

## **Chapter One:**

### **A Republic: The Issues**

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It is not my intention now to enter into the debate on the question whether Australia should become a republic. I remain unconvinced that the Constitution of Australia would be made more democratic, efficient or just by breaking the existing links with the Crown, and I regard as fanciful the suggestion that under a republic the Head of State would give Australia a sense of unity and would heal the divisions that are said to exist in our society. However, this is not the occasion to press arguments of that kind.

My present purpose is to discuss what issues would have to be decided before our Constitution could be converted to one that would be republican in form as well as in substance.

Much of the commentary in the media, which is not infrequently superficial and biased, suggests that the principal question to be decided would be how the Head of State under a republic should be chosen. That question is only one of many, and it is obvious enough that it cannot sensibly be discussed until it is known what role the Head of State is intended to have, and what powers it is proposed should be given to the holder of the office.

An initial question is whether, under a republic, there should be a Head of State who is appointed or elected to that office alone. An alternative possibility is that the role of the Head of State could be filled by the holder of an existing office, e.g. by the Prime Minister, the Speaker, the President of the Senate or the Chief Justice, or that the functions of the Head of State could be divided between the holders of those offices or some of them.

There would be obvious objections to the adoption of any expedient of that kind. If the powers and functions of a Head of State were given to someone who held another political office, the result would be to enhance the status and influence of that office in a way that might be regarded as unacceptable. If all such powers and functions were conferred on the Chief Justice, the result would be that that office would be given a political character, and if only ceremonial functions were conferred on him the heavy burden of that office would be unduly increased.

The representative and symbolic role which a Head of State is intended to have would be attenuated if there were no separate Head of State. In what follows I shall assume that if a republican Constitution were adopted it would provide for a separate Head of State, although that is a question that would have to be decided.

The question would then arise, what title should be given to the Head of State under a republic? Those advocates for change who wish to minimise the significance of the conversion might prefer to retain the title of Governor-General, but any title which ingenuity or ambition might suggest could be selected. However, President seems a likely choice, and for ease of expression I shall use that name to refer to the Head of State under a republican Constitution.

An important question that would have to be decided at the outset is what type of republican Constitution Australia should have if the conversion were to be made. Existing republican Constitutions throughout the world differ widely in detail. At one end of the range the President has full executive power, and is not responsible to the Legislature for the exercise of that power. That is the position in the United States. However, a President who has extensive executive power may be required to share that power with a Prime Minister (as in France) or may operate

under a Constitution which provides for responsible government (as in a number of former British colonies).

At the other end of the range the President exercises little more than ceremonial functions; that is so in Germany and the Republic of Ireland. In between these extremes there are Constitutions under which the Presidency is largely a ceremonial office, but the President still retains some important powers.

For Australia to adopt a Constitution which provided for an executive President on the American model would be to effect a change of the most radical kind, but the influence of American society in Australia is so strong that it is possible that this model might attract some support. On the other hand, a Constitution which allowed the President in practice to exercise only ceremonial functions would be likely to find favour with those who share the opinion which was held by the framers of the German Constitution, that democratic institutions are most likely to be preserved if the position of the Head of State is purely a titular one.

A more pragmatic (if unattractive) reason for adopting a Constitution of that kind is that such a President would lack the ability to check governmental abuses - an argument which may have appealed to Mr De Valera when the Constitution of the Republic of Ireland was under preparation. It is not my purpose now to discuss fully the a