

THE SOVEREIGNTY MODEL

A CONSTITUTIONAL MODEL TO ACHIEVE SEPARATION FROM THE ENGLISH MONARCHY IN THE SIMPLEST AND SAFEST MANNER POSSIBLE – THE MODEL IS A VARIATION OF THE “McGARVIE MODEL” THAT ALLOWS FOR A DIRECTLY ELECTED SOVEREIGN TO REPLACE THE QUEEN WHILST MAINTAINING THE CURRENT CONSTITUTIONAL SYSTEM INCLUDING THE ROLE OF THE GOVERNOR-GENERAL AND THE STATE GOVERNORS.

SUMMARY

I propose a model for the creation of an Australian Republic in its most basic form retaining the Governor-General and state Governors and simply replacing the Queen with that of an Australian “Sovereign” (appointed or elected depending upon the public’s preference) with pure ceremonial powers and a codified power to dismiss a Governor-General in limited circumstances.

Any other change, including a merging of the roles of the Governor-General and the Head of State (as is proposed in the 6 “possible models” prepared in the Australian Republican Movement’s October 2001 Discussion Paper)¹ is unnecessary to facilitate the most important step for the achievement of an Australian republic, i.e. separation from the English Monarchy.

Given the well known tendency of Monarchists to oppose whatever republican model is proposed ostensibly under the context of threats to the constitutional integrity of Australia, the seductive step of combining the roles of the Governor-General with the Queen actually creates more difficulties and obstacles to achieving a republic in our lifetimes than it solves.

Any other improvements to the Constitution (such as codification of powers, a bill of rights or the eventual merging of the Governor-General with the Sovereign) can occur after the republic has been achieved if so desired. They do not need to be confused with the question of whether or not Australia should separate from the English Monarchy.

Accordingly, the Sovereignty Model by its simplicity has the following advantages over other republic models:

- It proposes only as much alteration to the present constitutional arrangements as is necessary to achieve the only change that most Australians agree upon; separation from the English Monarchy.
- It allows for a simple understandable model for a directly elected Head of State (if that’s what most Australian’s desire) that would place least strain on the existing constitutional arrangements.

¹ And the four models proposed in the discussion paper.

- At the same time by preserving the roles of the Governor-General and the State Governors, the present constitutional checks on power between the executive, the Governor-General and the Sovereign would be preserved thereby allaying most reasonable concerns about the effects of separation from England on the integrity and working of the Australian system of government.
- It can be explained and justified as being the same form of constitution that would exist under the present system if the Queen of England (and therefore the Queen of Australia) was replaced with a directly elected British sovereign.
- It allows for separation from the English Monarchy at both state and federal levels with the simplest steps that enable existing state and federal arrangements to be retained.
- It is the Republican model that most equates to the present constitutional system and therefore makes it difficult for monarchists to oppose on constitutional grounds.
- It can be easily campaigned for as a model that achieves the two aspects that Australians want changed; separation from England and the replacement of a hereditary Monarchy with a directly elected (or appointed) Sovereign.

Accordingly, I consider it to be the best model to put to a referendum in the near future, as it raises the least constitutional concerns.

INTRODUCTION

The greatest obstacle to the birth of an Australian Republic (or Commonwealth) is how to replace the Queen of England with an Australian equivalent.

In theory this presents as a simple and seemingly innocuous hurdle to the achievement of a true independent federation, in the sense of separation from England.

As in most practical respects Australia is independent from Britain, the public remains sceptical of the need for any amendment to the Constitution ("if its not broke - don't fix it) and the relevance of the republic debate in general, despite the concerns relating to the Queen as the Head of State.

Ironically, Australia's practical independence in virtually all respects bar one (our Head of State is the Queen of England) means that any republic solution must allow time for a "popular momentum" to fall in behind it so that the inertia and conservative fondness to the status quo can be overcome.

In a sense, the seemingly simple task of cutting the last remaining "umbilical cord" to Britain has become an increasingly difficult operation because now the Federation is over a hundred years old and the dangers and risks associated with severing the sole remaining Constitutional tie seems to be greater to many than do the benefits of obtaining final independence from the English Monarchy.

Whilst the 1999 republic referendum was rejected, polls suggest that most Australians would support a separation from England if it could be achieved without upsetting the constitutional foundation of Australia's robust (but perhaps constitutionally fragile) democracy.

Clearly, if Australia had a ready replacement for the Queen of England (or Australia) then a Republic could be achieved with a minimum of fuss. However the paradoxical truth is that if one strives to preserve as much of our existing "Westminster" democracy as possible whilst separating from England, it is difficult if not impossible to find an individual or institution that serves as a clear, simple and predictable residue of power as does the monarchy.

Whilst examples such as Ireland exist whereby Monarchs have been replaced with a directly elected President with codified powers under a Westminster parliamentary system, the perceived difficulties with codification (and the dislike by many people of the term "President") lead one to conclude that the Sovereignty model would be an easier path to a republic than would either an appointed or directly elected "merged" republican model such as the 6 ARM models proposed.

Short of establishing an Australian monarchy (which I am confident most Australians would not support) then it is very difficult to find a replacement for the Queen's role (as opposed to the Governor-General) without either risking a more politicised head of state or requiring codification of the head of state powers.

Under the present constitution it is clear that the Queen is distinct from the Governor-General. Many people consider that the preservation of a Sovereign and a Governor-General should be unnecessary under an Australian Republic and much debate has proceeded on an assumption that it is convenient and necessary to merge the Queen and Governor-General's former roles into a single head of state. This debate has been inhibited by what are premature and unnecessary (at least initially) attempts to merge or further define these separate constitutional roles.

I believe the Australian people could simply be asked what constitution they would prefer, one with the Queen as the residue of power (and exercisable through the Governor-General) or the other with an Australian person or institution as the head of power (also exercisable through the Governor-General). Accordingly an independent and hence "sovereign" republic could be finally achieved by the simple replacement of the word "Queen" with the word "Sovereign" as defined in an Act of parliament.

The proposed referendum would then take place once the respective parliaments were satisfied that the model supported by their constituents received clear popular support. A sample question could be:

"Do you approve of a Proposed Law to alter the Constitution to establish the Commonwealth as a Republic with the Queen being replaced by a directly-elected Sovereign?"

The actual text of the constitution would contain only one amendment, that of "Queen" to "Sovereign". The definition of Sovereign and the manner of appointment can be contained in the new section 2 of the preamble to the constitution (or elsewhere if there are concerns about whether or not the preamble forms part of the Constitution).

This model would also allow for separate appointments of the Governor-General and state Governors to be made by the Sovereign on the advice of the respective Prime Ministers and Premiers, thereby preserving the current federal constitution in the easiest manner possible.

DEFINITION AND ROLE OF SOVEREIGN

Of course, the model is not dependent upon the use of the name "Sovereign" as the head of state. It could equally exist with the name "President" or some other name.

The word sovereign is defined in the Oxford dictionary as follows:

1. One who has supremacy or rank above, or authority over, other; a superior; a ruler; governor; lord; or master (of persons etc.)
2. The recognised supreme ruler of a people or country under monarchical government; a monarch; a king or queen.
3. A mayor or provost of a town, in later use especially in Ireland.
4. A gold coin minted in England from the time of Henry VII to Charles I.

The word sovereignty is also defined in the Oxford Dictionary as follows:

1. Supreme or pre-eminent in respect of excellence or efficacy.
2. Supremacy in respect of power, dominion, or rank; supreme dominion, authority, or rule.
3. The position rank, or power of a superior ruler or monarch; royal authority or dominion.
4. The supreme controlling power in communities not under monarchical government; absolute and independent authority.

Clearly the name sovereign represents the ultimate Head of State under the constitution and is often associated with a Monarchy. However there is no necessity for it to be so and in one respect at least the name “sovereignty” is used to denote communities independent from Monarchical rule. The name also has had a long association with Australia’s constitutional history where since Federation the nation has generally considered itself to be a sovereign nation (in the sense of being practically independent).

I prefer the name “Sovereign” to President as it does not connote the sense of politicised executive power that is associated with the latter name. Rather, by its nature it seems to imply the intended function, namely a predominantly ceremonial role with limited constitutional functions.

Further, the name President is already given to the leader of the Senate and proposals such as the Winterton 1998 proposal to have a Head of State President and a President of the Senate which would lead to unnecessary confusion and is another reason to favour the Sovereignty model over “Presidential” models.

Finally, for those who may consider the name to have some lingering “Royalist” connotations, I offer a contrary view. Namely, that the nature of the role and particularly the opportunity for a safer form of direct election, allows for a “democratising” of what was once a hereditary title that may serve as a means of inspiring other Monarchies (perhaps even including England!) to replace their Monarchs with ceremonial “Sovereigns” that do not have the executive connotations of similarly functioning “Presidents”.

The name is not essential to the model and neither is the manner of the Sovereign's appointment. At this stage, the entire Republican debate between elected and appointed models could exist around the role and power of Sovereign without interfering with the Governor-General's constitutional position. The essence of the model is that it preserves the constitutional role of the Governor-General and thereby enables Australia to separate from the Monarchy "by the fewest moves" thereby placing the least strain on the Constitution and the Federation.

COMPARISON WITH McGARVIE MODEL

The model has been called the "Sovereignty Model" for want of a better name and to distinguish it from the McGarvie model that was rejected by the 1999 Constitutional Convention of which it is a variation. The models are similar in the sense that they both maintain the distinction between the Head of State and the Governor-General. The 1999 McGarvie model (as I understand it) specified in detail how the Head of State would be appointed and proposed that a Constitutional Council of three *ex officio* persons formally appoint and formally remove the Governor-General, in each case acting solely on the advice of the Prime Minister or Premier as the case may be).

The Sovereignty Model leaves open the question of appointment or direct election of the Head of State or Sovereign for further conventions and/or plebiscites prior to finalising this issue at a referendum. What is important is that the important constitutional role formerly served by the Queen be replaced by a person or entity that also has a limited role and is entrusted to respect the conventions currently preserved by the Queen (principally that appointment or removal of a Governor-General only be made on the advice of the Prime Minister of the day). There is little to suggest why this role could not be transferred to another indigenous entity or person called a Sovereign.

Further with a Sovereign (even if popularly elected) serving such a limited (but important) constitutional role would be as unlikely to become political as is presently served by the Queen of England, even if directly elected. There seems little basis to say that the Queen of England is able to respect the singular task of following the conventions to act on the advice of the Prime Minister of the day in appointing or removing the Governor-General than would a directly elected Sovereign. Put simply, once the important power to appoint or remove the political head of state (ie the Prime Minister and Premiers) is removed from the elected head of state (ie the Sovereign) and remains with the Governor-General, then the fears of a directly elected Head of State corrupting the Westminster system are reduced by continuation of the Governor-General's constitutional role.

The Sovereignty Model would propose a simple amendment to the constitution as it presently stands, namely to amend the constitution to replace the word "Queen" with the word "Sovereign" as established and defined under the Referendum Act.

As with the McGarvie Model the constitutional role of the Governor-General and indeed the State Governors would remain unchanged. The manner of appointment or election of the Sovereign can be via an appointment process (automatic or prime ministerial) or via a direct election model (electoral college or popular vote).

Given the public's apparent desire for a direct election of the Head of State, I consider that a directly elected Sovereign is the best method of selection in order to achieving a republic that accords with that desire.

Many of the concerns about the dangers of politicising the Head of State's powers via a directly elected Head of State would not arise under the Sovereignty Model. This is because the intermediary of the Governor-Generals and the State Governors would keep each in check as they presently do with the powers of the Queen. Nevertheless, if desired some codification and definition of the Sovereign's role could occur without otherwise affecting the constitutional conventions existing between the Governor-General, the Prime Minister and the elected representatives.

Given that the primary remaining constitutional power of the Queen is the appointment and removal of the Governor-General on the advice of the Prime Minister, the task of codification of these powers would be much simpler than it would under one of the ARM's direct election models. This is because under the Sovereignty Model the Head of State no longer has to role of appointing or removing the Prime Minister or any of the other constitutional roles of the Governor-General. The most controversial power that would remain with the Sovereign (and is now with the Queen), being the power to remove a Governor-General, could for example be codified via an enshrinement of the convention that the Sovereign is only to appoint or remove a Prime Minister or Premier on the advice of the Prime Minister or Premier of the day.

If there was some desire to see that there was a reserve power in the Sovereign to ignore the Prime Minister's advice in extra-ordinary circumstances then a reserve power in the Sovereign to so act could exist under a "bee-sting" provision. Namely, in the event that the Sovereign elects to ignore the advice of the Prime Minister or Premier of the day, the Sovereign would also place his her or its own position up for re-election or re-appointment. This would thereby allay the Machiavellian notion of a Governor-General seeking to seize legislative power, by dismissing a Governor-General (against the advice of the Prime Minister) who doesn't agree with a political agenda promoted by the Sovereign.

The role of the Sovereign would be primarily ceremonial and it is anticipated that the ceremonial duties currently undertaken by the Governor-General would be transferred to the Sovereign. The Governor-General would still have an important constitutional role as an intermediary (and therefore a check on power) between the Executive Government and the Sovereign.

The constitutional and ceremonial role and duties of the state Governors would remain unchanged.

Finally, any concerns about the existence and continuation of any Royal prerogative powers remaining with the Queen could be simply translated to the Sovereign and would not need to be affected under this model unless it was considered desirable and convenient to do so.

CONCLUSION

Given the recent revival of interest inspired by the Corowa People's Convention in re-igniting the republican debate, those interested in achieving an Australian Head of State must start the important task of resolving which model is best for Australia's unique circumstances. The proposed Sovereignty Model is, I believe, the simplest and safest way to achieve an Australian Republic in our lifetime.

I recently attended the Corowa People's Conference and voted against the Winterton-Harris-Phillips-Peach proposal because, as was pointed out at the conference, the proposed plebiscite questions inadvertently excluded the possibility of a model such as the Sovereignty Model from being considered at the plebiscite. I believe this is a significant deficiency in the proposed questions not the least because the Corowa Conference was supposed to be only about process and had no mandate to consider or exclude any Republican models such as the Sovereignty Model.

Nevertheless, I have received brief verbal assurances from Mr Peach and Mr Winterton that when the plebiscite questions are drafted they will seek to include the possibility of other models, including the Sovereignty model.

I trust and hope that they will do so as I genuinely believe that the Sovereignty Model (or another variant of the McGarvie Model) is the easiest and quickest way of achieving an Australian Republic and also provides a workable solution to the direct election/appointment dilemma that has stalled the Republic debate for so long.

However, that this document is a draft of the model and in this respect I invite comments, suggestions and criticisms of the model and can be contacted below.

David O'Brien
Melbourne.