On 12 August 1999 the House of Representatives and the Senate passed the legislation necessary to hold a referendum on Constitutional change in Australia, which would result in Australia becoming a Republic. Two separate questions were put to the Australian public.

(1) To alter the Constitution to establish the Commonwealth of Australia as a Republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament.

(2) To alter the Constitution to insert a preamble.

The two questions were independent and the result of one did not affect the other.

On November 6 1999, Australians voted in a constitutional referendum on whether Australia should become a republic and whether to insert a preamble to the Constitution.

In the period immediately prior to the referendum, the Australian Electoral Commission hosted a study tour for electoral administrators from some fifteen countries. The study tour allowed the participants to observe the procedures for holding a referendum in Australia.

While the study tour focused on the institutions, procedures and technical issues associated with holding an election, it was considered important for the participants to have some understanding of the social and political context within which the referendum was taking place. The Australian Electoral Commission invited the Centre for Democratic Institutions to host a seminar for the participants, outlining the constitutional, political and social implications of Constitutional change, as well as the cases for and against the proposed changes.

On Friday 29 October, CDI held the Seminar on Referendum Issues. The Seminar was facilitated by CDI Executive Officer, Sharon Bessell, and included three eminent speakers: Mr George Williams an expert in constitutional law from The Australian National University, Ms Anne Witherford of the Australian Republican Movement and Sir David Smith, a former Official Secretary who served under five Australian Governors-General. Summaries of Mr Williams’ and Ms Witherford’s presentations are available, as is the full text of Sir David’s presentation.
Summary of Mr Williams’ comments to the Seminar on Referendum Issues. Please note that the following is a summary of Mr William’s presentation, prepared by the Seminar facilitator. It is not a verbatim record and should not be quoted.

**Historical overview**

Australia’s first Constitutional Conventions were held in the 1890s and focused on issues relating to trade and finance. When the Constitution came into force in 1901 it was a treaty between states, not a compact of the Australian people, a situation which may have changed during the course of this century.

Republicanism was not a major issue in the 1890s. In 1891 George Dibbs put forward the argument that Australia would inevitably become a republic; a view rejected by many of Australia’s founding fathers, including Alfred Deakin and Parkes.

In the 1890s it was also suggested that the Governor-General be popularly elected. This was rejected by a large majority of those involved in drafting the Constitution. Instead, the Constitution states that the Governor-General is to be appointed by the Queen. Following the convention of the Westminster System, the Queen, in practice, acts on the advice of the Prime Minister.

The Constitutional Conventions of the 1980s did not include women or indigenous peoples; nor were ethnic communities represented.

It took a series of referenda before the required majority was achieved, and then it was necessary to secure the consent of the British Parliament. The British Parliament made some changes to the proposed Constitution.

The Australian Constitution is notable in that it does not contain a Bill of Rights (Britain adopted a Bill of Rights in 1998).

The Constitution was drafted with negative references to Aborigines, who were not included in the census. At the time of the drafting of the Constitution Aboriginal communities were not seen as having a long term future, and it is these past attitudes that have fuelled the current desire for reconciliation. The provision of the Constitution that excluded Aborigines from the census was deleted in 1967.

The Constitution tends to give the false impression of the Australia system of government. On reading the Constitution, one could think that the role of Governor-General is one of a dictator. Indeed, the Constitution can only be understood within the context of the unwritten conventions of government. Most important of these is that the Prime Minister advises the Governor-General and the Governor-General must follow that advice.

The Constitution does not mention a Head of State, and one of the current debates revolves around who the Head of State is: the Governor-General or the Queen.
Several provisions of the Constitution are now obsolete and have no operational force.

Today, Australia is one of the world’s oldest continuing democracies.

**Current Debates**

The 1998 Constitutional Convention produced a model for the Republic, which will be put to the vote on 6 November. The model does not provide for the direct election of a President, but provides a strong role for popular opinion through elected representatives. The model requires a two-thirds majority of Parliament to elect the President, this means that bipartisan support is necessary. While the President would be elected by Parliament, the public can nominate Presidential candidates.

A popular referendum is the only means of changing the Constitution. The history of referenda in Australia shows us that it is very hard for referenda to succeed. To date, there have been 42 referenda of which 34 have failed. This suggests that it will be difficult for the pro-Republican lobby.

The preamble is the forgotten question in the Referendum. The Australian Constitution already has a preamble and should this question succeed, a second preamble would be inserted into the Constitution. The new preamble would not allow the Courts to use it in interpreting the Constitution. This raises questions about the role and usefulness of a new preamble.

The current Constitutional debate has revealed low levels of public knowledge about our system of government. Most Australians do not fully understand the current Constitution. The Australian education system has been quite weak in explaining the political system.

In 1994 a government-sponsored survey indicated that 47% of Australians surveyed knew that we have a written Constitution. Of those who knew that we do have a written Constitution, only 18% could name one thing that the Constitution does. This raises something of a problem when people are compelled to vote, as in Australia.
Summary of Ms Witherford’s comments to the Seminar on Referendum Issues. Please note that the following is a summary of Ms Witherford’s presentation, prepared by the Seminar facilitator. It is not a verbatim record and should not be quoted.

Existing levels of ignorance within Australia mean that it is necessary for the ‘Yes’ Campaign to both educate and argue.

The ‘No’ Campaign has been able to harness the lack of knowledge to defeat the proposal but arguing that ‘if you don’t know, vote no’.

The ‘Yes’ case has backing from all political parties. The Australian Labor Party supports the proposed Constitutional change, the Liberal Party is split, the Democrats support the proposed change with the exception of two Senators, and the Greens support change.

The referendum needs a majority nation-wide and a majority in four of six states.

Australia is now legally and politically independent, and this should be reflected in our Constitutional arrangements.

Forty percent of the younger generation has one parent from a non-English speaking background.

The Queen visits Australia once in seven years and lives in Britain. Her first loyalty is understandably and necessarily to Britain.

There are four main arguments to support a ‘Yes’ vote at the Referendum and the shift to a Republic:

1. Australia is now a very different nation from the 1890s. It's time!

2. A Republic is about reflecting the reality of Australia and Australian values. Australia is a very egalitarian nation, and our Constitutional arrangements should reflect that.

3. Australia needs a Head of State who can advocate on behalf of Australia’s trade interests. In 1998, the Queen visited in Malaysia and promoted British company’s interests over Australian interests; the British company won the contract in question.

4. The British system is sectarian, sexist and hierarchical. These characteristics do not reflect Australian values. It is necessary for Australia to send a message that we have our own values. It is necessary to send a message about Australia’s diverse and multi-cultural identity.
Australia has taken some steps towards independence from Britain. In 1942 and 1986 avenues of appeal to the British Privy Council were abolished. Australia changed its national anthem and changed the oath of allegiance from the Queen to the Australian people. Changing our Constitutional arrangements is a further step in an evolutionary process.

The proposed change is minimalist; it is the change of the symbol while retaining the Westminster system and the role of the Prime Minister.

Under the proposed system, the election of the President would be a three-fold process. First, the public would nominate potential candidates, the list of candidates would then go to a thirty-two member committee and finally, the Prime Minister and the Leader of the Opposition would approve the names and Parliament would vote.

This system means that the people do have a role in the process.

The proposed change would improve our system in four ways:
1. Australia would have an Australian Head of State.
2. The people would have a say in who their Head of State is. Currently, one person – the Prime Minister – can appoint and dismiss the Governor-General. The Queen has no real say.
3. The President would not be a politician. In the past many Governors-General have been politicians.
4. There are safeguards: appointment of the President would be a three stage process. After dismissing a President, the Prime Minister would have to return to the House of Representatives, where the decision would be scrutinised.

A Rebuttal of the ‘No’ Case
The case for the Republic is essentially about symbolism and national identity. The ‘No’ case argues for no change but avoids defending the status quo. The ‘No’ case makes no mention of the Queen. Despite the current debate about who is the Head of State, the Queen is actually the Head of State, this is reflected in our currency which has the Queen’s image.

A major criticism of the ‘No’ case is that it capitalises on current levels of ignorance.

The argument put by the ‘No’ case, that people have no say in the proposed model, is erroneous and glosses over the fact that at present the people have no say. The ‘No’ case claims that under the proposed model the Prime Minister could dismiss the President at will. In fact this is the case at present. The proposed model for a Republic may strengthen the role of the President vis-à-vis the Prime Minister because the latter would have to justify his or her actions to the House should the President be dismissed, and there would be political consequences.

The proposed model requires minimal change to the Constitution and the Constitutional Convention adopted this model purposefully. The ‘No’ case talks about 69 changes to the Constitution, but 43 of those changes require no more than replacing ‘Queen’ or ‘Governor-General’ with President. In reality there would be only one change.
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