

WHY AUSTRALIA SHOULD **NOT** BECOME A REPUBLIC

At the February 1998 Constitutional Convention in Old Parliament House Canberra, the 'almost unanimous' support of the 152 delegates resolved that all Australians will vote at a national referendum to be held on Saturday November 6th 1999.

Prior to the referendum, there were as many proposed republican models as there were republicans themselves. By the end of the first week of the Convention, the Australian Republican Movement (ARM), spearheaded by merchant banker Mr Malcolm Turnbull, realised its "enemy" was not the strong contingent of anti-republicans who remained unequivocally opposed to all republican models, but rather the one third of delegates absolutely opposed to the ARM's model. In particular, prominent delegates, such as Pat O'Shane, Ted Mack, Moira Rayner, Phil Cleary and Clem Jones, strongly argued for the popularly elected model of a republic. All polling consistently shows that 80% of Australians wanting a republic wish to elect the President directly. There was also much support for former Victorian Governor McGarvie's model for a President chosen by a Council of Elder Statesmen, support coming particularly from some more conservative politicians.

In the final vote, the ARM model did not get a majority of support at the Convention with 73 votes for it and 79 either voting against or abstaining. This No' vote was likewise reflected in all polling since the Convention, indicating a majority of Australians and a majority of States will vote 'No' in the referendum.

Since the Convention, prominent Australian republicans, such as Sir Anthony Mason, Professor George Winterton, Professor Greg Craven, Ms Cheryl Saunders, and Linda Kirk as well as leading anti-republicans, such as Sir Harry Gibbs, have all pointed out the flaws in the ARM proposal, which could lead to unstable government. For example, The UNSW Law Journal Forum, Vol. 4 No 2 June 1998, is witness to many of the aforementioned republicans attacking the bipartisan model. George Winterton says "the model is flawed", a Cheryl Saunders state that it is "unworkable" and Greg Craven admits that it is "a weak model with serious deficiencies".

The thought of Federal Australian politicians all amicably sinking their differences and agreeing to vote for a single candidate conjures up pictures of "wheels, deals and bribes"! However, it is the dismissal compromise, which would see the Australian Prime Minister alone responsible for removing the president, which has attracted the most concern and criticism. In a crisis, such as 1975 where the Governor-General dismissed the Prime Minister, it would no longer be clear who would be the more powerful! We would be sacrificing our non-political Australian Head of State, the Governor-General, as an umpire above politics for an apparently very powerful political President in formal terms, but with no security of tenure.

The problem of each of our Australian States, being separate Constitutional Monarchies with their own non-political Governors as Heads of State, was not addressed by the Convention. At the worst, States not wanting to become a republic could secede from the Federation. At best, each would have to rewrite its own Constitution, have its own President, and establish its own rules.

To run a 'No' case successfully in the media who have always shown bias towards the republican cause as a "good story", a minimum of \$10 million would be needed, most of which will be absorbed in television advertising.

In addition, the 'NO' Republic Campaign will continue to develop many educational tools and resources in the hope that every voter entering the polling booths in next year's referendum will be able to cast an educated vote based on the best and safest system of government for the future of Australia as we move into the new millennium.

THE FLAW'S IN THE KEATING/TURNBULL MODEL MARK 11

INTRODUCTION

The Convention named the amended APIM model as the “ Bipartisan Appointment of the President Model”. It is this model which will be tested against the current system in the 1999 Referendum.

Increasing numbers of Australians, many of them republicans, now realise the Republic model does not measure up to the safeguards of our current system.

However, as Constitutional Centenary Foundation Deputy Chair Cheryl Saunders has said “ ...the Parliament must complete matters left incomplete by the Convention, although it should do so in a way which preserves the essential characteristics of the Convention model “ (UNSW Law Journal Forum. Vol. 4 No 2, June 1998).

1. NOMINATIONS PROCESS

To try and pacify the republicans for popular election who were at the Convention, Malcolm Turnbull compromised and changed the ARM platform to include a cosmetic nomination process. It is suggested this would involve a consultation of the whole community, including State/Territory Parliaments, Local Government, community organisations and individuals from all considerations of federalism, gender, cultural or religious diversity all of whom could nominate and be represented on a nominations committee that would report to the Prime Minister. As with US Senate Confirmation Hearings this process would immediately ensure that Australians of high standing would not want to apply. This nomination process would, however, not be enshrined in the Constitution, thus anything could happen at any time, and i.e. any part of a republic could change without going to a referendum. As quoted by Frank Devine in 'The Australian' 16.12.98.

“...he (Turnbull) urged him (Costello) to vote for the ARM position because it would be easy to lop off the nomination clause after the convention. ‘But this is no way to begin the move to a republic’, Costello said virtuously. “

2. APPOINTMENT MODEL BY TWO THIRDS OF THE PARLIAMENT

The appointment process involves the Prime Minister presenting a single nomination for the Presidency, seconded by the Leader of the Opposition, to a joint sitting of both houses of Federal Parliament. He could if he wishes completely disregard the recommendations of the nomination committee. A two-thirds majority will be necessary.

This part of the process will not involve any public consultation or input making it undemocratic. Thus a President could ultimately wield power for his/her own political agenda instead of serving the people. The whole appointment process could in itself lead to a power vacuum, as witnessed recently in Slovakia, which has not had a President since 2 March. What happens to the vacuum created if the two-thirds majority can not be reached? How many worthwhile candidates will be eliminated to achieve a result? In addition it is not clear whether it is two thirds of the votes of those actually sitting or whether all members of Parliament must vote and be counted. This led former Governor General Mr Bill Hayden to comment at the Convention that the model had obviously been designed by people with no experience on how politicians operate.

3. DISMISSAL OF THE PRESIDENT

For over five years the ARM has scoffed at criticism that a president under their first model would be irremovable and therefore extremely powerful. The ARM changed this at the convention without any explanation, this caused Sir Harry Gibbs to announce that “ the Australian Republican Movement has displayed remarkable pliability UNSW Law Journal Forum, Vol. 4 No 2, June 1998). Unlike the present constitution, the president now could be removed at any time for any reason or none by notice in writing signed by the PM. This is to be ratified by the House of Representatives alone with the Senate sidelined: obvious pay back for the Senate role in 1975. The smaller states of QLD, SA, WA, TAS are disenfranchised with the numbers held for dismissal controlled by NSW and VIC, “...as it stands (the model) remains a hollow attempt to appease the electoral demands in States other than NSW and Victoria “ (Williams: UNSW Law Journal Forum, Vol. 4 No 2, June 1998).

However, if it is not ratified, the President is not restored to office yet he/she can stand for re-election, hence bringing a no confidence vote for the Prime Minister. Once again the rules for dismissal will not be codified, so basically the dismissal process is where the Prime Minister can sack the President or the President could bring down the Prime Minister. This has caused Professor David Flint to use the analogy that both the president and the Prime Minister will permanently carry dismissal notices in their pockets. NSW barrister, Mr Jeff Phillips, uses the word picture from the wild west, as the two gunmen take their places, guns poised we watch in horror as to who will shoot first and from Professor George Winterton, the “...mutual disposability of the President and the P.M facilitates the playing of a ‘Constitutional Chicken’ “ (UNSW Law Journal Forum, Vol. 4 No 2, June 1998).

CONCLUSION

This exercise of the ARM since 1991 demonstrates that it is impossible to change the constitution to a republic and still preserve and protect the freedoms of Australians from excesses and abuses by politicians. This model represents a power grab to increase the domination of politicians and concentrate more of this power and authority in Canberra.