Constitution Australian Essay, Research Paper

Will Australia become a republic in the next twenty years? This is a difficult question to speculate on. The main area of law governing this issue is section 128 of the Commonwealth of Australia Constitution Act 1900 (U.K). Other issues in this debate are regarding appointment, termination and the powers to be awarded to the proposed Head of State, and the impact the change will have on the States. Examining the history of Australian Legislative powers, and reasons why Australians would want to change, is also useful when speculating on this issue.

The Colonial Laws Validity Act 1865 emphasized self-government in the colonies, although denying them the power to amend or repeal British law. (Enright et.al 1995, p.14) It wasn’t until Australia became a Federation with the enactment of the Australian Constitution Act 1901(U.K.) on 1 January 1901, that Australia had their own law making powers. However, these powers were still limited by the Constitution. (Waller et.al 2000, p.71) When the Statute of Winchester 1931 invalidated the Colonial Laws Validity Act 1865 the Commonwealth gained the power to pass their own Acts, irrespective of whether they were consistent with British Law. However, this power did not extend to the States. Remaining restrictions were removed with the enactment of the Australia Acts 1986. Australian Parliaments and Courts now had full control of Australian Laws. (Enright et.al 1995, p.p. 16-17 and Carvan et.al 1999, p.p. 25-26)

Although the Monarch ceased to be active in government, the Queen still remains as the Constitutional Head of State, with Monarchial power being exercised through the Governor-General. With the exception of ‘reserve powers’ the Governor-General acts on the advice of the government. (Enright et.al 1995, p.19 and Brown et.al 1995,p.16)

Opinion polls show that the majority of Australians would prefer a Republic system of government. (Chisholm et.al 1997,p.68) There is a feeling that for Australia to be truly independent, the ties with England would need to be severed. (Mack, K., in Corkery et.al 1998, p.34) One view would be to simply abolish the Monarchy. (Winterton, G., in Stephenson et.al 1994, p.17) However, others might say that our current system is already mostly Republican with the only Monarchial elements remaining being the concentration of Royal powers in the Ministry. (http://www.aph.gov.au/senate/general/republic.htm#aussie)

In any event, ‘severing the Royal ties’ is not that easy, as amendments to the Australian Constitution Acts 1900(U.K) can only be passed in Parliament in accordance with section 128. (Chisholm et.al 1997, p.61)

Section 128 prescribes that changes can only be implemented by referendum. To hold a referendum a Bill needs to be passed through the Commonwealth Parliament to authorize it. Once authorized, a majority of votes, as well as a majority of States is required. This dual criterion has proven difficult to achieve, with only eight referendums being successful since Federation. (Brown et.al 2000, p.p. 68-69 and Chisholm et.al 1997, p.64)

If a referendum is successful, the Governor-General will need to assent to the Bill to become an Act. Moreover, since the referendum effectively abolishes the Office of the Governor-General, alternative arrangements could be needed to be made to proclaim a new system of government. (Brown et.al 2000,p.69)

If Australia is to become a Republic, issues pertaining to appointment, dismissal and powers to be vested in the Head of State needs to be defined.

One option for appointing the Head of State would be by a vote of the people. This however could undermine political neutrality, which would be important to maintain, to promote National cohesion. To avoid a political appointment an election of a super-majority of both houses of Parliament, which would require the agreeance of both parties could be considered. (Winterton, G., in Stephenson et.al1994, p.p 22-23)

The next issue is how the new Head of State would be removed from Office. Currently the Queen, on the advice of the Prime Minister can recall the Governor-General. (Winterton et.al 1986, p.115) However, with the abolishment of the Monarchy, the options remaining would be dismissal by a joint sitting of Parliament, or it can be a responsibility of the government of the day. (Brown et.al 2000, p.54)

Finally, should the new Head of State have the same role as the Governor-General, which includes ceremonial duties, conferring powers and acting on the advice of the government? Moreover, would they have reserve powers? Reserve powers would enable the Head of State to be the “ultimate Constitutional guardian”, but it would also increase the opportunity for abusing these powers. On the other hand, if reserve powers were not given, then the government would be less flexible. Furthermore, any reserve powers afforded would need to be clearly defined. (Winterton, G., in Stephenson et.al 1994, p.p. 20-21)

Another important issue that would need consideration in Australia becoming a Republic is the impact a Republican Commonwealth would have on the States.

The question arises if the States can remain Monarchial with a Republican Commonwealth. If not they will need to amend their Constitutions to convert to a State Republic. (Carney et.al 1994, p.p. 183-184)

Amendments to State Constitutions can occur in two ways. The first is pursuant too Section 15(1) of the Australia Acts, which requires concurrence of all States. If one State Parliament disagrees, then amendments can only be made under Section 15(3). This requires changes to the Commonwealth Constitution by Section 128, conferring the power to make the necessary amendments to the Australia Acts on the Commonwealth Parliaments. (Ibid.) In other words, Section 128 can be used to force the States to change their system of government. (Carney et.al 1994, p.2000)

As previously mentioned, speculating on Australia becoming a Republic in the next twenty years is not an easy task. This essay has only touched on some of the many, unresolved issues in making the change. As the history of Australian Legislative powers demonstrate, the Monarch’s influence has diminished over time, making their presence being that of a figurehead. However, to make the final move towards independence, a referendum pursuant to Section 128 of the Australian Constitution Act will be needed. In the event of a successful referendum, issues pertaining to the appointment, dismissal and powers afforded the Head of State will need to be clearly defined. In determining the powers afforded the Head of State, safeguards need to be put into place to prevent any opportunities for abuse of government power. (http://www.aph.gov.au/senate/general/republic.htm#aussie) Furthermore, the impact a Republic Commonwealth will have on the States would need to be examined.

With many experts being so unclear on the complex issues presented by the possibility of change, is it any wonder why the general public is so confused. Unless clear solutions, instead of possibilities are presented to Australian voters, this author would not feel that an Australian Republic is likely to eventuate in the next twenty years.

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