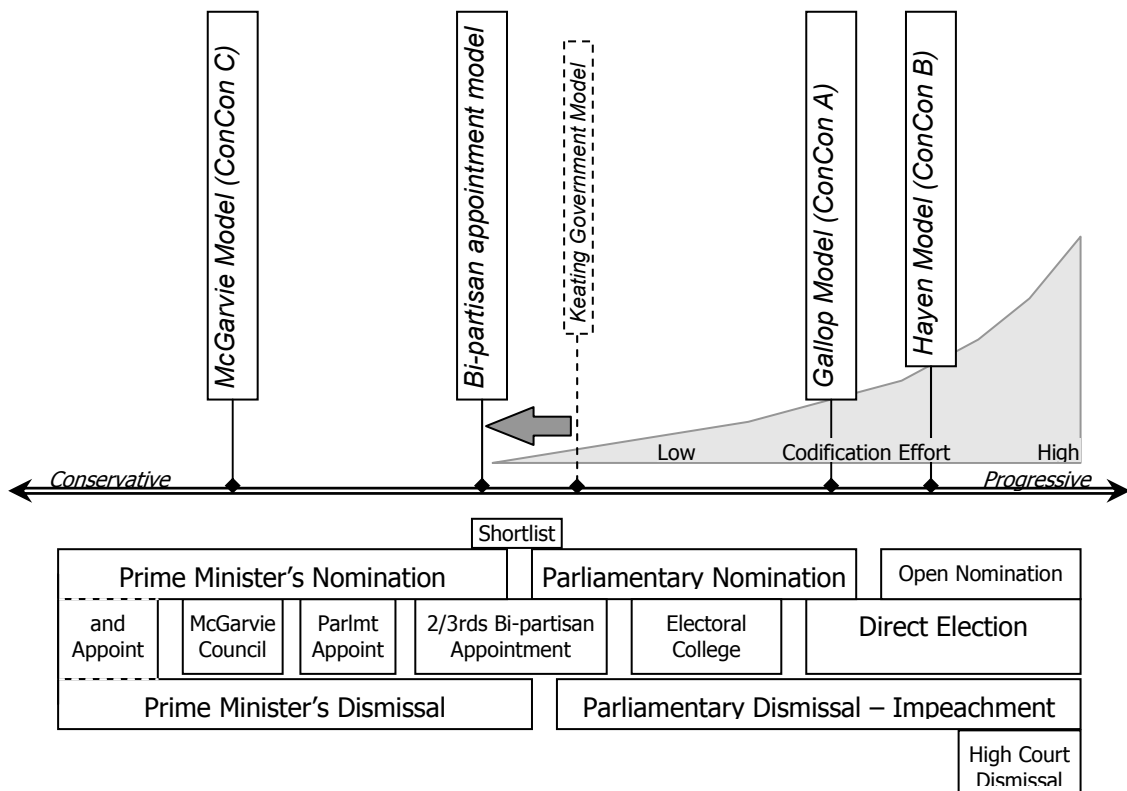
A model that allows the Prime Minister to appoint and dismiss the President with no restriction would appear on the extreme conservative side of the spectrum. It is minimal

change given that the existing conventions allow the Prime Minister to effectively do the same. There is low interest in the appointment, given that the office is subordinate in all but name to the Prime Minister.

A model that allows open nomination and direct election would appear on the extreme progressive side of the spectrum. The electorate is entirely involved in the election of the President, which involves political campaigning. There are ongoing political implications for the government and a possibility that the constitutional arrangements will evolve so that executive political power is shared between the President and Prime Minister.

COMPARING MODELS USING THE SPECTRUM

Between the conservative and progressive extremes are a number of popular republican models, including the bi-partisan appointment model and those being suggested for a future plebiscite. The diagram below provides the relative positions of these models on the spectrum of powers. Below the line are the main provisions of the models, which themselves indicate where a model belongs on the spectrum.



Above: Popular Republican Models compared on the Spectrum of Powers

The line itself is marked *Conservative* at one end and *Progressive* at the other, although these general terms should be preferably understood in the context of republican model building.

Five specific models are shown by the block diamond on the line. These are the four models voted upon at the Constitutional convention, plus the 1993 preferred Keating Government Model (also preferred by the ARM during those years). An arrow appears to indicate the change in ARM position between the time of the Republican Advisory Committee and the conclusion of the Constitutional Convention. It is likely that the most popular direct-election

model of the convention – the Gallop Model, moved in a conservative direction while being developed there.

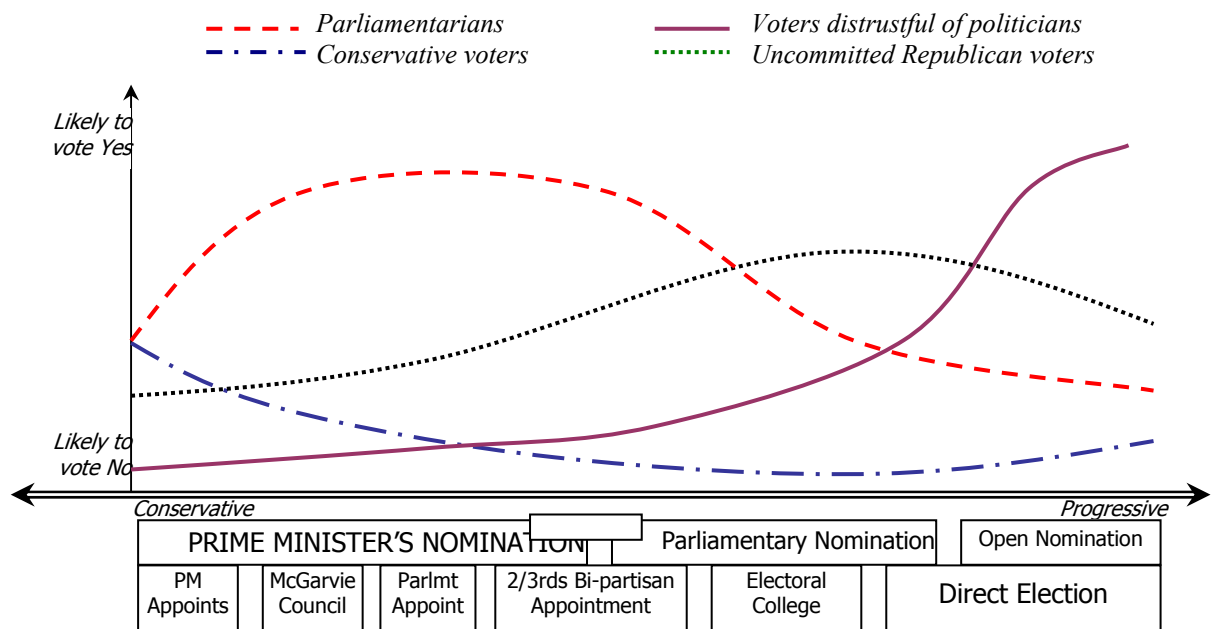
Below the line are the general features of the models. The organisation of these along the spectrum is meant as a guide. In the final analysis the decision as to whether a feature is more conservative or progressive is partly a question of opinion, partly a question of common sense. Furthermore there are anomalies, unavoidable as the further detail of each model is explained. The obvious example is the organisation of Prime Ministerial dismissal, for which the McGarvie model is less conservative than the Bi-Partisan Appointment model.

Finally the diagram indicates that the codification effort for the more progressive models is greater for those holding the conservative positions. The triangle height is indicative of the effort and if more models appear on the progressive side of the spectrum, the codification effort, that is the legal powers, would be in need of some elaboration.

Other new models which appear (with the exception of the Honorary President Model of this submission) are likely to accept the contention that they are either conservative, progressive or somewhere between. The progressive models are likely to attempt a codification of the President’s powers such that the reserve powers of the Governor General are limited, eliminated or transferred.

ASSESSING POPULARITY USING THE SPECTRUM

The Presidential Power Spectrum can be used to show the difficulty of obtaining success in the Parliament, which must agree to formulate the changes and success in the electorate, where a majority of electors in a majority of states must say yes in a referendum. Both the Parliament and the electorate have different conservative and progressive elements and this generally determines whether they, firstly, approve of any change and then, secondly, the type of republican models they have confidence in.



Above: Theoretical Support Curves along the Presidential Power Spectrum

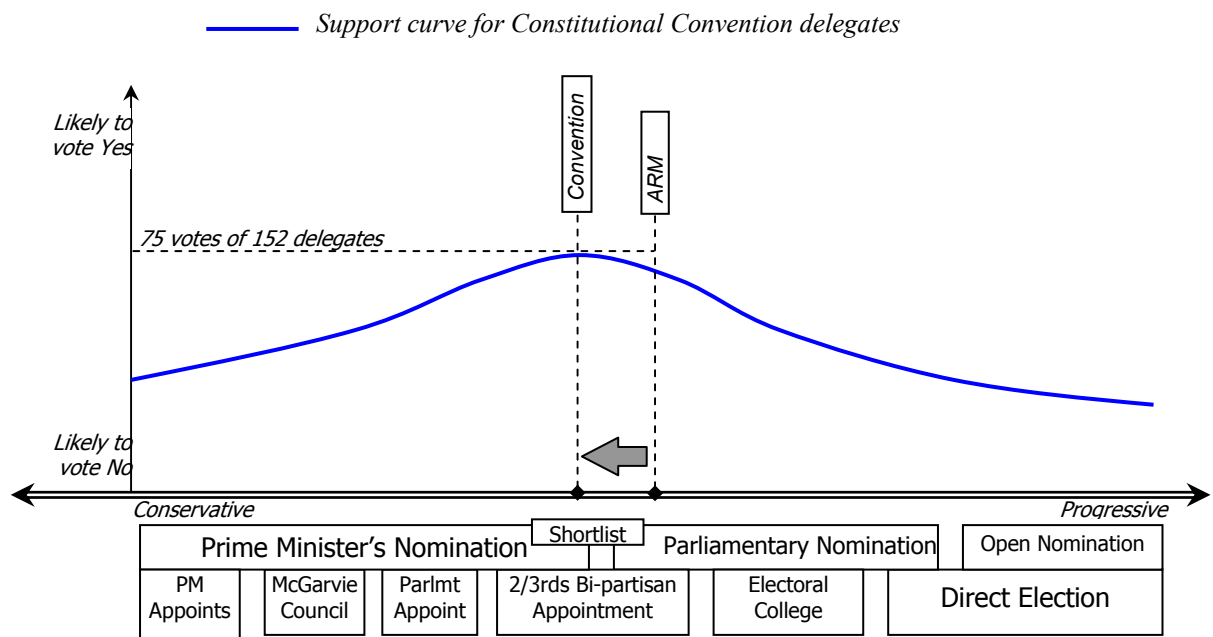
In the diagram above a voting block of electors who hold certain beliefs about the move to a republic are tested against the conservative, moderate or progressive models on the spectrum.

The test results appear as a support curve on the spectrum. Note that no polling has been used to create this submission, so the results presented are only theoretical. The parliamentarian group, who should have an well developed understanding of the political system, are inclined to vote for a moderately conservative model and adverse to the change and cost of direct election. Conservatives vote for conservative models but in some circumstances for conservative systems. A voter distrustful of politicians will reject involvement by parliamentarians even at the nominations stage while strongly supporting direct election. A republican voter, uncommitted to any model, could be supporting for all, but is most likely to support the more conservative of the direct-election models.

The spectrum projects the well understood idea that majority support from parliamentarians doesn't always translate as electoral support sufficient to pass the test of a referendum.

The strategy for republicans, who are flexible in their support for a model, has been to find the centre then broaden the provisions outwards to accommodate the beliefs of republicans on both the conservative and progressive side of that position. This is why the ARM preferred model was to incorporate a nominations committee (a progressive concept) and prime ministerial dismissal (a conservative concept). These in turn were modified so that the nominations committee short-list was not binding on the Prime Minister (conservative) and a prime minister's dismissal would be ratified by the Parliament within 30 days (progressive).

Although most discussion about models is about whether the provisions of a model are good or bad, advantageous or disadvantageous, popular or unpopular the underlying assumption behind the strategy is that support for a model is greatest in the middle. For republicans not committed to a particular model, finding the ideal compromise position is the key to success.



Above: Finding the Middle along the Presidential Power Spectrum

Supporters of the compromise strategy would accept the support curves described in the above diagram. It shows that at the convention the bi-partisan appointment model, introduced by ARM delegates to the Constitutional Convention, was moved to a slightly more conservative position through dialog with other delegates.

Further conservative movement would have reduced the total support for the model. An example of this was the Bishop amendment, which would have attracted slightly more support from conservative delegates but would have lost the support of even more progressive delegates.

Achieving compromise to produce a model with the highest possible support does not guarantee majority support and this did not happen the convention. What it does show is that no other model, not just the models voted upon and not even any hypothetical model that may have developed after further discussion or lobbying, in fact, no model whatsoever on the spectrum of power could have achieved higher support.

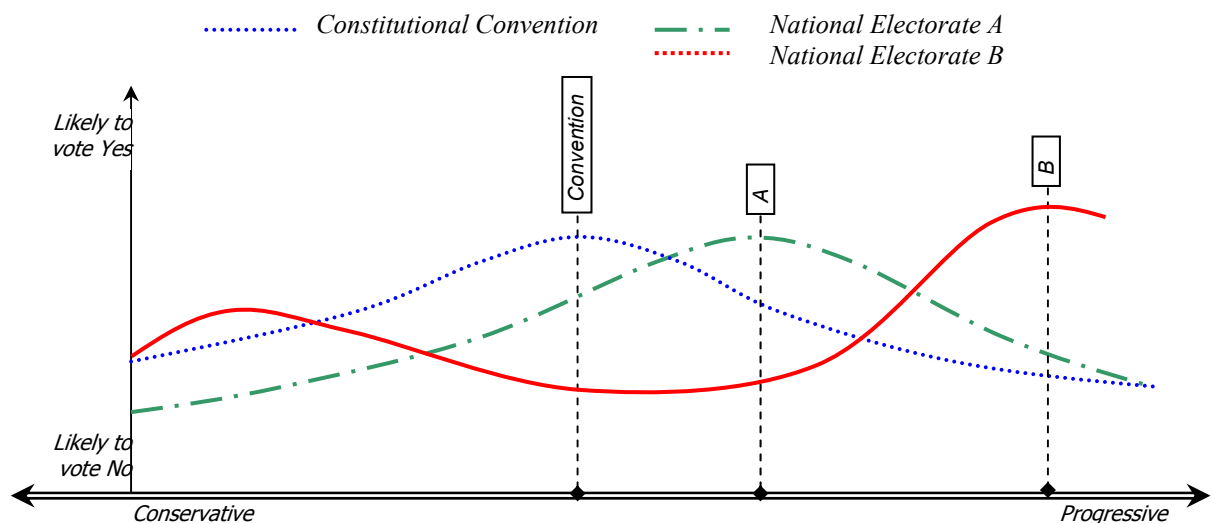
THE SPECTRUM AT THE REFERENDUM

The support curves for the referendum itself may not be read as simply. The success of the NO campaign has been largely attributed to its appeal to both conservatives and progressives. What does this say about the support curve that could be drawn for the national electorate?

In the diagram below there are two views of the electorate A and B.

The A support curve represents political common sense. It says that the range of views present at the convention was also present in the electorate. It says that the best strategy to win a referendum is to find the centre and then broaden the appeal of the proposal outwards. If the electorate is more progressive than the convention delegates, this is reflected by a progressive movement of the support curve. The result is model A – the best chance for a republic under these assumptions.

The B support curve represents a perspective of the electorate according to some advocates of direct-election. It is a purists view, proposing that the best chance of constitutional change cannot be achieved by mere compromise. Under this support curve, the weight of support is on the extremes and the best result is model B.



Above: Referendum perspectives along the Presidential Power Spectrum

Although the A curve makes political common sense, the purist B curve is relevant in the case of a republican referendum. The centre position is inelegant, a compromise, difficult to grasp. In the mind of a disinterested elector, it could be the soup spoiled by too many cooks. Perhaps the elector does not really care about the power balance between the President and Prime

Minister and more concerned with it being straightforward and/or decisive. It is the extremes of the spectrum that offer these qualities, not the centre which tries to be a bit of everything.

Part of the NO campaign strategy was to suggest to voters that they decline a republican constitution until the demand for a directly elected President was fulfilled. Given the success of this campaign, this could be evidence that the B curve could be a better indicator of the electorate than A.

Knowing if the electorate resembles either the A or B support curves can be used to indicate which types of models, along the spectrum, would be most likely to be successful at a referendum. If the political orthodoxy is right then the A curve suggests that the best model is a balance of conservative and progressive features, leading ultimately to a balance between the powers of the Prime Minister and President. And if B is correct, then it's an intense battle between conservatives and progressives, one group proposing the minimalist alterations, the other proposing seemingly revolutionary changes.

Unfortunately, although this analysis may show which model on the spectrum of powers is most likely to pass the test of a referendum, it cannot show not whether it would finally pass.

STATUS QUO AND THE SPECTRUM

One of the common refrains from supporters of the status quo is that none of the proposed models for a republic is better than the present constitutional monarchy. Does the analysis using a spectrum of powers assist in understanding this opinion?

An obvious conclusion about the debate between the republican proposals is that it results in a tug-of-war between conservative and progressive republican advocates. When a conservative argument about maintaining the power of the Prime Minister is accepted, the model moves in the conservative direction. When the progressive idea of using a nominations committee becomes attractive, the model moves in a progressive direction.

This sort of debate cannot persist under the present system because the constitution says so little on this subject – only that the Governor General is appointed at the Queen's pleasure.

The authority held by the Queen has no political basis in Australia. The appointment and dismissal procedures for the Queen are entirely outside the province of the Australian Prime Minister, Parliament and Courts. Governors-General, being representatives of the Queen, take their legitimacy from the Queen.

The history of the office is an example of the flexibility of the constitution in this regard. The first governors-general were appointed by the Imperial Government. In contrast, modern times have seen appointments made from both political and apolitical figures. It is possible to imagine a more transparent appointment process for the future, however none of these developments has or would affect the political power of the Prime Minister.

In conclusion, the status quo is not a model that can be placed along the spectrum of powers.

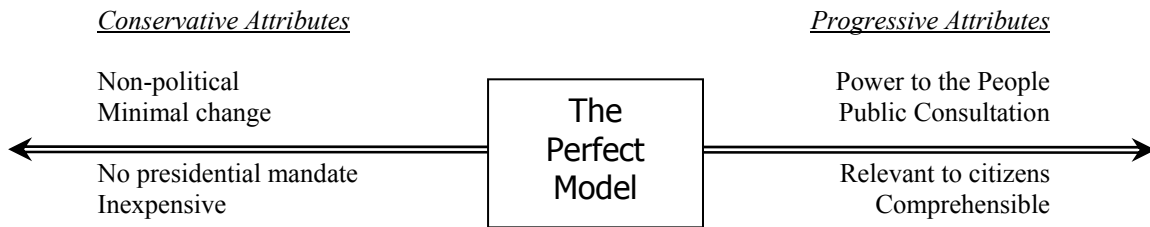
THE REPUBLICAN PARADOX

At the heart of the existing republican model debate is a paradox.

The model maker is expected to propose a system with qualities on either side of the spectrum of powers. The proposed President is not political, yet has survived an election process and substantial public scrutiny. The President should belong to the people, yet act only on the advice of the Prime Minister, except in the case of the most extraordinary constitutional crisis.

We would expect that the President have the support of the people yet take no mandate from the people in carrying out his/her important albeit apolitical responsibilities.

The bi-partisan appointment model has been the first casualty of this paradox. From the conservative side it was attacked for weakening the constitutional conventions critical to our system of government. On the progressive side it was attacked for giving the Prime Minister and Parliament too much power.



Above: Contradictory Qualities of the Ideal Model

It is now generally accepted that this paradox is unresolvable. The ideal model has qualities that are inherently contradictory. According to popular republican sentiment, this is something that the rest of the electorate must simply learn and accept.

PLEBISCITE SOLUTION

The most popular work-around for the paradox is to offer the electorate a plebiscite. The rationale for a plebiscite is that the results will unite republicans behind the most successful model. Once the debate on the model has been concluded, it is more likely that a referendum will succeed.

The ARM propose a number of models all of which appear on the spectrum of powers. In addition there is the McGarvie model.

It is likely that no model will attract majority support in the plebiscite. This in itself may indicate that the most attractive model is unlikely to pass at a referendum, however the plebiscite solution assumes that republicans will agree to support the winning model in the interests of achieving the goal. Unfortunately, we would need to imagine that republicans supporting a McGarvie-like model would, after the plebiscite, realise that their objections to more progressive models were groundless. Alternatively, we could imagine that direct-election purists would abandon their deeply held democratic ideals and support an appointment system.

There is no evidence that this would happen. McGarvie model supporters believe that the status quo is unequivocally better than directly-electing the President. As the referendum showed, direct-election purists would rather work with monarchists than accept parliamentary appointment.

Finally, it is likely that the support curve will move between the plebiscite and the referendum. The most attractive model in one year may be substantially different three years later, especially if a number of compromise provisions are included during the intervening period.

In conclusion, the plebiscite proposal is likely to affect only the margins of the republican model debate. The support advantage from winning the plebiscite may not translate into success at the referendum.

THE PASSIONATE DEBATE

There have always been calls for others to lay aside passion in the interests of resolving the republican model debate.

Centrists is an appropriate term for those republicans who supported the bi-partisan appointment model debate but actually are interested in supporting the compromise model with the best chance of winning a referendum. The primary goal for centrist republicans is full-independence for Australia from the monarchical institutions of Great Britain. It is only a secondary goal to provide a better constitution.

The Centrist perspective is strongly represented by the Australian Republican Movement. They are the leaders in the push to become a republic and without them the issue would be far more easily marginalised and confused with other issues such as citizen-initiated referenda or a bill of rights within the constitution.

The dialog of the Centrist perspective is moderate, polite, respectable and diligent. It is pleased to work with all the major political parties, understanding the importance of bi-partisanship.

Conservative republicans are less concerned with the primary goal of independence, but are more concerned that the constitution is not destabilised in the process. They may reject change for this reason and make their warnings public.

Progressive republicans are concerned with the primary goal of independence and a more democratic, accessible and transparent constitutional structure in equal measure. They see the centrist agenda as too limited. The republican push is also a chance to democratise the executive, to make it not just accountable to the Parliament, but to the people.

Both progressive and conservatives republicans attain prominence through the efforts of the centrists to raise the republican agenda. This is a source of friction as centrists feel they need to work twice as hard as necessary.

The passionate argument between these three types of republicans is strongly felt in the centre, yet it is internalised. The republican paradox is an enormous frustration, but ultimately without conservative support their proposals can be portrayed as destabilising our system of government. Without the support of progressive republicans, the proposal can be portrayed as undemocratic and compromised.

THREE UNSUITABLE SOLUTIONS

The republican paradox exists because no model along the spectrum of powers can satisfy both the progressive and conservative sides of the debate.

To unlock the paradox, the model maker should begin to consider proposals that do not appear along the spectrum of powers. There are three known solutions to this problem.

The first solution is the status quo. The legitimacy of the Queen has no political basis and the Governor General borrows this apolitical authority.

The second solution is to codify the powers of the President, extinguishing the reserve powers. This leaves the President with legal powers and no political power. There are a small number of republican model which attempt to do this, but they involve a radical redrafting of the constitution.

The experience of politicians and political experts is that redrafting the constitution is extremely unlikely to win the favour of the electorate. There is almost no possibility that a majority of the people will consider a new system as safe, especially when the objective is to remove the Queen from our political system and when confidence in our constitution remains generally high.

The third solution is to fundamentally diminish the status and authority of the Prime Minister. This solution means, in effect, establishing an Executive Presidency, either within or external to the Parliament. A small group of direct-election republicans are in favour of such a solution, however the revolutionary changes required are generally regarded as unsaleable to the electorate.

THE CURRENT STALEMATE

The paradox leaves the republican debate and republican movement stalemated.

Although the problems of the debate have not been previously described using the spectrum of powers paradigm, republicans are well aware of the problems in trying to move forward. The promotion of a national plebiscite is evidence of the belief that there are no real solutions.

The capacity of model makers to find republican models that do not appear along the spectrum of powers has been hampered by the original terms of reference for the Republic Advisory Committee. The fundamental assumption behind the models canvassed has been to remove the Queen and if doing so, promote the Governor General to President.

The advantage of the spectrum of powers paradigm is that it demonstrates that these fundamental assumptions can be revisited. In fact, they must be. The alternative is a republic which is less sensible, less reasonable and less practical than the status quo – a republic just scraping over the referendum line if at all.

A FOURTH SOLUTION

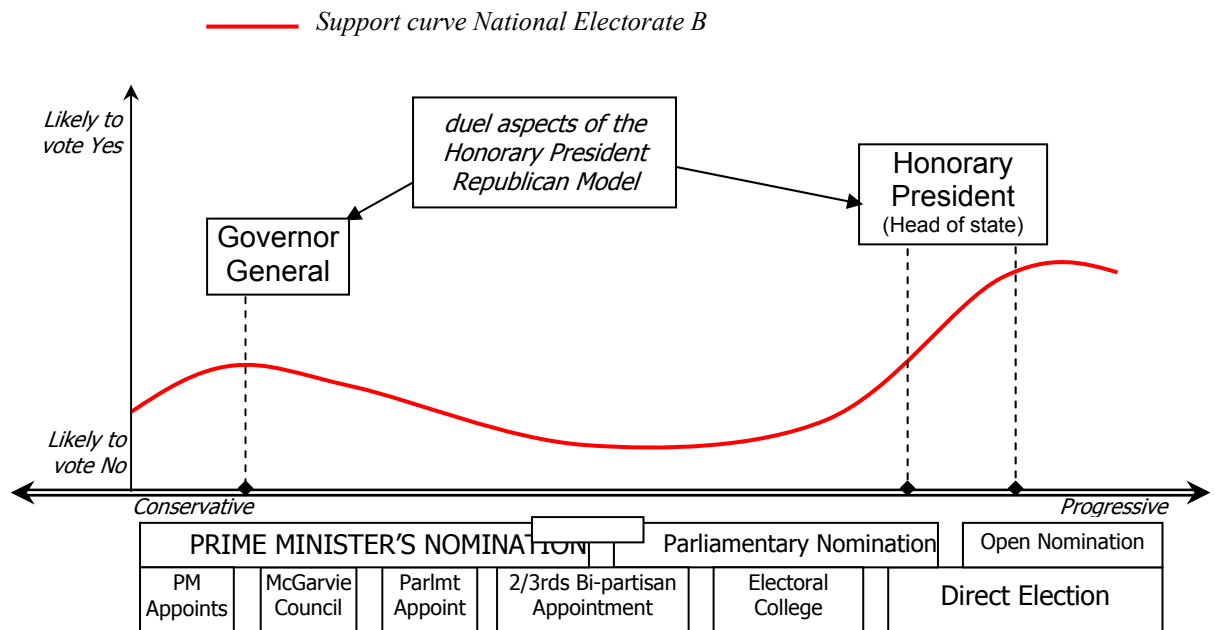
We have already uncovered three solutions to the spectrum of powers. The first is to maintain the status quo and this solution was reflected in the results of the 1999 referendum. The second solution is the codification of all the powers of the President. The third is an executive President. As discussed, while these resolve the paradox, more problems are created than are solved. In the case of the status quo, nothing changes.

The fourth solution is to revisit the fundamental assumptions that to remove the Queen, that her powers must be combined with those of the Governor General and offered to the President. A new alternative is to replace the Queen with a President and leave the position of the Governor General unaltered.

The Honorary President Republican Model uses this alternative method of establishing an Australian republic. The term President is qualified as Honorary President to demonstrate the position is not executive, but ceremonial. The main tenants of the model are:

- The Honorary President is directly elected
- Some nominations are accepted through public petition
- Some nominations are made by state and federal parliaments
- The appointment (and dismissal) of the Governor General is the same as the status quo, except the appointment is made by the Honorary President

The model cannot be placed on the spectrum of powers in just one position. Existing models establish or alter one position, yet this model establishes or alters two. Let this be called the duel aspects of the model. The consequence is that the model sits in more than one place on the spectrum of powers.



Above: The Honorary President Republican Model

The Governor General on the conservative side of the line holds the first position. They are nominated by the Prime Minister but are appointed by the Honorary President. The function of the Honorary President is equivalent to McGarvie’s Constitutional Council in terms of its conservative appeal.

The other positions are held by the Honorary President on the progressive side. Two positions are shown to indicate that candidates for election are accepted via two methods – public petition and parliamentary nomination. The former method should have the greater support.

After introducing support curve B (discussed earlier) we can see that the Honorary President Republican Model sits in an interesting position. It appears to take advantage of support from either end of the spectrum of powers. Although we must factor in a reduction of support from voters who cannot or will not break their republican assumptions, the position of the model appears to be favourable in terms of overall support.

The conclusion of this essay is that the Honorary President Republican Model could be a highly popular model in the eyes of the electorate. It could accede to the wishes of those progressive voters who desire a popularly elected Head of State, without objection from conservative voters concerned that such an election would destabilise our existing system of government.

APPENDIX B

LETTER TO THE EDITOR, FEBRUARY 1998

The following letter was sent via email to the Sydney Morning Herald and to delegates at the Constitutional Convention on 5th February 1998. It was but not published, which is unsurprising given the spelling mistakes, however a number of short replies were received from delegates. The text is reproduced below:

LETTER TO THE EDITOR

MCGARIVE / ELECTION SYNTHESIS

A majority of Australians hope to elect a President who is not a politician. The McGarvie proposal replaces the Queen with a constitutional council that elects the head of state.

The disadvantage of one is the advantage of the other. I would like you to consider a synthesis of the proposals as follows:

The McGarvie proposed council is formed with four members (not three). The President is elected by the people for a term of six years, fulfills (sic) the ceremonial role of head of state and becomes the tie-breaking chairperson of the council. In every other way the council is as MacGarvie (sic) proposed.

The constitutional council appoints a Vice-President who fulfills (sic) the current role of Governor-General and keeps those ceremonial functions associated with the Parliament. The Vice-President would be the representative of the president just as the Governor-General is representative of the Queen.

In my view a council with an elected President provides a better replacement of the Queen's role. It is almost totally void of political power and places a respected Australian in the position of head of state.

My concern with the non-elected President proposals is that they do not allow the people to form a relationship or bond with their head of state. This relationship is felt by monarchist Australians to the Queen. I believe it is possible to form an even closer relationship with all Australians and their President.

Yours sincerely,

David Latimer

APPENDIX C

DRAFT AMENDMENTS TO THE CONSTITUTION

Note: Bold and underlined phrases are chapter and section titles. They are there as a guide, and are not altered unless a comment in italics appears to the contrary.

Chapter I – The Parliament

Part I – General

1 Legislative Power

the Queen *replaced with* the Presidency

2 Appointment of the Governor General (*replacement of section*)

After a nomination, by message from the Prime Minister or, in the absence of the Prime Minister the most senior minister of the Federal Executive Council, to the Honorary President, the Honorary President may remove the current Governor General and appoint the nominated person to the office of Governor General.

3 Salary of the Governor General

There shall be payable to the Queen out *replaced with* There shall be, out

4 Powers of the Governor General (*replacement of section*)

The Governor General shall be the representative of the Honorary President in the Parliament of the Commonwealth and may exercise in the Parliament, subject to this constitution, the powers and functions of the Presidency.

Part III – The House of Representatives

34 Qualification of Members (*replacement of subsection*)

(ii) the person must be an Australian Citizen as defined by the laws made by the Parliament

Part III – Both Houses of Parliament

44 Disqualification

the Crown *twice replaced with* the Presidency

Queen's Ministers *replaced with* Ministers

Queen's army or navy *replaced with* naval or military forces of the Commonwealth

Part IV – Powers of the Parliament

57 Disagreement between the Houses

the Queen's accent *replaced with* accent

58 Royal Accent to Bills *section title replaced with* Accent to Bills

the Queen's accent *replaced with* accent

in the Queen's name *replaced with* on behalf of the Presidency

remove or that he reserves the law for the Queen's pleasure

Chapter II – Executive Government

Part I – The Honorary President

59 Powers of the Honorary President (*replacement of section*)

An Honorary President, chosen by the people of the Commonwealth acting as one electorate shall hold the most senior office of the Presidency, holding all the executive powers and functions of the Commonwealth, however these powers and functions shall only be exercised:

- (i) by representing the Presidency in a lawful ceremony or occasion;
- (ii) by appointing and removing Governors-General in accordance with this constitution;
- (iii) by delegating federal powers and functions to the Governor General;
- (iv) by declaring, by signed instrument, the validity of the Governor General's authority regarding external affairs;
- (v) by appointing and removing Governors and Lieutenant Governors of a state, in accordance with the constitution of that state; and
- (vi) regarding a state, as directed by with the constitution of that state.

Any exercise of power or function by the Honorary President, except in accordance with this section of this constitution shall have no validity and may be regarded as an improper exercise of power or function, however any improper exercise of power or function by the Honorary President shall not, in consequence, affect the validity of any exercise of a power or function by a Governor General or Governor. Furthermore, the Governor General or the Governor of a state may continue to exercise a power or function of the Presidency by precedent, until referenced by a subsequent delegation, and the Governor General shall continuously be able to exercise, on behalf of the Presidency, executive powers of the Commonwealth for the execution and maintenance of its laws and this, its constitution.

60 Election and Term of the Honorary President (*replacement of section*)

The Parliament shall make laws for the conduct of the election and term of the Honorary President providing, but not limited to providing, for:

- (i) the qualification of candidates
- (ii) the nomination of candidates by
 - (a) any state parliament, where one former Governor or one former Lieutenant Governor of that state is nominated; and
 - (b) the Federal Parliament, where one former Governor General is nominated.
 - (c) public petition, up to three showing the greatest support;
- (iii) the disqualification of candidates who have or in recent years have had an association or membership of a political party;
- (iv) limitations on re-nomination;
- (v) the appointment of one or more Honorary Vice Presidents from the group of candidates;
- (vi) annual salary and expenses;
- (vii) a term of five years, extensible in lots of six months to a maximum of eight years for the purpose of coordination with other elections;
- (viii) restrictions on holding other offices under this constitution;
- (ix) the resignation of the Honorary President or Honorary Vice President; and
- (x) the assumption of office by an Honorary Vice President

61 Removal of Honoraries (*replacement of section*)

An Honorary President or an Honorary Vice President, may be permanently removed by the Governor General, on an address from both Houses of Parliament in the same session praying for such removal on the grounds of:

- (i) proved misbehaviour;
- (ii) incapacity;
- (iii) improper exercise of powers;
- (iv) holding foreign citizenship; or
- (v) activity in a political party.

Part II – The Federal Executive Council

64 Ministers of State

the Queen's Ministers *replaced with* the Ministers

66 Salaries of Ministers

There shall be payable to the Queen out *replaced with* There shall be, out

68 Command of naval and military forces

as the Queen's representative *replaced with* as representative of the Presidency

Chapter III – The Judicature

73 Appellate jurisdiction of High Court (*replacement of the last sentence of the section*)

The Parliament shall provide the conditions of and restrictions of appeals from the Supreme Courts of the several states to the High Court.

74 Appeal to Queen in Council *section removed*

Chapter V – The States

117 Rights of Residents in States

subject of the Queen *replaced with* permanent resident, as defined by the laws made by the Parliament

Chapter VI - New States

122 Government of territories

territory placed by the Queen *replaced with* territory placed

Chapter VII - Miscellaneous

126 The Saving of Powers and Functions (*replacement of section*)

At the commencement of the term of the first Honorary President, in respect to Australia:

- (i) the Presidency shall be the successor to the Queen and the Crown;
- (ii) the validity and continued effect of the Queen's powers and functions shall be held in the Presidency; and
- (iii) the validity and continued effect of the Crown shall be held in the Presidency and where the Presidency is holding this validity or effect it may continue to be referenced as the "Crown" or it may be referenced as the "Presidency."

However, notwithstanding anything in this section, the Queen shall continue to be recognised as Head of the Commonwealth of Nations and Australia's membership of it shall continue until the Parliament otherwise provides.

Chapter VIII - Alteration of the Constitution

128 Mode of altering the Constitution

the Queen's assent *replaced with* assent