

An Australian Head of State the Contemporary Debate

Senator Baden Teague

My topic — An Australian head of state: the contemporary debate — is one I accept enthusiastically because it has now become important to the majority of Australians. It is very important to the great majority of younger Australians. I readily concede that the management of the Australian economy is even more important, as is strengthening the foundations of family policy in Australia. These issues will be among the most prominent in the coming twelve months of debate up to the next federal election.

The perennial politics of this Parliament House and the Australian community have always been about economic management. But right now one of the increasingly emerging top-five issues is the republic and the establishment of an Australian head of state. I say it is a top issue because it indicates one's whole attitude to Australia's sense of identity. It is a gateway to being on the same wavelength as those who regard it as important enough to affect significantly the way they vote in the 1996 and 1999 federal elections, and there is rising expectation in the public that this constitutional reform may be achieved by the time of the Sydney Olympics in the year 2000. That is even ahead of the centenary of the Constitution in the year 2001.

As one Liberal senator, let me make my own position clear. I support the establishment of an Australian head of state. I want to get our national symbols right: I think our national symbols are very important. We are one independent, united, sovereign country. Those characteristics were determined long ago. It is entirely right that our head of state should unequivocally reinforce this Australian independence. There is no longer room for ambiguity. It is no longer acceptable for Australia's head of state to live on the other side of the world, to have a priority allegiance to the United Kingdom and to represent actively that country's trade over ours.

Moreover, whilst I fully, and warmly, respect the person of Queen Elizabeth and acknowledge that the constitutional monarchy has served Australia well in the nineteenth century and in the first half of this century, the Australian monarchy has now, I believe, become irrelevant — the monarchy is irrelevant. The monarchy has also begun to be counterproductive to Australian interests, not only in the projection of Australia to Asia and to the world but more especially in young Australians' sense of confidence and clarity about our own integrity as the Australian nation. The monarchy in recent decades has served the benign purpose of ensuring that the established strengths of our Australian democracy, especially the processes of this Commonwealth Parliament and the processes of cabinet government — which is answerable to the Parliament — have not been transgressed by any autocratic interference. To her credit, the monarch of Australia, in recent decades, has not once interfered with the decisions made by democratically elected Australian parliaments or governments. But I will return to this theme later.

In this address I seek to do three things. Firstly, I want to set out my own developing views in support of an Australian head of state. Secondly, I want to consider the public, parliamentary and party processes now simultaneously involved in the increasingly viable proposal to change the Australian Constitution to achieve an Australian head of state. Thirdly, I want to focus on the probable obstacles that will need to be overcome — and I think they will be overcome — to achieve an Australian head of state by the end of this decade.

I begin by outlining the development of my own views. I am a fifth generation Australian. I have served as a senator in the last seven parliaments. I am a Liberal senator. About ten years ago I expressed to my family and friends my view that the time was very fast approaching for all Australians to get to know the Australian Constitution which has served us well in the past and to move on to improve it by changing to an Australian head of state. This would be increasingly called for by a public wanting clearly to reinforce Australia's independence, integrity and sovereignty.

I have three sons; two of them now at university and one here today. One evening, about ten years ago when they were still in primary school, they asked me to explain why a British resident was actually the head of Australia. I explained our Constitution and said that I supported moving to an Australian head of state. This would mean the end of the monarchy. In amazement, but with a dawning sense of enlightenment, the boys together responded, 'What will Nanna say?' You see my much loved mother had for years been slipping to the boys the wonderful pages of the *Women's Weekly*. I say no more. It is interesting that Nanna, my mother, in her late 70s, along with my father, now believe that moving to an Australian head of state is inescapable. Moreover, given the behaviour of the princes and princesses in recent years she has no time at all for them but she will always genuinely admire the Queen and the Queen Mother.

Twenty-three months ago, on the first day of sitting of the current Parliament, I gave notice in the Senate — as shown in the *Hansard*, 5 May 1993 — that I would move a motion about the republic. This motion is still on the Senate *Notice Paper*. I think it is the first of its kind in this Parliament. I gave notice:

That the Senate —

- (a) welcomes a variety of processes to prepare options papers to enable the people of Australia and the Parliament to consider the minimum constitutional changes necessary to achieve a viable federal republic of Australia, while maintaining the effect of our present conventions and principles of government;
- (b) considers that the terms of reference for these options papers should address:
 - i) the option to remove all references to the monarch in the Constitution,
 - (ii) the option to establish a new office of Head of State and the need to consider what that office may be called, including the possible retention of the name Governor-General of the Commonwealth of Australia,
 - (iii) the provisions for the appointment and termination of the appointment of the Head of State, including the option of election by the two Houses of the Parliament on nomination by the Government,
 - (iv) how the powers of the new Head of State can be made subject to the same conventions and principles which apply to the powers of the Governor-General...

It concluded:

[That the Senate...]

c) believes that:

- (i) all of the findings of these processes remain entirely subject to full and open discussion and debate by the people of Australia and the Parliament before proceeding to referenda...¹

I went on to say that such a referendum should not be held in conjunction with an election and that a significant date by which these minimal and constitutional changes, if supported, could be implemented might be 1 January 2001. Finally, I urged sound and unhurried preparation and consideration of the various option papers.

This motion, as I said, is on the *Notice Paper*, still ready for debate at any time in the Senate, but no party whether substantially or even opportunistically has been willing to give it priority for debate. Until recently, the coalition has been too tentative to be ready to be articulate in such a debate. The government members have been too tentative, as the cabinet response to the Republic Advisory Committee Report — the Turnbull report of September 1993 — is in fact still to be announced but is expected soon.

¹ *Notice Paper*, 5 May 1993, The Senate, Commonwealth Government Printer, p.95

The constitutional reform package, which I included in my notice of motion two years ago, is still my preferred option because I believe it is the best one to serve Ausulia and the most realistic benchmark to which the Australian voters are likely to give support in the eventual referendum. In contrast, any radical reform which endangers the actual Australian political structure will I believe, be rejected at any time by the voting public.

Let me now go on to recall my own first speech on this matter in the Senate which was seven months ago. You may recall that there was a great deal of public discussion about the republic in July and we were called upon as politicians to respond. I was one who did. I said in the midst of that debate that on my return to the Senate I would outline my views in the chamber. On the first opportunity, 29 August 1994, I rose and said:

In the few minutes available to me tonight I wish to outline why I believe we should move in Australia to an Australian head of state. Many describe Australia as in transition, in these last few years of the decade, between a monarchy that has served us very well in the past and a republic.²

By the way, I had only ten minutes to give this speech and I had in front of me a few dot points on the back of an envelope. This is, I think, the first speech certainly by a coalition member that advocates an Australian head of state. I said:

I believe that our national symbols are very important. We are an independent nation — a country that has its own independence, its own sovereignty, its own integrity — and our national symbols should reflect that independence. Accordingly, I think it is quite inappropriate that Australia has a foreigner as a head of state, a person who is not a citizen of Australia and who has prior allegiance to the United Kingdom and a range of allegiances to some 12 or 14 other countries. I believe that the time has come for an Australian citizen to be the head of state of Australia and for that person to have no other allegiances but to Australia. In that way, our national symbol, vested in the head of state, will be directly reflecting our independence and sovereignty as the Australian nation.³

There are three reasons why I advocate the change. The first is, as I have outlined, that we should have an Australian citizen as head of state with allegiance to only Australia. The second reason is that the current head of state of Australia has built within it as an institution a gender bias. If the Queen had a younger brother he would now be the king of Australia I believe it is unacceptable in the 1990s to have such a symbol in the head of state no longer reflecting the values of Australia. In fact, we have in Australian law a ban on gender bias for the determining of any official except one — that one official is the head of state. We should now remedy that situation.

² *Commonwealth Parliamentary Debates*, vol. S 166, 29 August 1994, p.530.

³ *ibid*

The third reason is that a religious test for the head of state is no longer to be tolerated. Currently the head of state of Australia must be a member of my church, the Anglican Church. I have no worries about any persons being relaxed as a member of my particular part of the Christian church, but it is abhorrent to me that there is not freedom of conscience or freedom of religion in the position of head of state of Australia. If the Queen were to become a Catholic she would be out of a job. If the Queen were to become a member of some other religion, she would be out of a job. It is against section 116 of the Constitution that there should be a restriction placed on any official of the Commonwealth of Australia. Section 116 applies to all except one person — the head of state. We must remedy that situation.

I went on in the speech to say why I believed we should call this head of state the Governor-General of the Commonwealth of Australia. I said that the head of state should have the same formal powers as the Governor-General, no more and no less. I referred to what I see as the public's resistance to radical change that would in any way affect the structure of politics or democracy in this country and that we should not move to any United States system. I also said that it is my view that the head of state should be nominated by the elected Australian government, as it is now, and be appointed by the Australian Parliament.

I actually argued that it should be by simple majority but I could be persuaded that it be by two-thirds majority. I certainly agree with the aspirations of those who are advocating a two-thirds majority. I have no problem with that. The only reason I was putting forward a simple majority was that it is closer to the status quo. At the moment the Prime Minister nominates the Governor-General and there is no one standing in the way of that appointment then being made. The Queen has always accepted the Prime Minister's advice. What we would be doing is requiring, I think by a new convention, that the Prime Minister consult with cabinet, with the heads of the non-government parties and Parliament, and then nominate one person, the most fitting person of all the citizens of Australia, to be the head of state and for the two Houses of Parliament sitting separately to endorse that one nomination.

I said with regard to state governors that it is clear that this is a matter for the states to determine but, as a federal parliamentarian if I were asked, I would say retain the governors in the states and give them the same powers, no more and no less than they have now. In a parallel way they can be nominated by the Premier of the day after consultation and appointed by the houses of the state parliament endorsing that nomination.

I do not advocate any change to our other national symbols. I said so seven months ago and I still would, because there is no reason to put forward any change to the flag, to the crest, to the flower, or to the anthem. I support the Australian flag; I support the Australian crest and so on.

Finally, we should not have a popular election for the head of state because that would mean the position is contested in a party political way; a way which would be unnecessarily divisive in Australia. I would like to see the position of Governor-General being a symbol of unity as it is now, not having a separate power base or a political base that is in any way challenging to the elected government of the day, but exercising clear powers under the Constitution and the conventions surrounding the Constitution that define the head of state's responsibilities.

At the moment the public seems to favour a popularly elected president but over the coming months there must be increased dialogue to show the implications of that. If the people could see that it would mean party politicising and, I believe, an ineligibility of the best candidates, they would accept the status quo.

I want to consider the public, parliamentary and party processes involved in the republican debate and to deal with them one by one in order, beginning with the public. The Constitution can only be changed by the public. The public will determine the whole outcome, yes or no, in a referendum. For any reform to succeed a majority of Australian voters plus a majority of the Australian States must support the precise proposals for change. Accordingly the public must be involved in knowing, discussing and debating the Constitution. A number of us made sure that the Parliament had printed an easily accessible constitution. Nothing will substitute for this public involvement. The public want to be involved and the public will be involved. It is the duty of all of us to facilitate this and to initiate mechanisms for it. Politicians will need to stand back a pace or two and allow democracy to work.

I strongly support the coalition's decision to commit a Liberal-National government, after the next election, to convene a public constitutional convention to discuss and formulate resolutions for precise constitutional reform including the republic. These resolutions would then require Parliament's consideration, and eventually public referenda. But the public's crucial role in referenda and in the constitutional convention will be preceded and enveloped by a third role; that is, the political impact of the waves and currents of public opinion.

For example, it is my judgment that currently within the coalition party room there consists three groups on this issue. One-third of the coalition favours a republic by the year 2000. One-third genuinely believes that we are best served by the status quo; the remaining one-third is waiting and watching public opinion. This last group, this make or break one-third, wants a dialogue with the public throughout 1995 and 1996. They want to see a clearer demonstration of public opinion on the matters of precise and workable reforms. When precise and workable reforms emerge, and not just general aspirations towards reform, then the public opinion about the package of reforms will need to be measured and understood. It will be at this point, I anticipate, that a clear and explicit majority will emerge in the coalition which will support an Australian head of state. This coalition majority will be needed to ensure that the eventual referendum is successful. The dialogue between politicians and the public will be paramount. The role of public opinion is paramount.

I am a liberal and a democrat. I have an enormous trust in the good sense and the informed judgment of the Australian public. They will not be conned by any fly-by-night proposal for reform. Also, they will not reject any reforms which may endanger the Australian democracy we have come to know and support. The Australian public will embrace change when they see it clearly as a positive improvement and when they see it as establishing a genuinely Australian head of state.

With regard to the Parliament, the Constitution can only be changed if both the Senate and the House of Representatives assent to the necessary constitutional alteration bills. The legislation would be introduced by the government of the day and it would need to be passed by the Parliament to allow public referenda to be conducted. Up to March 1995 the surprising thing is that there has not been a single debate in the Australian Parliament about the republic issue. The Parliament up until now has been silent.

It is all rather paradoxical. All the views expressed by the politicians, Keating, Howard, Fischer, Kernot, and by the many academics, Winterton, Hirst, Irving, are to be gleaned from the newspapers. I have given one speech in the Parliament; I do not know of any other. However, any informed political observer will know that there is now a majority in the House of Representatives and in the Senate to support the establishment of an Australian head of state. There is a majority in both houses to support a republic, but because no precise workable proposal for constitutional change has been articulated, the parliamentary debate has not yet begun.

The articulation of a precise and workable proposal will need to be reinforced by an informed public opinion. Only then will the government of the day propose a constitutional alteration bill. If the momentum towards the public's constitutional convention requires the focus of the years 1995, 1996 and 1997 then the Parliament's formulation of legislation looks like being the focus of 1998

I refer now to the political parties. It is the role of politicians to represent the aspirations of the people. The political parties are constantly changing their policies in order to try to gain the confidence of at least the majority of the people. Political parties are in dialogue with the people. They are flexible, they develop, they grow and they change. Let me state the obvious: a major political party has the overriding objective of winning a majority of seats at the next election in order to form a government. Referenda, for example, are a lower priority. The overriding objective is to win government.

Political parties contain members who believe in all sorts of reforms but a political party will only embrace a reform proposal when it is convinced that the proposal is essential to win the next election. Politicians are driven by the public support for essential reforms. It is my view that the issue of the republic has now become one — I stress — of the essential reforms to win government convincingly in Australia. It may still be just possible to win government on the basis of policies which only address the other key issues.

As I have already mentioned, economic management and family policy are high on the list of these essential issues but it is clear to me that a party which can demonstrate credibility and gain public confidence on all three of these issues — the economy, the family and the republic — will all the more convincingly win the federal elections in 1996 and 1997.

I now refer to the current policies of Australian political parties with regard to the republic issue. The Australian Labor Party is pro-republic but the Australian public does not know what that means. Does it mean something radical that they may reject, or does it mean something workable

that they should discuss? Does it mean 'Keating's republic'? The Prime Minister has often made speeches about the republic. The most substantial was his election policy speech of March 1993; the 'vision-thing'. The kind of positive leadership which sparked a public response and which was one element in the surprising 1993 ALP election victory. I have to say that as a Liberal who felt the enormous pain of losing the unlosable election, and the biggest element of that loss, of course, was the Goods and Services Tax (GST).

The most remembered speeches by Mr Keating about the republic have been those that he has made more recently overseas. They have far too much given the impression of being indulgent and self-sewing and of forcing the pace. Overall, he has coloured 'the Keating republic', as the public refers to it, with the impression of it being only raised when he is overseas and this appears out of place and discourteous. Those who are cynical have already rejected Keating's republic because they gather the impression that somehow it is his plot to be the first president of Australia and they do not want that. In his visit to Germany in March, the Australian Prime Minister promoted the German model of indirect election for the president of the country. Somehow, this came over to the Australian public as Mr Keating's attempt to impress his host the German Prime Minister, Mr Kohl, and they did not take it very seriously.

However, late last year the Attorney-General, Michael Lavarch, outlined a republic proposal that seems to be emerging as the Labor government's soon to be announced initiative. In a quite measured and credible way, the Attorney-General hinted that the Australian head of state should have the current Governor-General's powers and be appointed by two-thirds majority of the Australian Parliament. This emerging definition has not in any way been discounted by Minister Gareth Evans or Minister Kim Beazley and it may well become the cabinet position to be announced in the next week or two as the government's long awaited response to the Turnbull report of September 1993.

The Liberal Party, whilst supporting the Australian Constitution as it is until it is changed and supporting the constitutional monarch as it is until it is changed, has moved very significantly over the past twelve months, especially the past six months, to an open acceptance that there is a variety of views in the public and the party. The party now accepts that all of us should listen to the public and be in dialogue with the public as ideas involved in the republic debate develop.

The coalition leader, John Howard, has fully embraced the unanimous party room outcome of last November, and that is the pledge, on coming to government during the next twelve months, to convene, during 1997, a popular constitutional convention. This popular convention would review the Australian Constitution in a parallel way to the original and creative precedent of the 1890s' federation movement itself. This review would include recommendations for the proposal to become a republic.

The Liberal and National parties have not yet gone so far as to pledge the implementation of the reform proposals that will emerge from this convention. However, the politics are abundantly clear. It is as obvious as day follows night that any popularly articulated republic proposals that emerge from this convention will be unstoppable if the proposals truly succeed in touching the nerve of majority public opinion.

The National Party also supports the constitutional convention. My good friend the leader of the National Party, Tim Fischer, has spoken out very bravely just three weeks ago to undertake that he will accept a republic if that is what the Australian public demonstrate they are determined to have. Tim Fischer won headlines throughout Australia this month by indicating that his own preference would then be a popularly elected Australian head of state rather than one nominated by the government and endorsed by the Parliament. On several occasions over the last twelve months Tim Fischer and I have discussed our views. I regard his popular election model as brave because among all the party leaders he is the only one who takes this direction.

In contrast, the predominant politicians' view, now all the more consolidating, is that the Fischer model is only superficially attractive in so much as it appeals to the democratic principle. The predominant view, and the view I have argued from the beginning, is that a popular election for our head of state would be a fundamental and unacceptable change to Australia's political structure. It would party-politicise the head of state who should rather remain above the fray and be, as the Governor-General is now, a real symbol of unity in the nation and a source of that unity. More seriously, it would set up a party political mandate for the elected head of state to rival the mandate and political base of the Prime Minister and the federal government itself. This would destabilise the good political structure of Australian democracy as we have come to know it and as we see it serving Australia so well.

A third objection to any popular election of a head of state is this: it would rule out most of the best candidates for the job. I cannot imagine that a Ninian Stephen or a Zelman Cowen would agree to be nominated if it meant fighting a party political election and jeopardising the maturity and the unity which ought to be in the foundations of the position.

The Australian Democrats and the Independents are, as far as I know, all pro-republican. The Democrats advocate an Australian head of state with powers similar to the Governor-General and who is appointed by the Parliament. Senator Cheryl Kernot's innovation, however, is to provide for the public to nominate the candidates to be considered for appointment to be head of state. She does advocate, along with a majority of us, that it should be Parliament which determines which candidate will be successful.

Now I come to the final part of my address and I am conscious of wanting to give you the most time for questions. I have just this final, briefest section to go. I conclude by listing a number of the obstacles strewn along the path to a republic; obstacles which I believe can be overcome in these next five years as we approach the Sydney Olympics and the centenary of the Constitution.

The first obstacle is the danger that the Labor government may overbid and adopt too radical a proposal for change — we will know in a week or two. If the Australian head of state proposal is only a Trojan Horse to disguise any undermining of the states or of the Senate, or to change the law to get even with Sir John Kerr, then the coalition will oppose the proposal and the whole country will withdraw into trench warfare. It would mean half a generation would be lost before we gained the promised land. The best guarantee, however, that this can be avoided is that too

many leaders in the ALP really want to achieve an Australian head of state and so they will not throw it away so easily.

The second obstacle is the small risk that the Liberal and National parties might retreat to a ‘head in the sand’ conservatism such as we have never seen in the coalition before. Clearly this is not the case now. The coalition’s openness to dialogue and readiness to engage the public in discussion, and the coalition’s firm commitment to a people’s constitutional convention, is very good evidence that this obstacle can be avoided. The surest guarantee that the coalition will not retreat is its determination to win the next federal election. Public opinion will be the force to drive home the safeguard. The coalition will not allow itself to be exposed to Labor’s taunt — ‘how can you elect the Liberals to government if they have not anything to say about bringing in an Australian head of state?’ Politicians want to win government. If it is the winning of government itself which might be put in jeopardy rather than just the referendum outcome, then the politicians will sit up and listen to public opinion.

The third obstacle is the lingering doubt arising from the feeling of undecided and older Australians that the Queen herself should not suffer personally from any immaturity or discourtesy on Australia’s part. Despite the growing public enthusiasm to achieve by the year 2000 an Australian head of state to stand up in Sydney and on our behalf open the Olympic Games before the whole world, there is an equal sense of resolution that the Queen, who has served us so graciously, should be there as one of our special guests.

But I really am confident that Australia has the maturity to handle this well. We have got five years to do it. The main risk of disaster on this front would arise if the Queen were to be succeeded by one of the princes in any of the next five years because there would be such a huge swing in public opinion to reject the monarchy immediately. Then Australia would really be at risk of discourtesies that ordinarily I believe we can avoid. The best guarantee that we will in fact overcome this obstacle is the clear way the Queen has announced her full approval for Australia to decide its own way in its own time, and that she will accept our decision.

The fourth obstacle is that we may become distracted by the various options available about the details to be incorporated into the proposal for an Australian head of state to ensure that it is workable. There is time today only to list, but not to expand on, some of these options about detail:

1. The name Commonwealth or republic—I prefer Commonwealth.
2. The name Governor-General or president—I prefer Governor-General.
3. The reserve powers—do we rely on the status quo of both constitutional provision and convention, which I prefer, or do we spell out rigorously all the powers of the head of state?
4. The Prime Minister’s single nomination of a person to be head of state — should this require a new convention that the Prime Minister consult with cabinet colleagues and

- consult with the leaders of non-government parties, which I prefer, or should it remain the sole initiative of the Prime Minister as it is now?
5. The appointment of the head of state by Parliament—should this be by simple majority, which I advocated a year ago; or by a two-thirds majority, to which I now lean; or by an absolute majority, as is required for any constitutional alteration bill now?
 6. The Parliament's appointment — should it be by joint sitting, which I used to advocate; or by both of the houses, the Senate and the House of Representatives sitting separately, which is now what I would prefer?
 7. The Constitution's use of the words 'the Queen' and 'the Crown' — how in detail should they be omitted or replaced?
 8. The surely obsolete sections 58, 59 and 60 of the Constitution — how can they be translated from the nineteenth century sense of monarchy, except by being omitted altogether?
 9. As I have said recently, the state governors should be retained with the same powers, no more and no less, that governors now have. Their appointment can parallel that for the Australian head of state, that is, with nomination by a state premier and endorsement by the houses of the state parliament.

There are many other important details which we could go on to describe.

It is my view that patience, open discussion and clarity of debate will, in good time, lead us all to a sealed majority view of each of these particulars. It is the need to avoid the obstacle of diversion, by detail, from the main objective that we should all have in mind. I strongly believe that the four or five obstacles that lie in the path ahead for Australia, the path to establish an Australian head of state can, and will, be overcome.

In conclusion, the path ahead stretches over the next five years. A lot of dialogue is needed, especially with the public of Australia. As positively as we can, let us get on with it. I welcome any questions.

Questioner — I would like to pick up on your very last phrase 'let us get on with it'. I feel that, whilst I endorse a lot of your ideas, your way of going about it is not really the right way. There are two main questions *ad seriatim*: do we have a republic and in what form? Let us get to the will of the people. I suggest to you that we have a referendum to decide whether or not we have a republic. The obstructions cannot be used to delay it. Let us get on with it and have the force of the people to concentrate politicians minds to get on with the job and to stop all these delays which are occurring.

Senator Teague — Thank you very much for your suggestion. We must listen to each other and it may well be that we can proceed in that way. That is a matter to be determined.

Questioner — I found it very interesting that you found the monarchy undesirable for Australia due to its British nature, its gender bias and its religious bias. I believe that it is the hereditary nature of the monarchy itself that is the real problem that makes it irrelevant in Australia and inconsistent with the way that Australian society works. On the matter of electing or appointing the head of state, the appointment process today for the Governor-General cannot be any more partisan. Therefore, appointment or election through the parliamentary system is going to be just as partisan. With a public election the person elected would have the confidence of the entire Australian public, which is more than the confidence the public has in politicians and parliamentarians in this country.

Senator Teague — I was not trying to be exhaustive in terms of the reasons why Australians would reject an Australian monarchy. I acknowledge that there are many other reasons such as heredity. The whole idea of a hereditary principle or a feudal system is quite out of date.

The point about a popular election is the big question to be resolved. I have dear friends with a very careful knowledge of the Constitution who still advocate to me a popular election. It is clear that the majority of the public want a popular election. I have no doubt. That is why I have concentrated on giving you my reasons and what I see to be at risk in terms of the political structure of Australia and whether we should politicise the head of state because, in my view, a popular election would make that outcome inevitable.

I am going to Ireland again in a couple of weeks. I hope to speak with — I have already requested it — the President of Ireland, Mary Robinson, whom I greatly respect. She is elected by the public. The Irish model is one that is available to us. She handles her job superbly. We expect the same of our Governor-General now on behalf of the monarch, and, as we would, I project, want the head of state to handle the job maturely, with unity and with great sense of substance.

I do not want to conclude on this too early. I can be persuaded, but I want to make it clear why a majority of those who are in discussion about this, in various parties, are currently advocating that the Parliament make the election. It is not that we want to do it; it is not a matter of power. There should be only one nomination and it should be from the elected government.

Senator Kernot's suggestion is that the public assist by making nominations and then the Parliament determines. You are wanting to say, 'no', let the people at large elect, but please can you all help us describe how our problems and objections can be solved. If you can, I am with you and Mary Robinson.

Questioner — Yesterday, Malcolm Turnbull on *Australia Talks Back*, ABC Radio, reiterated his belief, or shall I say his preference, that the powers of the president be either partially or fully codified. I see your position as rejecting that. I believe that the Australian public, before they vote, will want a fairly tight definition to be inscribed in the Constitution of those powers. Would you promote discussion of this issue rather than simply stating your own preference? Secondly, you mentioned that John Howard and the senior Liberal Party members support the

constitutional convention. I understand from newspaper reports that he has undertaken to put recommendations from the convention to the people in a referendum; is that correct?

Senator Teague — The first point that you make is a very important one. It is linked to the question of a popular election. Let me assure you that I am putting forward my view as a starting point in the discussion. I listened to your view that you have summarised from Malcolm Turnbull. In fact, I have discussed that matter with him over the telephone. He put to me that he thinks they should be codified. This was before the Turnbull report. I put to him at that time that I believe we should stay with the status quo as far as possible and that we would be endangering a sound outcome if any proponents of ‘let us get John Kerr’ would use the codification to move away from the status quo. The best way to keep the status quo and to put that matter to rest is to say we will leave the constitutional provisions and the conventions around the Constitution that define the reserve powers of the Governor-General or the head of state exactly as they are. That is the reason. I am starting with the status quo, but if there was a popular election, I think it is inevitable that we would have to codify the reserve powers. These two answers are linked.

With regard to the second part of your question, you are right. The Liberal and National parties — by the way, it is not just the leaders of the Liberal and National parties, it is the whole Liberal and National parties, the whole party room — have this position. It is that whatever resolutions come from a people’s constitutional convention will, we undertake, be put to the Australian public. The only reservation is that the Liberal and National parties, even in government and putting those resolutions, will reserve the right until that time to make up their minds whether or not to agree with them. That is why I made the point that the politics are entirely clear. Proposals that come from that constitutional convention will be unstoppable if they have touched the nerve of Australian public opinion.

Questioner — It seems to me that it would be quite difficult to have an elected head of state without putting the central institution of the democracy, which is the Parliament, to some degree of risk. Given the traditional structure of an executive arm, a legislative arm and a judicial arm of government, what is your view as to whether or not the time has come to contemplate having a fourth arm of government, separate from the executive arm, which we might call a ceremonial arm or some other suitable title? It seems to me that there is a valuable role for a ceremonial arm, by whatever name it be known, separate and distinct from the executive arm with which it has now somewhat merged.

Senator Teague — I hear your word ceremonial. The reason I did not use the word ceremonial, even the word formal — but I do not argue against those who do talk about ceremonial and formal — is that it seems a bit of a put-down. The Australian head of state is a very important position, and the first responsibility of that position is to safeguard the Constitution: that is determined by the people. I have said and I think it will emerge, that the head of state will have all of the powers that we now see vested in and operated by a Governor-General. Whether or not there is this fourth arm of government — certainly we have an executive, legislative and a judicial arm and the separation of these powers — the head of state is related to them all. The head of state is a part of the Parliament. I am not wearing my badge — there is a red badge for the Senate, and a green one for the House of Representatives. On it are three symbols plus the

southern cross — the gold mace of the House of Representatives, the black rod of the Senate, and the Crown representing the third part of the Parliament.

It is envisaged by me, and I think by everyone who is involved in this discussion, that the head of state of Australia will still be that third part of the Parliament. That is one reason why many of my friends argue that the democratic principle should be reinforced and all three parts of the Parliament should be democratically elected by the people. I hear that argument. I would love to accept it, but for the problems that I have set out for you, and to which you were kind enough to allude. It is a matter of 'a rose by any name is a rose'. I mean it is, in a way, a fourth. It is a unique part. All ambassadors — that is, the heads of state — are a unique part. But the head of state chairs the Executive Council and is the head of government in that sense. All laws are signed by the head of state. All judicial appointments are made by the head of state on the advice of the elected government. All of our ambassadors are appointed by the head of state, and they are representing, not just the government of the day, but the whole nation, everyone of us, including an opposition senator. I want all of the wonderful unity, that we now see in our head of state, preserved. If my words then are a 'Yes' to your question, then so be it. I do see the head of state as unique, as involved in and yet apart from, and as sovereign over, the other three parts.

One little rider: no-one envisages that the High Court will have, I think the word is 'justiciable' review power of a decision of the head of state. If the head of state makes a decision, that is it. You cannot then go and sue in the High Court to get it changed. That is why the reserve powers need to be so compressed. In my view, they should be no more compressed than what they are now to safeguard the Constitution. To take the Irish model, for example, the first responsibility of the President of Ireland, Mary Robinson, is that, when she thinks a law is contrary to the nation's constitution, she does not make any decision about it except to refer it to the High Court for a decision to be made. So, there is this interrelationship, and the head of state is to be very much a part of the three arms of government, as you put it, and also very much a part of the people.

Questioner — You have denounced radical, fly-by-night reform of the Constitution, but it is not clear to me how you can actually install an Australian head of state without making substantial changes to the mechanics of the Constitution. By this, I mean that the Governor-General presently has enormous powers, some of these you have referred to, but there are others. Many people do not know he also has the power to approve treaties or to block legislation. It seems to me, and this is probably regarded as a novel concept, the reason that those powers are not exercised improperly is not simply because of the inherent decency of the appointee; it is because if he or she did act improperly, the Queen would dismiss him or her. If you grant nonjusticiable powers to a Governor-General, surely you are opening a massive Pandora's box? Accordingly, I just cannot possibly see how you can maintain the present principles and conventions of the Constitution unless you are going to make radical reforms. In a sense, perhaps, your proposal seems to be a wolf in sheep's clothing.

Senator Teague — Thank you for your comment. I certainly believe that the public will reject any inadequate and unworkable proposition that is put before them, and long may they do so.

And also, that they will reject anything that is fly-by-night or anything that is a wolf in sheep's clothing.

There are two particular answers I would give you: I believe that the head of state of Australia should be dismissible on the same grounds as any member of the High Court. There are some well-defined precedents and definitions. I would take them all on board. The second is that dismissal of a Governor-General would be by the same process of appointment. That is, by a motion before the House of Representatives and the Senate that passes both houses by the same majority that is determined for the original appointment. One of the reasons I originally advocated a simple majority, or if I updated it a little bit, an absolute majority in each of the two houses, was to make that more workable. That is, the dismissal procedure.

If ever a head of state is acting and making decisions that are not justiciable, not reviewable by a court, the only way to deal with that — if it were the view of the appointing power, the Australian Parliament — would be to sack that Governor-General. The existence of that dismissal power in the Parliament is in my view sufficient, or is likely to be sufficient, for it to be a deterrent against any action by the head of state that would be outside of the actual powers and accepted conventions for the head of state.

Clearly the precedents of the order of decisions, involved in the constitutional controversies surrounding the events of 1974 and 1975, have led us to examine very carefully these events.

None of us ever want to see these controversies repeated in Australia. No politician in the current Parliament wishes to see the dismissal of government in the way that we saw in 1974 and 1975. I say that — while accepting the textbook writer's description of how Sir John Kerr acted within the powers of his position, that he felt his decisions to be correct and that he believed he was preserving the public's interest by calling an election — the question of timing, as to the exercising of any of these powers, clearly needs to be carefully addressed, and more so than is the case in the Australian Constitution now. I think that we are all wanting to be a part of the dialogue, so let us get on with it.