

A FEDERAL PROCESS: OPTIONS FOR PRESIDENTIAL SELECTION INVOLVING THE PEOPLE, THE STATES AND THE COMMONWEALTH

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INTRODUCTION

This paper is directed at considering options for choosing Australia's head of state which that involve an element of federalism

The first part of the paper draws connections between the process of choosing a head of state, and the political system within which that head of state exercises powers and performs functions. In that context, it looks at the 1999 referendum proposal, and notes that that proposal appears to be most consistent with the type of political system applying to Australia.

The second part of the paper considers in more detail other electoral systems for choosing a head of state in more detail, concentrating on those which that include federal elements.

The third part of the paper considers the Australian position. It challenges the proposition that it is appropriate to include federal elements in the process for choosing an Australian head of state, and concludes that there is no real need to do so. It goes on, however, to describe a number of possible options which that could be applied to Australia, noting their advantages and disadvantages.

PART 1 THE CONNECTION BETWEEN POLITICAL SYSTEMS AND THE PROCESS OF CHOOSING A HEAD OF STATE

A method for choosing a head of state cannot be developed in a vacuum. It should be directly related to the type of political system which that applies in a the country in question, and the type of role the head of state will play in that political system. In considering the methods used in other countries to choose a head of state, the following generalisations may be made:

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- In countries which that are parliamentary republics (i.e. whether where there is a head of government, usually known as the Prime Minister, as well as a head of state, usually known as a President), the head of state is generally chosen indirectly, usually through election by the legislature or by an electoral college composed largely of legislators.
- In countries which have executive presidential systems (where the one same person is head of government and head of state), the head of state is generally elected directly.¹
- In federations, the result is mixed. Where the head of state is directly elected, it is usually on the basis of 'one vote, one value', without extra weighting which that takes into account sub-national sub-national representations.² Where the head of state is chosen indirectly, through an electoral college or by parliamentary election, the representation of smaller sub—national units is usually increased.

The 1999 Republic Referendum

If one were to translate the above generalisations to the Australian position, it is notable that the system which that would most likely be derived is that which was proposed in the 1999 referendum. The primary consideration is that Australia's system of governance is a parliamentary system, rather than an executive presidency. Accordingly, some form of indirect selection of the head of state would normally be chosen. Further, as a federation, some form of increase of the relative representation of the smaller sub—national units (the States) would often apply.

The 1999 referendum proposed indirect election of the head of state, by way of election by a two-thirds majority of a joint sitting of the Commonwealth Parliament. The increase of the representation of smaller States arises through their disproportionate representation in the Commonwealth Parliament, due to the fact that each State has an equal number of Senators, regardless of population, and each existing State has a minimum entitlement in the House of Representatives of five members.

Accordingly, the model proposed at the 1999 referendum is consistent with international practice. Countries which that use their national Parliament as the electoral college which that chooses the head

¹ The most notable exception is the United States of America where an electoral college is used. There is however, still the popular impression of direct election, as the members of the electoral college are directly elected and the voter marks his or her vote on the ballot paper in favour of the Presidential team that is preferred rather than the name of the candidate for the electoral college.

² See for example Argentina, Austria, Brazil, Mexico and Venezuela.

of state include South Africa (where only the lower house may vote),³ the Czech Republic (where there is a joint sitting of both chambers),⁴ Greece⁵ and Israel where the President is elected by the Knesset⁶

The 1999 referendum model is also consistent with the parameters of this topic, which require the involvement of 'the people (which occurs through their elected parliamentary representatives), the States' (which occurs through the disproportionate weighting of votes in the federal system) and 'the Commonwealth' (which occurs through the Commonwealth Parliament)

PART 2 INTERNATIONAL COMPARISONS

Electoral Colleges: - Indirect Election

While the use of the Commonwealth Parliament as a form of indirectly elected electoral college is the most obvious approach, its failure in the referendum of 1999 requires further consideration of other forms of indirectly chosen electoral colleges

In Germany, a special electoral college, described as the Federal Assembly or Federal Convention, is formed with the sole power of electing the German President. This body is composed of the members of the Bundestag (the lower House of the German Parliament) and an equal number of persons elected by the members of the Länder (i.e. State) Parliaments on the basis of proportional representation.⁷ A simple majority of votes is required to elect the President.

In reality, the high level of party discipline in the Länder and the Bundestag, means that the federal nature of representation resulting from this model is similar to a model which uses both houses of the national Parliament.⁸

In contrast to Germany, the Indian President is elected by an electoral college consisting of the elected members of *both* Houses of Parliament and all the elected members of the Legislative Assemblies of the States.⁹ On its face, this would give the States a disproportionately

³ South African Constitution of the Republic of South Africa 1986 s86

⁴ Czech Constitution of the Czech Republic 1993 Art 54

⁵ Constitution of Greece 1986 of Greece Art 30

⁶ Basic Law: - The President of the State of Israel 1964 Art 3

⁷ See Art 54 of the Basic Law of Constitution of the Federal Republic of Germany Art 54

⁸ Prof Von Beyme, K. Germany IN Australia Republic Advisory Committee *An Australian Republic - The Options*. Australian Government Publishing Service 1993. Appendix 4 55

⁹ Indian Constitution of the Republic of India 1996 Art 54

greater involvement in the election of the federal President; however, Article 55 of the Indian Constitution sets out two further principles, which are: (a) uniformity in the scale of representation of the various States in the presidential election; and (b) parity between the States as a whole and the national Parliament. This is done by way of a complicated formula which that weights votes accordingly. The method of electing the President is by way of proportional representation by means of a single transferable vote¹⁰

Another country which that uses indirect election of an electoral college to choose its head of state is Italy. The main difference is that Italy is not formally a federal state. In electing its President, however, it uses an electoral college comprised of both Houses of the Italian Parliament as well as three delegates from every Region, elected by the Regional Councils in such a manner 'as to ensure the representation of minorities'.¹¹ Its upper house is also elected on a regional basis, with a minimum number of senators for each region, but otherwise in proportion to the population in each region. Accordingly, the regional representation in the selection of the head of state arises both through the composition of the upper house and the addition of regional representatives to the electoral college¹²

While most electoral colleges include members of one or both houses of the national Parliament, this does not need to be the case. For example, in Malaysia, the Supreme Head of the Federation, the Yang di-Pertuan Agong, is elected by the Conference of Rulers¹³. This is comprised of the hereditary rulers of the States. The conference, however, is constitutionally obliged to offer the position to the Ruler qualified for election whose State is first on the election list¹⁴. This results in a rotation amongst the hereditary rulers of the different States,¹⁵ as long as the particular Ruler is not otherwise disqualified or does not accept the position.

A comparable system is the Swiss method of choosing the head of state of the Confederation. The head of state is chosen from the members of the Federal Council (the national executive), of which there are seven

10 Noorani, A. India IN Australia Republic Advisory Committee, *An Australian Republic - The Options*. Australian Government Publishing Service 1993. Appendix 4 886

11 Italian Constitution of the Republic of Italy 1948 Art 83.

12 See also the election of the President of Indonesia who is elected by the Majelis Permusyawaratan Rakyat, which is comprised of the Dewan Perwakilan Rakyat augmented by delegates from the regional territories and groups as provided for by statutory regulation: Art 2 and Art 6 of the Indonesian Constitution

13 Malaysian Constitution of Malaysia 1963 Art 32(3)

14 Malaysian Constitution of Malaysia 1963 sch 3

15 Most States have hereditary rulers. Those States that do not, cannot participate in the election of the head of state

members.¹⁶ Not more than one member of the Federal Council can be elected from the same Canton¹⁷ While the head of state is formally chosen by the Federal Assembly from among the members of the Federal Council, in practice, the position is rotated amongst those members, with terms of only one year.

Electoral Colleges: – Direct Election

Another option is the use of an electoral college that is directly elected by the people but with a weighting of votes that reflects federalism. This is the system that is applied in the United States of America. It is more suited to an executive presidency in a federation, rather than a parliamentary system. This system is similar to direct election because voters cast their ballot expressly on this issue — rather than the election of a Member of Parliament, which will be based on other reasons and will usually not be connected with an election for head of State.

This system has federalist elements, however, because the principle of 'one vote, one value' does not apply. Each state has a number of votes in the electoral college equal to its number of representatives and senators in the Congress. As a result of federal guarantees that each State be given an equal number of Senators, and each State be allowed at least one seat in the Congress, regardless of population, the voting power of smaller states is inflated¹⁸ and the voting power of larger states is reduced.¹⁹

The consequence of this federal aberration from the principle of 'one vote, one value', is that it is possible to be elected President of the United States without winning the majority of popular votes; however, this outcome is rare, only happening in 1876 and 1888.²⁰

Another peculiarity of the United States' system is that the voting method is such that whoever wins a plurality of the vote in a State usually wins all the votes of electoral college members for that State.

¹⁶ Federal Constitution of the Swiss Confederation 1999 Arts 95 and 98

¹⁷ Federal Constitution of the Swiss Confederation 1999 Art 96.

¹⁸ According to 1990 census figures the smallest four States and the District of Columbia had together 1.14 per cent % of the population of the United States but controlled 2.79% of the votes of the electoral college. Massicotte, I. Elections in Federal Countries. IN Rose, R. (ed), *International Encyclopaedia of Elections*, Macmillan 2000. 101.

¹⁹ The States of California and New York together had 19.2% of the population of the United States but controlled only 16.2% of the votes of the electoral college. Massicotte, I. Elections in Federal Countries. IN Rose, R. (ed) *International Encyclopaedia of Elections*. Macmillan 2000. 102.

²⁰ Shugart, M. Indirect Election. IN Rose, R. (ed) *International Encyclopaedia of Elections*. Macmillan 2000. 150.

Almost every State has enacted a law that gives all its electoral votes in the electoral college to the winner of the plurality of the popular vote in that State. This means that where there is a three-way contest (for example, the 1992 election contested by Bush, Clinton and Perot), whichever of the three achieves the most votes in a State for his or her electoral college candidates (being less than a majority) wins all the votes for that State, with whoever came second receiving none. For example, George Bush won all the electoral votes of Arizona and Kansas with just 39% of the popular vote, and Bill Clinton won all the votes of Montana and Nevada with just 38% of the vote.

The other idiosyncrasy of this system is that while the allocation of electoral college votes inflates the voting power of small states, the 'winner-takes-all' electoral system magnifies the importance of victory in the largest states. A victory by a very small margin over a rival in a State with a large number of electoral college positions (for example, California) — which will achieve all the electoral college votes for that State — is much more valuable than a large victory in a small State. This leads to campaigning being focussed upon the 10 most important States, which in 1992 had 257 of the 270 votes needed to win the Presidential election.²¹

This system has all the dangers of direct election for the head of state in a parliamentary system. It gives the head of state a popular political base and a status above that of the Prime Minister, resulting in the possibility of political rivalry. It would also, most likely, involve a political campaign with policies that may conflict with those of the government of the day. While appropriate for an executive presidential system of government, it appears to be inappropriate for a parliamentary system.

The other problem with this system is that it involves all the costs of direct election but is not transparent in the way that it operates. The trend amongst countries that had previously adopted such a system is to move to direct election of the President. For example, both Finland and Argentina previously had similar systems for electing their head of state, but both have now adopted the system of direct popular election.

Direct Election: - Federal Influence on the Nomination Process

Direct election normally proceeds on the basis of 'one vote, one value', and therefore does not take into account the federal balance. One way, however, to include a federal element is for the nomination process to be related to federal interests.

²¹ Lawrence D and Longley I. Electoral College. IN S Lipset, S (ed), *The Encyclopaedia of Democracy*, Vol II Congressional Quarterly Inc 1995 410

In the Republic of Ireland, the President is directly elected. This was intended to give the position a legitimacy which that the previous heads of state (the monarch or the Governor-General) were perceived to have lacked. While the election is based upon the principle of 'one vote, one value', the nomination process is controlled by elected representatives at the national and county level. Article 12.4.2 of the Irish Constitution provides that a presidential candidate must either be nominated by at least 20 people, each of whom is a member of one of the Houses of the Oireachtas (the national Parliament), or by the Councils of not less than four administrative Counties.

If only one candidate is nominated, there is no need for an election. Accordingly, if political parties make deals with one another, the role of the people in the election is supplanted. This has occurred in 1938, 1952, 1974, 1976 and 1983, when no election was held because there was only one candidate.²²

Other Criteria for Nomination

While there may be some justification in nominating federalism as the element which that should affect the nomination or selection process of the head of state, there may well be grounds for choosing other criteria. The position of head of state always runs the risk of becoming a political prize for example, for a party hack who has served the party's interests, for a defeated political competitor as compensation, or for a political colleague who stirs up trouble and who would be safer in a prestigious but neutered position. The Parliamentary positions of Speaker and President are often allocated in this way as a prize to safely dispose of the unwanted. Alternatively, the head of state's position risks becoming a retirement home for former judges and military officers.

One way of countering this outcome is to change the nomination criteria. This is done in some Parliaments to ensure a mix of parliamentarians and a broader form of 'representation' in the Parliament. For example, the Irish Senate (the Seanad Éireann) is composed of 60 members, 11 of whom are appointed by the Prime Minister and 49 of whom are elected. Three are elected by the National University of Ireland and three by the University of Dublin. The remaining 43 are elected from panels of candidates with knowledge and practical experience in:

- national language and culture, literature, art, education and such professional interests as are defined by law for the purposes of this panel;

²² Duffy, J. Ireland IN Australia Republic Advisory Committee *An Australian Republic - The Options* Australian Government Publishing Service 1993 Appendix 4 136

- agricultural and allied interests, and fisheries;
- labour, whether organised or unorganised;
- industry and commerce, including banking, finance, accountancy, engineering and architecture; and
- public administration and social services, including voluntary social activities.

No more than eleven and no fewer than five members can be elected from any one panel.

A similar approach is taken in India, although on a much smaller scale. While its federal upper house is mostly comprised of representatives of the States (elected by the members of the Legislative Assembly of the States), it also contains 12 members nominated by the President, being persons with special knowledge or practical experience in literature, science, art and social service.²³ Malaysia also provides for appointments to the upper house by the Yang di-Pertuan Agong of persons 'who have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, agriculture, cultural activities or social service, or are representative of racial minorities or are capable of representing the interests of aborigines'.²⁴

While these categories of nomination relate to numerous parliamentary positions (where variety can be accommodated), it would not work as well where there is only one position to be filled. It could, however, be incorporated into a nomination process, where the final choice is to be made from a variety of candidates.

PART 3 THE AUSTRALIAN POSITION

Is the Position of Head of State a Truly 'Federal' Position?

An important preliminary question to be asked is whether the position of head of state of Australia should be seen as relating to the national level of government only, or whether it should be seen as playing a role in relation to the States.

Even prior to federation, during the debates on a proposed federal Constitution, the States (or colonies as they then were) resisted the notion of a Commonwealth Governor-General having any jurisdiction in

²³ Indian Constitution of the Republic of India 1996 Art 80

²⁴ Malaysian Constitution of Malaysia 1963 Art 45

relation to State governance, and rejected the suggestion that State Governors should be appointed by the Governor-General²⁵

After federation, the States maintained the positions of their own Governors and maintained independent links with the Crown, refusing to deal through the Governor-General as an intermediary²⁶ The Governor-General has no constitutional power in relation to a State; for example, he or she cannot dismiss a State Government or assent to a State law

If anything, the State Governors have a greater influence on the position of Governor-General, because in the absence of the Governor-General, or when a vacancy arises, it is the most senior State Governor who fills the role. (The reverse, of course, does not occur. The Governor-General never fills in when a State Governor is absent or there is a vacancy in the office.)

The monarch, however, holds a different position in relation to State Governments. The monarch holds a direct constitutional relationship with each of the States, which is separate from his or her relationship with the Commonwealth Government. Although the *Australia Acts 1986* have now limited that role in relation to the States, it remains a constitutional role which that is exercised upon State advice²⁷

The question which that must be asked in formulating any republic proposal is whether the new head of state (however described) is intended to replace the Queen, and fulfil all her separate roles in relation to the States, or whether the proposal is really intended to make the Governor-General the head of state. The answer to this question ought to have an effect upon the extent to which a federal element is included in the selection process for the head of state

At the Republic Convention in February 1998, the then NSW Attorney General, the Hon Jeff Shaw QC MLC floated the following personal view:

²⁵ This matter was debated in some detail at the 1898 Constitutional Convention. See: *Official Record of the Debates of the Australasian Federal Convention*, 3rd session. Melbourne vol II 1 March 1898, 1702-1717. It is interesting that the main proponent of State Governors being appointed by the Governor-General was the Western Australian Premier, Sir John Forrest. The main opponent to this idea was Mr Barton from New South Wales

²⁶ Proposals that relations between States and the Crown be channelled through the Governor-General and that the Governor-General appoint State Governors have been raised from time to time and rejected. See: Dunstan, D. *The State, the Governors and the Crown*, IN Dutton, G (ed) *Republican Australia?* Melbourne: Sun Books, 1977, 202, 208; and *Australia Report of the Constitutional Convention* Canberra: Department of Prime Minister & Cabinet 1998 vol 4, 588

²⁷ *Australia Acts 1986* (Cwlth) s7

I propose as little change as practicable [in the appointment of State Governors] Like my colleague from Victoria Mr Brumby, I favour appointment by the President of the Commonwealth on the advice of the State Premier However, in such an arrangement, it would have to be crystal clear that neither the President nor the Commonwealth Government would have any discretion to decline to make an appointment or make it in any way other than in accordance with the wishes of the State Premier.²⁸

While some supported the view, others vehemently objected to it. The Hon. Peter Collins MP (then Leader of the Opposition in NSW) stated that it is 'absurd' to suggest that 'Governors will somehow be appointed by the President'²⁹ The Hon. Denver Beanland (then Queensland Attorney-General) observed that the last thing the people of Queensland would want is some arrangement where the State Governor was appointed by a federal President. He considered it would be a 'disaster' that 'would lead to the destruction of the sovereign states as we know it'³⁰ Mr Griffin (who was representing the South Australian Premier) also rejected the idea of State Governors being appointed by a federal President. He stated that 'the sheer symbolism of such an outcome is that the Federation is dead. It undermines the States'³¹ The Hon Michael Hodgman from Tasmania went so far as to describe the idea as the 'rape' of the Constitution³²

Given the level of outrage at such a suggestion, it is not surprising that the 1999 referendum proposal gave no role to the President in relation to the States or the appointment of State Governors. The proposal was really directed at making the Governor-General the head of state, rather than establishing a Head of Statehead of state to replace the Queen. The 'President' was to have constitutional powers in relation to the Commonwealth Government (e.g. for example, the power to appoint Commonwealth Ministers, assent to Commonwealth laws and dissolve the Commonwealth Parliament), but could not exercise any of these powers in relation to State Ministers, State laws or State Parliaments. Nor was it proposed that the President would have the power to appoint the Governors of the States, or ever undertake functions where the President would be obliged to act upon the advice of the States. The role

28 Australia *Report of the Constitutional Convention* Canberra: Department of Prime Minister & Cabinet, 1998, vol 4, 714

29 Australia *Report of the Constitutional Convention* Canberra: Department of Prime Minister & Cabinet, 1998, vol 4 710

30 Australia *Report of the Constitutional Convention* Canberra: Department of Prime Minister & Cabinet, 1998, vol 4, 719

31 Australia *Report of the Constitutional Convention* Canberra: Department of Prime Minister & Cabinet, 1998, vol 4, 712.

32 Australia *Report of the Constitutional Convention* Canberra: Department of Prime Minister & Cabinet, 1998, Vol. 4 723

of the President was clearly confined to Commonwealth matters. While the President would have to also hold a symbolic position of representing the nation as a whole, no truly 'federal' role was intended.

The only 'federal' aspect of the 1999 referendum proposal in relation to the President, was the requirement that in the case of a vacancy in the office of President, the longest-serving State Governor available would fill the position until a new President was chosen. The Prime Minister could also appoint the longest-serving State Governor available to act as President for any period during which the President was incapacitated.³³ This, however, largely replicated the current informal system under which State Governors fill in for the Governor-General in his or her absence.

If it would be the 'destruction of federation' and the 'rape' of the Constitution for the Commonwealth head of state to be involved in the selection of State Governors, why then should the States be expressly involved in the selection of the Commonwealth head of state? Would not State involvement in the selection of the Commonwealth head of state merely invite the reverse presumption, that the Commonwealth should be involved in the selection of State Governors?³⁴

If the legal and political role of the Commonwealth Head of Statehead of state is confined to matters relating to the Commonwealth Government and not the States, then the only remaining role in which the States could conceivably have an interest is the symbolic and representational role of the Commonwealth head of state. Certainly, a republican 'President' of Australia would have a symbolic role in representing all Australians; for example, at funerals, tragedies, celebrations and official functions. He or she would also have an international role in representing Australia. The question then is whether 'Australianness' is recognised by reference to State allegiance, or whether there is a level of national unity which transcends State boundaries. Can an Australian head of state adequately represent all Australians regardless of the State to which he or she belongs?

Again, it is difficult to accept the notion that unless the States have a recognised role in the selection of the head of state, the person chosen cannot adequately represent Australia as a whole.

As long as the head of state's role relates to Commonwealth matters and representational matters, then the need for State involvement in the selection of the head of state is just not apparent. If, however, that office were to be given a constitutional or political role in relation to

³³ *Constitution Alteration (Establishment of Republic) 1999* cl 63, 9

³⁴ Note that the Canadian Governor-General appoints the Lieutenant-Governors of the Provinces

States (such as the appointment of State Governors, or the power to dismiss State Governments) there would be no question as to the need for the States to be involved in the selection process. It is unlikely, however, that in any revised republican proposal, such a change would be advocated.

No doubt others will disagree with this conclusion. If it is generally accepted that the States should play a special role in the selection of the head of state, then below are some suggestions as to how this could be achieved.

Possible Models

An Indirectly Elected Electoral College

As noted above, the most obvious model, and the one most consistent with international practice, is the election of the head of state by a joint sitting of both Houses of the Commonwealth Parliament, as was proposed by the 1999 referendum. Under this model, the smaller States have increased representation through their disproportionate representation in the Commonwealth Parliament.

The next best means of using an indirectly chosen electoral college, to add an element of federalism to the process, is a model similar to that of Germany. This would involve the selection of the head of state by an electoral college comprised of the Commonwealth House of Representatives, and an equal number of members elected by the State Parliaments. The Indian model of using all members, both State and Federal, with a complicated system for weighting votes, should probably be rejected on grounds of expense.³⁵ It should also be noted that in India the National President appoints State Governors, making the role of the States in choosing the National President more important.³⁶

Another alternative is the Malaysian model, which would involve all the State Governors meeting to choose the head of state (either from their own ranks, or an independent candidate). This model would undoubtedly be rejected on the grounds of elitism; however it does have the advantage of being cheap, more efficient, and less likely to throw up a 'political' result. An issue to be resolved would be whether State Governors were able to exercise their own discretion, or would be obliged to act on the advice of their Government.

³⁵ Note recent public criticism of the cost of holding a joint sitting of the NSW Parliament for the purpose of filling casual vacancies in the Legislative Council: What costs \$6000 for 60 seconds. A State Parliament *Daily Telegraph*. 31 August 2000, 10.

³⁶ Indian Constitution of the Republic of India 1996 Art 155.

One way of ensuring equality amongst the States would be to adopt the 'rotation' system used in Malaysia and Switzerland, so that each State's Governor became head of state in turn. This would also avoid the question of whether or not the Governors should be acting on advice in selecting the head of state.

A Directly Elected Electoral College

A different approach would be to use a directly elected electoral college, as in the United States. This is a substitute for directly electing the head of state, because direct elections usually work on the basis of 'one vote, one value', with no 'federal' element which that increases the representation of the smaller States. A directly elected electoral college model, however, may involve a federal element through the allocation of electoral college votes to each State. At the same time, it involves the people through a direct election of candidates for the electoral college.

The disadvantages of this system, are, however, are: (a) a lack of transparency in the process; (b) the expense of a national election; and (c) the risk of establishing an opposing political force to the Prime Minister, with the inherent instability that this would involve. This model is more suited to an Executive Presidency, as in the United States.

State Involvement in the Nomination Process

A more palatable way of involving the States in the process of selection of the head of state would be through the nomination process. Each State could have the right to nominate a candidate to be considered in whatever method is chosen for selecting the head of state; for example, appointment on the nomination of the Prime Minister, or by the Commonwealth Parliament, or even direct election. This would have the advantage of widening the field to include the nomination of people who might not otherwise have been considered.

The nomination could be determined by the Premier, or a vote of the State Parliament, or through a public nomination process where the final nomination is made by a State committee of community representatives. If the States controlled the nomination of candidates, and the Commonwealth controlled the selection from within that number of candidates, then the process would certainly be more balanced between the two levels of Government.

The disadvantage is that few eminent people would be likely to wish to involve themselves in a process in which they are publicly pitted against five or more candidates nominated by other States.

CONCLUSION

Despite its failure at the 1999 referendum, the model proposed for the selection of the head of state was consistent with international precedent and well-adapted to our system of government. It had an element of federalism involved, through the disproportionately greater representation of the smaller States in the federal Parliament, but that element would not have been a major factor in the selection of a republican head of state. Party discipline is far more likely to play a major role.

There are other means of increasing the level of involvement of the States in the process for selecting the head of state, and these have been discussed above. The need to do so, however, is queried if the head of state's constitutional and political role is confined to Commonwealth matters. There may, indeed, be some danger in giving the States an explicit role in the selection of the head of state, because this may be seen as a reason for the head of state's powers to be interpreted broadly to encompass a constitutional or political role in relation to the States.