Briefing Note

M-in-S

SGAN
P-PL
114572
5/93 'a'
c5

NSW Parliamentary Librai
Macquarie Street Sydney
NSW 2000 Australia

Telephone (02) 230 2382
(Int Prefix 61-2)
Facsimile (02) 231 1932
(Int Prefix 61-2)

Republicanism:
Review of Issues and Summary of the Republic Advisory Committee Report

by

Gareth Griffith

No 005/93

© New South Wales Parliamentary Library

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without written permission from the Librarian, New South Wales Parliamentary Library. Inquiries should be directed to the Publications Officer, New South Wales Parliamentary Library, Parliament House, Macquarie Street, Sydney, 2000.

New South Wales Parliamentary Library cataloguing-in-publication data

Griffith, Gareth

Republicanism : review of issues and summary of the Republic Advisory Committee report / by Gareth Griffith
[Sydney, N.S.W.] : New South Wales Parliamentary Library, 1993. -
[iv, 28 p.; 30 cm.] (Briefing note / New South Wales Parliamentary Library, ISSN 1321-2559 ; 005/93)

ISSN 1321-2559

1. Republicanism--Australia (LCSH)
[1. REPUBLICANISM-AUSTRALIA (Parliamentary thesaurus)]
2. Australia. Department of the Prime minister and Cabinet. Republic Advisory Committee. Report
I. New South Wales. Parliamentary Library
II. Title
III. (Series) Briefing note (New South Wales. Parliamentary Library ; 1993/5)

321.860994 (DDC20)

Published by the New South Wales Parliamentary Library.

Contents

1 Introduction 1

2 The Republican Debate

(a) Australia's constitutional system 1
(b) The Republican debate 2
(c) Arguments for a republic 3
(i) Issues of identity and nationhood
(ii) Issues of law and principle
(d) Arguments against a republic 6
(i) General issues
(ii) Legal issues

3 The Report of the Republic Advisory Committee

(a) Overview 10
(b) CHAPTER 4 A NEW OFFICE OF HEAD OF STATE 11
(c) CHAPTER 5 APPOINTMENT AND REMOVAL OF THE HEAD OF STATE 11
(d) CHAPTER 6 THE POWERS OF A NEW HEAD OF STATE 14
(e) CHAPTER 7 HOW A REPUBLIC CAN BE ACHIEVED 16
(f) CHAPTER 8 THE STATES AND THE REPUBLIC 17
(g) CHAPTER 9 OTHER ISSUES RELEVANT TO A CHANGE TO A REPUBLIC 21
(h) CHAPTER 10 CONCLUSION 21

4 Responses and Comments

(a) Comments in the press 23
(b) Other responses 24
(c) Australians for Constitutional Monarchy 26

5 Prospects 28

1 Introduction

This paper canvasses the major issues and arguments surrounding the contemporary debate for and against alteration of the Australian Constitution for the purpose of establishing a republican head of state. The sounding board for many of these issues and arguments is the Report of the Republic Advisory Committee, *An Australian Republic-The Options*.

The more general themes of the republican debate are considered first. Next comes a summary of the main points of the Committee's report, followed by a survey of comments and responses to it.

References in this paper to the 'Constitution' relate to the Commonwealth Constitution.

2 The Republican Debate

(a) Australia's constitutional system

Our system of government is based on the concepts of representative democracy and responsible government within the context of a federal compact. The irony is that these fundamental concepts of constitutional law and practice are barely discernible in the written Constitutions of either the Commonwealth or the States. To a large extent they must be inferred from these texts, developed from and interpreted in terms of political practice and tradition. In the language of constitutional law these are known as constitutional 'conventions'. These operate in particular with reference to responsible government, under which the Crown acts, other than in exceptional circumstances, on the advice of Ministers who are responsible to Parliament, and where the government of the day is chosen from those who have the confidence of the lower house.

On the other hand, the institution of the Crown is written into the texts of the Commonwealth and State Constitutions in express terms. Professor Zines comments, 'The notion of the Crown pervades the Constitution', a comment made in a federal context but which can be taken to have general application.[1] The irony of course is that the formal and express significance of the Crown is in inverse proportion to its actual, practical importance. Precisely the reverse is true of the concepts of representative democracy and responsible government. Government is administered in the name of the Queen, but it is her 'advisers' who actually make the decisions.

The Queen, as head of the Australian nation state, is now titled 'Queen of Australia'. This legal title was introduced by the *Royal Style and Titles Act 1973*, which in addition removed references found in the *Royal Style and Titles Act 1953* to 'United Kingdom' and 'Defender of the Faith'. References to 'the Queen' in the

---

[1] L Zines, *The High Court and the Constitution*, 3rd Edition, 1992 at 213.

Constitution are in effect references to 'the Australian Government'. In her capacity as Queen of Australia, the Queen formally appoints the Governor-General on the advice of the Australian Prime Minister. As the Republic Advisory Committee explains, the only other constitutional power at present exercised by the Queen in respect of Australia is the granting of royal assent to legislation 'in circumstances where it is considered appropriate for the assent to be given by the monarch rather than the Governor-General'. For example, the *Royal Style and Titles Act 1973* was 'reserved for Her Majesty's pleasure'. Section 61 of the Constitution provides that the Governor-General is the Queen's representative. Since the Imperial Conferences of 1926 and 1930 the Governor-General represents the Queen only in her capacity as head of state of Australia.

The Queen is head of state of all the States. The Crown's constitutional position is the same in each of the States and basically conforms with its position under the Commonwealth Constitution. The Australia Acts of 1986 clarify the relationship between the State Governments and the Crown. Section 7(1) provides that the Queen is represented in the States by the Governor; section 7(4) that the Queen is not precluded from exercising her powers when personally present in a State; and section 7(5) holds that, in respect of these powers, the Queen acts on the advice of the State Premier. Further, section 8 removed the monarch's power to disallow legislation in the States.

The functions of the Governor-General and the State Governors are primarily symbolic and ceremonial in nature. Other powers, such as the issuing of writs for an election, are performed on advice. Distinct from these are the reserve powers, in which area the Governor-General and the State Governors enjoy some personal discretion. The scope of these powers, which are exercised in accordance with the constitutional conventions, is not entirely clear. Following the Republic Advisory Committee, in the federal context they can be said to include:

- the power to appoint the Prime Minister;
- the power to dismiss the prime Minister, and therefore the Government; and
- the power to refuse to follow advice to dissolve the House of Representatives, or both Houses.

The dismissal of Premier Lang in 1932 is a controversial example of a State Governor dismissing the Premier for, in the words of the Advisory Committee, 'persistently refusing to comply with a Commonwealth law'.[2]

(b) The Republican debate

The debate about whether Australia should remain a constitutional monarchy is not new. It has however gained in intensity during the 1990s. In 1991 the Australian Republican Movement was formed, followed in 1992 by the counter organisation,

---

[2] Republic Advisory Committee, *An Australian Republic - the Options*, 1993, vol. 2. As noted, the dismissal of Premier Lang remains controversial, from the standpoint of both historical and legal opinion. One account of the circumstances of the dismissal is set out in Appendix 6 to the Report.

Australians for Constitutional Monarchy. The republican cause gained new impetus when the Prime Minister announced on 28 April 1993 the establishment of the Republic Advisory Committee. Its purpose was to prepare an 'options paper which describes the minimum constitutional changes necessary to achieve a viable federal republic of Australia, while maintaining the effect of our current conventions and principles of Government'. The Committee's Terms of Reference went on to say, 'There is no intention that the Committee should examine any options which would otherwise change our structure of government, including the relationship between the Commonwealth and the States'. This has become known as the 'minimalist' approach to constitutional reform.

The Committee's work is sure to be read in the context of the background debate, the key issues of which will inform response to its more technical discussion of constitutional alteration. The establishment of the Committee certainly encouraged vigorous public debate in which a range of arguments emerged for and against a federal republic of Australia.

(c) Arguments for a republic

(i) Issues of identity and nationhood
(ii) Issues of law and principle

The main arguments put on behalf of republican constitutional reform are broadly of two kinds, one concerned more with the general issues of identity and nationhood, the other focussing on narrower issues of law and principle.

(i) Issues of identity and nationhood

In summary, the arguments from the first category are as follows:

- Republicans contend that the monarchy plays a powerful symbolic role in Australian life which carries negative connotations in terms of our sense of independent nationhood. What it suggests to the world is a lingering subservience to the political culture of Britain. Donald Horne writes that for Australia to become a constitutionally independent Commonwealth with its own head of state would represent a 'final formal detachment from that long but expiring tradition of imperial British chauvinism'.[3] Taking up this theme, John Warhurst argues that republicanism is in this respect an issue of Australian nationalism, in the limited sense that Australia's institutions, citizenship and symbols should 'adequately reflect Australia's status as an independent nation'.[4] From this standpoint the big question the republican argument asks of Australians is to re-consider our constitutional identity in the light of our evolving sense of nationhood. At one level the minimalist

3 D Horne, 'Letter to the Editor', 1991 *Eureka Street* 1(7) at 7.

4 J Warhurst, 'Nationalism and republicanism in Australia', *Australian Journal of Political Science* (1993), vol 28, Special Issue, at 100.

strategy for changing the head of state may be described as being 'merely symbolic'. But, as every monarchist knows, it remains the case that the symbols of nationhood play a crucial role in shaping and defining a political culture.

- The monarchy simply becomes less relevant, republicans say, the more Australia develops into a diverse, multicultural society. The first wave of migration in modern times, predominantly Anglo-Celtic in its ethnic origin, was followed after 1945, in keeping with government policy, by an influx of people from Europe and more recently from Asia. These later migrants have little or no connection with Britain's monarchical tradition. The weakening of the once powerful ties with Britain is also felt amongst younger Australians, thus making our constitutional monarchy a cultural anachronism.

- It is argued that the gradual loosening of personal and formal ties with Britain, a two-way affair encapsulated in Britain's joining of the Common Market in 1973, makes republicanism part of the natural evolution of nationhood. There is a sense therefore in which republicanism is historically inevitable. For former New South Wales Premier, Nick Greiner, the republic is not a rejection of our past, 'It is a useful statement about our future; it is a predictable, evolutionary step forward'.[6]

All the above arguments are based on the idea of the integrity of Australia's political culture. To that extent they refer to the general framework of ideas, beliefs and aspirations concerned with Australian national identity in the widest sense.

(ii) Issues of law and principle

A further set of arguments on behalf of republicanism can be noted, more technical in nature and focussing on the legal/constitutional framework. These are as follows:

- The Australian Constitution should present an accurate and accessible description of the way the country is governed. This is not achieved at present, say republicans, largely because of the operation of the Crown within the framework of the unwritten constitution. The Queen and the Governor-General act in accordance with constitutional conventions which are not recorded either in the text of the written Constitution or any other legislative instrument. The result is that core elements of the machinery of responsible government - notably the office of Prime Minister and the Cabinet - are not found in the Australian Constitution. Reading the chapter in the Constitution on 'The Executive Government', sections 61 and 68 in particular, gives an inflated impression to the layperson of the significance of the Governor-General in the Australian system of government. Section 61 places the Governor-General at the apex of the federal executive government; the section provides, 'the executive power of the

---

[6] N Greiner, 'The Republic', Speech delivered at the Sydney Institute, 19 October 1993 at 5'.

Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative'. Section 68 provides, 'The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General'.

The part of Chapter 1 of the Constitution, setting out the powers of the federal Parliament, contains sections which appear to confer extraordinary powers over Australian affairs on the Queen. As the Republic Advisory Committee explains, 'Section 58 provides that the Governor-General may give, or withhold, assent to bills passed by both Houses of Parliament. It also provides that he may reserve such bills for the Queen's pleasure. If a bill is reserved for the monarch's approval she has two years to decide whether she will approve it. Moreover, under section 59, the monarch has the right to disallow legislation passed by Parliament and assented to by the Governor-General'.[6]

In practical terms these are formal powers only. They are nonetheless inappropriate in the Constitution of an independent nation. Further, it is the case that these legalistic formalities form a substantial impediment to popular understanding of constitutional issues. Paul Kelly, editor of *The Australian*, writes that 'the monarchy is an obsolete and poorly understood institution in Australia and therefore warrants reform or removal'.[7]

- As the constitutional crisis of 1975 showed, with the dismissal of the Whitlam Government by the Governor-General, the part played by the Queen's representative under the Commonwealth Constitution can be of more than formal or theoretical interest. For republicans, the use of the reserve powers on that occasion demonstrates the way in which the apparently innocuous institution of constitutional monarchy can subvert the operation of representative democracy. That the Governor-General used powers in 1975 which the Queen herself would not use serves only to make the situation even more anomalous. As a result, republican attention is often focussed on the reserve powers, particularly on the issue of codification of these. For example, George Winterton writes that reserve powers should be retained by an Australian republic, but they 'should be narrowly confined to be compatible with their purpose'. He adds, 'If the task of codification is executed carefully, it should be possible to retain sufficient discretion to enable these powers to fulfil their purpose of protecting the operation of responsible parliamentary government in a flexible and adaptive manner without themselves posing a threat to the body politic'.[8]

- From a standpoint of republican principle, a monarchical form of government, however constitutional it may be, is essentially undemocratic

6 Republic Advisory Committee, *An Australian Republic - The Options - An Overview*, 1993 at 5. (henceforth 'Overview')

7 P Kelly, 'A case for the republic', *Quadrant*, November 1993 at 10.

8 G Winterton, 'Presidential power in republican Australia', *Australian Journal of Political Science* (1993), vol 28, Special Issue, at 46-49.

and therefore inappropriate to a modern system of government based on the idea of the sovereignty of the people. The heredity principle necessarily contradicts the values inherent to democracy. It is said that for this and other reasons of principle and sentiment many potential citizens of this country are reluctant to swear the oath of allegiance.

- Adoption of a republican form of government would not affect Australia's membership of the Commonwealth, 28 members of which are already republics. This underlines the point that the argument for republicanism is not in any way anti-British.

All the above arguments are consistent with the minimalist approach to constitutional reform. However, the republican debate extends into other, even more controversial areas, including the questioning of the federal compact itself. For some therefore the republican debate is an opportunity to put forward a wider agenda of reform. However that clearly is not a feature of the minimalist agenda established by the Prime Minister, nor has it been to date the focus of the debate in a wider sense.

(d) Arguments against a republic

(i) General issues
(ii) Legal issues

As with the arguments on behalf of republicanism, those on the opposing side are a combination of more general and technical considerations.

(i) General issues

The arguments belonging to the more general category are as follows:

- Constitutional monarchists argue that the present system works well. It may look rather curious on paper, especially to those unacquainted with the Westminster model of government, but in practice it has stood the test of time. Australia is one of the oldest continuous democracies in the world. Sir Ninian Stephen, the then Governor-General, pointed out that only Britain, the USA, Canada, Switzerland and Sweden could look back on longer periods of democratic rule.[8] Sir David Smith comments that four of the six oldest continuous democratic nations listed by Sir Ninian are constitutional monarchies, these being Britain, Canada, Sweden and Australia. It is argued on this basis that the system of government derived from Britain is a success, delivering the benefits of a stable, parliamentary, responsible democracy. The argument states that we should avoid rejecting something

[8] Cited in D Smith, 'Australian Constitutional Monarchy', Occasional Paper No 1 - Australians for Constitutional Monarchy, October 1992 at 3.

that is old simply because it is old and seems to be unfashionable. 'If it ain't broke, don't fix it'.

- It is wrong to suggest, say constitutional monarchists, that adherence to constitutional monarchy somehow compromises the country's independence, still less that it is indicative of some other kind of lingering subservience. A number of landmarks are found on the path to independence, including the *Statute of Westminster* of 1931, the culminating point coming when the Queen of Australia personally assented to the *Australia Act 1986* in Canberra. For Justice Michael Kirby, President of the New South Wales Court of Appeal, in every legal and practical respect Australia is already a completely independent country, in legislative, executive, judicial and administrative terms. He argues that Australia is in fact a '*crowned* republic' which leads him to the conclusion that 'republicans in Australia are not dealing with practical realities of constitutional independence. Their concern is only with a symbolic link in the person of the Queen. It is symbols not realities, that they want to eradicate - at least that is the position of those of the minimalist persuasion'.[10]

- Constitutional monarchists claim that the republican debate will divert attention from important economic and political issues of real substance. The debate is sure to be divisive, along generational and other lines, and should only be undertaken at the level of a proposal to alter the Constitution if it promises to deliver real and substantial benefits. This is not the case. The idea that republicanism will strengthen our connections with Asia, for example, thus bringing economic and other benefits, is unfounded.[11] Sir David Smith asks in this context, 'And what about the Asian monarchies of Japan, Thailand and Malaysia? They would surely find it strange that we should contemplate changing our system of government to a republic in order to identify more closely with them'.[12] The more general point is made by former Chief Justice, Sir Harry Gibbs, who states, 'Australia faces grave problems of an economic, industrial and social kind. The debate about the republic is diverting the energies of Australians from matters which require more immediate attention'.

- Republicans do not speak with one voice, say constitutional monarchists. Some are content with the minimalist approach, virtually doing no more than substituting references to the Queen and the Governor-General in the Constitution with references to the President, others would use the republican debate to achieve a wider agenda which would have profound implications for our federal system of government. It is argued that for these republicans the debate would be seen as an opportunity to reduce the power of the Senate and even abolish the States.

---

[10] M Kirby, 'A defence of the constitutional monarchy', *Quadrant*, September 1993.

[11] Sir H Gibbs, 'Changes would bring country no material benefit', *The Australian*, 9 October.

[12] D Smith, op cit, at 4.

(ii) Legal issues

In addition to these general arguments, the following issues of a more technical, legalistic nature were raised both by pro-monarchists and other commentators prior to the releases of the Republic Advisory Committee's Report:

- There is the argument of complexity. Commentators have noted that even the minimalist approach to republicanism takes us into a constitutional minefield. The Crown is integral to the present system as are the conventions underlying the written Constitution. The minimalist strategy seeks to retain the best elements of the present system, while in fact having the potential to unravel it. The issue of complexity has been raised by Greg Craven who states, 'The legal complexities involved can scarcely be overestimated. There are virtually no questions in Australian constitutional law and theory more complicated and perplexing than those that surround the process by which the monarchy might be abolished. Naturally enough, this fact has not been stressed by prominent republicans, but it will have to be squarely faced before Australians are persuaded to commit themselves irrevocably to what may well prove a constitutional quagmire'.[13]

- Prominent among the questions posed by the organisation Australians for Constitutional Monarchy in its submission to the Republic Advisory Committee were:

  Can the crown be removed at all? The question here is whether a referendum under section 128 of the Constitution is sufficient at law to turn Australia into a republic, having regard to the declaration in the preamble to the Constitution that the purpose of the document is to establish 'one indissoluble Federal Commonwealth under the Crown'. There is in addition the question of the States and their separate relationships with the Crown. Section 106 of the Constitution expressly preserves the Constitutions of the States. Section 7 of the Australia Act 1986 expressly recognises the Monarchy and section 15 of that Act requires the concurrence of all the States to any amendment.

  Could the Queen reign in some States but not others? At issue is how Australia could become a republic while some States remained constitutional monarchies. Alternatively, the Committee was asked to consider how States which retained the Queen might be coerced into republicanism in the event of a successful referendum in some States only (assuming a referendum to be the effective means of change).

  Selecting a republican head of state: Amongst the issues raised here was how the proposed republican head of state is to be chosen - by popular election, by a prescribed majority of both houses of the Federal Parliament, or by some other means. What were the consequences following upon these various methods? Specifically, if popular election was rejected as the

---

13 G Craven, 'The constitutional minefield of Australian republicanism', *Policy*, Spring 1992 at 33.

preferred method then the Committee was asked to explain 'why it supports a "democratic" - as opposed to hereditary - Head of State but does not trust the people to select a Head of State themselves'. Further, if the President were chosen by a special majority of the two houses of Federal Parliament would this not raise the very real possibility of a deadlock, with the result that Australia would have no head of state.

The powers of a republican head of state: The basic point here is that 'simply substituting President for Governor-General in the existing Constitution would create an executive presidency and the potential, without major additional changes, for a Presidential dictatorship'. The submission goes on to consider the issue of the exercise and possible codification of the reserve powers. On the subject of codification, it concludes that this would either 'entrench the existing reserve powers', thereby making them more likely to be used, or it would reduce them, 'thereby enhancing the power of the Prime Minister and executive government beyond historical and conventional restraint'. The reference here is to constitutional conventions, those aspects of our system of government which are not stated in formal written rules but are nonetheless integral to the operation of responsible government. It is said that 'the ultimate power of both the Prime Minister and the Governor-General to remove each other in extreme circumstances' (coupled with well-understood conventions restraining the use of that power), is one reason for the effectiveness of the present arrangements. A further consideration is that 'codification could render exercise of the Head of State's powers subject to court proceedings with profound implications for the role and standing of the High Court'. The problems canvassed in the submission would be intensified were the President to be chosen by direct popular election, for then 'the Head of State would have a democratic legitimacy that the Governor-General does not aspire to - and would lack the conventional restraints by which the Governor-General is bound'.

These are among the key issues considered by the Republic Advisory Committee in its Report, *An Australian Republic - The Options*.

3 The Report of the Republic Advisory Committee

(a) Overview

The Committee explained in its Issues Paper of May 1993,

> The essential objective...is to examine the means of introducing into our successful system of representative democracy an entirely Australian office of the Head of State which will enhance our national democratic institutions without diminishing the authority or legitimacy of our Parliament, or the Government which is responsible to it.[14]

The Committee's task was not to recommend constitutional reform, but rather to advise on the technical issues involved. The Committee's report is, in that sense, narrow in scope. It looks at the *how* of constitutional change but not the *why*. In looking at the options for reform the Committee was required to address the following:

- the removal of all references to the monarch in the Constitution;
- the need for an office of an Australian head of state, its creation, and what it might be called:
- how the head of state might be appointed and removed:
- how the powers of a head of state should be made subject to the same conventions and principles as apply to the powers of the Governor-General:
- how the Constitution would need to be changed for Australia to become a republic; and
- the implications for the States.

The Committee's two volume report was released on 5 October 1993. The first volume deals with the substantive issues noted above; volume 2 contains the appendices, including lengthy comparative analyses of constitutional arrangements in other federations. Much of the discussion in volume 1 canvasses the options for change made in submissions to the Committee, with the report picking out the most viable of these for further debate.

It is said in the 'summary' that, in order to replace the monarch with a republican head of state, the Constitution would need to be amended in only three substantive ways:

- establishing the office of a new Australian head of state (including the method of appointment and removal);
- providing for the powers of the head of state; and
- providing for the States.

---

[14] Republic Advisory Committee, *Issues Paper*, May 1993 at 1.

The following account of the report's key points is organised around these issues, bearing in mind the Committee's conclusion that, while these require careful consideration and raise complex legal questions, there are nonetheless 'a number of practical and workable options for addressing these issues, and that the legal complexities are readily soluble'.[15]

(b) CHAPTER 4 A NEW OFFICE OF HEAD OF STATE

The Committee considered, and soon disposed of, the question of whether Australia needs a head of state at all. The Committee answered in the affirmative. Accepting it may be possible in theory to dispense with the office, there are yet strong and good reasons for having a head of state. These are a combination of symbolic and pragmatic arguments. Most important for the Committee, 'a separate head of state may be part of the checks and balances inherent in the system of government', something which would depend on the nature of the powers conferred on the head of state.[16] In the more symbolic and ceremonial aspects of the office, the Committee envisaged a more active role for the new head of state, particularly in representing Australia on the international stage.

What should the head of state be called? The Committee preferred the title of 'President', thereby severing the link with the monarchy. However, 'Governor-General' and 'Head of State' also received guarded approval.[17]

The Committee was inclined to think that the office of head of state should not require specific qualifications, 'beyond the requirements that the head of state be an adult Australian citizen and not hold another remunerated position while in office'.[18] The method of selecting a head of state would be relevant in this context.

A five-year term of office was favoured, consistent with the present convention for the term of office of the Governor-General. Other options were canvassed, however, as were a range of possible arrangements for re-appointment.

As to the position of acting head of state, the present system where the senior State Governor is used is favoured in the report, as long that is as the new head of state has functions similar to the Governor-General.

(c) CHAPTER 5 APPOINTMENT AND REMOVAL OF THE HEAD OF STATE

---

15 Republic Advisory Committee, *An Australian Republic - The Options*, 1993, vol 1 at 150 (henceforth 'Report').

16 Report at 50.

17 Report at 53.

18 Report at 2.

Informing the work of the Committee was the assumption that a new head of state would be non-executive in nature. Unlike the US Presidency therefore the functions of the office would be primarily symbolic and ceremonial in nature. The alternative option is considered at different points in the report, but more from the standpoint of thoroughness than in terms of its practical application to the Australian system of politics. To a large extent the Committee's Terms of reference required it to remain within the framework of present arrangements. The various options for appointment and removal were canvassed very much in this light.

(i) Appointment: Four methods of appointment are discussed, the first of which is appointment ***by the Prime Minister***. This method most closely reflects the current practice. The Committee comments that most submissions to it would prefer a method of appointment which is seen to be above party politics.

Secondly, there is appointment ***by the Parliament***. It is said that this is a quite common method used for appointment of non-executive heads of state, for instance in Greece, Israel, Malta, Mauritius and Bangladesh. It was the method supported in over half of the submissions. Further, it is consistent with the theory of representative democracy and the idea of the supremacy of Parliament, the key principles underpinning the Australian system of government. The question then is how would Parliament appoint a head of state. The following options are considered:

- approval by a majority of members in a joint sitting;
- approval by a majority of members in each House;
- approval by a two-thirds majority of members in a joint sitting; or
- approval by a two-thirds majority of members in each House.

Of these, the method of appointment by a special majority at a joint sitting of the Houses is favoured by the Committee. This would be in keeping with the importance of the occasion and could provide a symbol of unity appropriate for the appointment of a head of state who would represent the nation as a whole. Where the required special majority was not forthcoming, government could continue to function with an acting head of state (or possibly the outgoing head of state staying on) until the situation was resolved.[19]

The process of nomination could be left to Parliament to legislate on, or else single nomination by the Prime Minister could be provided for, or nomination by an independent commission or group of eminent persons, or by members of Parliament. Whether single or multiple nomination was decided on, the two-thirds majority requirement would ensure a bipartisan result in the end.

The third method of appointment considered by the Committee is ***by popular election***. The discussion is negative in tone, though at the same time the strong public appeal of the proposal is acknowledged. A central problem is that popular election may encourage the head of state to believe that he or she has a popular

[19] As noted, the Committee supports the present system where the senior State Governor is used as acting head of state, as long as the new head of state has functions similar to the Governor-General.

mandate to exercise the powers of that office. The report notes that a system of this kind operates successfully in Ireland and Austria; in neither case has the popularly elected President challenged the chief minister's authority. The Committee remained unconvinced, stating that the problem would be exacerbated if the powers of the head of state were not defined and delimited in the Constitution. Also, contrary to public expectation, this method may politicise the process of appointment.

A fourth method of appointment discussed by the Committee is ***by an electoral college***. It is explained that in Germany, India and Italy the President is elected by an electoral college composed of members of national and State or regional legislatures. Neither this nor any other electoral college method of appointment is supported by the Committee. Its appeal from a 'federal' standpoint are quickly dismissed, with the report commenting that 'Viewed realistically, party discipline would prevail, making the vote a formality, rather than reflecting State and Territory interests as such'. A similar comment could be made of appointment by federal Parliament. Significantly, the report adds:

> The interests of the States in the matter are, in any event, questionable: the duties of the head of state are tied to Commonwealth responsibilities just as Governors, or their successors, would be tied to State responsibilities.[20]

(ii) Removal: The method of removal selected would of course depend on both the method of appointment and the nature of the powers conferred on the new head of state. The report states, 'There is much to be said for adopting the same method of removal as appointment, unless there are good practical reasons for not doing so'.[21] Thus, if the head of state is appointed by a special majority at a joint sitting of the Houses of Federal Parliament, as favoured by the Committee, then removal will be achieved by the same method. It may be that 'expression of dissatisfaction, from both sides of politics', would in these circumstances be 'cause in itself for the head of state to be removed without proof of any particular behaviour to justify removal'.[22] While there is 'strong argument' for this proposal, the Committee acknowledges the difficulties with it, and other options are canvassed, including a parliamentary commission of inquiry to investigate specified forms of misconduct or incapacity. Definitional and other difficulties associated with the removal of federal judges under section 72 of the Constitution are noted in this context.

The question of how the process of removal should be initiated is asked. The Committee's answer is 'by a resolution of a House of Parliament or a specified number of members of Parliament'.[23]

---

[20] Report at 73.

[21] Report at 75.

[22] Report at 79.

[23] Report at 80.

(d) CHAPTER 6 THE POWERS OF A NEW HEAD OF STATE

The starting point for the Committee's approach to this issue was the reference to 'maintaining the effect of our current conventions and principles of government' in its Terms of Reference. The framework for discussion was provided therefore by the powers presently exercised by the Governor-General. For this purpose an analytical distinction is made between the 'ordinary powers' and the 'reserve powers' of the Governor-General, a distinction which guides the Committee's discussion of the powers of a new head of state.

(i) The ordinary powers: The Governor-General's 'ordinary powers' are governmental in character. These include issuing writs for elections and assenting to legislation, and extend to the exercise of the executive power of the Commonwealth under section 61 of the Constitution, invariably on ministerial advice. It is envisaged by the Committee that a new head of state would continue to exercise these powers and remain 'The command in chief of the naval and military forces of the Commonwealth' under section 68. However, in order to eliminate any uncertainty it is proposed that 'the Constitution should provide that in the exercise of these powers the head of state acts on ministerial advice' - probably by reference to the Federal Executive Council.[24]

The power vested in the Governor-General under section 58 of the Constitution to preserve a proposed law for the Queen's pleasure would be removed, as would the Queen's power under section 59 to disallow legislation within one year of the Governor-General's assent.

(ii) The reserve powers: On balance, having regard to maintaining the present balance of powers under the Constitution, the Committee supported retention of the reserve powers in the office of the head of state, thus avoiding 'substantial change to our way of government'.[25] Having decided on this course, the Committee then had to work out the best strategy for dealing with the reserve powers under a new head of state. Simply leaving things as they are was discounted as unviable, with the (perhaps) justifiable fears of some people regarding the potential for autocratic power being noted in this respect. Quoting verbatim from the report, the following viable options were considered:[26]

- leaving the powers in the same form as are presently set out in the Constitution, but stating in the Constitution that the existing constitutional conventions will continue to apply to the exercise of those powers;
- leaving the powers in the same form as are presently set out in the Constitution with the constitutional conventions formulated in an authoritative written form, but not as part of the Constitution;

---

[24] Report at 86.

[25] Report at 93.

[26] Report at 7.

- leaving the powers in the same form as are presently set out in the Constitution and providing that Parliament can make laws (possibly by a two-thirds majority) to formulate the relevant constitutional conventions in a legislative form; and

- 'codifying' the relevant constitutional conventions by setting out in the Constitution the circumstances in which the head of state can exercise the reserve powers.

The last option can be done in one of two ways:

- by setting out the most important (and generally agreed) conventions and providing that the remaining (unwritten) conventions are otherwise to continue (i.e. ***partial codification***); or

- by setting out in the Constitution all the circumstances in which the head of state can exercise a reserve power and stating expressly that in all other circumstances the head of state is to act on ministerial advice (i.e. ***full codification***).

For the Committee some form of codification, be it partial or full, was clearly desirable. A more minimalist approach, simply stating in the Constitution that the present conventions will continue to apply, would only entrench the current uncertainty. Leaving the Constitution unaltered, but formulating the reserve powers in some authoritative written form, would be too limited in that the formulations could be overridden by the head of state acting under the authority of the Constitution. A legislative mechanism would have the potential to shift the balance of power in the Constitution and to offer a way of altering the powers of the head of state in addition to the mechanism provided under section 128. That leaves codification as the only viable option.

The Committee's discussion of this is detailed, with examples of partial and full codification being provided. However, a definitive solution is not attempted and the report notes the major criticisms made of codification: (a) that it can produce rigidity, and (b) that it will be difficult to achieve a sufficient degree of consensus around a code for it to be successfully inserted in the Constitution. The report cites in another context the difficulty faced by the Australian Constitutional Convention in 1983 in formulating agreed conventions, commenting that 'in the most contentious areas (such as the dismissal of the Prime Minister), there has been little success in reaching consensus as to the appropriate conventions'.[27]

Two models of 'complete codification' are presented. In one the circumstances in which the head of state should follow ministerial advice would be set out in the Constitution, as would those circumstances involving the potential for discretionary powers. In the second model the head of state would have no discretionary powers. Instead, those areas would be covered by constitutional rules requiring the head of state always to act in accordance with ministerial advice. The Committee

[27] Report at 96.

comments that arrangements of this kind operate in Sweden and Japan.

A particular problem discussed by the Committee is the question of the Senate and supply. Four distinct approaches are presented. One is to leave things as they are. A second is to alter the Constitution to provide for an automatic double dissolution election if the Senate rejects or fails to pass supply bills. A third option would be to remove the Senate's right to reject or delay supply. The fourth option would be to allow a head of state to dismiss a government, but only when it has breached the Constitution by drawing funds which had not been legally appropriated. The report recognised that any approach will be controversial in light of the events of 1975. The Committee's Chairman, Malcolm Turnbull, made the comment later that, 'Leaving the situation as it stands may not be the most elegant solution but, in light of the political sensitivity of the issue, may turn out to be the most practicable one'.[28]

(e) CHAPTER 7 HOW A REPUBLIC CAN BE ACHIEVED

The Committee opens its account of this issue by explaining the processes involved in section 128 of the Constitution, plus the substantive and consequential alterations to the Constitution required to substitute a republican for a monarchical head of state. Having done so, it then poses the question whether section 128 of the Constitution can be used to make Australia a republic.

It is asserted that section 128 can certainly be used to make whatever changes the people approve to the Constitution itself. However the Constitution is, in fact, 'part of section 9 of the Act of the United Kingdom Parliament entitled the *Commonwealth of Australia Constitution Act 1900*' (called 'the Constitution Act' to distinguish it from the Constitution proper). As the Committee explains, questions are sometimes raised 'about whether material in the Constitution Act prevents the creation of an Australian republic by means of section 128'.[29] The Act contains a Preamble followed by 8 covering clauses. The Preamble refers, for example, to the agreement of 'the people' before 1900 to unite 'under the Crown of the United Kingdom of Great Britain and Ireland'.

The Committee was guided in its approach to this matter by the advice of the Acting Commonwealth Solicitor-General, Dennis Rose QC, which is set out in Appendix 8 of volume 2 of the report. He advised a number of possible approaches. First that it would be legally possible 'to amend the Constitution so as to make Australia a republic while leaving the preamble and covering clauses as they are'.[30] Nonetheless, the Committee recognised the desirability of removing references to the British Crown which would be inappropriate, together with those provisions in the covering clauses that are spent or out of date.

---

[28] M Millett, 'Panel proposes four options to avoid a repeat of 1975', *The Sydney Morning Herald*, 6 October 1993.

[29] Report at 118.

[30] Report at 118.

A second question then arises, can the Constitution Act be amended? The committee answers that it can, notwithstanding what is described as the 'orthodox' view that section 128 cannot be used for this purpose. One basis for the argument is that the power is a consequence of Australia's 'contemporary, independent status', a further consequence of which is that the High Court could not reasonably be expected to hold that the preamble and covering clauses could not be altered by Australians at all.[31]

Following the Acting Solicitor-General's advice, the Committee notes other, 'less direct but more certain', methods of altering the Constitution Act.[32] Both arise under the Australia Acts.[33] Section 15(1) empowers the Federal Parliament to amend both the Australia Act and the Statute of Westminster 'at the request or with the concurrence of the Parliaments of all the States'. By this method section 8 of the Statue of Westminster could be altered to the extent necessary to allow certain specified amendments to the Constitution Act to be made. This method overcomes the objection, perhaps valid up to 1986, that United Kingdom legislation was the only means by which the Constitution Act could be amended.

Alternatively, a further mode of altering the Constitution Act was identified, using section 15(3) of the Australia Acts. Basically this allows section 128 to be used to confer on the Federal Parliament the legislative power to alter the Constitution. The Committee comments, 'Under this approach, the Constitution itself would be amended, pursuant to section 128, to grant a power to the Commonwealth Parliament to amend the Statute of Westminster in the manner referred to above'. The Committee adds, 'No doubt the proposed grant of power would be limited to the enactment of a specified amendment to the Constitution Act...'. The complications of the method are noted by the Committee, as is the perception that it 'might be seen as overriding the interests of the States in some way'.[34]

(f) CHAPTER 8 THE STATES AND THE REPUBLIC

The chapter refers at the outset to the Committee's Terms of Reference requiring it

---

[31] Report at 119.

[32] Report at 120.

[33] There are 2 Australia Acts. One is expressed to be an Act of the Australian Commonwealth Parliament, assented to by the Queen as Queen of Australia. The introductory recital to the Act states that it is a valid enactment pursuant to section 51 (xxxviii) of the Constitution.

In addition to the Australian enactment, and in order to set aside any doubt as to that Act's validity, the British Parliament separately enacted an Australia Act, in identical terms but with a different introduction reciting the request and consent to this British action by the Commonwealth and State Parliaments. Then, on 2 March 1986, the Queen while in Canberra proclaimed the British and Australian Acts into law as from 3 March 1986 (G Sawer, *The Australian Constitution*, 1988 at 74-77). The Constitutional Commission commented in relation to the Australia Acts, 'Thus, by joint action of all the Parliaments of Australia and the United Kingdom, the legislative, executive and judicial institutions of the United Kingdom ceased to have any power, responsibility or jurisdiction in respect of Australian affairs'- *Final Report of the Constitutional Commission*, 1988 at 77.

[34] Report at 121.

the preservation of existing structures and principles of Australian government 'including the relationship between the Commonwealth and the States'. It comments afterwards that its report should be of assistance to State Parliaments, on the basis that 'the systems of parliamentary government used by the States are so similar to that of the Commonwealth'.

In order to arrive at the substantive questions at issue, namely the possibility of some States wishing 'to retain the person who is monarch of the United Kingdom as their head of state, notwithstanding a move to a republic at the federal level', the Committee had first to confront a technical issue of constitutional law. This is whether Australia should be described as a 'monarchy' or 'heptarchy'? By monarchy it is meant that 'while the Crown acts in different capacities and on different advice in different jurisdictions, there is only one Crown of Australia'. Opinion differs, the report comments, as to whether abolition of the monarchy at the federal level would automatically involve abolition at the State level as well. By heptarchy it is meant that the Crown in right of the Commonwealth and the six States should be regarded as separate Crowns. The report states:

> It would follow from the existence of seven separate Crowns that the removal of the Crown from the system of government of the Commonwealth would have no necessary effect on the relationships between the six States and their Crowns.[35]

The Committee is inclined to adopt the latter heptarchy model, but accepts this will not have universal support in legal circles. For this reason, so that republicanism does not become 'mired in technical debate', the report spells out what will happen to the links between the States and the monarchy. Two outcomes are considered.

(i) One in, all in: First and simplest is where all the States decide in advance to follow, in their jurisdictions, whatever course was adopted by the people at the referendum pursuant to section 128. For this contingency the Committee provides a draft provision for the Constitution which reads:

> The Governor of a State shall not represent, or be appointed by, the Queen or any Head of State or officer of the government of another country.

It is added that, 'In order completely to remove the monarchy from the States' constitutions, it would have to be supplemented by a provision requiring the removal of the monarch as a component of State legislatures' (see below).[36]

Following a possibility raised in the submission of the Premier of New South Wales, the Committee looked next as to whether section 7 of the Australia Acts entrenches the monarchy at State level. The section provides, inter alia, for the

---

35 Report at 125.

36 Report at 127.

Queen's powers and functions in a State. On the advice of the Acting Solicitor-General, the Committee formed the view that section 7 *assumes* but does not *require* the existence of a monarch with certain powers. To avoid doubt, amendment of the Australia Acts was recommended 'to make clear that they do not entrench the monarchy'. This could be achieved by the Commonwealth either under section 15(1), with the consent of the States, or under section 15(3) of the Australia Act.[37] Transitional provisions were also recommended to avoid the possibility of a governmental vacuum in any State.

These proposals were seen to have the virtue of preserving the federal division of power, as well as allowing a State to continue to have a 'Governor' with the powers and functions of the existing office. The report notes: 'It would be a neat and simple solution and could easily be done in a way that would overcome "entrenching" provisions in some of the State constitutions which require special procedures to amend provisions relating to the Crown'. On this issue, the Acting Solicitor-General had advised that, 'Entrenched provisions relating to the monarchy, and requiring State referenda, exist in the New South Wales *Constitution Act 1902* as amended, section 7A and 7B read with the definition of 'The Legislature' in section 3'.[38] Relevant provisions in other State Constitutions were also cited.

(ii) Some States wish to retain the monarchy: The second outcome considered in the report is where some States wish to retain the monarchy. One option is that any State should be free to do so, despite this giving rise to an obviously anomalous situation. It would of course be contingent on the Queen agreeing to remain as head of state of a State or States in these circumstances. Also, the Committee considered it wise to provide for this outcome in the Constitution, thus avoiding the possibility of legal challenge based on the argument that 'removal of the monarch as head of state at the Commonwealth level would, *ipso facto*, eliminate the monarchy at the State level also'.[39] The following draft constitutional provision was provided:

> (1) Subject to subsection (2), the person who is monarch for the time being of the United Kingdom of Great Britain and Northern Ireland shall remain as monarch in each State.
>
> (2) Notwithstanding anything in the laws of a State, the Parliament of the State may make laws for the abolition of the monarchy in that State.

A State would then have to take action if it wished to sever its links with the monarchy.

Also provided was a draft amendment to the Australia Act to deal with those who did desire to replace the monarchy with an Australian head of state.

---

[37] References to the Australia Act in the singular are to the Australian enactment.

[38] Section 3 of the New South Wales *Constitution Act 1902* provides, '"The Legislature" means His Majesty the King with advice and consent of the Legislative Council and Legislative Assembly'.

[39] Report at 128.

Another option is that the Constitution should provide for consistency. In other words the Commonwealth, with the approval of the people under section 128, would 'force the issue' by inserting in the Constitution provisions abolishing the monarchy at State level.[40] The Australia Acts would need to be amended in addition, to deal with the argument that section 7 entrenches the monarchy at State level. The Committee says this would be best achieved by the Commonwealth using the route under section 15(3) of the Australia Act, thus avoiding the need for the consent of all the States required under section 15(1).

Discussed by the Committee is a legal opinion prepared for Australians for Constitutional Monarchy which argues that section 7 of the Australia Acts is a bar to the Commonwealth forcing Constitutional change of this kind on the States. It is said that this is based on a reading of section 128 of the Constitution, the penultimate paragraph of which limits alterations affecting the States.[41] The legal opinion presented by Australians for Constitutional Monarchy relies on an expansive interpretation of the words 'in relation thereto'. The Committee's response is that that expression 'refers only to the specific matters mentioned in the paragraph - the limits of the State and its representation in federal Parliament'.[42]

Section 106 of the Constitution, which preserves the constitutions of the States, is dealt with very briskly in the report, with the point being made that the section is expressed to be 'subject' to the Commonwealth Constitution. In consequence, the Committee concludes that 'the power of amendment of the Constitution which section 128 gives to the Parliament and people of the Commonwealth extends to changing the relationship between the Commonwealth and the States and the constitutional arrangements of the States themselves'.[43]

A further consideration is that a 'change of this nature cannot be forced on the States because the Constitution is a compact of States and the entity created by the compact - the Commonwealth - cannot alter the fundamental character of the parties to the compact without requiring the renegotiation of the entire agreement'.[44] Whilst the Committee accepts this has some force as a 'political proposition', as a legal argument it is not persuasive. In essence, the Constitution 'declares itself to be based on the agreement of "the people" of the colonies, rather than the colonies themselves'.[45]

---

40 Report at 129.

41 The penultimate paragraph of section 128 reads: 'No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law'.

42 Report at 130.

43 Report at 131.

44 Report at 130.

45 Report at 130-31.

If the Commonwealth did decide to force the issue in this way, then the Committee recommends amendment to the Constitution to provide for transitional arrangements, thus avoiding the possibility of a governmental vacuum in any State.

(g) CHAPTER 9 OTHER ISSUES RELEVANT TO A CHANGE TO A REPUBLIC

A range of further matters are considered in the report which are reproduced here from the 'summary':

- whether a change to a republic necessarily involves a change to the name 'Commonwealth of Australia' - the Committee concluded that it does not, and that there does not appear to be a strong case for such a change;
- whether a change to the preamble of the *Commonwealth of Australia Constitution Act 1900* would be necessary or desirable if Australia were to become a republic - the Committee concluded that it is not necessary, as a matter of law to change the preamble, but that the change to a republic might be an appropriate time to assess the statements about Australia which are included in the preamble;
- whether the specific references in the text of the Constitution to the Queen and the Governor-General would have to be removed - the Committee concluded that generally they would; and
- what should be done to the 'royal prerogatives' - the Committee concluded that the powers and rights of the Commonwealth and State governments which derive from the common law prerogatives of the Crown could and should be preserved.

The Committee also concluded that:

- consideration would have to be given to other aspects of the law and our legal system such as the laws and practices relating to royal charters etc., offices at present filled by commissions from the Crown, and transitional and consequential changes to replace references in federal legislation to the Governor-General and in State legislation to the Governor etc.; and
- a change to a republic need not have any implications for Australia's membership of the Commonwealth of Nations.

(h) CHAPTER 10 CONCLUSION

The general tenor of the conclusion to the report is that 'it is both legally and practically possible to amend the Constitution to achieve a republic without making

changes which will in any way detract from the fundamental constitutional principles on which our system of government is based'.[46]

[46] Report at 10.

4 Responses and comments

(a) Comments in the press

Launching the Report of the Republic Advisory Committee on 5 October 1993, Committee Chairman, Malcolm Turnbull, called for the report to be used as the basis for informed, non-partisan debate. Several editorial and other comments echoed that sentiment, stating the general desirability of reasoned debate about Constitutional reform. There was considerable support for the Committee's work on these grounds. The following responses are taken from editorial comments published the day after the report was officially released.

The Sydney Morning Herald described the report's contribution to the debate as 'scrupulously fair', so much so, the editorial added, 'that some of its main conclusions may be seen as equally supportive of the status quo as of change'. In particular, if the change to a republic is essentially symbolic, therefore bringing no great change to the existing political system, then the argument can be turned back on itself and the question asked, 'what's the need for it?'. On a cautionary note , the editorial went on to say that 'the practicalities of a change to a republic will always be of secondary consideration. The first question will always be whether, for reasons of history and sentiment, Australians want the change'. Crucial in this respect is the growing number of Australians from parts of the world other than Britain, a factor which must favour the republican cause. The republic will only arrive, the editorial concludes, when Australians from a non-British background are in the majority. It will come in its own good time and any 'attempt to force it will, it is equally safe to say, simply delay it'.

Thoroughly supportive of the report was the editorial comment of 6 October in *The Australian*, stating that 'The Republic Advisory Committee has made a necessary and valuable contribution to informed debate...'. Discussing the issue of the reserve powers, it said the 'best option seems to be a balance of codification and reliance on convention'. Codification could be adopted where there is general agreement about the use of a reserve power; in the absence of such agreement, a general provision could be inserted in the Constitution saying that the President should be guided by the same unwritten conventions as guided the Governor-General.
The Financial Review in its editorial of the same day comments that if the report gets the 'attention it deserves, it should help focus the debate on the important practical questions that would flow from a decision to change to a republic'. A warning note is struck when it is said that, this apparently symbolic alteration to the Constitution, could in fact have 'a very significant impact on the government of Australia'. This is considered in relation to community support for appointing the head of state by popular election which the editorial criticises as, among other things, 'politically destabilising'. The editorial ends with two comments. One is that, 'A better solution would be not to have a popularly elected president'. The other is that even 'when considering symbolic change, it is necessary to get the practical details right'.

Editorial comment in *The Newcastle Herald* was largely descriptive of the report's contents, but also generally supportive in tone, calling it a 'blueprint' by which Australia may complete, 'with little fuss or bother, its evolution from a colony to a

fully and symbolically independent nation'. It commended the report for 'wisely' not favouring a 'popular presidential-style election, despite signs that this might be welcomed by voters'. This was on grounds of cost, politicisation of the office of head of state and because of the potential for creating a rival source of political legitimacy.

The Age concluded with the comment that the 'symbolism of the monarchy is wrong for Australia in the 21st century'. Along the way to that conclusion, the editorial counselled against the option of forcing any State to adopt the republican model of government, stating, 'We do not believe that this would be the right way to go. While it would, in many ways, be ridiculous for some States to retain their connection with the monarchy if Australia was a republic, they could not be forced to change. In time, these States would, in all probability, cut their ties with the monarchy'.

The Canberra Times opens with the comment that the report is 'heavy on the reassurance' and, having covered some equivocal ground in between, ends by saying that the report 'does present a convincing case that the changes that would accompany a switch to a republic can be kept, if not minimal, at least limited'. Still, the report will not convince the critics of republicanism and there are of course the larger political problems to contend with.

The Courier Mail saw the report as contributing to a valid debate about constitutional reform, but said it should nonetheless 'be viewed as a partisan report on one side of the argument'.

(b) Other responses

These have varied along a continuum of criticism and support, summed up by an article in the *Sydney Morning Herald* of 6 October headed, 'Mixed reaction of anger, praise greets report'.

On the pro-republican side support was unequivocal, with the report being variously described as 'calm and reasoned' and as 'a good document'. The main issue now was establishing the time frame for the debate.[47] Senator **Gareth Evans** praised the Committee's work in similar terms, saying of the report 'It is a substantial document, thorough, very highly professional and will certainly provide an excellent foundation for public debate on this particular subject'.[48] The Senator went on to say that the government does not have a timetable for a republic, recognising as it does the need for extensive public debate, but that it does hope to see a republican structure in place by the turn of the century.

The Federal Coalition was less than enthusiastic. Liberal Party leader, **John Hewson** is reported to have said that the report had little bearing on the central issue of

[47] G Chan, 'Republicans welcome "end of a lie"', *The Australian*, 6 October 1993. Various supporters of the republican cause are cited, including Franca Arena MLC, Tom Keneally, Donald Horne and Geraldine Doogue.

[48] Cth Parl Debates, Senate, 5 October 1993 at 1628.

whether change was warranted or desirable. He also questioned whether the changes envisaged in the report could be described as minimal in nature, stating that 'most Australians would rightly consider the replacement of the monarch, the redefinition of the powers of any head of state and the position of the States as major changes to our system of government'.[49] National Party leader, **Tim Fischer** suggested there was a need for a counter report to 'balance the debate'.[50]

Rather different is the suggestion of the leader of the Australian Democrats, **Senator Cheryl Kernot**, proposing a four or five-year process to go back to the question of whether the Constitution is an impediment to national development - and to canvass a broader range of remedies than those proposed by the government. Her view is that the minimalist option of the report does not exist, because even removing references to the Queen and installing an Australian head of state would be extremely complex'. A non-partisan investigation of the issues, undertaken by the Constitutional Centenary Foundation, is suggested by Senator Kernot, but its terms of reference should extend to considering the viability of three tiers of government and the introduction of a Bill of Rights.[51]

The **Constitutional Centenary Foundation** itself has supported the idea of a convention, of the kind that led up to Federation in the 1890s[52], an idea also favoured by former Prime Minister, **Malcolm Fraser**. Mr Fraser contends that it is 'essentially false' to argue that the establishment of an Australian republic would be a 'symbolic change of no real consequence to our political system'. His emphasis is on the complexity involved in a change of this sort, warning that ill-conceived change may result in a 'substantial shift of power of far-reaching consequences'. He is particularly sceptical of the prospects of codifying any or all of the presently unwritten conventions of the Constitution.[53]

Mr Fraser's comments contrast in this respect with those of the *Sydney Morning Herald* journalist, **Geoff Kitney**, who considers the argument for codification to be the most 'compelling' part of the report. He notes that the report shows that the Constitution is 'absurdly irrelevant to the current system of government' which appears to work 'almost by accident'.[54]

The Governor of New South Wales, Governor **Rear Admiral Peter Sinclair**, whilst not expressing a view for or against constitutional change, is reported as saying that if a republican referendum were passed at a national level it would be difficult to maintain a monarchical system in the States. 'It would be very hard for people in NSW to be both Australian citizens and citizens of NSW under different systems',

---

49 D Shanahan, 'Why bother? asks Hewson', *The Australian*, 6 October 1993.

50 'Call for report', *The Sydney Morning Herald*, 6 October 1993.

51 L Taylor, 'Kernot calls for republic rethink', *The Australian*, 1 November 1993.

52 J Greenaway, 'Conventional solutions', *Eureka Street*, vol. 3 no. 9 at page 25.

53 M Fraser, 'Complex task goes to heart of government', *The Australian*, 9 October 1993.

54 G Kitney, 'Turnbull puts reserve powers right on the spot', *The Sydney Morning Herald*, 6 October 1993.

he said.[55]

(c) Australians for Constitutional Monarchy

The most thorough critique to date of the report has come, not unexpectedly, from Australians for Constitutional Monarchy. Both the executive director, Tony Abbott, and the national convenor, Lloyd Waddy, have been quoted extensively in the press. Writing in *The Australian* on 9 October Tony Abbott said the 'extraordinary complexity' of the changes required to achieve a republic, as revealed by the report, was one factor which 'should kill the republican push stone dead'. The other factor is the lack of consensus for change. He is least happy with chapter 8 of the report dealing with the States, where a complex argument ends with the possible option of some States remaining under a monarchical system. Of this prospect, Tony Abbott says, 'we are supposed to put at risk a Constitution which has given us 100 years of freedom and stability only to gain an "anomalous structure"'.

On 3 November Australians for Constitutional Monarchy released a legal opinion by former Chief Justice of the High Court, Sir Harry Gibbs, and signed by other lawyers. In it Sir Harry Gibbs takes issue with the Committee's conclusion that the legal complexities associated with a change to a republic are 'readily soluble'. He says that in order to show that this is not the case it is 'sufficient to consider the position of the States'. A number of arguments are made, some legal, others founded more on political principle. One legal argument, concerned with the Committee's option for forcing the issue of republicanism onto a State, is encapsulated in this passage:

> However, there is a strong argument that a referendum in any way affecting the Constitution in relation to a State cannot be passed unless a majority of electors voting in that State vote in favour of the law proposed at the referendum. If that argument is correct, a referendum enabling the Commonwealth to abolish the position or status of State Governors would have to be approved in all States. Whether the argument is correct depends on the proper construction of the ambiguous words of section 128 of the Constitution, and is a disputed question which only the High Court can decide.

One argument of political principle is that the prospect that some States remain monarchies 'is simply absurd since the whole purpose of the change is intended to be symbolic'. Another is that the people of the Australian colonies agreed to unite under the Crown: 'If that bond is severed, a new basis of union must be found, or in other words, there must be a new agreement to unite'. As indicated, Sir Harry Gibbs is not convinced that, as a matter of law, change could be forced on the States - 'There is no decision of the courts that supports that opinion'. He goes on to say that the 'questions raised [in the report] are novel, free from authority and shrouded in doubt'. Especially doubtful, despite what is claimed in the report, is whether section 128 can be used to change the Constitution Act (as against the

55 K Bissett, 'Debate debased', *The Daily Telegraph Mirror*, 2 November 1993.

Constitution itself). The opinion closes with the statement, 'So far from being readily soluble, the legal complexities associated with the change to a republic involve difficult questions that go to the very heart of federation'.

5 Prospects

Opinion polls do not seem to point in any very clear direction on the issue of republicanism, other than to suggest that the current debate has raised its profile in the public mind. The first Newspoll on the republic was taken in October 1987 and found only 21% for an Australian republic and 64% against. The other 15% were uncommitted. Later Newspolls, from June 1991 onwards, show figures for those in favour of a republic climbing into the 30 and 40% points, reaching 46% in April and July 1993.[66] On the other hand, a report released in November suggests that only 35% of Australia's youth favour the republic, a result which seems to confound conventional wisdom on the generational split on this issue.[67]This finding is in turn challenged by a survey from September 1993 which found that more than 51% of 15 to 18 year-olds favour an Australian republic.[68]

The one clear prospect at this stage is the Prime Minister's commitment to establishing a working party of senior ministers to consider the report and to develop a paper for cabinet in the first half of 1994. In his statement to the Senate, Senator Evans said the working party would consist of himself, Kim Beazley, Michael Lavarch, Graham Richardson, Ros Kelly and Frank Walker.[69]

---

66 D Shanahan, 'Polls mirror PM's fortunes', *The Australian*, 6 October 1993.

67 J Robinson, 'Revealed: our cynical young', *The Sydney Morning Herald*, 9 November 1993. The result is based on a report, *Attitudes of Australian Youth to Leadership*, prepared by the Dangar Research Group.

68 'Most youngsters favour a republic', *The Daily Telegraph Mirror*, 7 September 1993.

69 Cth Parl Debates, Senate, 5 October 1993 at 1629.