

**“POPULAR APPOINTMENT” (PA)
TOWARD A CONSENSUS REPUBLIC
FAQs**

Although a majority of Australians favoured becoming a republic, the 1999 referendum failed. It failed because people did not like the method of choosing the president (who was to replace the governor-general). Perhaps the republic should be deferred until we solve this problem. “Popular Appointment” proposes that the people, instead of the Queen, would approve the prime minister’s nominee for GG. Compared to the current situation and to the 1999 model:

Current: PM picks GG, Queen approves
1999 model: PM picks GG, politicians approve
Popular Appt: PM picks GG, people approve

Popular Appointment would remove the obstacle to a republic without changing other power relationships, i.e., without giving power to politicians, without giving the GG authority to rule, and without affecting the prospects of any republic design.

These FAQs are in two parts:

Process FAQs (how PA would work), and: **Reasons FAQs** (grounds for PA).

with three appendices:

Appendix A The unwritten constitution (“conventions”)

Appendix B Terms of reference for the Republic Advisory Committee (reported 1993)

Appendix C A timeline of republic activism

Process FAQs: how PA would work

P1. What is the “Popular Appointment” plan?

The plan is to replace the word “Queen” by the word “People” in two places in Section 2 of the Australian constitution and to change nothing else. Section 2 is the only reference to the governor-general’s appointment and dismissal so this change would entirely transfer the appointment power from the Queen to the people. Section 2 would read:

A Governor-General appointed by the ~~Queen~~ **People** shall be Her Majesty’s representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the ~~Queen’s~~ **People’s** pleasure, but subject to this Constitution, such powers and functions of the Queen as her Majesty may be pleased to assign to him.

That’s it. That is the whole plan. The Australian monarchy is undisturbed.

With no further changes to the written constitution and no changes to the unwritten constitution (the “conventions”) the sole effect would be that the people appoint the GG instead of the Queen.

The power to appoint and dismiss the GG is the only remnant of actual power the Queen has. This vestigial power is what the disagreement has been about since the early 1990s. If we

were to resolve it, we could then discuss whether and how to become a republic without being side-tracked by the question of the Queen's appointment power.

P2. What would be the actual procedure of the people appointing a GG?

Much the same as it has always been. At present the PM writes a letter to the Queen proposing a candidate and the Queen writes a letter in reply. With the change to Section 2, the PM would write to every citizen and they would write in reply.

Dear Sovereign Citizen,

The time has again come to appoint a new Governor-General. I am delighted to recommend Jo Bloggs AO. Ms Bloggs has an outstanding record of public service including... I ask you to appoint Ms Bloggs for a five year term by ticking the green box on the card and posting it in the pre-paid envelope. Thank you for your attention, Your humble and obedient servant, Bill Smith, Prime Minister.

By the green box would be: "Dear Prime Minister, I am pleased to appoint Jo Bloggs as GG for five years." By the red box: "Dear Prime Minister, I regret I must decline to appoint this candidate. Kindly submit another for my consideration."

So the procedure becomes a postal referendum. The conventions are respected; the constitutional process remains; the new sovereign simply takes over the duty of the old sovereign.

P3. Does the constitution provide for this letter from the PM to the sovereign?

It is in the unwritten constitution. The written constitution does not even provide for a prime minister. The prime-ministership, and the PM's arrangements with the sovereign and the GG, are "conventions." These and other unwritten conventions (see Appendix A) have applied federally since 1901 and in the Australian states since the 1850s. They evolved over 800 years. Apart from the bare mechanics, transferring the appointment power from Queen to People would not affect the unwritten constitution.

P4. Is postal voting secure and democratic?

Yes. It was done nationally for the election of delegates to the 1998 constitutional convention and has also been used in Australia for local government elections.

P5. Would the voters really know who they were appointing?

The sovereign only needs to know the candidate is of good character with a record of public service. That would be assured by the PM's recommendation and by media coverage preceding the referendum.

P6. Do any other countries do this "popular appointment"?

Yes, though we would be the first to employ PA for a head of state. All supreme court judges of Japan are so appointed. In the USA it is called the "Missouri Plan" and half the states appoint judges this way.

P7. Wouldn't the referendum be like the pretend-elections of the Soviet Union or China?

No. Soviet citizens could not decline to "elect" the candidate.

It was the republic proposal put to referendum in 1999 which would have created a communist-style process. Under the 1999 model the top power players were to agree in secret and then the members of parliament were to clap on cue, precisely as they do in China.

P8. Wouldn't the PM just nominate a mate?

That is sometimes the current practice. Sir John Kerr was a mate. It could be different if the people were sovereign. The PM has a prior informal discussion with the Queen about the proposed candidate so the PM can then expect the Queen's approval. Prior informal

discussion with the people would be via the media so all aspects of the candidate's suitability would be discussed.

P9. Isn't PA a recipe for a movie star or sports hero to get appointed?

PA changes nothing in this respect. One reason for becoming a republic is so an Australian would become the head of state. No profession would disqualify. The GG is someone the PM and the sovereign agree is suitable.

P10. What if, at the appointment referendum, the people rejected the PM's candidate?

Declining to appoint the candidate would be their right. The sovereignty is real.

However it is very unlikely. In the USA rejection is extremely rare. No judge appointments have been declined in Japan in the 60 years since the system was introduced.

Under the convention, the PM agrees informally on the proposed candidate with the sovereign. With the people as sovereign, media discussion and opinion polls would indicate if the candidate was not acceptable and the PM could withdraw the nomination.

If a candidate ever was rejected at the referendum the process would have proved its worth in having avoided a GG unacceptable to the people. For the PM, who would have to call another referendum for another candidate, it would be a debacle indicating poor political judgement.

P11. Still, with only one nomination, the people don't get a multiple choice, do they?

At present, the people don't get any choice at all. The PA proposal is simply to take over the Queen's powers. Which is better: the Queen does it or the people do it? To any democrat the answer is clear.

P12. Would voting be compulsory?

Yes; the convention is that the sovereign must reply to the PM's letter. Besides, compulsory voting is normal in Australia and with a postal vote there is no inconvenience or personal cost.

P13. On what grounds would voters decide whether or not to appoint the PM's candidate?

The same as ever: the person's past record and the PM's recommendation.

Media coverage should ensure that we learn of problems with a candidate before appointment rather than afterward as with Hollingworth. If doubts about the candidate's suitability arose, the PM would probably withdraw the proposal. Given the media interest, the PM would take more care.

P14. Wouldn't some people vote against the candidate just to nark the PM?

A few. Expressions of disaffection occur in ballots. That's democracy.

P15. Wouldn't the Opposition make political capital out of the appointment referendum?

No. That would politicise the GG's office and spoil an act of national concord. The candidate would, no doubt, speak to the Opposition leader and other leaders before agreeing to stand.

P16. Wouldn't some organisations oppose the nomination because they dislike the PM?

Possibly. To campaign against the candidate by criticising the PM would not wash so they would have to put up real grounds. That is, they would criticise the candidate's character or record of public service. This is just what the voters need to know.

P17. How would the GG be dismissed?

Dismissal of a GG would be as at present: the PM writes a letter to the sovereign, i.e., holds a postal referendum. It need not be slow and may be faster than getting a decision from the Queen.

No GG dismissal has ever occurred and the prospect could only arise as the culmination of some extraordinary political crisis. Opinion polls would show whether a dismissal referendum was likely to succeed and if so the GG would probably resign. If the people were not willing to dismiss the GG, the PM would have to put up with it, as is appropriate where the people are sovereign.

No governor or governor-general has been dismissed in over 100 years in the Commonwealth and 150 years in the states—about 200 appointments. A few have resigned.

P18. So PA would obviate the “race to the palace”?

Yes. It is widely thought that Kerr acted in haste because he feared Whitlam might sack him before he could sack Whitlam. The referendum requirement precludes ambush of the GG.

P19. Shouldn't the people be able to get rid of the GG without waiting for the PM?

Hollingworth's resignation seems to indicate they can do that now. It would not change. The convention is that the sovereign takes advice from the PM. If another process of dismissal is wanted, the convention could be replaced at any time. PA is not a plan to reform the constitution and it is not wise to attempt reform at the same time as transferring the sovereignty—see R9, R10 below.

P20. What if, for some unforeseen reason, PA was not satisfactory?

The basic process has worked for over 100 years so it should go on working with the people substituted for the Queen. However, if we didn't like it, no bridges are burnt and we could change to any other method. In theory we could even revert to having the Queen do it.

P21. Would the GG have authority to intervene in day-to-day government?

No. There is no power shift: no campaign, no policies, no promises, no mandate to rule. Since politicians are not involved in the GG's appointment, there are no private deals to pay off.

P22. What happens with the “reserve powers”?

Nothing. The GG's four powers (1) to appoint and (2) dismiss a government and (3) to hold, or (4) refuse to hold, an election are not affected. PA is probably the *only* way to release the Queen without affecting these reserve powers. The other constitutional conventions are also unaffected, including the convention that the written constitution does not mention the conventions.

Reasons FAQs: grounds for introducing PA

R1. Republic supporters are so divided, isn't a model endorsed by a big majority a pipe-dream?

No. In 1999 about 70% of Australians wanted a republic and if it again became a burning issue similar support may be expected. The support is there; all that is needed is a practical proposal.

R2. Shouldn't we first check general support for a republic by holding a national plebiscite?

It is not feasible. Framing the plebiscite question is awkward because “republic” is ambiguous. The real difficulty, however, is that the politicians expect that such a national plebiscite would

show strong support for a republic which would put the government under pressure to do something. Since the government does not know what to do, it would be political stupidity for the government to hold it. The leadership knows all this; the plebiscite proposal is a way to pretend to have a policy.

A plebiscite has been ALP policy since 2000. In 2004 the federal Senate held an inquiry into “the road to a republic.” It received over 700 submissions (which it took no notice of) and its report recommended *two* plebiscites. The ALP won government in 2007 and could implement its policy. Nothing happened. The Rudd government’s “2020 Summit” in 2008 advised a plebiscite. Nothing happened. Malcolm Turnbull (the country’s most prominent republican) became Opposition leader a few months later. Nothing happened. On a Greens initiative the Senate held an inquiry in 2009 into whether to hold a plebiscite worded: “Do you support Australia becoming a republic?” There were 249 submissions. The recommendations of its report *do not mention a plebiscite*. Instead they call for a “public awareness campaign”—in effect blaming the people for the lack of progress. Both Senate reports are online.

If the problem of the GG’s appointment were solved, the government would not fear a republic plebiscite. Until then, the government will not consider it.

R3. Would it really matter if the republic squeaked in with a bare 50 percent?

Very much. Where there is a comfortable majority, the defeated know their cause is lost. A bitter campaign resulting in a narrow yes-vote, where half of Australia celebrates the distress of the other half, would see the opponents blame media bias and perhaps fight on, state by state. Is the monarchy so bad that we should put ourselves through this?

A referendum for a republic is not an election where a mistake might be rectified in three years’ time. It is not a football final which measures the current skills of competing teams. A hard-fought campaign with each side seeking to “win” is improper. The switch to a republic is a permanent change of identity and we should do it willingly, not steam-rolled by the better-organised faction. A narrow victory would cast a long political shadow. It would be a poor start to the republic and it is quite unnecessary.

The politicians will not initiate another close-fought referendum. They will hold another republic referendum only when polls show a positive outcome to be certain.

R4. If getting a republic is so hard, won’t seeking wide agreement just make it harder?

It is probably essential. Proposals that seek a narrow victory by appealing to one republican faction increase the vote for the monarchy. We can have a referendum where we largely agree, or else have a political fight where republicans are divided and “yes” proponents try to overwhelm the “no” opponents—as in 1999.

The politicians would like some variant of the 1999 model (see R8, R15) but are not game to try it. A second, bipartisan, attempt at this “politicians’ republic” may signal that the politicians do not care about public division as long as they accumulate power. The attempt would be ridiculed by both monarchists and direct-election republicans and it could well be again rejected by the people. Hence, as long as the leaderships of the two major parties see only the two extreme options—popular election or parliamentary appointment—they may be expected to continue the program since 1999: do nothing.

With a majority of Australians in favour of a republic, it is a most effective pro-monarchy strategy to keep discussion confined to the two extreme options. Getting a republic is made hard by the polarisation into the two extremes.

It may be that PA is the only real possibility of severing ties with the monarchy.

R5. If the people appoint the GG what remains to do to make us a republic?

The written constitution contains a further two dozen mentions of the Queen. These must be amended for the monarchy to end. Popular Appointment may be regarded as “Stage 1.” It would remove the big obstacle to becoming a republic by resolving the issue we have been

quarrelling over since the early nineties, namely: who appoints the GG if the Queen does not. With the question of the GG's appointment out of the way we could consider what sort of republic we want and so move to "Stage 2", i.e., become a republic. All proposals would be on the table.

R6. Couldn't we do both stages, becoming a republic straight off?

It seems it is too difficult. In theory it is easy: simply replace all mentions of the monarch with "the People." That would create a republic. It also would not prejudice subsequent constitutional reform. However for some it would be too sudden; doing it in stages would be politically easier and it is generally prudent to make political changes gradually. By doing only Stage 1 everybody would then have an opportunity to argue for their preferred republic design.

R7. Is Popular Appointment really republican?

Very. The basic definition of a republic is a polity where the people are sovereign. Our monarch has only one scrap of real sovereignty: the power to appoint the GG. If the people are to be sovereign it is proper for them to take over this power. This would also apply to a substitution of "the People" for all two dozen mentions of the monarchy although there is no power attached to the other things.

R8. Supporters of direct election may see PA as low people-power. Would they endorse it?

Why not? PA does not affect the prospect of getting a republic at Stage 2 with a president popularly elected from multiple candidates. All options remain open.

However...! What are the prospects for a directly elected president in Australia? Realistically, none. The reason is that the politicians will not allow it. A referendum proposal must first pass through parliament. And in practice, to succeed at the polls, a referendum needs support from both major parties. No form of the Liberal Party of the last hundred years would have contemplated direct election and no imaginable future one will either. Sixty years ago Labor might have supported popular election but not now.

R9. Wouldn't it be better if a committee chose the candidate from public nominations?

PA is to transfer the Queen's appointment power, not reform the constitution.

There are many reform proposals: a nomination process, a fixed term for the GG, a minimum age, codified reserve powers, a new flag, a new preamble, CIR, an Aboriginal treaty, limits on Senate power, abolition of the states. Every such proposal is grounds for someone to object. One reason the republic is stalled is because reformers want to do everything at once. One thing at a time. It is already hard enough; extra reforms only make it harder.

PA is a beginning—or it lifts the barrier to allow a beginning. There are worthy reforms that could be made to Australia's constitution but any proposal involves investigations, counter-proposals, recommendations and political debates. PA requires only two words to be switched so there is little to argue over. Few politicians would declare that they prefer the Queen to the Australian people. Those who do prefer the Queen may try to tack on "improvements" as a delay, to complicate and confuse, and perhaps to derail. The point of PA is to transfer the appointment power and change nothing else.

There is a further reason to keep constitutional reforms separate: it keeps the politicians' fingers out of it. In Australia, any proposal to alter the constitution has to pass parliament before going to referendum. Almost all such proposals have been attempts by politicians to increase their power. Parliament presently has no role in appointing the sovereign and no role in appointing the GG. PA preserves that.

R10. Isn't becoming a republic our opportunity for constitutional reform? Wouldn't PA squander that opportunity?

Quite the contrary.

Firstly: there is no such opportunity; each reform proposal is something someone will object to and is thus an obstacle in the way of voting to break our ties with the monarchy.

Secondly: there *should* be no reforms associated. Breaking with the British crown is an emotional matter of identity, whereas reforms are rational matters reflecting political preferences. To combine them is to confuse them. There is wide popular consensus about breaking with the crown; there is no such consensus about constitutional reform. All the same, the introduction of PA, minimal though it is, would be a psychological tipping point for it would transfer, after two centuries of gradually increasing autonomy, the last tangible power from the mother country.

Thirdly: if PA were adopted for appointing the GG, the contentious aspect of the monarchy would not exist and political reforms could be debated on their merits without being side-tracked by arguments over the method of appointment. That is, PA would clear the space for reform.

R11. The GG's real job is to dismiss the government. Would PA provide sufficient authority?

PA seems to be the *only* way to provide it. Only a GG appointed by the sovereign has authority to act in the sovereign's name. To dismiss the elected government is huge power—as are the other three “reserve powers.” Such authority (and more) would also be granted if the GG/president were directly elected. However, apart from the fact that popular election is politically impossible (see R8), all such proposals actually plan to *remove* the GG's powers by “codifying” them.

R12. The reserve powers are very great. What prevents the GG using them irresponsibly?

Integrity. Wisdom. The attenuation of personal ambition that comes with grey hair. Conventions cannot be litigated so the sanction against a breach is public disapproval, not legal prosecution. The governors of the states also have these reserve powers. In 150 years there have been some incidents and “codification” of the powers (putting them in writing) has been discussed since 1932 when the NSW governor, Sir Philip Game, dismissed the Lang government.

R13. Wouldn't it be better if these unwritten “conventions” were written law?

Probably. It seems ridiculous that the prime minister does not officially exist. It is also peculiar that the GG (and state governors) have paramount powers the exercise of which is not specified in writing. But there is no incentive to do anything about it. During the 1970s and 80s a series of learned conferences agreed on some conventions and disagreed on others. It is very complex and even if the politicians and lawyers could agree on how to codify the powers, the constitutional referendum might well fail.

So we have to put up with it. It could be worse. The constitution of Great Britain is entirely unwritten. The Australian states, too, have no particular document called a constitution. They have various acts of parliament which are considered constitutional and they have the conventions.

R14. Where would Popular Appointment leave monarchy supporters?

They are not affected by PA itself for it has no impact on the monarchy. Some might welcome PA since it would guarantee the Queen's representative had popular support. However PA would leave the way open to a republic. Emotional supporters of the monarchy cannot be helped: they will be disappointed when the Queen goes. Rational supporters, i.e., those concerned about the reliability and the dignity of succession, should be happy with PA because it ensures both.

R15. Would the politicians accept Popular Appointment?

They should. It solves their problem. The politicians desperately want to talk the public out of an elected president. They would like to appoint the GG/president themselves (as they sought in 1999) but their absolute bottom line is: "No election!" because they fear it would cost them power. Since the early 1990s their reports, inquiries and speeches have been cast to show how frightful it would be. This insistence has made little impression on the public which is stubbornly pro-election. PA would not affect politicians' power.

Knowing only the two extreme options—popular election versus parliament appointment—politicians think in terms of re-running the 1999 referendum. But the people do not want it and if the two major parties colluded to push it onto the people, it would be very divisive. PA has the potential for a 70% endorsement or even higher if some monarchists vote for it.

Popular Appointment may be the only process acceptable to both people and politicians.

R16. Wouldn't the PM lose some power under PA? Would the PM endorse it?

It is probably not of concern. Whether the sovereign is Queen or People, the prior informal discussion should ensure the PM is not embarrassed. Since the discussion would be public it would mean the PM has to be more careful which is a small loss of power. It just shows there might be real meaning to becoming a republic. Either we agree the people will be sovereign or we promote another sham. PA is genuine and the PM who supports the substitution of people's appointment for Queen's appointment would accept that.

The PM's power loss under PA is minor compared with that under the 1999 parliament appointment model. There the PM had to seek the approval of the leader of the Opposition who was thus in a position to extract almost any backroom quid pro quo.

For the sovereign to have real power to reject the PM's nominee would be to restore the original constitutional situation. In 1930 the King rejected PM Scullin's candidate for GG. Scullin protested and got the rejection overturned. In 1946 the King rejected NSW premier McKell's candidate for governor and McKell protested in vain.

R17. Regarding Stage 2: Could Australia really become a republic just by switching "People" for "Queen" in two dozen places in the constitution?

Yes. In some places the wording has to be adjusted to fit the context but it is quite straightforward. It is the logical way for sovereignty to pass from a monarch to the people. It is the way we could become a republic with least disturbance, i.e., without affecting other power relations. Moreover it would be very republican in that it would directly transfer the "royal prerogatives" which are the philosophical and statutory (e.g., Section 61) source of the power of the Australian government.

But Stage 2 is the more distant future. If the problem of appointing the GG were resolved we could discuss these matters and there would be many ideas for turning Australia into a republic.

R18. Might PA become ensconced and so inhibit alternative proposals?

PA could not be more ensconced than the current arrangement. If PA were introduced we probably wouldn't immediately change again but with a realistic prospect of a republic, change would be in the air and further change would be possible. By contrast, the 1999 proposal to give the appointment power to parliament would have ruled out further change. Only politicians can call referendums and politicians do not give away power. Of the 44 referendums they have called since federation, only two (in 1988) might have given power to the people; almost all were to increase the power of the federal government.

R19. What if we adopted PA but then decided not to become a republic?

PA is worthwhile in its own right. In a constitutional monarchy the Crown is expected to have public support which is now not the case in Australia. PA would ensure that the representative of the Crown did have popular support.

Adoption of PA would permit a real debate on the pros and cons of becoming a republic and we could decide not to proceed. But monarchy is not in the nature of Australia and though there would be many contested proposals, with PA having resolved the really contentious issue, acceptable constitutional amendments would probably be soon worked out and endorsed at referendum.

R20. If PA went to referendum how would voting divide up?

The referendum question would be something like:

“Do you agree to change two words in Section 2 of the Constitution so that the People would appoint the Governor-General instead of the Queen?”

Republic supporters would have nothing to lose and a probable republic to gain. That should be a good 70%. Since PA does not affect the monarchy, some monarchy supporters would vote in favour of democracy. Other conservatives might see PA as relatively mild and vote for it as preferable to more radical proposals.

Who would be against? Dedicated monarchists. Though PA does not disturb the Queen, they would see it as the thin edge of the wedge—rightly so, as it would clear the way for a republic. Still, it is hard to see what their argument would be. Would they claim the Queen does a better job than the people would? She didn't do a very good job with Hollingworth. They may have a problem with campaign credibility.

PA should pass with a resounding majority.

R21. In sum, what are the reasons for “Popular Appointment”?

- It transfers sovereignty from monarch to people as is appropriate to becoming a republic.
- It continues the system which has worked satisfactorily since 1901 whereby the GG is the agent of the sovereign, appointed by the sovereign, and holds the sovereign's authority.
- The constitutional change is extremely simple.
- It continues to exclude politicians from the selection of the head of state. As a result:
 - It makes the people sovereign without political power upsets.
 - It has no effect on reserve powers or on other conventions; “codification” is obviated.
 - It preserves the dignity and predictability of the office of governor-general.
 - It clears the way for rational discussion of a republic.
 - It has no effect on the prospects for any republic design.
- There is a hope of real consensus. About 70% of Australians favour becoming a republic but cannot agree on how to choose the president. They could agree with “Popular Appointment” for it removes the obstacle to becoming a republic but does not alter power relationships and does not inhibit anyone from promoting their preferred republic model.

R22. What are the realistic prospects for progress, i.e., for adoption of PA?

Progress would depend upon recognition—recognition that there is an alternative to the two universally known proposals of popular election and parliamentary appointment.

In the early 1990s the debate about an Australian republic shrank to an argument about who should take over the Queen's job of appointing the governor-general. This debate further shrank to the binary extremes either (a) a popular direct election of the president, or (b) parliament appointing a person agreed by the leaders of the Labor and Liberal parties. These two options, *popular election* versus *parliamentary appointment*, is where the debate remains, inasmuch as there is any debate.

The 1993 RAC Report

This polarisation was magnified by the Report of the 1993 Republic Advisory Committee (RAC), chaired by lawyer and banker, Malcolm Turnbull. The terms of reference (Appendix B below) required the Turnbull Committee to “describe and analyse the possibilities and main arguments for and against them.” However the Report does not describe the possibilities of popular appointment, or of parliamentary election.

Report: *people elect* versus *parliament appoints*

Omitted: *people appoint* and *parliament elects*

The Turnbull Committee held hearings around Australia. It received over 400 written submissions and over 400 oral submissions. Did no one suggest that in a republic the people are sovereign, and therefore the people should replace the monarch? In 1992 Tom Keneally, founding chair of the Australian Republican Movement (ARM), had suggested a head of state “who is appointed by and can be removed by the Australian people.”¹ But the Report does not mention the possibility and the submissions to the RAC were not published.

The option, *parliament elects*, was also ignored, although Item 3 of the Terms of Reference explicitly required consideration of “election by the Federal Parliament.” It seems to be a clear breach. The terms also state that the Committee “should not make recommendations” yet of its two extreme possibilities, the RAC Report has pages of argument *against* popular election (pp. 69-73) and no word in its favour, and it has pages of argument *for* parliamentary appointment and no word against (pp. 66-69).

This biased report became the handbook for subsequent discussion.

Con-Con and referendum

Parliamentary appointment was subsequently promoted by the ARM which by then was chaired by Malcolm Turnbull. Supporters of this parliamentary appointment included almost all politicians and celebrities and most of the press. Politicians and the well-organised ARM dominated the constitutional convention held in Canberra in February 1998 which voted (barely) for parliamentary appointment.

After years of this one-sided publicity, a broad section of the public still favoured direct election. In November 1999 parliamentary appointment was submitted to the people as the only option: take it or leave it. Although opinion polls were showing up to 70% of voters in favour of a republic, this “politicians’ republic” gained just 45% of the vote and the referendum failed.

In the years since, the polarisation has not shifted. It is clear that proponents of neither extreme model can persuade the other. Indeed, they hardly try. The dispute is very negative with supporters evidently more horrified by the other side than enamoured of their own, more motivated to describe the political catastrophe the other side would bring down on us than to demonstrate the blessings of their own preference. Neither side positively promotes its own position and neither responds to the alleged defects; each just attacks the other. In the official 1999 referendum information pamphlet, the “no” case filled its allocated space with the faults of the proposal. The “yes” case did not respond to these faults and had so little to say in favour of its case that it left most of its allocated pages blank. Of course, it could not fill its pages with vituperation against direct election as no such proposal was being put before the people.

Stalemate

The two entrenched republican factions, *popular election* and *parliamentary appointment*, have a veto over each other since either can join with monarchy supporters to defeat any proposal. For the republic to progress, the two factions will have to agree. Thus in terms of practical politics, both the extreme models appear to be lost causes. A third option is needed.

Like the two republican factions, supporters of the monarchy also do not respond to criticism; instead of defending the monarchy they criticise republican proposals. They need do no more: as long as republicans are divided, the monarchy is not under serious threat. The ARM, now a

¹ Tom Keneally, Republic Debate, “Queen indeed or simply quaint?”, *The Australian*, 15 February 1992.

moribund rump, claims it endorses no model and so monarchists ridicule it for wanting a republic without knowing what sort. Actually, the ARM still wants parliamentary appointment.

As long as each republican faction is utterly opposed to the other faction's model and nurses a hope that its own model might somehow get up (or fears the other model might get up), the stalemate will continue. The futility would be more easily recognised if it were appreciated that the binary extremes which have dominated debate for two decades are *not* the only possibilities, if it were known that there *do* exist other viable options. The moderate option of parliament electing (as in Germany and Italy) would probably now be seen as yet another form of "politicians' republic." In that case PA may be the only option which is without the defects of the two extreme models.

PA: a third way to a genuine republic debate

From the point of view of the direct electionist, PA perfectly achieves the basic requirement of excluding politicians. From the viewpoint of the parliament advocate, it perfectly achieves the basic requirement of not giving the GG a mandate to rule. From the perspective of any republican, PA perfectly achieves the basic requirement of making the people sovereign. And PA has no effect on the future prospects of popular election, parliamentary appointment, or any other proposal.

PA ignores the question of the pros and cons of monarchy versus republic. PA concerns only the matter that has been argued over for two decades: the Queen's appointment power. To date, we have not really had a debate about a republic, only an angry polarised row about the appointment power. Resolution of this contentious issue would oblige republicans to produce actual republic proposals and demonstrate their virtues. Similarly, monarchists would have to actually defend the monarchy. In short, the adoption of PA would permit a genuine discussion of whether and how to become a republic.

It has proved impossible to discuss an Australian republic without the question of the Queen's appointment power taking over. Yet this matter concerns only two words in Section 2. There are about two dozen mentions of the monarchy that must be dealt with in order to become a republic. We can remove the Queen's appointment power without becoming a republic but we can't become a republic without removing her power. The process is stalled. If we were initially just to patriate this appointment power, then tackling the problem of how to become a republic would become much easier and discussion about it more honest.

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APPENDIX A: THE UNWRITTEN CONSTITUTION ("CONVENTIONS")

The Queen, GG, Chief Justice, ministers, and parliament, are defined in the written Constitution. The People are mentioned (ss. 7 and 24) but not defined.

Not mentioned in the written Constitution are: the PM, the cabinet, the GG's obligation to take the PM's advice in all things except the exercise of the reserve powers.

The *unwritten* constitution of Australia includes the following conventions:

- there is a "Prime Minister" (PM)
- the PM is appointed by the Governor-General (GG)
- the PM should be a member of the House of Representatives

- the GG appoints a PM who will be supported by a majority in the House of Reps
- the PM advises the GG whom to appoint as ministers; these form the “cabinet”
- a PM who ceases to command a Repts majority resigns. All ministers then cease to exist
- the GG takes ministers’ advice in all things except when invoking the “reserve powers”
- the PM recommends someone to the Queen as the next GG
- the Queen and the PM informally discuss the appointment of the next GG
- the PM formally recommends someone, in writing, via the current GG, to be the next GG
- the Queen accepts the PM’s nominee and writes, via the GG, appointing the next GG
- the appointment is for five years (and a GG can be reappointed to a second term)
- the Queen dismisses the GG on the PM’s recommendation (never happened in Australia)
- the GG officially acts in the name of the Queen, actually acts on the people’s behalf
- in extraordinary circumstances the GG can resort to a “reserve power”
- a reserve power is invoked in the name of the Queen but in the interests of the people
- the GG may exercise the reserve powers contrary to the PM’s advice:
 - 1 appoint the PM.
 - 2 dismiss the PM. This automatically terminates all ministers.
 - 3 dissolve the parliament to force an election. This reserve power might not exist.
 - 4 refuse the PM’s request to dissolve parliament (i.e. refuse to call an election).

None of the above are in the written Constitution. Note that:

- the Queen and the PM informally and formally communicate via the GG
- parliament has no role in appointing or dismissing the GG
- who the PM and the Queen might consult about the next GG is up to them.

APPENDIX B: TERMS OF REFERENCE FOR REPUBLIC ADVISORY COMMITTEE

(From page iv of the RAC Report, 1993. The *emphasised* terms were not honoured)

The current purpose is to obtain an options paper which describes the minimum constitutional changes necessary to achieve a viable Federal Republic of Australia, maintaining the effect of our current conventions and principles of government. 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. Even with this limited purpose, however, it will be necessary to examine a variety of practical possibilities and consult widely with the community.

The Committee should describe and analyse the possibilities and *the main arguments for and against* them, but should not make recommendations as such. The Committee’s final report should be available to the Prime Minister by 1 September 1993.

In the light of the above, the report should address the following matters:

1. The removal of all references to the monarch in the Constitution.

2. In light of this, the need for and creation of a new office of Head of State and consideration of what the office might be called.
3. The provisions for the appointment and termination of appointment of the Head of State including the method of selection and appointment, eg
 - selection and appointment by the government of the day
 - selection by the government and endorsement by both Houses of Parliament
 - appointment by an 'electoral college' comprising representatives of various parliaments
 - appointment following ***election by the Federal Parliament***
 - popular election
4. How the powers of the new Head of State and their exercise can be made subject to the same conventions and principles which apply to the powers of the Governor-General.
5. The nature and amendments to the Commonwealth of Australia Constitution Act required to implement the options.
6. The implications for the States.
7. Other aspects which arise in the Committee's deliberations and consultations providing they are relevant to the overall objective in the opening paragraph above.

APPENDIX C: TIMELINE OF REPUBLIC ACTIVISM

From early 1800s

Sporadic suggestions for an Australian republic.

1991 ARM formed

Labor party adopts policy for Australia to become a republic.

Aust. Republican Movement (ARM) formed with Tom Keneally as chair.

1993 RAC report

Keating govt's Republic Advisory Committee (chaired by Malcolm Turnbull who has by now become the ARM chair) tours country holding hearings. RAC Report says a president should do the job of governor-general. Sets out four options ("models") for how president should be chosen of which two are fake and two are serious and earnestly discussed:

- parliamentary appointment
- popular election

Re parliamentary appointment: all arguments are in favour; there are none opposed. Re direct election: all are against, none are for. This conflicts with popular opinion. From this point most people assume no other models exist.

Feb 1998 Constitutional Convention

Con-Con with half the delegates elected by postal vote; half appointed by federal and state governments. Discussion dominated by politicians and ARM. Convention votes narrowly for parliamentary appointment model. PM Howard agrees to put it to referendum.

Nov 1999 Referendum

Referendum rejects "politicians' republic" 55% to 45% (fails in all states; passes in ACT).

2000

ALP policy to hold a preliminary plebiscite on republic.

2001

Corowa conference—enthusiasts' talkfest

ca 2001

ARM reconvenes, adopts policy for preliminary plebiscite (Turnbull gone). Says it is up to the people to choose the model.

2004 Senate Inquiry

Senate "Road to a Republic" inquiry receives 700 submissions (including a "plethora" of republic models) which it ignores and recommends ARM's plebiscite on the condition that there is a second plebiscite to choose a model by preference voting. The report is online.

2008

Rudd Labor government holds 2020 Summit which recommends plebiscite.

2009 Senate Inquiry

Senate inquiry (a Greens initiative) on whether to hold a plebiscite worded: "Do you support Australia becoming a republic?" Received 249 submissions. The recommendations of its report *do not mention a plebiscite*. Instead they call for a "public awareness campaign"—in effect blaming the people for the lack of progress. Both 2004 & 2009 reports are online.

2017

ARM still exists but effectively comatose. Since 2001 the ARM has refused to discuss republic models and is impervious to criticism of this policy. ARM remains "top-down" with a website which talks about "a conversation" on the republic but which does not allow any conversation. ARM publicly declares its refusal to discuss models and hires professional political campaigners to promote an Australian head of state.

END